



AMERICAN CIVIL LIBERTIES UNION

California

# PATTERNS & PRACTICES OF POLICE EXCESSIVE FORCE IN KERN COUNTY

FINDINGS & RECOMMENDATIONS

November 2017

## I. Introduction

For many years, residents of Kern County have expressed concerns about excessive force and serious misconduct by the officers of the Kern County Sheriff's Office ("KCSO") and Bakersfield Police Department ("BPD"). In response to community concerns and to public reports about a number of police killings of unarmed individuals in Kern County, the ACLU of California ("ACLU CA") conducted a two-year investigation into excessive force by KCSO and BPD. This paper summarizes the findings of that investigation.

Our findings show that both KCSO and BPD have engaged in patterns and practices that violate civil rights. KCSO and BPD officers have engaged in patterns of excessive force—including shooting and beating to death unarmed individuals and deploying canines to attack and injure—as well as a practice of filing intimidating or retaliatory criminal charges against individuals they subject to excessive force. Deficient oversight and accountability structures have allowed law enforcement misconduct to go unchecked and in some cases escalate. Changes to KCSO and BPD policies, training, and institutional structures are therefore required to ensure that officers carry out their duties lawfully, ethically, and safely – consistent with the Constitution and respect for the sanctity of life.

## II. Methodology

The ACLU CA's investigation in Kern County has from its inception been guided by the concerns, information, and personal experiences shared with us by various members of the community. To arrive at the findings in this letter, ACLU CA staff additionally reviewed state data on deaths in custody and arrest-related deaths; court records; coroner's reports; media reports; records of the Kern County District Attorney's office; data maintained by KCSO and BPD about officer-involved shootings, canine use of force, and obstruction charges; and the agencies' policies and training materials.

Throughout this process, our limited right to access law enforcement records under state law has constrained our ability to investigate excessive force in Kern County. For example, state law precluded ACLU CA from reviewing records relating to officer disciplinary proceedings. Although KCSO and BPD have been cooperative and responsive to our public records requests

in many respects, a wide range of documents related to individual uses of force are exempt from disclosure as “investigatory files” under the Public Records Act, and the County was unable to provide all the documents we requested in time for their analysis to be included in this paper. Additionally, Kern County Superior Court demanded prohibitively high fees for copies of court records and even on-site review of court files, so we were able to examine only a sample of case files pertinent to our investigation. Consequently, our findings cannot be taken as a comprehensive accounting of all evidence of excessive force by KCSO or BPD. Nevertheless, the information we were able to obtain from public records corroborates the anecdotal evidence we gathered from affected community members and supports the findings set forth below.

### III. Findings

#### A. Officer-Involved Shootings

The data we compiled from publicly available sources show that both KCSO and BPD are outliers with respect to the number of people that their officers shoot and kill. KCSO deputies have shot and killed 10 people since 2013, far more than other Sheriff’s departments in counties with equivalent population sizes.<sup>1</sup> In the same amount of time, BPD officers shot and killed at least 19 people, making it one of the deadliest police departments in the country.<sup>2</sup> Comparing only police departments in cities with crime rates equivalent to or higher than Bakersfield’s, BPD’s rate of police killings in recent years is among the top five highest in the country, and the second highest in California.<sup>3</sup> In 2015, Bakersfield Police Department was responsible for *the highest rate of police homicides per capita* among the country’s 60 largest police departments.<sup>4</sup>

In addition to being numerous, BPD and KCSO shootings also follow patterns that raise serious constitutional concerns. Over a quarter of BPD’s deadly shootings since 2009 killed someone unarmed, and an additional 3 involved someone armed only with a knife.<sup>5</sup> Similarly, the vast majority of KCSO shootings have involved someone unarmed or armed only with a knife.<sup>6</sup> A significant percentage of people shot and killed were initially contacted by law enforcement because they exhibited signs of mental illness or disability.<sup>7</sup> On several occasions, BPD officers shot someone fleeing in a car or on foot.<sup>8</sup> These patterns are in tension with established Fourth

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<sup>1</sup> For example, in the same timeframe, Ventura County Sheriff’s deputies were responsible for 4 shooting deaths, and San Mateo County deputies shot and killed one person. *See* Appendix I.

<sup>2</sup> BPD officers were additionally responsible for 4 non-lethal shootings during this time. According to our data, BPD officers have shot at least 45 people since 2009. *See* Appendix III.

<sup>3</sup> *See* Appendix II.

<sup>4</sup> Mapping Police Violence Project, *2015 Police Violence Report*, <https://mappingpoliceviolence.org/2015/>.

<sup>5</sup> *See* Appendix III; *see also Lopez v. City of Bakersfield*, No. 1:13-cv-01725-LJO-JLT (E.D. Cal. filed Dec. 8, 2014).

<sup>6</sup> *See* Appendix III (roughly 75% of KCSO fatal shootings involved someone unarmed or armed only with a knife); *see also D.G. v. County of Kern*, No. 1:15-cv-00760-JAM-JLT (E.D. Cal. filed May 14, 2015) (alleging that officers shot David Garcia after he had already dropped the knife he previously carried and was running away).

<sup>7</sup> *See* Appendix III (Jesse Soliz (BPD, 2013), Michael Dozer (BPD, 2014), Francisco Serna (BPD, 2016), Rodolfo Medrano (KCSO, 2011), Christian Chavez (KCSO, 2012), Bethany Lytle (KCSO, 2013), David Garcia (KCSO, 2015)).

<sup>8</sup> *See* Appendix III (Abel Gurolla (BPD, 2013), Vincent Yzaguirre (BPD, 2010), Traevon Avila (BPD, 2010)); *see also D.G. v. County of Kern*.

Amendment law and policing principles, which justify the use of deadly force only to prevent imminent death or serious injury to officers or others.<sup>9</sup>

The disparate impact of BPD's shootings on communities of color is also troubling. Sixty-five percent of the people shot and killed by BPD officers since 2013 were Latino, though Latinos comprise only 45% of the city's total population.<sup>10</sup> Of the 6 cases we identified where BPD officers shot someone unarmed, 4 of the people shot were Latino, and another was black. These patterns also raise serious legal concerns. All people, regardless of race or ethnicity, are entitled under the Constitution to the equal protection of their law enforcement officers, and police violence that disparately impacts racial minorities may violate state and federal anti-discrimination laws.

## B. Canine Attacks

Both KCSO and BPD use canines in ways that are life-threatening, hazardous for public safety, and at odds with national standards and practices as well as constitutional law. In the last decade, 5 people have died after being attacked by KCSO canines, 3 between 2011 and 2013 alone.<sup>11</sup> Many other people have been seriously injured because KCSO or BPD canines unjustifiably attacked them.<sup>12</sup> Even non-lethal canine attacks can cause excruciating pain, involve multiple bites, and result in permanent injury.<sup>13</sup> After a KCSO canine mauled a 60-year old woman inside her home while she was sleeping, a medical report stated that her "mutilated right ear" was "questionably salvageable," and she faced the potential loss of her hearing.<sup>14</sup>

The factual circumstances surrounding the canine attacks we found in the public record establish four troubling realities about KCSO and BPD practices:

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<sup>9</sup> *Graham v. Connor*, 490 U.S. 386, 397 (1989); *Tennessee v. Garner*, 471 U.S. 1 (1985); National Consensus Policy on Use of Force (Jan. 2017) ("National Consensus Policy"); see also Police Executive Research Forum, Use of Force: Taking Policing to a Higher Standard (Jan. 29, 2016) ("PERF Principles"), 1 ("Departments should adopt policies that hold themselves to a higher standard than the legal requirements of *Graham v. Connor*.");

<sup>10</sup> See U.S. Census Bureau, Community Facts: Bakersfield (last visited Oct. 24, 2017), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>; Appendix III.

<sup>11</sup> See Appendix III (Christopher McDaniel (2014), Ronnie Ledesma (2013), David Sal Silva (2013), Rory McKenzie (2009), Ray Robles (2006)).

<sup>12</sup> See, e.g., Victoria Youngblood (KCSO, 2012), Erin Casey (KCSO, 2013), Austin Attebery (BPD, 2014), Ruben Lopez (KCSO, 2014), Justin Gutierrez (KCSO, 2012), Tatyana Hargrove (BPD, 2017). We were unable to review canine use of reports completed by KCSO and BPD handlers, so this list of people injured by canine attacks is based only on media reports and court filings, and is therefore incomplete. In conversations with community members, we heard additional troubling anecdotes about injuries resulting from canine use of force.

<sup>13</sup> *Lopez v. Kern County Sheriff's Dep't*, No. 116CV00095DADJLT, 2016 WL 5930418, \*3 (E.D. Cal. Oct. 11, 2016) (describing painful experience of being attacked by BPD canine while handcuffed); *id.* (reporting nine bites); *People v. Michael Brucker*, No. BM 8902701A (Kern Super. Ct. Feb. 15, 2017) (documenting serious injuries inflicted by canine "from head to . . . ankle, some of which required stitches"); see also Los Angeles Sheriff's Dep't, 34th Semiannual Report of Special Counsel (Aug. 2014) ("LASD Report") ("While canine bites have not been classified by the courts as lethal force, they come close to it in the permanent injury and disfigurement they can cause.").

<sup>14</sup> Jason Kotowski, *Sheriff's estranged wife mauled by Bakersfield police dog in her bed*, Bakersfield Californian (Apr. 13, 2012), <http://bakersfieldnow.com/news/local/sheriffs-estranged-wife-mauled-by-bakersfield-police-k-9/>.

*First*, KCSO and BPD officers deploy canines not only to locate suspects at large or in hiding, but to intimidate and injure people already in their presence—including people who are unarmed. A KCSO deputy had already located David Sal Silva, who was not armed, fleeing or even mobile, when he initiated the canine attack.<sup>15</sup> According to Tatyana Hargrove, a BPD officer used canine force to intimidate her into relinquishing her constitutional rights; when she asked if he had a warrant after he demanded her backpack, he pointed to the canine at his side to threaten her, and ultimately instructed it to attack her.<sup>16</sup> Court records document similar incidents.<sup>17</sup>

*Second*, KCSO and BPD officers do not deploy canines to avoid using greater force. Instead, they escalate canine attacks with beatings, Tasers, baton strikes, and gunshots. For example, leading up to David Sal Silva’s death, KCSO deputies released a canine to bite him, then struck him across the head with their batons in response to his attempt to stop the canine attack, which by that point had continued for several minutes. Cell-phone video of the canine attack and beating leading to Ronnie Ledesma’s death documents a similar course of action by KCSO officers.<sup>18</sup> Court records suggest that these are not isolated incidents – that as a matter of custom and practice, officers use people’s evasive or defensive actions in reaction to being bitten by dogs as the justification for additional force.<sup>19</sup>

*Third*, KCSO and BPD canine handlers simply do not have adequate control over the animals they train to attack and injure. Canines from both departments have repeatedly mauled members of the public without specifically being instructed to do so by their handlers.<sup>20</sup>

*Finally*, the impact of KCSO and BPD’s canine deployments appears to fall disproportionately on people of color. With only one exception, every person killed in an incident involving KCSO canines was black or Hispanic. This is particularly troubling in the

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<sup>15</sup> See *Timeline surrounding David Sal Silva’s death*, Bakersfield Californian (Jun. 1, 2013), [http://www.bakersfield.com/news/timeline-surrounding-david-sal-silva-s-death/article\\_fb01ef0a-d5e0-5376-9293-052a90a4f24e.html](http://www.bakersfield.com/news/timeline-surrounding-david-sal-silva-s-death/article_fb01ef0a-d5e0-5376-9293-052a90a4f24e.html). The same is true of Ronnie Ledesma.

<sup>16</sup> See Veronica Rocha, “Bakersfield woman, mistaken for male suspect, files excessive force claim against police,” L.A. Times (Aug. 30, 2017), available at <http://www.latimes.com/local/lanow/la-me-ln-teen-mistaken-male-files-claim-bakersfield-20170830-story.html>.

<sup>17</sup> *People v. Ray*, No. F070436, 2016 WL 4621046, \*2 (Cal. Ct. App. Sept. 6, 2016) (describing BPD officers’ threat to release canine if Ray moved, in response to Ray’s verbal protest against being frisked and handcuffed); *People v. Garcia*, No. F072447, 2016 WL 6747296, \*1 (Cal. Ct. App. Nov. 15, 2016) (describing use of canine to arrest suspect who was located and visible).

<sup>18</sup> See Order Granting in Part & Denying in Part Defendants’ Motion for Summary Judgment at 5-6, *Ledesma v. Kern County*, No. 1:14-cv-01634-DAD-JLT (E.D. Cal. Nov. 10, 2016) (“*Ledesma Order*”) (“After [the canine] began biting Ledesma’s leg, Ledesma started to kick and swing his arms, placing his hands near [the dog’s] head and mouth in an attempt to pry [it] off him. . . . Upon witnessing Ledesma grab [the dog], [KCSO deputy] DeLaGarza struck Ledesma with her collapsible baton three times on his arm and leg . . . [then] twice more. . . .”); see also Ronnie Ledesma Jr. Arrest – cell phone video (uploaded by Kern County Sheriff Aug. 30, 2013), <https://www.youtube.com/watch?v=XI8akTUy-E0>.

<sup>19</sup> See, e.g., *People v. Daniels*, No. F068304, 2016 WL 3999777, \*3 (Cal. Ct. App. Jul. 26, 2016) (describing BPD officers’ use of pepper spray and physical force in response to defendants’ defensive blows reacting to dog attack).

<sup>20</sup> Erin Casey (KCSO, 2013), Austin Attebery (BPD, 2014), Ruben Lopez (BPD, 2014). See also *Lopez*, 2016 WL 5930418 at \*3 (accidental canine attack while victim was handcuffed).

context of this country's legacy of using canine violence against communities of color as a tool of oppression.<sup>21</sup>

BPD is deliberately indifferent to the risks to life and public safety posed by its canine program. In 2004, the federal Department of Justice ("US-DOJ") recommended that BPD make several changes to its practices and policies related to canine deployment.<sup>22</sup> More than a decade later, BPD has failed to implement US-DOJ's recommendations in several ways:

- US-DOJ recommended that BPD "develop appropriate safeguards" to ensure that its canine units operate in conformance with a "find and bark" methodology.<sup>23</sup> The "find and bark" methodology trains canines to bark, rather than bite upon locating a subject. US-DOJ noted that the "find and bark" policy is better practice "because it prevents canines from biting subjects in situations in which such force is not necessary."<sup>24</sup> BPD's canine policy does not require officers to adhere to the "find and bark" methodology.<sup>25</sup> Although the department requires canine handlers to undergo training on the equivalent "bark and hold" philosophy, court records indicate that they do not implement that philosophy in practice: as a matter of custom, and as instructed by their handlers, BPD canines find and then bite.<sup>26</sup>
- US-DOJ specifically recommended that BPD amend its policy to require supervisory approval prior to the deployment of a canine unit, noting that BPD exercised inadequate oversight of canine handlers.<sup>27</sup> BPD's current policy does not implement that recommendation. Instead, canine-handling officers retain the discretion to release canines for apprehension and control; BPD policy expressly makes determinations about the appropriateness of canine deployments the responsibility of the canine handler. Thus, BPD appears to have returned to a less-protective policy after revising its canine policy in 2005 to comport with US-DOJ's recommendations.<sup>28</sup>

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<sup>21</sup> See, e.g., Charlton Yingling & Tyler Parry, *The Canine Terror*, Jacobin (May 19, 2016), <https://www.jacobinmag.com/2016/05/dogs-bloodhounds-slavery-police-brutality-racism/>.

<sup>22</sup> U.S. Dep't of Justice, Civil Rights Division, Letter re: Investigation of the City of Bakersfield Police Department (Apr. 12, 2004) ("US-DOJ Letter").

<sup>23</sup> *Id.* at 9; cf. Consent Decree between the U.S. Dep't of Justice and Prince George's County, Md. & the Prince George's County Police Dep't (Jan. 22, 2004) ("PG County Consent Decree") ¶¶ 30-32 (requiring department to implement "guard and bark" policy by mandating that canine handlers give a "revere" command requiring canines to hold suspects at bay and bark rather than bite).

<sup>24</sup> *Id.*

<sup>25</sup> Bakersfield Police Department, Policy 318 (May 19, 2017).

<sup>26</sup> *Orduno v. Spearman*, No. 1:16-CV-01180-EPG-HC, 2017 WL 1349488, \*2 (E.D. Cal. Apr. 6, 2017) (describing BPD canine acting according to "find and bite" methodology); *People v. Deleon*, No. F070806, 2017 WL 1326322, \*2 (Cal. Ct. App. Apr. 11, 2017); *People v. Gomez*, No. F070785, 2016 WL 7384100, \*3 (Cal. Ct. App. Dec. 21, 2016) (suspect located in a tree and dragged down to the ground by BPD canine); *Brucker*, No. BM890270A (documenting BPD officer's commands to canine to find, bite, and drag suspect towards him).

<sup>27</sup> US-DOJ Letter at 9; cf. PG County Consent Decree ¶ 35 (requiring supervisory approval for canine deployment).

<sup>28</sup> Bakersfield Police Department, Policy 318.6.1 (May 19, 2017). See Bakersfield Police Memorandum, "Actions Related to DOJ T.A. Letter" ("BPD Actions Letter") (Mar. 23, 2005) (on file with ACLU and BPD) ¶ 24 ("We have revised policy which now requires notification of a supervisor when a canine team is on scene, unless exigent circumstances prevent notification. It also states that prior to releasing a canine for the purpose of

- US-DOJ recommended that BPD limit canine deployments to searches for serious felons and cases where a subject is armed or has potential to use force to cause harm to an officer or others.<sup>29</sup> But BPD’s policy authorizes canine attacks against individuals committing or threatening to commit “serious offenses,” without limiting “serious offenses” to felonies or otherwise defining that term.<sup>30</sup> BPD policy authorizes the use of canines to “apprehend” such persons – not just search for them. Moreover, BPD policy authorizes the use of canines to apprehend people even when they are unarmed and there is no reason to believe that they pose a threat to officers or others. Pursuant to BPD policy, officers may—and, as described above, actually do—deploy canines to bite suspects who are merely resisting or even threatening to resist arrest, as well as suspects in concealed locations.
- US-DOJ recommended that BPD policy prohibit the use of canines against unarmed people under the influence of drugs and/or alcohol or persons with mental illnesses.<sup>31</sup> BPD’s canine policy includes no such prohibition.
- US-DOJ recommended that BPD track canine apprehensions in order to properly calculate bite ratios. The documents that BPD provided us in response to a public records request for documentation of bite ratios, however, appear to only reflect the ratio of deployments to bites, not apprehensions to bites. Accordingly, they are insufficient to establish bite ratios or help BPD leadership confirm that canines are functioning under a “find and bark” methodology, since deployments may include use of canines simply to sniff for drugs and other functions unrelated to locating suspects. It is therefore unclear whether BPD is adequately monitoring how often canines are biting people when they are deployed to “find and bark.”<sup>32</sup>

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location/apprehending a suspect, a supervisor’s approval will be obtained unless exigent circumstances prevent such [approval]”).

<sup>29</sup> US-DOJ Letter at 9-10; *cf.* LASD Report (recommending that department allow dogs to be released on fleeing suspects “only when an objectively reasonable officer would conclude that it is necessary and the officer had probable cause to believe that the suspect has committed a felony involving the infliction or threatened infliction of serious physical injury or death; and the escape of the suspect would pose an imminent danger of death or serious physical injury to the officer or to another person unless the suspect is apprehended without delay; and the officer has given a verbal warning to the suspect, if time, safety, and circumstances permit”).

<sup>30</sup> Bakersfield Police Department, Policy 318.6 (May 19, 2017); *cf.* U.S. Dep’t of Justice, Preliminary Technical Assistance Recommendations to Improve the Cincinnati Division of Police (Oct. 23, 2001), <https://www.justice.gov/crt/preliminary-technical-assistance-recommendations-improve-cincinnati-division-police> (“Cincinnati TA Letter”) (finding policy that authorized use of canines to arrest those who commit a felony or “serious misdemeanor” insufficiently limiting, and recommending that “canine deployment for purposes of apprehending a person” be limited to (1) searches for serious felons and (2) cases where a subject is armed and poses a threat of harm to the officer or others). As with policy requiring supervisory approval for canine deployment, BPD appears to have adopted US-DOJ’s recommended change, then reverted to its prior defective policy. BPD Actions Letter ¶ 25 (“Revised policy contains language that states that canine deployment should be limited to searches for serious felons and cases where a subject is armed”) (emphasis added).

<sup>31</sup> US-DOJ Letter at 10.

<sup>32</sup> *Cf.* Cincinnati TA Letter (remarking on department’s failure to properly monitor and calculate ratios, because department tracked canine bites and dispatches, not canine apprehensions, and clarifying that “[b]ite ratios are properly defined as the number of apprehensions accomplished by means of a dog bite divided by the *total number of apprehensions*”) (emphasis added).

Although US-DOJ's recommendations were only addressed to BPD, they bring into sharp relief KCSO's problematic canine policies and practices. Specifically:

- As a matter of official policy, KCSO's use of canines is not limited to "find and bark." Rather, KCSO's policy encourages officers to use canines for attack and control purposes, stating: "In addition to their ability to search and locate suspect(s), Sheriff's canines also possess the capability and training to physically seize suspect(s) who are violent and resisting."<sup>33</sup> KCSO policy expressly gives officers broad authority to use canine attacks "to overcome resistance."<sup>34</sup>
- As described above, KCSO has used canines to attack unarmed people under the influence of drugs or alcohol or experiencing mental health crisis. Like BPD, it does not have a policy prohibiting such use.
- As described above, KCSO has used canines to attack people not suspected of any serious crime, who posed no imminent threat of serious harm to officers or others; such attacks are unreasonable and impermissible under the Constitution.<sup>35</sup> KCSO's policy encourages this unlawful practice. It categorically classifies canine attacks as "less than lethal force" without further elaboration, even though courts have recognized that some uses of canine force may rise to the level of "deadly force."<sup>36</sup> Moreover, the policy does not limit the use of canines to situations involving serious crime or violence, but rather encourages handlers to deploy canines against "prowlers,"<sup>37</sup> for warrant service, for crowd control, and against any resisting suspect.<sup>38</sup>
- Like BPD, KCSO gives its handlers great discretion to release canines for apprehension and control. Its canine policy does not require supervisory approval for canine deployments. Rather, it states: "Sheriff's Canine Handlers alone will make the decision to deploy their canines."<sup>39</sup> The unchecked string of deadly attacks and accidental maulings by KCSO canines in recent years demonstrates that KCSO does not exercise sufficient supervision over canine handlers.

### C. Excessive Force

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<sup>33</sup> Kern County Sheriff's Office Metropolitan Patrol Division Operational Manual ("KCSO Op. Manual"), No. K9-300 (Apr. 18, 2013).

<sup>34</sup> *Id.*, No. K9-500.

<sup>35</sup> *See Smith v. Hemet*, 394 F.3d 689, 704 (9th Cir. 2005).

<sup>36</sup> *Id.* at 707 (citing *Robinette v. Barnes*, 854 F.2d 909, 913 (6th Cir.1988)).

<sup>37</sup> "Prowling" is a misdemeanor offense. Cal. Penal Code § 647(h); *see also Sandoval v. Las Vegas Met. Police Dep't*, 756 F.3d 1154, 1163 (9th Cir. 2014) (distinguishing lawful search justified by suspected burglary from unlawful search based on suspicion of prowling).

<sup>38</sup> KCSO Op. Manual, Nos. K9-300, K9-500. *But see* US-DOJ Letter at 10 n.18 (use of canines for crowd control "places citizens at unreasonable risk of harm").

<sup>39</sup> *Id.*

Excessive force by BPD and KCSO officers has not been limited to shootings or canine attacks. It has also taken the form of sometimes-deadly beatings—including use of impact weapons like batons—pepper spray, chokeholds, and tasing, followed by life-endangering restraints.<sup>40</sup> Before Tatyana Hargrove became the victim of the canine attack described above, a BPD officer first punched her in the face and threw her to the ground. And after a Kern County Sheriff’s deputy ordered his dog to attack David Sal Silva, several KCSO officers repeatedly kicked and beat him with their batons across the head and body, then hogtied him, resulting in his death. Tatyana and David did not present a threat to the safety of officers or others when officers began striking them; both individuals were unarmed. Their stories illustrate how BPD and KCSO have failed to ensure that officers use only reasonable and proportional force, as required by the Constitution.<sup>41</sup>

Since 2009, at least 9 people have died after being beaten or tased by KCSO deputies.<sup>42</sup> At least 3 people have died after BPD officers beat or tased them.<sup>43</sup> In many of these cases, the use of batons and Tasers was combined with the use of canine attacks and pepper spray or other use of force. *In every case, the person killed was unarmed.*

Just as the impact of BPD and KCSO’s use of firearms and canines has landed disproportionately on people of color and people with disabilities, so has the impact of BPD and KCSO’s use of other force and restraints. The majority of people who died following KCSO beatings or tasings, and all of the people killed by BPD beatings and tasings, were identified as Hispanic. Several individuals were struggling with mental illness.

KCSO and BPD officers have used severe force against individuals who were not suspected of any serious crime, but were simply intoxicated or reported to be acting strangely.<sup>44</sup> For example, KCSO officers repeatedly struck Ronnie Ledesma with their fists, feet, and batons and instructed a canine to bite him twice, resulting in multiple bite wounds—even though he was suspected only of being intoxicated in public, was unarmed, and did not hit the officers or try to flee the scene.<sup>45</sup> When KCSO deputies responded to delusional phone calls that Jose Lucero placed

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<sup>40</sup> Because there is more publicly available information about use of force that leads to a death in custody, our analysis primarily focuses on deadly incidents. But we received many indications—through conversations with community members, news media reports, and court records—that KCSO and BPD also engage in patterns and practices of nonlethal but nevertheless illegal excessive force. *See, e.g., Gonzalez-Chavez v. City of Bakersfield et al.*, No. 1:12-cv-02053 (E.D. Cal. Feb. 13, 2017) (jury verdict finding excessive force in case where plaintiff alleged BPD officer approached him while he was sitting in his friend’s car; forcefully removed him from said car; hit him with weapons and punches about the arms, leg, face, and body; and tased him without cause).

<sup>41</sup> Officers in Kern County are responsible for far more serious uses of force than counties of similar size. In 2016, officers in Ventura County reported 15 incidents of serious use of force and San Mateo County officers reported 7, while Kern County officers reported 36 incidents. Thirty incidents of serious force took place in the city of Bakersfield alone. Cal. Dep’t of Justice, Use of Force Reporting Incident Report (2016).

<sup>42</sup> *See* Appendix III (Michael LeMon (2015), Juan Fidel Castro (2015), Robert Moore (2014), David Silva (2013), Ronnie Ledesma (2013), Michael Mesa (2009), Rory McKenzie (2009), Garrett Farn (2008), Ray Robles (2006)).

<sup>43</sup> *Id.* (Jose Vilorio (2016), Rodolfo Lepe (2009), Cecil Valenzuela (2007)).

<sup>44</sup> BPD’s own reported data suggest that a significant number of use of force incidents involve only minor, non-violent offenses. For example, in 2015, only about 20% of use of force incidents involved a crime against a person, domestic violence, or a weapon. The percentage of incidents involving a charge of being intoxicated in public or Welfare & Institutions Code § 5150 was roughly the same. Bakersfield Police Department, Internal Affairs Division, Year End Report 2015 (on file with ACLU CAI).

<sup>45</sup> *See generally* Order Granting in Part & Denying in Part Defendants’ Motion for Summary Judgment, *Ledesma v. Kern County*, No. 1:14-cv-01634-DAD-JLT (E.D. Cal. Nov. 10, 2016); *see also* Memorandum Decision and Order



during a mental health episode, they beat him with their batons, used pepper spray on him, and struck him with their Tasers roughly 25 times,<sup>46</sup> even though it is well-established that using a Taser against someone multiple times is potentially lethal and should be avoided.<sup>47</sup> When BPD officers responded to a call from Rodolfo Lepe's sister expressing concern that he was acting strangely, several of them attempted to extract him from the closet where he was hiding by hitting and kicking him and shooting him with multiple Tasers.<sup>48</sup> Lepe died from the resulting asphyxia and blunt force trauma.<sup>49</sup>

BPD and KCSO's inadequate use of force policies contribute to the custom and practice of excessive force in their respective departments. In 2004, US-DOJ observed that BPD's use of force policy was deficient and risked encouraging unreasonable force. Although BPD has since changed its use of force policy, its current policy still fails to take into account US-DOJ's critiques and recommendations in several important respects:<sup>50</sup>

- US-DOJ found that BPD's use of force policy did not adequately limit officers' use of force to cases in which it is required to make a lawful arrest or protect an officer or third-party from an immediate safety threat. It stated that the policy's authorization of force "to gain and maintain compliance with the law," was too ambiguous, and could lead officers to believe they were justified in using force in situations in which it was not reasonable.<sup>51</sup> BPD's current use of force policy authorizes officers to use force "in carrying out their duties" and "to accomplish a legitimate law enforcement purpose,"

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Granting in Part & Denying in Part Defendants' Motions for Summary Judgment at 6-7, *Garlick et al. v. County of Kern et al.*, No. 1:13-cv-01051-LJO-JLT (Mar. 8, 2016) (reflecting agreement between parties that Sal Silva was not suspected of any crime other than being drunk in public)

<sup>46</sup> Opinion, *Lucero v. County of Kern*, F066705 (Cal. Ct. App. Sept. 3, 2014).

<sup>47</sup> U.S. Dep't of Justice, Off. of Community Policing Services & Police Executive Research Forum, *2011 Electronic Control Weapon Guidelines* ("PERF Guidelines") (2011) at 13, <http://www.cops.usdoj.gov/files/RIC/Publications/e021111339-PERF-ECWGb.pdf> (noting that "repeated or multiple applications [of Tasers] may increase risk of death," and stressing that "[o]fficers must be trained to understand that repeated applications and continuous cycling of [Tasers] may increase the risk of death or serious injury and should be avoided"). *But see* Kern County Sheriff's Office Policy F0700 (Aug. 1, 2014), Directive A (specifying that deputies are not precluded "from multiple, reasonably necessary applications of the TASER on an individual"); Bakersfield Police Department Policy 309.4.4 (Apr. 24, 2012) (specifying that policy "shall not preclude any officer from deploying multiple, reasonable applications of the TASER on an individual").

<sup>48</sup> Shooting an individual with multiple Tasers at once is also an inappropriate and potentially deadly tactic. *See* PERF Guidelines ("No more than one officer should activate a CED against a person at a time"). Like the use of multiple deployments, this dangerous practice is sanctioned by KCSO policy and is not prohibited by BPD policy. *See* Kern County Sheriff's Office Policy F0700 (Aug. 1, 2014), Directive A (authorizing the use of two TASERS simultaneously to "increase the likelihood of effective probe placement and instant incapacitation").

<sup>49</sup> Kern County Sheriff/Coroner Final Report (Jan. 11, 2009) (on file with ACLU CA).

<sup>50</sup> There is reason to believe that BPD amended or considered amending its Use of Force Policy, like its Canine Policy, in response to US-DOJ's recommendations, only to adopt a policy suffering from previously-corrected defects after BPD signed a contract with the private policy consultant Lexipol. An internal memorandum references various changes to the Use of Force Manual, including the inclusion of a use of force continuum identifying different types of force that may be used in response to varying degrees of resistance. BPD's current use of force policy, which is based on standard Lexipol policy language, does not appear to include a use of force continuum or otherwise reflect policy changes BPD purported to adopt. BPD Actions Letter ¶¶ 1-5; *see also* Letter from BPD Chief W.R. Rector to Shanetta Cutlar, DOJ (Jan. 14, 2008) (reporting that policy changes responsive to DOJ's recommendations were submitted to Lexipol in draft form and would not be operational until March 1, 2008).

<sup>51</sup> US-DOJ Letter at 2.

which is equally ambiguous.<sup>52</sup>

- US-DOJ recommended that BPD remove from its use of force policy the statement: “It is impossible . . . to instruct officers how to react in each and every situation where the need to use force may occur.” US-DOJ observed that the statement was “problematic and should be removed because it suggests that there are no parameters for an officer to follow when the use of force is necessary.”<sup>53</sup> But BPD’s current policy contains an even more problematic statement in its first paragraph: “[T]here is no way to specify the exact amount or type of reasonable force to be applied in *any* situation.”<sup>54</sup>
- US-DOJ observed that BPD’s policy failed to recognize that certain types of force may constitute either deadly or non-deadly force depending on how they are used. Specifically, it noted that a baton strike to the head can be deadly force. BPD’s current policy does not recognize that a baton strike can be deadly force. Moreover, its definition of deadly force is problematic and not based on any valid legal standard. The policy states that force is not “deadly” unless the officer “anticipated and intended” to cause risk of death or serious bodily injury.<sup>55</sup> But under federal and state law, deadly force is “force that creates a substantial risk of causing death or serious bodily injury.” To meet the constitutional requirement of proportionality, the use of deadly force is legally permissible only to prevent death or serious bodily injury. This legal limitation applies to police use of deadly force whether or not the officer specifically intends to kill or seriously injure. BPD’s policy frees its officers to use life-endangering tactics and weapons, as in the cases described above involving baton strikes and Tasers, outside the legal limitations that apply to deadly force.

US-DOJ’s 2004 comments to BPD highlight the deficiencies of KCSO’s use of force policy. Like BPD, KCSO authorizes force in broad and ambiguous terms, instructing officers that they may use force not only to effect arrests, but also “to overcome resistance.”<sup>56</sup> And the policy states, in similarly problematic terms, that “there is no way to specify what force is reasonable in advance.” Finally, KCSO policy categorically authorizes the use of batons, “to subdue a person” when necessary “to effect an arrest, prevent escape, or overcome resistance,” without specifically limiting baton strikes to the head to situations involving an imminent threat of death or serious bodily injury to the officer or another. KCSO’s deadly force policy specifically refers only to firearms.<sup>57</sup>

Additionally, there are signs that excessive force is embedded in the culture of both agencies. According to news reports, KCSO deputies have been caught rewarding colleagues for aggressive use of batons with a “baby seal” prize for the best clubbing.<sup>58</sup> Others have reportedly

<sup>52</sup> Bakersfield Police Department Policy 300.2-3 (May 19, 2017).

<sup>53</sup> US-DOJ Letter at 4.

<sup>54</sup> Bakersfield Police Department Policy 300.1 (May 19, 2017) (emphasis added).

<sup>55</sup> Bakersfield Police Department Policy 300.1.1 (May 19, 2017).

<sup>56</sup> Kern County Sheriff’s Office Policy F0100 (Oct. 27, 2014).

<sup>57</sup> Kern County Sheriff’s Office Policy F0700 (Nov. 12, 2007).

<sup>58</sup> See Jon Swaine & Oliver Laughland, *The County: where deputies dole out rough justice*, *The Guardian*, Dec. 4, 2015 (“The County Pt. 2”).

modified their patrol cars with decals declaring “We’ll kick your ass.”<sup>59</sup> (Canine units reportedly have modified decals proclaiming “We’ll bite your ass”). Officers have testified that they believed the people they subjected to force were “unaffected” and “impervious to pain,” even when video evidence and eyewitness testimony established that the person was screaming in pain and pleading for help.<sup>60</sup> The strongest indicator of an institutional culture that tolerates excessive force within KCSO and BPD, however, is the absence of consequences for officers who engage in such conduct, detailed below.

#### **D. Failure to Monitor, Train, and Discipline**

KCSO and BPD fail to monitor and discipline officers who engage in serious uses of force—or remove them from positions where they may use force when there is reason to believe their actions endanger members of the public. Both agencies have deemed justified nearly every fatal officer-involved shooting and use of force since 2009.<sup>61</sup> Thus, KCSO and BPD institutionally enable the continuation of patterns and practices of excessive force.

Twelve KCSO deputies have been involved in multiple shootings since 2009.<sup>62</sup> Two of them—Deputies Wesley Kraft and Cody Johnson—shot multiple people within the span of a few months. BPD has employed at least 8 repeat shooters since 2009. BPD officer Timothy Berchtold shot and killed three people in less than two months.<sup>63</sup> Two were unarmed, and one was 15 years old. Two of the shootings were justified on seemingly identical (and problematic) grounds—the decedent was alleged to have reversed a vehicle towards Berchtold. Berchtold’s supervisory officers did not relieve him of patrol responsibilities after the first or even the second shooting.<sup>64</sup>

Both agencies allow officers who begin with lower levels of nonetheless excessive force to escalate to deadly shootings. In 2014, KCSO Deputy Robert Reed was involved in a violent incident that led to a federal lawsuit;<sup>65</sup> a year later, he shot David Garcia. KCSO Deputy Jeffrey Kelly was one of the officers who participated in the deadly beating of David Sal Silva. A year later, Deputy Kelly took part in the shooting that killed Christopher McDaniel. BPD Officer Rick Wimbish deployed his Taser against Ramiro Villegas, who was unarmed, during the incident that led to Villegas’s death, then continued to shoot and kill three other individuals, two of whom were also unarmed.<sup>66</sup>

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<sup>59</sup> *Id.*

<sup>60</sup> *Ledesma* Order at 8.

<sup>61</sup> Swaine & Laughland, *The County* Pt. 2 (reporting that 49 of 54 fatal shootings in past decade by BPD and KCSO were publicly ruled justified, and 4 others appeared to have been ruled the same).

<sup>62</sup> All of the fatal use of force incidents referenced below are documented in Appendix III, which compiles details from various sources.

<sup>63</sup> Jon Swaine & Oliver Laughland, *The County: the story of America’s deadliest police*, *The Guardian*, Dec. 1, 2015 (“*The County* Pt. 1”).

<sup>64</sup> US-DOJ recommended that BPD prohibit shooting at moving vehicles in 2004, noting that “the risks presented by officers firing at moving vehicles far outweighs any benefit that could be attained by such action.” US-DOJ Letter at 12.

<sup>65</sup> *Dora, Jr. v. County of Kern*, No. 1:14-cv-00896-LJ-JLT (E.D. Cal. filed Jun. 11, 2014)

<sup>66</sup> The third individual that Officer Wimbish shot and killed was carrying a BB gun.

KCSO's failure to rein in its deputies' excessive force has had deadly consequences even when deputies do not draw their firearms. In 2013, Deputy Brandon Geherty participated in the beating of Scotty Byrket that reportedly broke his ribs and fractured his spine.<sup>67</sup> A year later, Geherty participated in the beating leading to Michael Le Mon's death, during which he and another officer reportedly pepper-sprayed Le Mon, struck him with batons, shocked him with a Taser, and placed him a chokehold. Similarly, Deputy Ryan Greer participated in the group tasing and beating that led to Jose Lucero's death. A few years later, he participated in the beating that killed David Sal Silva.

## E. Abuse of Process

KCSO and BPD charging patterns indicate that both agencies' officers are engaged in a practice of using criminal charges to preempt and defend against allegations of excessive force. This is consistent with information reported to us in our conversations with community members.

According to BPD, its officers filed "resisting" charges in 27% of its reported use of force incidents in 2015.<sup>68</sup> In a sample of 2016 cases we reviewed, over half of "resisting" cases initiated by BPD involved a use of force by officers.<sup>69</sup> BPD sought "resisting" charges in 543 cases in the first half of 2016 alone.<sup>70</sup> Where officers' use of force was especially unreasonable, we found evidence of overcharging. After injuring Tatyana Hargrove, for example, BPD officers sought two counts of resisting arrest, one count of willfully interfering with a police K-9, and two counts of assault on a peace officer—charges that were dismissed only after significant community pressure from NAACP-Bakersfield and other groups.<sup>71</sup> In the last three years, BPD officers charged 42 individuals with "assault on a police animal," Cal. Penal Code § 600. In both of the two such cases we identified in our sample of court records, charges followed officers' use of a canine attack to arrest and were based on the defendant's defensive actions as the dog was biting them.<sup>72</sup>

We were unable to find data reflecting the percentage of use of force incidents in which KCSO filed "resisting" charges. News reports, however, document in detail KCSO deputies' use of

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<sup>67</sup> Swaine & Laughland, *The County Pt. 2*.

<sup>68</sup> Bakersfield Police Department, Internal Affairs Division, Year End Report 2015 (on file with ACLU CA); *cf.* <https://www.justice.gov/crt/findings-letter-re-use-force-washington-metropolitan-police-department> (expressing concern that "[i]n approximately one-third of the [use of force] incidents in [the] sample, the subject was charged with 'assault on a police officer'").

<sup>69</sup> Notes of public records on file with ACLU CA. By "resisting" charges, we refer here to charges for alleged violation of Cal. Penal Code § 148(a)(1). Because the Kern County Superior Court charges prohibitively high fees for copies of court records and even on-site review of court files, we were unable to conduct a comprehensive analysis of "resisting" cases or § 600 cases filed, so we reviewed a sample of cases instead.

<sup>70</sup> BPD charging records, on file with ACLU CA.

<sup>71</sup> Harold Pierce, *Kern County district attorney dismisses charges against Tatyana Hargrove, but says she 'handled encounter very poorly,'* Bakersfield Californian, Aug. 2, 2017, [http://www.bakersfield.com/news/breaking/kern-county-district-attorney-dismisses-charges-against-tatyana-hargrove-but/article\\_1ed61b74-77ac-11e7-a3f5-d7b99e061ed4.html](http://www.bakersfield.com/news/breaking/kern-county-district-attorney-dismisses-charges-against-tatyana-hargrove-but/article_1ed61b74-77ac-11e7-a3f5-d7b99e061ed4.html).

<sup>72</sup> *See also Daniels*, 2016 WL 3999777 at \*3 (describing § 600 charge based on reaction to being bitten).

resisting arrest charges to intimidate victims of excessive force.<sup>73</sup> We confirmed that in the last 3 years, KCSO officers sought “resisting” charges in 273 cases *without seeking a charge for any other offense*.<sup>74</sup> KCSO reported 381 assaults on its officers between 2014 and 2016, but over half of those reported incidents resulted in no injury to the officer and did not involve a gun or knife.<sup>75</sup> KCSO officers have arrested at least 24 individuals pursuant to PC § 600 charges since 2014.<sup>76</sup> We were able to review the court files for three of those cases, and in each, charges followed the use of a canine attack in the process of arrest and were based on the defendant’s response to being bitten.<sup>77</sup>

#### IV. Recommendations

As the evidence set forth above shows, both BPD and KCSO maintain a number of patterns and practices that deprive people of their constitutional rights to be free from excessive force and unreasonable search and seizure. To address these patterns and practices, BPD and KCSO must take the following steps.

##### ***Correct Use of Force Policies and Training***

At a minimum, BPD must revise its use of force policy pursuant to US-DOJ’s 2004 recommendations. KCSO must make equivalent changes to its use of force policy. Specifically, both agencies should change their policies to:

- Limit use of force to cases where it is required to effect a lawful arrest or protect an officer or third party from an immediate safety threat;<sup>78</sup>
- Remove confusing statements that suggest that there are no set parameters that officers should follow to determine whether the use of force is reasonable;<sup>79</sup>
- Specify that baton strikes to the head constitute deadly force, and revise the definition of “deadly force” to clarify that it encompasses *any* force that creates a substantial risk of causing death or serious bodily injury, regardless of whether the officer has a specific intent to kill.<sup>80</sup>

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<sup>73</sup> Swaine & Laughland, *The County Pt. 2* (“When alleging excessive force against deputies, residents . . . have faced criminal charges themselves, typically for resisting arrest. Donald Cook, a veteran attorney in the region, said KCSO operated an unwritten policy of ‘hurt a man, charge a man’”).

<sup>74</sup> Records on file with ACLU CA.

<sup>75</sup> Dep’t of Justice, Criminal Justice Statistics Center, *Law Enforcement Officers Killed or Assaulted Data* (2016).

<sup>76</sup> Records on file with ACLU CA.

<sup>77</sup> Notes of review of public records on file with ACLU CA.

<sup>78</sup> *See, e.g.*, Settlement Agreement, *U.S. v. L.A. County Sheriff’s Dep’t* (C.D. Cal., signed Apr. 28, 2015) (“LASD Settlement Agreement”) ¶ 104 (“LASD agrees to clarify that . . . deputies may not use force against individuals who may be exhibiting resistive behavior, but who are under control and do not pose a threat to the public safety, themselves, or to other deputies.”).

<sup>79</sup> For BPD, this would require deleting the statement: “There is no way to specify the exact amount or type of reasonable force to be applied in any situation.” For KCSO, this would require deleting the sentence: “There is no way to specify what force is reasonable in advance.”

<sup>80</sup> *See, e.g.*, LASD Settlement Agreement ¶ 107 (requiring LASD emphasize in policy and training “that a hard strike to the head with any impact weapon, including a baton, is prohibited unless deadly force is justified”); Settlement Agreement, *U.S. v. City of Cleveland* (N.D. Ohio, signed May 26, 2015) (“Cleveland Settlement

These long overdue policy changes, while necessary, are not sufficient to ensure that BPD and KCSO officers use only constitutionally permissible force. To comply with the Constitution and prevailing policing standards, BPD and KCSO must also revise their use of force policies to:

- Clarify that force must be *proportional* to the purpose it is used to serve.<sup>81</sup> Both agencies currently have use of force policies that suggest any force is permissible if applied to effect law enforcement objectives, including “to overcome resistance.” But the use of overly severe force to carry out even legitimate law enforcement aims may be objectively unreasonable, and therefore unconstitutional, if the force is not proportional.
- Clarify that any force must be *necessary*. Model policies authorize officers to use force “only when no reasonably effective alternative appears to exist.”<sup>82</sup>
- Require officers to take reasonable care to avoid taking actions that precipitate unnecessary, unreasonable, or disproportionate use of force by placing themselves or others in jeopardy, or by not following policy or tactical training.<sup>83</sup>
- Correct existing practices by explicitly prohibiting the use of retaliatory force – that is, the use of force in excess of what is necessary and reasonable to punish individuals for fleeing, resisting arrest, or disrespecting officers.<sup>84</sup>
- Formally integrate a de-escalation requirement into their use of force policies.<sup>85</sup>

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Agreement”) ¶ 46(h) (requiring change in policy to clarify that officers may not use head strikes with hard objects except where lethal force is justified).

<sup>81</sup> See, e.g., LASD Settlement Agreement at Pt. VIII (“Deputies and staff shall endeavor to use only that level of force necessary for the situation.”); *id.* ¶ 104 (requiring LASD to emphasize to deputies that force “must be proportional to the threat or resistance of the subject”); Consent Decree, *U.S. v. Police Dep’t of Baltimore City et al.*, No. 1:17-cv-0099-JKB (Dkt. 2-2) (D. Md. Jan. 12, 2017) (“Baltimore Consent Decree”) ¶ 127 (“BPD will ensure that . . . officers will use only the amount of force necessary”); Consent Decree, *U.S. v. City of Newark* (D.N.J. signed Mar. 30, 2016) (“Newark Consent Decree”) ¶ 218(oo) (“Reasonable force means force that is objectively reasonable under the circumstances and the minimum force necessary to effect an arrest or protect the officer or another person”).

<sup>82</sup> National Consensus Policy, Pt. II; see also, e.g., LASD Settlement Agreement at Pt. VIII (requiring LASD to ensure that deputies use force “as a last resort”); Baltimore Consent Decree ¶ 124(a).

<sup>83</sup> See, e.g., Seattle Police Dep’t Manual, Policy 8.000 (Sept. 2015) (“Officers should take reasonable care that their actions do not precipitate an unnecessary, unreasonable, or disproportionate use of force, by placing themselves or others in jeopardy, or by not following policy or training.”); New Orleans Police Dep’t Ops. Manual, Chapter 1.3: Use of Force, at 5, 8 (Dec. 2015) (“Officers shall perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others through the use of poor tactical decisions.”); Baltimore Consent Decree ¶ 124(c) (“BPD will ensure that officers . . . use tactics that do not unnecessarily escalate an encounter”); *id.* ¶ 135 (“BPD will prohibit the use of tactics that unnecessarily escalate an encounter and create a need for force”).

<sup>84</sup> See, e.g., Cleveland Settlement Agreement ¶ 46(g); Baltimore Consent Decree ¶ 134; Newark Consent Decree ¶ 152(i).

<sup>85</sup> The agencies may refer to the National Consensus Policy on the Use of Force for exemplary policy language on de-escalation. National Consensus Policy, Pt. IV(B); see also, e.g., LASD Settlement Agreement ¶ 103 (“Deputies shall use advisements, warnings, and verbal persuasion, when possible, before resorting to force; and de-escalate force immediately as resistance decreases.”); Cleveland Settlement Agreement § 46(b) (requiring the use of de-escalation techniques whenever possible and appropriate, before resorting to force and to reduce the need for force); Baltimore Consent Decree ¶ 124(b) (“BPD will ensure that officers . . . [u]se de-escalation techniques and tactics to minimize the need to use force”); *id.* ¶ 125 (specifically identifying required de-escalation tactics).

Because policy change without adequate training will likely be ineffectual, BPD and KCSO must also require all officers to undergo mandatory training on their revised policies,<sup>86</sup> as well as de-escalation and crisis intervention trainings that provide adequate guidance on how to identify people with mental illness, disability, impairment, or incapacity, and on how to safely control and resolve tense encounters without needing to resort to force.<sup>87</sup> The significant number of people shot and killed by BPD and KCSO officers while (a) undergoing mental health crisis, and/or (b) armed only with a knife or other non-firearm weapon indicates an urgent need for improved training to specifically address alternative ways to resolve such encounters.<sup>88</sup>

KCSO and BPD must also amend their Taser policies to address the exceptionally dangerous Taser practices their officers employ. The agencies should remove policy language that gives deputies free rein to use multiple applications of the Taser, and KCSO should specifically prohibit the use of more than one Taser on a person at the same time.<sup>89</sup> The agencies should replace their defective Taser policies with language drawn from model policies on the use of electronic control weapons.<sup>90</sup> In addition to changing their policies, both agencies must also re-train any officer authorized to carry or use a Taser.<sup>91</sup>

### ***End the Use of Dog Attacks***

The longstanding patterns and practices of dog attacks documented above demonstrate that KCSO and BPD are not capable of safely maintaining canine programs that include using dogs to bite people. Immediate discontinuation of KCSO and BPD's canine programs should be required – because the dogs they have specifically trained to attack people pose a serious threat

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<sup>86</sup> See, e.g., Cleveland Settlement Agreement ¶ 146(h) (requiring training to instruct officers that a strike to the head with an impact weapon may result in death).

<sup>87</sup> See, e.g., LASD Settlement Agreement ¶ 119(d)-(e) (requiring de-escalation and racial bias training); Baltimore Consent Decree ¶ 166(d)-(e) (requiring training on de-escalation tactics and consideration that a subject may be noncompliant due to medical or mental conditions, physical or hearing impairment, language barrier, drug interaction, or emotional crisis). Some agencies—including KCSO—require 40 hours of crisis intervention training. Given the demonstrated and urgent need for such education within KCSO's and BPD's ranks, all officers in both agencies should be required to undergo at least that amount of training. In response to a public information request regarding both de-escalation and crisis intervention training, KCSO only indicated that its officers started receiving crisis intervention training in 2014. The materials KCSO provided to us indicate that de-escalation is a topic addressed by the crisis intervention training. It is unclear how much de-escalation training KCSO officers receive, if any, outside that context.

<sup>88</sup> See PERF, Critical Issues in Policing Series: Re-engineering Training on Police Use of Force 4-5 (Aug. 2015), <http://www.policeforum.org/assets/reengineeringtraining1.pdf>.

<sup>89</sup> See, e.g., Cleveland Settlement Agreement ¶ 61 (prohibiting officers from employing more than three cycles of a Taser against a subject during a single incident); Baltimore Consent Decree ¶ 145 (same); *id.* ¶ 146(h) (“BPD will ensure that officers . . . do not activate more than one [Taser] at a time against a subject”); Consent Decree Regarding the New Orleans Police Dep't, *U.S. v. City of New Orleans*, No. 2:12-cv-01924-SM-JCW (Dkt. 159-1) (E.D. La. filed Jan. 11, 2013) (“New Orleans Consent Decree”) ¶¶ 57-58 (“Officers shall not intentionally activate more than one [Taser] at a time against a subject.”).

<sup>90</sup> See, e.g., PERF Guidelines.

<sup>91</sup> See, e.g., Cleveland Settlement Agreement ¶ 84(g) (requiring training on the risks of prolonged or repeated Taser exposure); Baltimore Consent Decree ¶ 166(g) (same, “including the increased risks of [repeated exposure] on persons in crisis or experiencing a behavioral health disability”); New Orleans Consent Decree ¶ 57 (same, including that “exposure for longer than 15 seconds, whether due to multiple applications or continuous cycling, may increase the risk of death or serious injury”).

to public safety; because their use of dog attacks for apprehension and control has repeatedly proven to be seriously injurious and even deadly; and because their deployment of dogs rapidly escalates every situation, displacing the opportunity for nonviolent resolution and exacerbating other patterns and practices of excessive force.<sup>92</sup>

### ***Improve Internal Oversight and Monitoring***

Eliminating the patterns and practices of excessive force by KCSO and BPD officers also requires improving the agencies' systems for monitoring and oversight of officers' use of force,

As an initial matter, BPD and KCSO must take steps to ensure that all force is logged and reviewed. In 2008, US-DOJ observed that BPD officers under-reported their use of force. US-DOJ noted that its review of a sample of use of force reports uncovered a number of incidents where force was under-reported (documenting the use of fists, but not the simultaneous deployment of a canine, for example) or not reported at all – resulting in no supervisory assessment of the reasonableness of the officer's use of force.<sup>93</sup> Court files we reviewed suggest this may be an ongoing problem for BPD, and that KCSO may also maintain this problematic practice.<sup>94</sup> Accordingly, both BPD and KCSO must implement policies and protocol requiring supervisors to take an active role to ensure that officers meet reporting requirements,<sup>95</sup> and—to make sure policies are not routinely ignored—they must impose disciplinary consequences on both supervisors and officers who fail their reporting duties.<sup>96</sup> An independent monitor should periodically audit use of force records (see below).

BPD and KCSO must also improve the early warning systems they use to detect dangerous patterns of behavior by their officers.<sup>97</sup> As set forth above, neither agency effectively prevents

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<sup>92</sup> Cf. U.S. Dep't of Justice, Civil Rights Division, Investigation of the New Orleans Police Dep't (Mar. 16, 2011) at vi, 8 (“We found that NOPD’s canines were uncontrollable . . . compelling us to recommend immediate suspension of NOPD’s use of canines to apprehend suspects.”). If the use of canines is permitted, they should be trained and authorized only for detection. Under no circumstances should BPD or KCSO continue to train or authorize dogs to bite.

<sup>93</sup> US-DOJ Letter at 2.

<sup>94</sup> In some court files, we observed that an officer's use of force was described in the underlying crime report but not logged in the field inquiring whether force was used. Notes on file with ACLU CA.

<sup>95</sup> See, e.g., US-DOJ Letter at 2 (making similar recommendations); Judgment Pursuant to Stipulation, *People v. City of Maywood*, No. BC 416-522 (Dkt. 19) (L.A. Super. Ct. Jul. 21, 2009) (“Maywood Judgment”) ¶¶ 47, 64 (requiring city to retain qualified outside expert to evaluate supervision and management policies and procedures); LASD Settlement Agreement ¶ 117 (making unit commanders responsible for identifying and reporting force trends and taking preventive steps to curb problematic trends); Baltimore Consent Decree ¶¶ 169-210 (requiring systemic reform of supervisory and management system).

<sup>96</sup> See, e.g., Cleveland Settlement Agreement ¶ 89 (“Officers will be subject to the disciplinary process for material omissions or misrepresentations in their Use of Force Reports”); LASD Settlement Agreement ¶ 116 (“LASD will hold supervisors accountable for not detecting, adequately investigating, or responding to force that is unreasonable or otherwise contrary to LASD policy”); Baltimore Consent Decree ¶ 177 (requiring corrective action where Use of Force Reports are found to include material omissions or inaccuracies, including discipline and review of the entire incident in light of new information); New Orleans Consent Decree ¶ 79 (“use of force reporting policy shall explicitly prohibit the use of conclusory statements without supporting detail, including ‘boilerplate’ . . . language”).

<sup>97</sup> See, e.g., Judgment (Pursuant to Stipulation), *People v. City of Riverside*, No. 355-410 (Riverside Super. Ct. Mar. 5, 2001) (“Riverside Judgment”), ¶ 62 (requiring enhancement of early warning system); LASD Settlement Agreement ¶¶ 141-144 (same); Baltimore Consent Decree ¶¶ 312-327 (same).



officers who engage in excessive force from doing so repeatedly. Given that there is an established practice in both agencies of officers filing “resisting” and “assault on a police animal” charges against people they subject to force, KCSO and BPD should use their early warning systems to collect data not only on force that officers actually report, but also on the number of cases in which officers file criminal charges alleging resisting, obstruction, or assault against an officer or police animal – and such filings should serve as the basis for intervention alerts.<sup>98</sup> Additionally, a supervising officer should evaluate each incident in which a person is charged with one of the offenses listed above; agency policy and protocol should require supervisors to initiate disciplinary or remedial measures if their review of the underlying events raises concerns about excessive force or other abuse of authority.<sup>99</sup>

BPD and KCSO must also take steps to ensure that members of the public can reliably access their citizen complaint procedures to report abuse of force.<sup>100</sup> On multiple occasions, community members informed us of incidents where someone attempted to make a complaint against officers but was turned away at the station. KCSO and BPD complaint policies and procedures have allowed such obstruction to go undetected.<sup>101</sup> KCSO’s complaint form is not readily accessible online; it must be requested in person or over the phone. KCSO instructs members of the public to file complaints in person at its headquarters or at a substation,<sup>102</sup> which may be intimidating for potential complainants fearing retaliation. KCSO and BPD should provide the public a variety of avenues for submitting complaints, and ensure that officers take and document *all* complaints, in order to guarantee that citizens’ reports of excessive force will be appropriately reviewed.<sup>103</sup>

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<sup>98</sup> See, e.g., Baltimore Consent Decree ¶ 317(d) (requiring upgrade of early warning system to capture, among other data, “all instances in which force is used and a subject is charged with Failure to Obey, Resisting Arrest, Assault on an Officer, Disorderly Conduct, Trespassing, or similar charges” as well as “all instances in which an officer issues three or more Citations during a single encounter”); Newark Consent Decree ¶ 157(g) (requiring early warning system to include “all relevant information, including the results of any investigation or supervisory review related to . . . all arrests for disorderly conduct, resisting arrest, and assaulting a police officer”).

<sup>99</sup> Consent Decree, *U.S. v. City of Los Angeles*, No. (C.D. Cal. entered June 15, 2001) (“LAPD Consent Decree”) (“Supervisors shall evaluate each incident in which a person is charged with interfering with a police officer (California Penal Code § 148), resisting arrest, or assault on an officer to determine whether it raises any issue or concern regarding training, policy, or tactics.”).

<sup>100</sup> See, e.g., Maywood Judgment ¶¶ 43, 45 (requiring systematic evaluation and audit of complaint procedures and investigations, as well as documentation of all complaints).

<sup>101</sup> Until recently, BPD’s complaint policy stated: “When an uninvolved supervisor or the Watch Commander determines that the reporting person is satisfied that their complaint required nothing more than an explanation regarding the proper/improper implementation of department policy or procedure, a complaint need not be taken.” BPD Policy No. 1020.2.3 (adopted Apr. 24, 2012). By allowing officers to make informal, one-sided determinations that complaints were resolved, this policy circumvented the formal procedure required by state law and likely led to under-reporting of complaints. BPD should ensure that officers are not continuing to operate pursuant to the policy in practice.

<sup>102</sup> See Kern County Sheriff’s Office, Internal Affairs, [http://www.kernsheriff.org/internal\\_affairs.aspx](http://www.kernsheriff.org/internal_affairs.aspx) (last visited Oct. 30, 2017).

<sup>103</sup> See, e.g., Cleveland Settlement Agreement ¶¶ 202, 205 (requiring city: (1) to allow civilian complaints to be submitted verbally or in writing, in person, by phone, or online, on behalf of oneself, on behalf of another, or anonymously; (2) to document *all* complaints in writing; and (3) to distribute complaint forms in public libraries, public buildings, and gathering places, as well as in all police vehicles); Baltimore Consent Decree ¶ 336(a)-(i) (requiring the same remedial measures “to ensure broad and easy access” to complaint system, and requiring the establishment of a free, 24-hour hotline for complaints).

## ***Implement Independent Review & Oversight***

Currently, BPD and KCSO do not have systems for independent review and oversight. Fatal uses of force and officer-involved shootings are reviewed only by other department members. But BPD and KCSO are not capable of holding their own officers accountable, as demonstrated by the near-uniform exoneration of officers involved in lethal incidents, including in multiple cases involving the deaths of unarmed individuals.

Indeed, US-DOJ found in 2008 that BPD supervisors were not competently reviewing officers' use of force: supervisors reached conclusions regarding the use of force inconsistent with the evidence available, and failed to reconcile contradicting accounts regarding officers' use of force.<sup>104</sup> It appears that KCSO supervisors may be similarly failing their duties; as set forth above, KCSO officers who used excessive force against members of the public have been allowed to do so again or escalate their use of force, indicating that they are not disciplined or affected by any discipline imposed on them. Similarly, the maintenance of defective use of force policies and practices in both agencies over the course of the last decade demonstrates that BPD and KCSO are incapable of overseeing themselves on an institutional level. To effectively address BPD's and KCSO's patterns and practices of excessive force, therefore, independent review of all serious uses of force must be established alongside independent oversight of the agencies' policy-setting functions.

An independent monitor should be appointed to oversee the agencies' immediate reform efforts, along with a civilian taskforce comprised of a diverse panel of individuals from community organizations, faith groups, student or youth groups, and academic institutions with demonstrated interest in addressing the patterns and practices set forth herein.<sup>105</sup> The monitor's duties should specifically include audits of use of force and complaint records.<sup>106</sup> The monitor and civilian taskforce should share the goal of establishing permanent structures for independent use of force review and agency oversight. To enable public oversight of KCSO and BPD, the monitor and taskforce—and the independent oversight institutions that eventually succeed them—should regularly conduct public hearings and publish detailed reports on the progress of reforms, contemplated changes to policies or training, and data about officers' actual use of force in the community.<sup>107</sup> These efforts should be designed both to inform the public and to solicit feedback from community members directly affected by the conduct of KCSO and BPD officers.

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<sup>104</sup> US-DOJ Letter at 2.

<sup>105</sup> See, e.g., Maywood Judgment ¶ 68 (requiring retention of AG consultant/monitor); Riverside Judgment ¶¶ 71-72 (same); Baltimore Consent Decree ¶¶ 10-13 (requiring establishment of and funding for Community "Oversight Task Force"); Memo. of Understanding Between the U.S. & the City of Seattle (Jul. 27, 2012) ("Seattle MOU") ¶ 3 (requiring establishment of Community Police Commission representative of the many and diverse communities in Seattle, including members from faith communities, minority ethnic and community organizations, and student or youth organizations, to oversee implementation of MOU); Cleveland Settlement Agreement ¶¶ 15-22 (requiring establishment of a "Community Police Commission" selected by panel with representatives from faith groups, civil rights advocates, the business community, organizations, representing communities of color, youth, academics, and individuals with expertise in the challenges facing people with mental illness or the homeless); Newark Consent Decree ¶ 13 (requiring establishment and funding of a civilian oversight entity).

<sup>106</sup> See, e.g., LASD Settlement Agreement ¶¶ 149-167; Newark Consent Decree ¶ 173 ("Compliance reviews and Audits"); *id.* ¶ 174 ("Outcome Assessments"); Seattle Monitoring Plan for the First Year (Mar. 5, 2013), p. 8.

<sup>107</sup> See, e.g., Maywood Judgment ¶ 64 (requiring annual report); Cleveland Settlement Agreement ¶ 17 (requiring public meetings to discuss Monitor's reports, implementation of reforms, and changes to police policies, practices, and training); LASD Settlement Agreement ¶ 171 (requiring public report every six months detailing agency's

## V. Conclusion

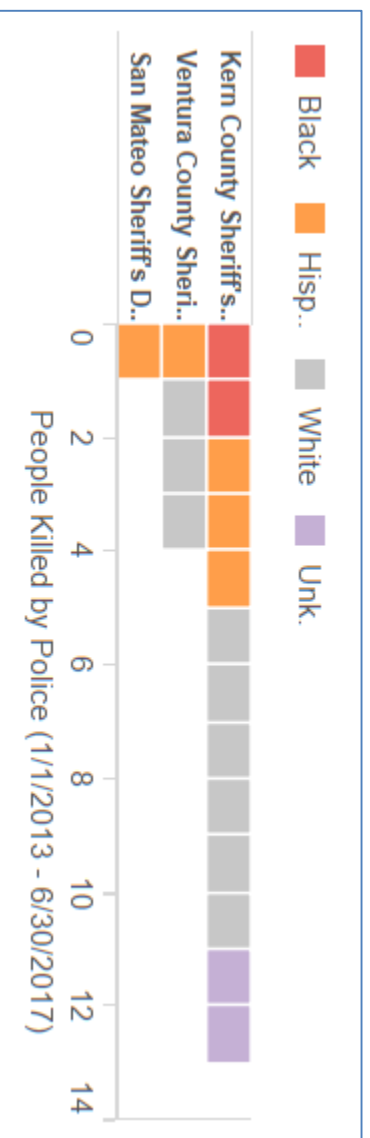
As set forth above, both KCSO and BPD maintain patterns and practices of excessive force. The history of BPD policy reform shows that eliminating such patterns and practices will require more than adopting standardized policy language.<sup>108</sup> It will require a concerted effort to re-train and re-orient both line and supervisory officers towards a culture that emphasizes the consistent use of tactical alternatives to force and consequences for the use of unreasonable, unnecessary, or disproportionate force. Most importantly, it will require structural change: the establishment of rigorous and independent oversight institutions to ensure that KCSO and BPD remain accountable and responsive to the communities they serve.

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progress in implementing reforms); Seattle MOU ¶ 7 (requiring Community Police Commission to hold public meetings at regular intervals to discuss Monitor's reports and receiving community feedback on progress or compliance with required reforms).

<sup>108</sup> *See supra*, note 50.

## APPENDIX I



## APPENDIX II

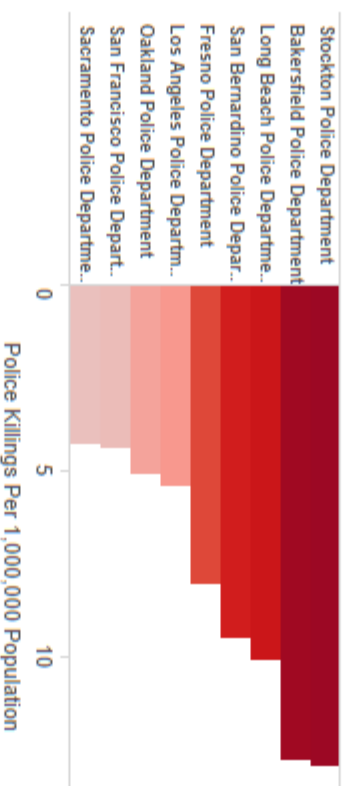
### Rate of Police Killings per Population

Data from Jan, 2013 through Jun, 2017

Filter by State  
California

Filter by Police Department  
All

Filter by City Violent Crime Rate  
4.5 to 21



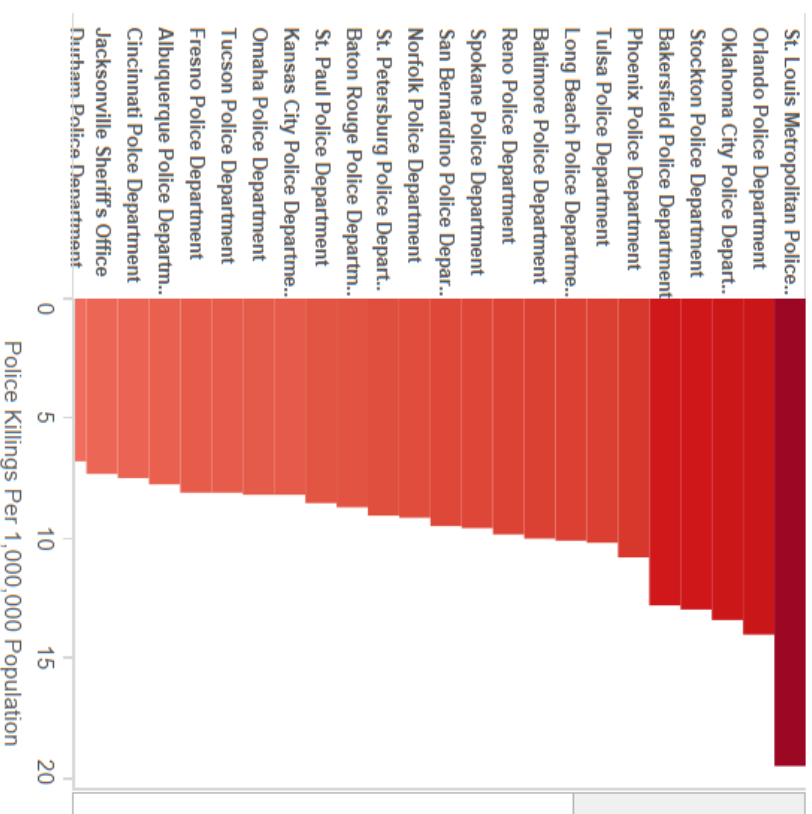
### Rate of Police Killings per Population

Data from Jan, 2013 through Jun, 2017

Filter by State  
All

Filter by Police Department  
All

Filter by City Violent Crime Rate  
4.5 to 21



# APPENDIX III

LAST NAME	FIRST NAME	YEAR	MONTH	DAY	AGENCY	FATAL	ARMED	RACE / ETHNICITY	FORCE USED	OFFICER HISTORY	NOTES ON CIRCUMSTANCES	SOURCE OF INFO
JUNIOR	OSCAR	2017	6	8	BPD	Y	Y	HISPANIC	Shot			WaPo
LANDA	ROGELIO VIDAL	2017	4	4	BPD	Y	N	HISPANIC	Shot			WaPo; MPV
GARCIA	ANTONIO ARTURO PEREZ	2017	1	24	BPD	Y	Y	HISPANIC	Shot			WaPo; MPV
SERNA	FRANCISCO	2016	12	12	BPD	Y	N	HISPANIC	Shot		Elderly man with dementia.	Guardian; WaPo; MPV; News [1]
VILORIA	JOSE	2016	10	2	BPD	Y	N	HISPANIC	Carotid hold, blunt force			Guardian; MPV
VILLARREAL	FRANCISCO	2016	8	18	BPD	Y	Y	HISPANIC	Shot		Shot while fleeing in a car.	Guardian; WaPo; MPV
LONG	JAMIE CLARK	2016	2	22	BPD	Y	KNIFE	WHITE	Shot			Guardian; WaPo; MPV
FITE	JERIAL	2015	12	4	BPD	N	Y	HISPANIC	Shot			News [3]
CELIO	HUGO FERNANDO	2015	11	29	BPD	Y	Y	HISPANIC	Shot			Guardian; WaPo; MPV
ALDERMAN	JASON	2015	8	22	BPD	Y	N	WHITE	Shot	Repeat Shooter (Rick Wimbish)	Officer claimed to mistake carjack for gun.	Guardian; WaPo; MPV; News (2)
HERNANDEZ	DANIEL	2015	7	7	BPD	Y	Y	HISPANIC	Shot			Guardian; WaPo; MPV
ALEXANDER	JEFF	2015	3	18	BPD	Y	KNIFE	WHITE	Shot			Guardian; WaPo; MPV
BURDGE	ROBERT P.	2015	3	19	BPD	Y	Y	WHITE	Shot			Guardian; WaPo; MPV
HERNANDEZ	ADRIAN	2015	3	27	BPD	Y	BB GUN	HISPANIC	Shot	Repeat Shooter (Rick Wimbish)		Guardian; WaPo; MPV
VILLEGAS	RAMIRO	2014	11	13	BPD	Y	N	HISPANIC	Shot	Repeat Shooter (Rick Wimbish)		CADDOJ DIC; OIS PRA; MPV
PORTILLO	RODMIRO	2014	11	15	BPD	N	Y	HISPANIC	Shot	Repeat Shooter (Robert Pair)		OIS PRA
DOZER	MICHAEL	2014	8	6	BPD	Y	N	BLACK	Shot	Repeat Shooter; Misconduct (Aaron Stringer)	Signs of mental illness.	CADDOJ DIC; OIS PRA; MPV
VILLANUEVA	MIGUEL	2014	3	14	BPD	N	Y	HISPANIC	Shot			OIS PRA
SINGH	JASPAL	2013	12	29	BPD	Y	Y	ASIAN INDIAN	Shot		Possible mental health crisis.	CADDOJ DIC; OIS PRA; MPV
MILES	ERIC	2013	12	14	BPD	N	N	HISPANIC	Shot		Shot during vehicle chase.	OIS PRA
ZARATE	MARIA	2013	10	1	BPD	Y	AIRSOFT GUN	HISPANIC	Shot		Responding to report of mental illness.	CADDOJ DIC; MPV; News (4)
RAMIREZ	JORGE	2013	9	16	BPD	Y	Y	HISPANIC	Shot	Repeat Shooter (Rick Wimbish); Repeat Shooter (Jess Beagley)		CADDOJ DIC; MPV; Guardian
HARGER	JUSTIN	2013	9	16	BPD	Y	Y	WHITE	Shot	Repeat Shooter (Rick Wimbish); Repeat Shooter (Jess Beagley)		CADDOJ DIC; OIS PRA; MPV
GURROLA	ABEL	2013	1	1	BPD	Y	Y	HISPANIC	Shot	Repeat Shooter (Isaac Aleman)	Shot during foot pursuit.	CADDOJ DIC; OIS PRA; MPV; News (5)
LOPEZ	JONATHAN	2012	10	30	BPD	Y	Y	HISPANIC	Shot	Repeat Shooter (Deron Miller)	Facts disputed re: whether Lopez was armed.	OIS PRA
FIAD	EDWARD	2012	5	12	BPD	Y	Y	WHITE	Shot	Repeat Shooter (Deron Miller)	Police responding to keep the peace request, encountered Fiad seated holding gun.	CADDOJ DIC; OIS PRA
CHAVEZ	VICTOR FLORENTINO	2011	5	21	BPD	N	N	HISPANIC	Shot		Was holding a phone.	OIS PRA
PEREZ	ADRIAN	2011	5	9	BPD	Y	Y	HISPANIC	Shot			CADDOJ DIC; OIS PRA; Coroner Report
ROSAS	DAVID SEBASTIAN	2010	11	28	BPD	N	Y	HISPANIC	Shot			OIS PRA
GARCIA	FABIAN RODRIGUEZ	2010	10	3	BPD	N	Y	HISPANIC	Shot			CADDOJ DIC; OIS PRA; Coroner Report
CAKCKEN	LONNIE	2010	9	24	BPD	Y	Y	WHITE	Shot	Repeat Shooter (William Caughell)		CADDOJ DIC; OIS PRA; Coroner Report
DANIELS	GARRY (Gary Ray)	2010	8	4	BPD	Y	KNIFE	BLACK	Shot			CADDOJ DIC; OIS PRA; Coroner Report
AVILA	TRAYVON	2010	7	9	BPD	Y	N	BLACK	Shot	Repeat Shooter (Timothy Berchtold)		CADDOJ DIC; OIS PRA; Coroner Report
MILLER	ALFRED	2010	6	8	BPD	Y	N	BLACK	Recorded as "natural"		Died in KCSO jail after encounter with BPD - details unclear - told witnesses he had been beaten. Had multiple rib fractures, mid sternal fractures, lacerated right ventricle which Coroner attributed to CPR attempts. Other bruising deemed "superficial."	CADDOJ DIC; Coroner Report
YZAGUIRRE	VINCENT	2010	5	14	BPD	Y	N	HISPANIC	Shot	Repeat Shooter (Timothy Berchtold)	Shot in car.	CADDOJ DIC; OIS PRA; Coroner Report
SOLIZ	JOHN (JESSE) III	2010	5	23	BPD	Y	Y	HISPANIC	Shot	Repeat Shooter (Timothy Berchtold)	Responding to family call expressing concern that Soliz was expressing suicidal thoughts.	CADDOJ DIC; OIS PRA; Coroner Report
MOHAMED	SADDAM BANUELOS	2010	4	28	BPD	N	Y	BLACK	Shot	Repeat Shooter (Jess Beagley)		OIS PRA
UNKNOWN	UNKNOWN	2010	3	25	BPD	N	Y	UNKNOWN	Shot			OIS PRA
UNKNOWN	UNKNOWN	2010	2	20	BPD	N	Y	UNKNOWN	Shot			OIS PRA
AMAYA	FERNANDO MARIANO	2010	1	29	BPD	N	Y	HISPANIC	Shot			OIS PRA
HOGG	DARRIN	2009	12	18	BPD	Y	Y	BLACK	Shot	Repeat Shooter (Robert Pair)		OIS PRA; Coroner Report
BARRAZA	MARCOS	2009	10	7	BPD	N	N	HISPANIC	Shot		Shot on motorcycle.	OIS PRA
UNKNOWN	UNKNOWN	2009	9	20	BPD	N	Y	UNKNOWN	Shot	Repeat Shooter (Isaac Aleman); Repeat Shooter; Misconduct (Aaron Stringer)	Responding to call of "suspicious men in hoodies"	OIS PRA
BARTON	DENNIS	2009	9	16	BPD	N	N	UNKNOWN	Shot		Shot during vehicle pursuit.	OIS PRA
SLEGGERS	HUBERT JOHN	2009	3	17	BPD	N	N	UNKNOWN	Shot		Shot during vehicle pursuit.	OIS PRA
UNKNOWN	UNKNOWN	2009	3	15	BPD	N	KNIFE	UNKNOWN	Shot			OIS PRA
CASTILLO	ONCIMO	2009	3	1	BPD	Y	AIRSOFT GUN	HISPANIC	Shot			CADDOJ DIC; OIS PRA
BIRCHFIELD	SPENCER	2009	3	14	BPD	Y	Y	WHITE	Shot			CADDOJ DIC; OIS PRA; Coroner Report
LEPE	RODOLFO	2009	1	11	BPD	Y	N	HISPANIC	Taser, Chokehold, Blunt force	Repeat Shooter (Jess Beagley)	Signs of mental illness.	CADDOJ DIC; Coroner Report; Guardian
PEYAN-LEAL	JOSE	2009	1	4	BPD	N	Y	HISPANIC	Shot		Shot while fleeing on foot.	CADDOJ DIC; OIS PRA; Coroner Report
BELDEN	DOUGLAS	2009	3	15	BPD	N	KNIFE	UNKNOWN	Shot		Teenager with mental disability.	News (6)
ANDERSON	LEON	2008	12	9	BPD	Y	Y	BLACK	Shot	Repeat Shooter (William Caughell)		News (7)
VALENZUELA	CECIL	2007	5	24	BPD	Y	N	HISPANIC	Taser			Guardian
CASTRO	JUAN FIDEL	2015	12	8	KCSO	Y	N	HISPANIC	Hands-on force		Died in KCSO custody	Coroner Report
ASHLEY	BENJAMIN	2015	8	15	KCSO	Y	KNIFE	BLACK	Shot	Repeat Shooter (James Perry); Repeat Shooter; Repeat Force; Misconduct (William Starr)		CADDOJ DIC; Guardian; WAPD; MPV
UNKNOWN	UNKNOWN	2015	8	1	KCSO	N	N	UNKNOWN	Shot	Repeat Shooter (Michael Booker); Repeat Shooter (Conrado Curiel); Repeat Shooter (Gabriel Romo); Repeat Shooter; Repeat Force; Misconduct (William Starr)		OIS PRA
UNKNOWN	UNKNOWN	2015	8	3	KCSO	N	N	UNKNOWN	Shot			OIS PRA
UNKNOWN	UNKNOWN	2015	7	24	KCSO	N	N	UNKNOWN	Shot	Repeat Shooter (Daniel Willis)		OIS PRA
UNKNOWN	UNKNOWN	2015	7	28	KCSO	N	N	UNKNOWN	Shot			OIS PRA
LE MON	MICHAEL EARL	2015	4	28	KCSO	Y	N	WHITE	Baton, Taser, Pepper spray, Control hold	Repeat Force (Brandon Geherty)		Guardian; MPV
GARCIA	DAVID	2015	1	26	KCSO	Y	KNIFE	HISPANIC	Shot	Repeat Shooter (Robert Reed)	Signs of mental illness. Police responded to welfare check.	OIS PRA; Guardian; WAPD; MPV; Court Records
RODRIGUEZ	MARIA	2014	8	3	KCSO	Y	N	HISPANIC	Shot	Misconduct (Dwayne Perkins)	Signs of mental illness. Carrying a fake gun.	MPV; News (11)
JOHNSON	GREGORY	2014	6	15	KCSO	Y	KNIFE	UNKNOWN	Shot	Repeat Shooter (James Perry)	Resident at an elder care facility.	MPV; News (10)
CURTIS	HENRY	2014	5	24	KCSO	Y	KNIFE	WHITE	Shot			MPV; News (9)
MCDANIEL	CHRISTOPHER	2014	3	26	KCSO	Y	Y	WHITE	Shot; K9	Repeat Force (Jeffrey Kelly)	Shot following vehicle chase.	MPV; News (8)
MOORE	ROBERT (JAMES)	2014	2	12	KCSO	Y	N	WHITE	Baton, feet, fists, pepper spray			CADDOJ DIC; Guardian
LYTLE	BETHANY	2013	12	29	KCSO	Y	KNIFE	WHITE	Shot		Shot by police responding to report of mental health crisis.	MPV; News (12)
CORDOVA	STEVEN	2013	11	10	KCSO	N	Y	UNKNOWN	Shot	Repeat Shooter; Misconduct (Derrick Penney); Misconduct (Logan August)	Responding to call reporting suicidal man.	OIS PRA
MUNOZ	SERGIO	2013	10	25	KCSO	Y	Y	HISPANIC	Shot			CADDOJ DIC; MPV
LEDESMA	RONNIE	2013	8	27	KCSO	Y	N	HISPANIC	Baton, K9, Control hold	Misconduct (Dwayne Perkins)	Killed by police responding to report of man under the influence of drugs or alcohol.	CADDOJ DIC; MPV; Guardian
UNKNOWN	UNKNOWN	2013	6	23	KCSO	N	N	UNKNOWN	Shot	Repeat Shooter (Cody Johnson)	No details reported in incident review log or press release	OIS PRA
SILVA	DAVID	2013	5	8	KCSO	Y	N	HISPANIC	Baton, K9, Taser, Hands-on force	Repeat Force (Jeffrey Kelly); Repeat Force (Doug Sword); Repeat Force (Ryan Greer)		CADDOJ DIC; MPV; Guardian; Court Records
BLACKBURN	CALEB	2013	5	16	KCSO	Y	N	WHITE	Shot, Taser		Signs of mental illness.	OIS PRA; MPV
RAINES	DARREN	2013	4	18	KCSO	Y	Y	UNKNOWN	Shot	Repeat Shooter (Cody Johnson); Repeat Force (Doug Sword)	Shot inside home during stand-off with police, possibly mental health crisis.	MPV; OIS PRA
GARCIA	JOSE	2013	3	9	KCSO	N	Y	HISPANIC	Shot	Repeat Shooter (Cody Johnson)	Shot during foot pursuit.	OIS PRA
RIVERA	ADOLFO	2013	1	3	KCSO	N	N	HISPANIC	Shot	Repeat Shooter (Robert Reed)	Shot during vehicle pursuit.	OIS PRA
AGUILAR	ANDRES	2012	11	15	KCSO	Y	Y	HISPANIC	Shot	Repeat Shooter (Michael Booker); Repeat Shooter (Conrado Curiel); Repeat Shooter (Patrick McNeal); Repeat Shooter (Gabriel Romo); Repeat Shooter; Misconduct (Derrick Penney)		CADDOJ DIC
BAILEY	JARED	2012	3	7	KCSO	N	Y	UNKNOWN	Shot			
SUMANTE	FERNANDO	2012	2	25	KCSO	N	Y	HISPANIC	Shot			OIS PRA
CHAVEZ	CHRISTIAN	2012	1	23	KCSO	Y	KNIFE	HISPANIC	Shot		Responding to 911 call for assistance with person expressing suicidal thoughts.	CADDOJ DIC; OIS PRA
UNKNOWN	UNKNOWN	2012	1	3	KCSO	N	N	WHITE	Shot		Shooting at moving vehicle	OIS PRA
UNKNOWN	UNKNOWN	2011	9	10	KCSO	N	N	UNKNOWN	Shot	Repeat Shooter (Wesley Kraft)		OIS PRA

TURNER	DAVID	2011	7	10	KCSD	Y	N	BLACK	Shot	Repeat Shooter (Wesley Kraft)	Shot during police investigation into report of minors trying to buy alcohol. Turner was with his son, carrying only beer.	CADOJ DIC, Coroner Report
HORTTOR	ADAM	2011	6	1	KCSD	Y	N	WHITE	Shot, Taser, hands-on force	Repeat Shooter (Daniel Willis)	Reportedly beaten severely by officers on 5/31/11. Known to struggle with mental illness.	CADOJ DIC, Coroner Report
MENDEZ	JOSE	2011	5	6	KCSD	Y	N	HISPANIC	Shot; K9	Repeat Shooter (Jason Colbert)	Shot while carrying metal rod.	CADOJ DIC, Coroner Report
MEDRANO	RODOLFO	2011	5	29	KCSD	Y	KNIFE	HISPANIC	Shot	Repeat Shooter (Patrick McNeal)	Shot during welfare check responding to suicidal comments, while in a wheelchair (amputee).	CADOJ DIC, Coroner Report
LUCERO	JOSE	2010	12	18	KCSD	Y	N	HISPANIC	Taser, Baton, Pepper spray, Hands-on force	Repeat Force (Ryan Greer)		Guardian; Court Records
JONES	JOHN PAUL	2010	11	13	KCSD	N	N	WHITE	Shot		Shot at moving vehicle (quad).	OIS PRA
LESLEY	JESSICA	2010	9	3	KCSD	N	N	WHITE	Shot; K9		Shot during vehicle pursuit, then arrested with canine.	OIS PRA
MORALES	CARLOS	2010	9	8	KCSD	N	Y	HISPANIC	Shot	Repeat Shooter (Michael Booker); Repeat Shooter; Repeat Force; Misconduct (William Starr)		OIS PRA
RIVERA	ADOLFO	2010	3	9	KCSD	N		HISPANIC	Shot	Repeat Shooter (Patrick McNeal)		OIS PRA
GODDMAN	LUKE	2009	10	17	KCSD	N	Y		Shot			OIS PRA
MCKENZIE	RORY	2009	7	2	KCSD	Y	N	BLACK	Taser, K9			OIS PRA
NAMMAULEG	BRUCE	2009	6	13	KCSD	Y	KNIFE	HISPANIC	Shot	Repeat Shooter (Jason Colbert)		CADOJ DIC, Guardian; Coroner Report
UNKNOWN	UNKNOWN	2009	4	29	KCSD	N			Shot			OIS PRA
MESA	MICHAEL	2009	1	20	KCSD	Y	N	HISPANIC	Taser, Baton, Control hold, Pepper spray			CADOJ DIC, Guardian; Coroner Report
FARN	GARRETT	2008	2	19	KCSD	Y	N	WHITE	Taser		Signs of mental illness or impairment	Guardian
ROBLES	RAY	2006	1	21	KCSD	Y	N	HISPANIC	Baton, K9, Blunt force, Prone positioning	Repeat Shooter; Misconduct; Repeat Force (William Starr)		Guardian

**ABBREVIATIONS**

WaPo: "Fatal Force," The Washington Post (2015-2017), <http://wapo.st/p/ice-shootings> (database of fatal police shootings)

MPV: Mapping Police Violence database, <https://mappingpoliceviolence.org/>

Guardian: "The Counted," The Guardian, <https://www.theguardian.com/us-news/series/counted-us-police-killings>

CADOJ DIC: data about deaths in custody reported to the California Department of Justice, available at <https://openjustice.doj.ca.gov/data>

OIS PRA: information about officer-involved shootings obtained through public records requests submitted by ACLU SoCal to BPD and KCSD, or from public statements issued by BPD or KCSD

Coroner Reports: reports of the Kern County Sheriff/Coroner, Coroners Section, obtained by ACLU SoCal in response to a public records act request

Court Records: records in civil court filings obtained from PACER

Repeat Shooter: officer involved in more than one shooting

Repeat Force: officer involved in more than one serious use of force

Misconduct: officer has engaged in reported misconduct (see, e.g., Peter Holley "Cop once hailed as a hero now accused of ticking a dead mans toes," (Apr. 13, 2015), <https://www.washingtonpost.com/news/morning-mix/wp/2015/04/13/cop-once-hailed-as-a-hero-now-accused-of-ticking-a-dead-mans-toes/>;

Lois Henry, "Another Kern County Sheriff's official under investigation in connection with disgraced deputies," Bakersfield Californian (June 12, 2017), [http://www.bakersfield.com/news/another-kern-county-sheriff-s-official-under-investigation-in-connection/article\\_448d9e66-2f88-5c3b-a7b5-e836a3cb33af.html](http://www.bakersfield.com/news/another-kern-county-sheriff-s-official-under-investigation-in-connection/article_448d9e66-2f88-5c3b-a7b5-e836a3cb33af.html).)

**NEWS**

[1] Matt Hamilton & Veronica Rocha, "Family demands federal investigation after Bakersfield police kill 73-year old man," L.A. Times (Dec. 14, 2016), <http://www.latimes.com/local/lanow/la-me-ln-serna-dementia-federal-investigation-bakersfield-20161214-story.html>.

[2] Jose Gaspar, "Attorney calls shooting of suspect 'execution,'" Bakersfield Now (Jan. 5, 2016), <http://bakersfieldnow.com/news/local/bakersfield-police-release-video-of-officer-involved-shooting>

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