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September 20, 2018

**VIA EMAIL AND FIRST CLASS MAIL**

Dr. Tony Frank  
President  
Colorado State University  
01 Administration Building  
Fort Collins, Colorado 80523-0006  
Cc: Jason L. Johnson, General Counsel

**Re: Unlawful Seizure and Search of Kanewakeron Thomas and Skanahwati Lloyd Gray**



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

National Office  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004  
(212) 549-2500  
aclu.org

Dear Dr. Frank:

I write on behalf of Kanewakeron Thomas Gray and Skanahwati Lloyd Gray, who were removed from an admissions tour of the Colorado State University (“CSU”) campus on April 30th, 2018 by employees of the CSU Police Department following a call reporting suspicion of the two Native American young men on the basis of their appearance. Although they were never suspected of a crime, the Gray brothers were detained and searched by CSU police officers. In addition to violating their constitutional rights, this experience left the brothers humiliated, frightened, and with an understanding that they were unwelcome on the CSU campus.

In your May 4th letter to the campus community, you reflected on the sadness, frustration, and anger this incident generated within the CSU community. You affirmed the administration’s desire to make things right with the Gray family and communicated “the deep concern and commitment shared by [the] Admissions team, CSUPD, and the University administration to prevent something like this from happening again.” This is a heartening promise.

We, the ACLU and the Gray family, share in your belief that racial bias is not tolerable and must be confronted in order for CSU to provide educational opportunities on an equal basis. We too recognize that the University must take affirmative steps to prevent this from happening again. The events at CSU, Yale University, Smith College, and—most recently at the time of this writing—the University of Massachusetts Amherst demonstrate that affirmative measures are necessary to prevent campus police from being used to further racial bias and discrimination.

We have been in communication with your employees over the course of the summer in the hopes of translating this shared belief into concrete actions. As a new school year begins, a new group of diverse students have arrived on the CSU campus. Before long, a new wave of

prospective students will also visit the CSU campus. We write with renewed urgency to ensure that CSU can make good on its promise for these new and prospective students. While CSU has indicated efforts to amend its practices surrounding admissions tours, as you recognized in your message to the CSU community, these small steps do not obviate the need for more comprehensive measures.

We recently received a copy of the CSU Police Department's policy on bias-based policing and are glad to learn that the Department has this policy in place. At the same time, we must recognize that the existence of this policy was not sufficient to prevent bias-based calls for service from directing law enforcement actions. The Gray brothers were confronted, detained, and searched by CSU police, leaving them humiliated, scared, and literally marginalized. This exercise of sanctioned police power magnified and legitimized the bias of an individual and created an injury beyond what a private individual could inflict alone. For this reason, it is imperative to revisit both policy and training if the University hopes to prevent its police from being used as a tool of bias in the future.

We urge the CSU Police Department to implement additional trainings and to adopt specific policies addressing dispatcher and officer responses to bias-based reports. Training on justice based policing, incorporating LEED principles ("Listen and Explain with Equity and Dignity"), as well as training on Fair and Impartial Policing can better equip the CSU Police Department and its employees to evaluate and be attuned to the potential for racial bias and to ensure that individuals are treated with dignity and respect. This approach to policing is a recognized best practice. The 2015 President's Task Force on 21<sup>st</sup> Century Policing, for example, emphasized the importance of procedurally just behavior in building trust and legitimacy for police,<sup>1</sup> and the Colorado State Patrol has trained every member on Fair and Impartial Policing.<sup>2</sup> The quality of a training program will impact its effectiveness. Initial training should be in-person, not computer-based, and should include interactive participation. Trainings that are in-person and interactive are significantly more effective than computer-based training modules.<sup>3</sup> To sustain the benefits of training, it is also important to reinforce training frequently, through strategies such as reminder bulletins, roll call overviews, and shorter in-person refresher training every two years.

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<sup>1</sup> Final Report of the President's Task Force on 21<sup>st</sup> Century Policing (May 2015), [http://www.theiacp.org/Portals/0/taskforce\\_finalreport.pdf](http://www.theiacp.org/Portals/0/taskforce_finalreport.pdf).

<sup>2</sup> Colorado Department of Public Safety, *What CDPS is Doing to Balance Safety and Civil Liberties* (July 8, 2016), <https://www.colorado.gov/what-cdps-doing-balance-safety-and-civil-liberties>.

<sup>3</sup> A meta-analysis of diversity trainings found that training involving interactive components, mediated by a human instructor were most effective and substantially more effective than computer based training. Zachary T. Kalinoski *et al.*, *A Meta-analytical Evaluation of Diversity Training Outcomes*, 34 J. BEHAV. ORG. 1076, 1092 (2013).



The CSU Police Department should also provide particular attention to the policies and training provided to dispatchers to ensure that anti-bias principles and a LEED approach are reflected in this important aspect of law enforcement. CSUPD employees handling calls for service should receive in-person, interactive training in Fair and Impartial Policing and LEED principles, in keeping with the training described above. Additionally, CSUPD policies should provide specific direction from dispatch through the point of response to suspicious persons reports. First, policies should direct dispatch staff to elicit information about specific behaviors when receiving suspicious person calls, and to relay as much information as possible to officer(s) so that the officer(s) can devise an appropriate contact strategy. Second, CSUPD policies should indicate that employees are permitted to exercise discretion in determining whether sufficient basis exists to initiate contact. That policy directive should include the option of a “respond and observe” approach. Policy, training, and refresher trainings are a necessary component of strong and effective bias-free policing practices.

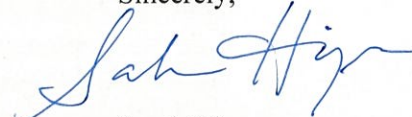
We are glad to learn of the efforts that CSU’s Office of Admissions and the Native American Student Center have made to continue to recruit Native students and to ensure that CSU’s campus is a welcoming and supportive place for Native students. We were glad to learn that CSU is planning to work with its Native students this fall to develop programming for a special Native Student visit day. We also support the requests of CSU’s native student community to ensure the further support of the Native American Cultural Center and its programming; to adopt a land acknowledgement recognizing CSU’s historic ties to Native lands; strengthening and expanding cultural competency training for students and employees; and working to improve the recruitment and retention of Native American faculty, graduate students, and fellows. As the treatment of Kanewakeron and Skanahwati Gray makes painfully clear, negative law enforcement actions undermine these positive efforts.

CSU has invited the Gray family to visit the campus and witness the positive programming of the Native American Cultural Center and other aspects of the campus. However, without a commitment to examine the actions of the CSU Police Department, it is impossible for the family to feel truly invited. We would welcome the opportunity to meet with you to discuss the full spectrum of actions that indicate CSU’s commitment to Native students, including the policies and practices of CSUPD.

Finally, in furtherance of our communications with CSU, attached to this letter is a formal request pursuant to Colorado’s open records laws, for records concerning the incident and the University’s policies, procedures, and trainings for campus police in responding to calls for service and confronting racial bias.

We appreciate your prompt attention to this matter. Especially given your expressed “deep concern and commitment,” we continue to hope that Colorado State University will show leadership by remedying the harms caused by racial profiling on its campus and taking the necessary steps to protect against the reoccurrence of similar events.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sarah Hinger". The signature is fluid and cursive, with the first name "Sarah" being more prominent than the last name "Hinger".

Sarah Hinger