

# **FIRESTORM:**

## **Treatment of Vulnerable Populations During the San Diego Fires**



**Prepared by:**  
**San Diego Immigrants Rights Consortium**  
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# **I. INTRODUCTION**

## **Responding to a Humanitarian Crisis**

In perhaps the largest natural disaster the San Diego region has ever seen, we put our emergency response system to the test. For one frightening week that began on October 21, 2007, fires raged through the region and more than half a million people evacuated their homes.

Like all members of our community, we are proud of all those who acted quickly and effectively to save lives and homes, some at great risk to themselves. Were it not for these heroes, which include firefighters, first responders, public servants, and countless volunteers, we would no doubt have suffered a far greater loss than we did.

Our emergency response system was successful in alerting vast segments of the population and evacuating them to safety. It was also successful in providing immediate shelter, food, water and other emergency supplies to the great many of those fleeing the affected areas. But the system and human compassion fell short in some of our most vulnerable populations, including immigrant, low-income, detained, and homeless populations.

At a time of crisis, such as we just experienced, humanitarian principles should be prioritized in our emergency response policies and practices. These include respect for human dignity and the sanctity of family regardless of race, national origin, language, legal status, property ownership, or any other factor. When lives and family well-being are on the line, nothing else should matter. Natural disasters do not pick and choose their victims, and they certainly do not bypass the defenseless. A humanitarian response demands that all victims have access to disaster relief.

This is not only compassionate and civilized, it is also good public policy to ensure the public's health and safety. Emergency assistance—from government and from private sources—must be available to all people affected by a disaster's destruction.

The American Civil Liberties Union, Immigrant Rights Consortium, Justice Overcoming Boundaries and other legal and community organizations have received hundreds of reports of civil liberties, civil rights, and human rights abuses. These include undocumented immigrants and homeless evacuees denied emergency services and shelter because they could not provide the proper identity documents; an extended family with three children arrested and deported for taking more donated goods than someone thought reasonable; a young Filipino volunteer evicted from the stadium for helping evacuees carry donated goods to their vehicles; and a number of journalists denied access to relief operations or otherwise precluded from doing their jobs.

These abuses should not be repeated. As a community, we can ensure that they will not be by implementing emergency protection policies that are mindful of our most vulnerable communities in times of crisis.

This report highlights in detail some of the incidents of abuse that have occurred over the last week. It is a starting point for a broader and more thorough evaluation of abuse and neglect during the evacuation process. Through an assessment of what went wrong, we hope to build on what went right.

Based on the many reports we have received, we offer initial recommendations for short-term and long-term changes to improve emergency response. While we are hopeful that we will avoid any future disasters, we are cognizant that another disaster could be just around the corner. For this reason, we ask our public officials, emergency response organizations, and the community at large to do everything possible to ensure that we are able to protect everyone.

## **Recommended Reforms**

The American Civil Liberties Union of San Diego & Imperial Counties, Justice Overcoming Boundaries, and the San Diego Immigrant Rights Consortium, which is made up of more than 25 organizations, call for the following five specific reforms:

1. Immediate cessation of identity checks in the disbursement of emergency shelter, food water and other supplies during a disaster.
2. Temporary cessation of immigration enforcement at emergency services centers for a short, reasonable period to allow the entire relief network to focus on meeting basic human needs, without being distracted by issues of immigration status. Create a clear “wall” between the agencies delivering humanitarian emergency services and law enforcement agencies responsible for immigration enforcement.
3. Training and deployment of language interpreters, particularly in the Spanish language, at evacuation sites and within relief agencies such as Red Cross and FEMA. Too often, our legal observers were called upon to serve as translators and interpreters because *too few people in an official capacity spoke Spanish, or languages other than English.*
4. Guarantee from civic leaders that all victims, including immigrants, of fires and other disasters can access vital assistance without fear of apprehension, inspection, or disparate treatment.
5. Formation of a task force with members from the emergency services sector, legal sector, public policy sector, law enforcement sector, community service sector, and civil rights sector to formulate clear policies and standards so that all parties—law enforcement officers, volunteer humanitarian workers, government officials, and disaster victims—are cognizant of what is reasonable and allowable in times of crisis.

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## II. POSITIVE RESPONSES

So much was done so well in responding to the initial crisis of controlling and containing the San Diego wildfires and then in creating a humanitarian infrastructure where there had been none that some facts and events need to be called out for special acknowledgment.

- Approximately 625 firefighters began battling one of the largest wildfires in San Diego<sup>1</sup>, the Witch Creek Fire shortly after it began at 11 a.m. on October 21. The enormity of this fire can be measured by its impact: 1,040 homes, 414 outbuildings, and 239 vehicles destroyed, as well as an additional 170 homes and 25 outbuildings damaged. But worse than property damage is human injury. Seven firefighters and one civilian were hurt in the Witch Creek Fire. As of today, most of the fire has thankfully been contained but firefighters remain vigilant.
- In an exemplary show of neighborly support and cooperation, approximately 60 Mexican firefighters crossed the U.S.-Mexico border to help fight the California wildfires last week.<sup>2</sup> About 30 of those firefighters headed north Sunday, October 21, almost immediately after the wildfires started in San Diego County.<sup>3</sup>
- Two days into the fires, approximately 500,000 people from at least 346,000 homes, alerted by an efficient reverse 911 calling system,<sup>4</sup> were ordered to evacuate their homes.<sup>5</sup> This was the largest evacuation in the region's history, and the largest wildfire evacuation in U.S. history.<sup>6</sup> Evacuation sites quickly opened to shelter those fleeing life-threatening flames, including numerous nursing home and elderly care facility patients.<sup>7</sup> It is estimated that 10,000 were gathered at Qualcomm Stadium. But, scores of schools, civic centers, and churches throughout the area also provided much-needed emergency shelter and disaster relief.
- For the first time, the county employed a sign language interpreter to communicate the up-to-the-minute news to the deaf community, and it was a good thing it did. KPBS reported that lives were saved—a deaf and legally blind man saw the interpreter sign the name of his street and evacuated. The interpreter worked for more than 20 hours straight, eager to keep the deaf community informed.

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<sup>1</sup> Greg Gross, "Witch Creek fire's toll so far: 750 homes destroyed or damaged," *San Diego Union-Tribune*, Oct. 23, 2007; <http://cfx.signonsandiego.com/news/northcounty/20071023-0214-bn22fire9.html>.

<sup>2</sup> Associated Press, "Mexican firefighters helping in California return to Mexico to fight blaze," *North County Times*, Oct. 23, 2007. [http://www.nctimes.com/articles/2007/10/24/news/state/11\\_36\\_0410\\_23\\_07.txt](http://www.nctimes.com/articles/2007/10/24/news/state/11_36_0410_23_07.txt)

<sup>3</sup> Associated Press, "Mexican firefighters helping in California return to Mexico to fight blaze," *International Herald Tribune*, Oct. 23, 2007. <http://www.iht.com/articles/ap/2007/10/23/america/LA-GEN-Mexico-Wildfires.php>

<sup>4</sup> Elliot Spagat, "Reverse 911 calls credited with saving lives in California," *Dallas Morning News*, Oct. 25, 2007; [http://www.dallasnews.com/sharedcontent/dws/news/nation/stories/DN-wildfire\\_25nat.1.ART.North.Edition1.42da9b9.html](http://www.dallasnews.com/sharedcontent/dws/news/nation/stories/DN-wildfire_25nat.1.ART.North.Edition1.42da9b9.html). Unfortunately, the calls were only transmitted in English. The ACLU and other civil rights organizations have received reports from non-English speakers who received the call...but did not know what they were being instructed to do.

<sup>5</sup> NPR Reports and Associated Press, "California Wildfires Trigger Widespread Evacuations," National Public Radio, Oct. 24, 2007. <http://www.npr.org/templates/story/story.php?storyId=15561235>

<sup>6</sup> William M. Welch, Patrick O'Driscoll and Chris Woodyard "'Staggering' numbers flee amid fear and uncertainty," *USA Today*, Oct. 23, 2007. [http://www.usatoday.com/weather/wildfires/2007-10-23-wildfires-cover\\_N.htm](http://www.usatoday.com/weather/wildfires/2007-10-23-wildfires-cover_N.htm)

<sup>7</sup> H.G. Reza, Jill Leovy and Alex Pham, "Scale of the fires' disruption on display at San Diego stadium," *Los Angeles Times*, Oct. 24, 2007; <http://www.latimes.com/news/local/la-me-evacuate24oct24,1,5751160.story>.

### **III. NEGATIVE STORIES / CIVIL LIBERTIES ISSUES**

#### **A. Evacuation Centers**

##### **1. Qualcomm Stadium Evacuation Center**

###### **San Diego Police Department Detention of Immigrant Evacuees and Call to Border Patrol in Violation of Police Policy**

At approximately noon on Wednesday, October 24, IRC chair Andrea Guerrero received a report that a family of evacuees had been detained by police and taken away by Border Patrol. Shortly thereafter, Guerrero spoke to a witness over the phone (who wishes to remain anonymous) who stated that at least a dozen adult evacuees and several child evacuees were detained by police for allegedly stealing donated items and were subsequently passed off to Border Patrol who took some of the family members away. The witness stated that stadium volunteers were encouraging evacuees to take as much as they could because there was an abundance of supplies and they told evacuees that they might need the supplies when they returned to their homes. The witness noted that donations were being turned away because of the over supply and the allegation did not ring true.<sup>8</sup>

The following morning, Guerrero spoke to another witness in person, Remy Bermudez, who was volunteering at the stadium. Bermudez stated that she saw the detained evacuees as some of them were taken away by Border Patrol. She said she recognized the evacuees from their stay at the stadium and was surprised to see them taken away. When she questioned several police officers nearby why Border Patrol had been called in she was treated rudely by an officer who stepped into her and yelled at her. At the same time, another officer took out his cell phone and took a picture of Bermudez. Bermudez felt intimidated and walked away.<sup>9</sup>

The *San Diego Union-Tribune* reported that the evacuees taken away by Border Patrol were part of an extended family. After conducting an immigration inspection of the family, Border Patrol took seven of the family members away – four adults and three children ages 13, 8 and 2 years old. Police spokeswoman Monica Munoz stated the police called Border Patrol after the officers found that the evacuees “suspected of looting could not produce identification.” One of the mothers deported to Mexico told the reporter that she and her family “did not steal anything, and that they only took items they had already been given as they prepared to return home to Scripps Ranch,” including puzzles and notebooks for the children to draw on and a cooler with juice and Gatorade.<sup>10</sup>

Although San Diego Police Department policy prohibits officers from calling in Border Patrol unless a criminal charge has been lodged, police in this instance violated that policy and called in Border Patrol without lodging a formal charge.

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<sup>8</sup> Andrea Guerrero, Conversation Notes, Oct. 24, 2007, on file at ACLU.

<sup>9</sup> Andrea Guerrero, Conversation Notes, Oct. 25, 2007, on file at ACLU.

<sup>10</sup> Leslie Berestein, “Latino evacuees at stadium feel anxiety.” *San Diego Union-Tribune*, Oct. 25, 2007; <http://www.signonsandiego.com/news/metro/20071025-1911-bn26deport.html>.

Several witnesses, including Bermudez, told Guerrero that immediately following this incident, more than 25 families of evacuees left the stadium out of fear that they would be apprehended and deported.<sup>11</sup>

### **Intimidating Presence of Border Patrol**

Following the incident on Wednesday, volunteers from the IRC set up an information table for immigrants at the stadium. Upon arrival, Guerrero and Justice Overcoming Boundaries Executive Director Norma Chavez Peterson noted the presence of a Border Patrol van and agents stationed near the FEMA and Red Cross canopies just inside the entrance to the stadium. Guerrero was informed by a City of San Diego volunteer that the Border Patrol unit was invited in by the city to provide mapping information on the burn areas. Although the Border Patrol unit on site did not engage in immigration enforcement, the presence of the unit along with approximately seven agents walking around the area in dark green Border Patrol uniforms created a climate of intimidation.

Over the course of the day more than 25 families approached the IRC table and reported feeling intimidated or threatened by the presence of Border Patrol and other law enforcement.

The presence of Border Patrol led one volunteer, a criminal attorney who staffed the registration table at the entrance to the stadium, to instruct anyone who she suspected of being undocumented, regardless of whether they had identification, not to enter the evacuation center. The volunteer said she feared that if she allowed in these evacuees, they would be subject to immigration inspection, despite assurances from Border Patrol on site that they were only there to provide information.<sup>12</sup> As a result, these evacuees did not access emergency supplies or services from the evacuation center.

### **San Diego Police Inspections, Expulsions and Rejections of Evacuees**

On Thursday morning, at least three evacuee families approached the IRC table and reported that the previous night, at approximately midnight, San Diego City police officers circulated through the stadium, waking families up, and asking to see identity documents. They went from family to family asking for IDs proving that the individual or families had come from evacuation zones. They reportedly accepted drivers licenses, “green cards” (permanent resident cards), school IDs, and bill statements, but only if they corresponded with proof of residence in an evacuation zone.<sup>13</sup>

Guerrero spoke with a church volunteer who spent the night with evacuees in the stadium and was witness to the identification checks. He stated that families who could not provide the requested identification were escorted out of the stadium in the middle of the night. He observed some individuals and families request to stay through the night, but they were escorted out of the stadium.<sup>14</sup> It is unclear how many families and individuals were asked to leave.

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<sup>11</sup> Andrea Guerrero, Conversation Notes, Oct. 25, 2007, on file at ACLU.

<sup>12</sup> Kevin Keenan, Conversation Notes, Oct. 24, 2007, on file at ACLU.

<sup>13</sup> Andrea Guerrero, Conversation Notes, Oct. 25, 2007, on file at ACLU.

<sup>14</sup> Tom Fudge, “San Diego Wildfire Update,” These Days, KPBS, Oct. 25, 2007; [http://www.kpbs.org/radio/these\\_days?id=9994](http://www.kpbs.org/radio/these_days?id=9994)

When the sun rose and evacuees who had slept in the stadium parking lot in or near their cars and belongings attempted to enter, they were subjected to the same identity check at a registration table staffed by volunteers and surrounded by City police. Prior to Thursday, evacuees were not required to show any identification. Several volunteers who had been at the stadium for several days told International Red Cross (IRC) volunteers that the identity check, coupled with the large law enforcement presence, created a tense atmosphere that was not present in the previous days.<sup>15</sup>

Guerrero spoke with San Diego Police Chief William Lansdowne about the police identity checks, and he explained that the checks were instituted to expel or keep out persons who were not true evacuees. Guerrero expressed concern that some true evacuees might not be able to meet the documentation requirement and thus might be prevented from accessing much needed emergency supplies and services either because they fled without documents, did not have documents to begin with, had recently moved or for some other reason did not have documents that corresponded to their address in an evacuated zone, or were homeless and were nonetheless affected. Lansdowne acknowledged this might be a problem and stated he would advise the officer in charge of operations at the stadium.<sup>16</sup>

Less than one hour later, a Mexican couple and their small child approached the IRC table. They told Guerrero and other volunteers that, after sleeping in the parking lot as they had done for several nights, they had attempted to enter the stadium to access food and restrooms and the husband was asked for his immigration status by the volunteer at the registration table. When he said he had none, the registration volunteer intimidated him by asking him, saying, “What would happen if immigration officials came by?” The wife pleaded with the volunteer to let the family in. She presented an ID for herself, and the family was eventually let in.<sup>17</sup>

After several other families reported trouble entering the stadium, ACLU Executive Director Kevin Keenan raised the issue again with Chief Lansdowne. The chief, to his credit, sent a liaison officer to the IRC table, who facilitated the placement of an IRC observer at the registration table. An IRC volunteer observed the registration process for four hours. Although she saw no further inquiry into immigration status, she noted that people who were homeless, even if they claimed to be affected, were turned away including one man who appeared to be a migrant worker. She also noted that people who could not write or articulate their address clearly (such as one man who appeared to speak an indigenous Mayan language) were also turned away.<sup>18</sup>

## **Racial Profiling by San Diego Police and Volunteers**

The IRC received more than a dozen complaints from evacuees who felt that they were targeted by police or treated in a discriminatory fashion by volunteers dispersing food and other supplies. Most of the complaints came from persons of Mexican or Central American descent. Two incidents, involving an African American mother and a Filipino volunteer, are recounted separately below.

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<sup>15</sup> Andrea Guerrero, Observation Notes, Oct. 24, 2007, on file at ACLU.

<sup>16</sup> Andrea Guerrero, Conversation Notes, Oct. 24, 2007, on file at ACLU.

<sup>17</sup> Andrea Guerrero, Conversation Notes, Oct. 24, 2007, on file at ACLU.

<sup>18</sup> Nancy Ramos, Observation Notes, Oct. 24, 2007, on file at ACLU.

IRC volunteers were told by more than a dozen evacuees of Mexican and Central American descent that they were afraid to leave the stadium for fear of being targeted and harassed by the police who were patrolling the exit. More than half a dozen evacuees, some of whom were citizens or legal residents and some of whom were undocumented, reported that they were approached in the parking lot by officers while carrying donated provisions to their cars. In one instance, a family was surrounded by five officers who asked them to account for the items in their vehicle, implying that they suspected the family of stealing the items. In another instance, a family's car was surrounded by orange cones to obstruct the car's possible movement after the family carried some donated items to their car and returned to the stadium. Believing they were targeted for immigration inspection, they told IRC volunteers that they were afraid to leave the stadium.<sup>19</sup>

More than ten families of immigrant evacuees reported fear of leaving the stadium. One evacuee told Guerrero that she was afraid to leave because she thought she would be inspected by the officers at the exit. She thus considered leaving without food, clothing, water, or blankets for her and her children so that she would not be accused of stealing and suffer the same fate as the family deported on Wednesday. She was approached by a CBS national news crew for an interview and expressed these same fears on camera. Afterwards, IRC volunteers escorted her and her family out of the stadium with emergency supplies.<sup>20</sup>

IRC volunteers also received a report from a distraught mother of Mexican descent who stated that on Wednesday she requested size five diapers from volunteers staffing a supply table, and was told there were none available. She watched as a Caucasian woman also requested size five diapers and was given a box. An American Friends Service Committee volunteer subsequently accompanied her to ask for diapers again; this time, they were given diapers.<sup>21</sup> It should be noted that upon the closing of Qualcomm stadium as an evacuation center on Friday morning, there were hundreds of cases of diapers of all sizes.

Throughout the day on Thursday, IRC volunteers witnessed numerous Caucasian evacuees carrying cases of water and food, bags full of clothes and other supplies to their cars, and in no instance did any witness report that a Caucasian evacuee was detained, interrogated, inspected, surrounded, intimidated or accused of looting.

### **San Diego Police Department Harassment of African American Evacuee Leaving With Supplies**

On Thursday, October 25, at approximately 1 p.m., an IRC volunteer observed an African American woman, Keisha King, and her son being stopped from re-entering Qualcomm Stadium. Two officers were blocking her entrance and asking her questions. They were questioning why she had been taking supplies (diapers, diaper wipes, water, all in clear bags) to her car, and said, "I keep seeing you coming and going—are you stealing this stuff?" King vehemently denied that she was stealing anything, and replied that the Red Cross volunteers had instructed her to take as many supplies as she needed for her family. The volunteer subsequently found out that King was a single mother of three. One of the officers said that she had witnessed the woman

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<sup>19</sup> Andrea Guerrero, Conversation Notes, Oct. 24, 2007, on file at ACLU.

<sup>20</sup> Id.

<sup>21</sup> Andrea Guerrero, Conversation Notes, Oct. 25, 2007, on file at ACLU.

making multiple trips in and out. King replied that this was the first time she had left the stadium since she arrived on Monday night.<sup>22</sup>

In an interview with the IRC, King stated that this was the second confrontation with that particular officer who had questioned King while she was standing in a line to receive food, asking to check King's wristband. King said that while she was in the line, Officer Spurlock did not ask to see anyone else's wristbands.<sup>23</sup>

King also said that later that day she spoke to a Red Cross volunteer about receiving assistance. The volunteer asked her for identification, which she had in her car. She left the stadium to retrieve the identification and upon re-entering the stadium, she was blocked by the same officers. King asked to speak to the officer in charge to file a formal complaint, and the officer told her the officer in charge could not talk to her. Another officer pointed out the officer in charge. King described her experiences to him. He asked her what she wanted to do about it and said he would talk to the officer involved. King did not feel that was enough and wanted to file a written complaint, which he refused to take.<sup>24</sup>

### **San Diego Police Department Harassment of 19-year-old Filipino Volunteer**

A 19-year-old community volunteer, Jonathan Santos Galendez, had been volunteering day and night at Qualcomm since Monday, October 22, 2007. Using his skateboard, he helped move food and other supplies from different parts of the stadium, and to help evacuees who were able to return to their homes to take needed supplies to their vehicles.<sup>25</sup>

On Thursday, he was returning to the stadium after helping an elderly Caucasian couple load some donated goods into their car, when a San Diego Police officer told him to get off his skateboard. He was not riding it at the time, but he nodded and continued into the stadium. He then, at the direction of the Red Cross nurse, helped a Mexican mother with a baby carry some water to her car. When he returned to the stadium this time, the same officer said, "Where are you going with that water—do you know those people?" Santos Galendez said he was surrounded by four to five police officers and his re-entry was blocked. He told the police he had been helping people all week. They said he was making too many trips out to the parking lot and they suspected he was stealing or helping others to steal. He said a officer grabbed him and told him, "You have a bad attitude—you're out of here." The officer had a retired police officer escort Santos Galendez out of the stadium.<sup>26</sup>

As they were making their way to an exit, IRC volunteers saw them progressing across the walkway, noticing that Santos Galendez was quite upset. They asked what was going on, why was this volunteer being led away like a criminal? The escort said he was simply doing what he had been told to do. A volunteer coordinator (who wishes to remain anonymous) recognized Santos Galendez as he passed by in a cart and asked what was going on. He asked the escort officer to stop to clarify why Santos Galendez was being evicted. A film crew began filming at this time. Santos Galendez told the volunteer coordinator and the surrounding witnesses that the

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<sup>22</sup> Rebecca Rauber, Observation Notes, Oct. 25, 2007, on file at ACLU.

<sup>23</sup> Rebecca Rauber, Conversation Notes, Oct. 25, 2007, on file at ACLU.

<sup>24</sup> Andrea Guerrero, Conversation Notes, Oct. 25, 2007, on file at ACLU.

<sup>25</sup> Andrea Guerrero, Conversation Notes, Oct. 25, 2007, on file at ACLU. .

<sup>26</sup> Id.

officers had accused him of stealing. He was visibly shaking and upset, and he said maybe he should just leave, he was sick of the whole thing. “Why are they doing this to me?” he said. “I’ve been here from the beginning, and I’m just trying to help the people.”<sup>27</sup>

Two police officers approached the group. They immediately started yelling at the group to back off, stay away, stop filming, and to leave them to do their jobs. People did back off, afraid of escalating the situation. Santos Galendez reached his hands behind his head as if he was under arrest and the officers said, “No, put your hands down.” They escorted Santos Galendez inside the security office that was immediately adjacent to this scene.<sup>28</sup>

Shortly afterwards, one of the observers came back in from the parking lot, saying the police had escorted Santos Galendez outside of the stadium and told him that if he came back on to the property they would arrest him. They also told Santos Galendez that they “should have tasered him.”<sup>29</sup>

## **2. The Del Mar Fairgrounds Evacuation Center**

Officially, the American Red Cross took over control of the evacuation center at Del Mar Fairgrounds on Friday, October 26, 2007 at noon.<sup>30</sup> But, preparations for the transition began on Wednesday, October 24, 2007, and the American Red Cross was present in force on Thursday night, October 25, 2007,<sup>31</sup> just ahead of the police identity sweep at Qualcomm at midnight Wednesday morning. On Thursday night, the Del Mar center sheltered approximately 120 evacuees, approximately half of whom were Spanish speakers, according to a Red Cross volunteer.<sup>32</sup> Between Thursday and Saturday, evacuees were transported from Qualcomm to Del Mar, and new evacuees were directed to Del Mar. The Red Cross braced for hundreds more evacuees to come, but the center’s population never exceeded 300. On Monday, October 30, the center sheltered about 150 evacuees.<sup>33</sup>

The Del Mar site was notable for three characteristics: (1) American Red Cross leadership and experience, (2) a substantial, visible military presence, and (3) little to no language resources (apart from the IRC presence) for Spanish speaking and immigrant communities.

### **American Red Cross Leadership, Sheriff’s Department Harassment**

From IRC’s first contact at the Del Mar site, it was clear that Red Cross officials and volunteers embodied the organization’s humanitarian mission and subordinated other influences.

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<sup>27</sup> Rebecca Rauber, Observation Notes, Oct. 25, 2007, on file at ACLU.

<sup>28</sup> Id.

<sup>29</sup> Andrea Guerrero, Conversation Notes, Oct. 25, 2007, on file at ACLU.

<sup>30</sup> From Sunday, October 21, 2007 through Tuesday, October 30, 2007, the Del Mar evacuation site cared for approximately 2,200 people. From Sunday to Friday, the site was managed by the San Diego County Office of Emergency Services. Matthew Rodriguez, “Up to 2,200 Evacuees, Many Animals, Aided at Fairgrounds.” *San Diego Union-Tribune*, Oct. 31, 2007; <http://www.signonsandiego.com/news/northcounty/20071031-9999-1mi31fair.html>

<sup>31</sup> Kevin Keenan, Observation Notes, Oct. 24, 2007, on file at ACLU.

<sup>32</sup> Kevin Keenan, Conversation Notes, Oct. 31, 2007, on file at ACLU.

<sup>33</sup> Kevin Keenan, Conversation Notes, Oct. 24, 2007, on file at ACLU.

A Red Cross official said the organization would not invite, welcome, or allow a U.S. Border Patrol presence at its site the way the City had done at Qualcomm. The Red Cross does not determine who needs relief services based on immigration status, according to the official, and a Border Patrol presence would intimidate and deter people who need emergency services.<sup>34</sup>

The Red Cross allowed IRC volunteers to set up a table near the entrance and provide communication and translation support for Spanish speakers. On Thursday and Friday, the IRC had four to seven volunteers onsite from 8 a.m. to 10 p.m. Late Saturday morning, the IRC began to deploy its volunteers to communities in which the evacuation orders were being lifted to monitor law enforcement check points and the availability of relief services. The credit for this quick mobilization of Spanish speaking volunteers goes to IRC member Justice Overcoming Boundaries (JOB) and its director Norma Chavez. JOB was able to leverage its close relationships with faith communities, service providers, advocates, and activists. Immediately upon arriving Thursday morning, IRC volunteers were asked by Red Cross to describe the services available at the center to Spanish language media that showed up. While at Del Mar, IRC volunteers answered questions from Spanish speaking evacuees. IRC volunteers approached Latinos at the center to mention and explain services available through Red Cross, FEMA, and other agencies. Being approached by a friendly, Spanish speaking Latino, it seemed, was instrumental to overcoming fear and modesty among immigrant evacuees.

On Friday evening, the relationships and communications the IRC established proved instrumental in addressing three disturbing incidents involving the Sheriff's Department.

At approximately 7:30 p.m. on Friday, October 26, fifteen or more Sheriff's deputies entered the Red Cross site. Previously, the Sheriff's Department had little to no presence at the site.<sup>35</sup>

A group of the deputies, as many as ten, went to the second floor sleeping area and walked down the rows of cots looking intensely at the evacuees, an IRC volunteer observed.<sup>36</sup>

Descending the stairs, four deputies stopped a Latino man who was walking upstairs to be with his family. They asked him for his ID and instructed him to go back downstairs and sit down to answer their questions. Four deputies proceeded to interrogate the man, questioning his story that he evacuated from the rural Portrero area because he could not remember his exact address. The man suggested they confirm his address and story with his wife who was upstairs with their children. A deputy went to find his wife while the others continued to interrogate the man. Upstairs, the deputy asked the shocked and worried wife where she lived, at what address specifically, and for how long. The deputy returned to the others and said the husband and wife had given different lengths of residence. A deputy returned with the man's ID, which listed his sister's address in Barrio Logan, a Latino neighborhood in San Diego. Another deputy told the man he should take his family and stay with his sister rather than at the shelter. The man explained that he does not like to ask his family for anything. The deputies returned his ID and left the man scared and shaken.<sup>37</sup>

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<sup>34</sup> Kevin Keenan, Conversation Notes, Oct. 24, 2007, on file at the ACLU.

<sup>35</sup> Norma Chavez, Incident Report, Oct. 30, 2007, on file at the ACLU.

<sup>36</sup> Id.

<sup>37</sup> Id.

An IRC volunteer who observed the entire incident comforted the man and then sought a Red Cross official. Three Red Cross officials received the report, visited the family upstairs, comforted them, and assured them that the deputies' behavior was inappropriate and would not happen again. The Red Cross stationed a volunteer in the area near the family.<sup>38</sup>

At about the same time that Sheriff's deputies detained the Latino man at the stairs, two other IRC volunteers were helping three women and their mother select supplies for their return home to rural, devastated Ramona the next morning. The women needed diapers, wipes, and other supplies but were afraid to take them due to the presence of the Sheriff's deputies. The IRC volunteers relayed the instructions they had received from the Red Cross that evacuees should take all that they needed and more due to the uncertain situation they would face when getting home and due to the abundant store of goods. The volunteers said they would help the family make the two trips to take the goods to their cars.<sup>39</sup>

Upon returning, a group of four Sheriff's deputies stopped the women. One said sternly, "Where do you live?" and asked again in Spanish. One of the women replied, "Ramona," to which the deputy said, "Make this your last trip. No more stuff for you. You got enough to last you two weeks." Another deputy asked, "Where in Ramona do you live?" and, "What street?" The woman answered. The first deputy said, "That's right near downtown. Downtown was not affected. You'll be fine. We were just there yesterday." The evacuee wanted to ask if they would have water and electricity but she was cut off by the deputy who kept telling her the area was fine. The IRC volunteers and family walked away from the deputies, but they followed close behind. The deputies then headed to the stairs to the residential second floor.<sup>40</sup>

At the stairs, the deputies encountered the Red Cross Public Information Officer in charge at the site. IRC and Red Cross volunteers observed the conversation that ensued between the four Sheriff's deputies, including a sergeant from the San Marcos Sheriff's Station, and the Red Cross official. The Sergeant, who had a very large physical presence, led the discussion with the woman from Red Cross who stood with her back to the stairs, blocking their path. The Sergeant spoke in an intimidating, condescending manner. The Red Cross official spoke calmly, quietly, and diplomatically.<sup>41</sup>

The Sergeant said, "We just want to make sure they aren't taking things other families can have." The Red Cross official said, "That is what those supplies are here for, for them, and we have told families to take as much as they want." The Sergeant said, "We just feel like some people may be taking advantage of the situation,"<sup>42</sup> and, "You can't have homeless people staying here. Believe me, some of these people will never leave until you kick them out." The Red Cross official responded, "This facility is now being run and managed by the American Red Cross, and we are okay with homeless people being here. We can take care of it." The Sergeant said, "A lot of these people aren't going to leave until you kick them out the door," and later, "The Fairgrounds wants us to make sure their property is protected. . . . It's a very generous thing the Fairgrounds have done letting you use this property." The Red Cross official expressed her

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<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Maribel Baltadano, Incident Report, Oct. 28, 2007, on file at the ACLU; Vanessa Arteaga, Incident Report, Oct. 29, 2007, on file at the ACLU.

<sup>41</sup> Norma Chavez, Incident Report, Oct. 30, 2007, on file at the ACLU; Kevin Keenan, Incident Report, Oct. 29, 2007, on file at the ACLU.

<sup>42</sup> Norma Chavez, Incident Report, Oct. 30, 2007, on file at the ACLU.

gratitude for the Fairgrounds' generosity and assured the deputy that Red Cross was taking care of things. Upon noticing they were being observed, a female deputy said something to the Sergeant, the conversation quickly ended, and the deputies left.<sup>43</sup>

Later, a Red Cross official notified the IRC volunteer who had reported the first incident that the appropriate people had been notified and the situation was being taken care of. The Sheriff's deputies did not return inside the facility until after 10 p.m. (lights out), at which point four deputies stayed in the first floor, front, common area. The next day, the same IRC volunteer was asked to share what she observed with an outside delegation of Red Cross officials.<sup>44</sup> The IRC is unaware of what actions were taken, if any, by Red Cross or what conversations occurred, if any, between Red Cross and law enforcement. However, the Sheriff's Department presence after that night was very light and at times nonexistent.<sup>45</sup>

It is the IRC's impression that the American Red Cross handled this situation in a fair, fast, professional, and thorough manner. The Red Cross' Public Information Officer that night deserves particular commendation for her kind but firm manner in confronting the intimidating manner of the deputies and deescalating a tense situation to the benefit of all the evacuees.

### **Military Presence at the Del Mar Fairgrounds**

There is no question that the National Guard is essential to domestic disaster relief efforts and in many situations a welcome sight. Further, in hot spots around the world, the U.S. military provides protection, relief, and services that are a refuge for victims of strife.

However, in Del Mar, California, the massive presence of National Guard and Reserve Officer Training Corps (ROTC) volunteers who were virtually indistinguishable from active service U.S. military, combined to create the distinct impression that the Fairgrounds had become a military fort. On Wednesday night, October 24, the entrance to the Fairgrounds parking lot was guarded by National Guardsmen and an armored Humvee. Dozens of uniformed ROTC volunteers stood guard at the entrance to the evacuation center, and more than 20 National Guard trucks sat in the parking lot.<sup>46</sup>

The IRC is grateful for the service of our ROTC and Guard volunteers but questions whether their presence could have been structured in a way to be less intimidating. It is possible that Wednesday night was a transition night and the Fairgrounds were being used for staging other relief operations by the Guard. An IRC volunteer registered wonder and concern with a Red Cross official that night who said the observation would be relayed into the "feedback loop."<sup>47</sup> In any event, the military presence decreased from its height on Wednesday night but remained significant through Monday, October 29.

The IRC is aware of the close relationship between the Red Cross, the Guard, and the U.S. military. However, when seeking to create a welcoming atmosphere for victims generally and to

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<sup>43</sup> Kevin Keenan, Incident Report, Oct. 29, 2007, on file at the ACLU.

<sup>44</sup> Norma Chavez, Incident Report, Oct. 30, 2007, on file at the ACLU.

<sup>45</sup> Kevin Keenan, Incident Report, Oct. 29, 2007, on file at the ACLU.

<sup>46</sup> Andrea Guerrero, Observation Notes, Oct. 28, 2007, on file at the ACLU.

<sup>47</sup> Id.

avoid intimidation while serving vulnerable populations, the Red Cross might give further attention to the visual impression that such a fortified presence creates.

### Spanish Language Resources and Outreach

The Red Cross was generous and welcoming to the IRC at Del Mar, but the Red Cross also desperately needed the IRC’s language services. From Thursday to Saturday, the IRC found no Spanish speakers among Red Cross volunteers at the site, with the exception of two Mormon LDS volunteers who helped at the registration table.<sup>48</sup> If there were Spanish speakers, they did not come forward to help. There were no visibly Latino Red Cross volunteers.<sup>49</sup> The same was true among the FEMA workers at the site. IRC volunteers provided translation assistance to evacuees seeking medical, FEMA, and other services. IRC volunteers conducted numerous media interviews on behalf of Red Cross with Spanish language media.<sup>50</sup> Del Mar Fairgrounds’ Hispanic Spokesperson provided information and contacts to Spanish language media throughout the emergency. He reports that Spanish language media provided thorough coverage of his updates, even reading his statements verbatim on air. When Red Cross officially took over control of the site, his role with respect to information about the relief operations and services was to refer media to the Red Cross’ public information officers who did not have a Hispanic spokesperson.<sup>51</sup>

Volunteers estimated that on Wednesday night, October 24, approximately half of the 120 evacuees staying at Del Mar were Spanish speakers. On Monday, October 29, a volunteer estimated that one in eight people served during the week were Spanish-only speaking.<sup>52</sup> It is impossible to have an accurate count of Spanish speakers, but it was clear that the need was significant. It is also clear that the areas most affected by the fires have significant Latino and Spanish speaking populations.

	<b>Ramona</b>	<b>Fallbrook</b>	<b>Escondido</b>	<b>Valley Center</b>	<b>Spring Valley*</b>
<b>Total Population</b>	33,038	42,134	17,863	14,748	78,082*
<b>Latinos</b>	17.2%	29.8%	14.9%	23.9%	25%*
<b>Spanish spoken at home</b>	13.9%	25.1%	11.1%	19.5%	

\*All figures are 2000 U.S. Census data, except Spring Valley, which is 2000 data from SANDAG. The U.S. Census Bureau splits Spring Valley into two data areas, Spring Valley and La Presa.

The Red Cross was able to make some modest improvements as the relief efforts continued. Over the weekend at Del Mar, for instance, volunteers reported that a Spanish speaking Red Cross volunteer was available during the day shift, a limited Spanish speaking Red Cross volunteer was on duty at night, and native Spanish speakers were “on call,” able to be summoned by phone if necessary. Volunteers were not aware, however, whether translation service was

<sup>48</sup> Norma Chavez, Observation Notes, Oct. 30, 2007, on file at the ACLU.

<sup>49</sup> Id.

<sup>50</sup> Andrea Guerrero, Observation Notes, Oct. 29, 2007.

<sup>51</sup> Kevin Keenan, Conversation Notes, Oct. 31, 2007.

<sup>52</sup> Norma Chavez, Observation Notes, Oct. 30, 2007, on file at the ACLU.

available to them through a toll free number, as other Red Cross chapters (New Jersey, Washington, D.C.) have arranged.<sup>53</sup>

The American Red Cross is aware of the need to be accessible to affected populations in a disaster relief effort. The National Council of La Raza (NCLR) issued a report following Hurricane Katrina urging the Red Cross to diversify its operations, starting with its top leadership, and foster relationships with key organizations able to provide bilingual and bicultural workers and volunteers.<sup>54</sup> The report also blamed FEMA for the failure to adequately serve the Latino population following Katrina. “From a workforce lacking diversity from top to bottom to widespread communications failures to policies that endangered the public health and safety, the disaster response of the two entities most responsible for disaster relief – the federal government and the American Red Cross (ARC) – was a failure on every level for Latinos,” said Janet Murguía, NCLR President and CEO.<sup>55</sup>

Fred Sanford, who volunteered for the Red Cross during the Katrina relief effort, understands this problem. A former bank executive and current board member of the San Diego chapter of the Red Cross, Sanford has served as the Community Outreach Manager for the San Diego fire relief effort. After recovering from the fire’s devastating effects in his own community of Rancho Bernardo, Sanford drove straight to the areas where he knew vulnerable populations would be and might fear to access Red Cross services. The IRC met with him on Monday, October 29, and found he was already well aware of the same barriers and problems IRC has documented in this report. At Sanford’s request, Justice Overcoming Boundaries (JOB) provided Sanford with a list of local churches and service providers that were trusted by and hospitable to Latinos and immigrants. The IRC continues to monitor the performance of relief agencies, including the Red Cross.<sup>56</sup>

We are not certain the Red Cross or others understand the many profound ways in which language accessibility is crucial to relief efforts. It is not merely the translation of information to facilitate the exchange of food, shelter, or medical care, although of course that value is primary. In a chaotic, emergency situation, language familiarity and outreach become synonymous with comfort and welcome. For a marginalized population like undocumented immigrants, language and cultural affinity becomes a tool to draw out a frightened community. And, as the IRC learned first hand on Friday night with the Sheriff’s Department, language solidarity becomes advocacy and protection when marginalized people are subject to scrutiny and harassment by law enforcement or other authorities.

## **B. FARMWORKERS WORKING IN MANDATORY EVACUATION AREAS**

The IRC observed and received reports of farmworkers laboring during the fires in areas adjacent to fires, on several occasions inside mandatory evacuation zones. These reports suggest a pattern of reckless endangerment of immigrant workers by employers during San Diego’s wildfires.

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<sup>53</sup> Id.

<sup>54</sup> National Council of La Raza. *In the Eye of the Storm: How the Government and Private Response to Hurricane Katrina Failed Latinos*, Feb. 28, 2006. <http://www.nclr.org/content/news/detail/36801/>

<sup>55</sup> Id.

<sup>56</sup> Norma Chavez, Observation Notes, Oct. 30, 2007, on file at the ACLU.

According to a report on National Public Radio, Jesús Gómez, a worker at an unidentified North County nursery near the Witch Fire stated that between October 22 and October 24, 2007, immigrant crews kept working while wind whipped smoke and ash in their eyes.<sup>57</sup> “They gave us masks, but still, our eyes were filling with dirt and ashes. So, we keep working, but then the police came in,” Gomez said. He then revealed that his boss let him leave work only after police officers gave a mandatory evacuation order.<sup>58</sup> The reporter who interviewed Gómez also saw immigrant tomato pickers working in a field across the road from the nursery on Wednesday, October 25, 2007.<sup>59</sup>

According to the *Voice of San Diego*, on October 24, 2007, reporters observed immigrant workers at the “Be Wise Ranch” installing a plastic pipe.<sup>60</sup> According to the Be Wise website, the farm, located at 9018 Artesian Road near Rancho Santa Fe, “sustained some major damage due to the Witch Creek fire. Regretfully, the farmer Bill Brammer and his wife Marsanne lost their home which was burned to the ground.”<sup>61</sup> A Be Wise employee, Sandra Broussard, told reporters that workers were trying to replace a length of the farm's water system that was melted in hopes of saving a strawberry crop. According to the farm's owner, the installation rescued eighty percent of the crop.<sup>62</sup>

While the IRC commends these immigrant farmworkers for their bravery, it is important to note that on October 24 the area around the Be Wise Ranch was not only under a mandatory evacuation but was inside the Witch Fire Zone.<sup>63</sup> It should be stressed that the Air Quality Index (AQI) in that area of San Diego County was between 151-200.<sup>64</sup> The county of San Diego classifies this level as ‘unhealthy’ and gives the following description: “Everyone may begin to experience health effects; members of sensitive groups may experience more serious health effects.”<sup>65</sup>

On October 29, 2007, an IRC volunteer interviewed workers at the Evergreen Nursery on Carmel Valley Road.<sup>66</sup> One unnamed Evergreen employee reported that he and others worked on October 22 and October 23 at the nursery's store. Other interviews revealed that about a dozen other immigrant laborers worked from October 22 to October 26 watering plants.<sup>67</sup> Similar interviews with workers at a tomato field about a quarter-mile west of Evergreen on Carmel Valley Road revealed employee who said they had been instructed not to work during that same time period because of the threat that the heavy smoke posed to their health.<sup>68</sup> The Evergreen Nursery is located in an area that was under mandatory evacuation orders from Monday, October

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<sup>57</sup> Amy Isackson, “Fires Highlight Safety Needs of Migrant Workers,” KPBS/NPR, Oct. 25, 2007; <http://www.npr.org/templates/story/story.php?storyId=15634399&sc=emaf>

<sup>58</sup> *Id.*

<sup>59</sup> José Fusté, Conversation Notes, Oct. 26, 2007, on file at ACLU.

<sup>60</sup> Kelley Bennett, “Twenty Acres of Thirsty Strawberries,” *Voice of San Diego*, Oct. 25, 2007; [http://www.voiceofsandiego.org/articles/2007/10/26/this\\_just\\_in/798bewise102507.txt](http://www.voiceofsandiego.org/articles/2007/10/26/this_just_in/798bewise102507.txt)

<sup>61</sup> Be Wise Ranch, <http://www.bewiseranch.com/>, home page, Oct. 29 2007

<sup>62</sup> “Twenty Acres of Thirsty Strawberries. *Voice of San Diego*, Oct. 25, 2007

<sup>63</sup> San Diego County Emergency Homepage, Evacuation Maps, Oct. 24, 2007; <http://www.sdcountyemergency.com/firemaps.html>

<sup>64</sup> AirNow.gov, Air Quality Maps, Oct. 29, 2007;

<http://airnow.gov/index.cfm?action=airnow.displaymaps&Pollutant=PM2.5&StateID=60&domain=super>

<sup>65</sup> County of San Diego, Air Quality Index, Oct. 29, 2007; <http://www.sdapcd.org/air/reports/AQI.html>

<sup>66</sup> José Fusté, Interview Notes, Oct. 29, 2007, on file at ACLU.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

22 through the afternoon of Thursday, October 25.<sup>69</sup> The Air Quality Index (AQI) in that area of San Diego County was also between 150 and 200 (“unhealthy”).<sup>70</sup>

Volunteers, journalists and representatives of the Mexican consulate also observed numerous workers picking tomatoes on Wednesday, October 24, 2007 at a field leased by Leslie Farms between Carmel Valley Road and Black Mountain Valley Road, north of Highway 56.<sup>71</sup> Originally, the Frente Indígena de Organizaciones Bi-Nacionales received word that immigrant workers at this farm were told to pick tomatoes during mandatory evacuations. On Wednesday, October 24, 2007, the Frente brought representatives of the American Friends Services Committee, Border Angels, two employees of the Mexican Consulate and members of the news media. They intended to deliver masks, tarps, water, eye protection, and food to the workers and try to convince them to leave. Witnesses observed about 150 farmhands working under dangerously polluted weather conditions.<sup>72</sup> The volunteers learned from the workers that they had been told to work for several hours on Monday, October 22, all day the following Tuesday, and half a day on Wednesday. The farm was in a mandatory evacuated area until Wednesday afternoon.<sup>73</sup>

According to *MiEnlace*, workers said they had been told the area was under evacuation and that they *had been given the option to stay working*.<sup>74</sup> When the group of observers arrived at the property, they spoke to a supervisor who said that the area was under “temporary evacuation.” This was confirmed by police officers who promptly arrived at the scene. According to the officers, they had no legal authority to force the owner of the farm to release the workers because the area was temporarily evacuated at the time. The *MiEnlace* reporter confirmed this but said that the *mandatory* evacuation order had just been lifted hours before observers arrived there.<sup>75</sup> An ABC reporter confirmed that the farm was in a temporary evacuation but noted that the properties on the north side of the road were still under mandatory evacuation.<sup>76</sup> Workers

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<sup>69</sup> San Diego County Emergency Homepage, Evacuation Maps, Oct. 29, 2007;

<http://www.sdcountyemergency.com/firemaps.html>

<sup>70</sup> AirNow.gov, Air Quality Maps, Oct. 29, 2007;

<http://airnow.gov/index.cfm?action=airnow.displaymaps&Pollutant=PM2.5&StateID=60&domain=super>

<sup>71</sup> The incident is well documented in numerous newspaper and video accounts, including:

Jim Avila, Teri Witchcraft, Thomas Berman, “Dangerous Dilemma for Illegal Immigrants: Seeking Safety from Wildfires, some Undocumented Workers Find Border Patrol Instead,” ABC News, 20/20, Oct. 24, 2007;

<http://www.abcnews.go.com/2020/story?id=3769989&page=1>

and Hiram Soto, “Nunca dejaron de trabajar: agricultor ignora zona de evacuación,” *MiEnlace*, Oct. 26, 2007;

<http://www.mienlace.com/?secc=7&subsecc=107&idt=8547>; José Fusté, Interview Notes, Oct. 29, 2007, on file with ACLU; American Friends Service Committee, “AFSC San Diego Supports Farmworkers in San Diego,”

(Email, photos, and video on file with the ACLU); and “Preliminary update on farm workers and fire” (Email on file with the ACLU.)

<sup>72</sup> The Air Quality Index (AQI) in that area of San Diego County was classified as ‘unhealthy.’ See AirNow.gov, Air Quality Maps.

<sup>73</sup> San Diego County Emergency Homepage, Evacuation Maps, Oct. 29, 2007;

<http://www.sdcountyemergency.com/firemaps.html>

<sup>74</sup> Hiram Soto, “Nunca dejaron de trabajar: agricultor ignora zona de evacuación,” *MiEnlace*, Oct. 26, 2007;

<http://www.mienlace.com/?secc=7&subsecc=107&idt=8547> (Video report also available online and on file at ACLU.)

<sup>75</sup> *Id.*

<sup>76</sup> Jim Avila, Teri Witchcraft, Thomas Berman, “Dangerous Dilemma for Illegal Immigrants: Seeking Safety from Wildfires, some Undocumented Workers Find Border Patrol Instead,” ABC News 20/20, Oct. 24, 2007;

<http://www.abcnews.go.com/2020/story?id=3769989&page=1> (Video report also available online and on file at ACLU.)

continued to pick tomatoes on Wednesday until the witnesses present, along with police officers, were able to convince the farm owner to let the workers leave.

It should be noted that to the best of IRC's knowledge all of the incidents listed above involved laborers who stated they were working voluntarily. But, as one American Friends Service Committee representative put it, "Giving workers the option of working is equivalent to telling them that if they don't do it, they will not find work the next day, since there are always other people in line to do the same jobs out in the fields."<sup>77</sup> According to KPBS News, Alberto Lozano of the Mexican Consulate in San Diego stated that he's concerned the workers care more about their jobs than their personal safety. "They could smell the smoke and they could see the light of the fire. But since their boss didn't order them to leave, they were thinking they were just saving their jobs," Lozano says.<sup>78</sup>

According to an attorney who works with farmworkers in San Diego, low wage undocumented workers "always live under the dark cloud of fear that they will lose their jobs. For low wage workers, losing a job has devastating and immediate consequences. It may mean no food for the worker and his family. Or it may mean they can't pay rent and will face eviction." This attorney also noted that since most farm workers are seasonal employees, they feel the pressure that if they do not do what is asked of them, they will be fired and will not find work for the rest of the season.<sup>79</sup>

San Diego's tomato business is worth about \$88 million annually. The nursery business is worth \$1 billion.<sup>80</sup> October marks the season when the tomato crop peaks. Farm owners may be feeling the pressure to harvest as much fruit as possible before the season ends. By convincing or allowing their employees to work, employers are no doubt responding to fears that the fire would destroy their crop.

## **C. RESPONSE OF DETENTION FACILITIES IN OTAY MESA TO WILDFIRES**

As the Harris fire burned eastward, it threatened the Otay Mesa area. At 6:30 a.m. on October 23, 2007, County officials advised Otay Mesa residents "to begin evacuating. The voluntary evacuation area is bounded by Alta Road to the east, Interstate 805 on the west and runs from the Mexican border to Main Street in Chula Vista."<sup>81</sup> The voluntary evacuation order was lifted one day later, at 7:00 a.m. on October 24, 2007.<sup>82</sup>

The fire danger to Otay Mesa was of particular concern to the inmates, detainees and staff of detention facilities in that area: Donovan State Prison, George F. Bailey and East Mesa Detention Facilities, and San Diego Correctional Facility (SDCF). Based on our current information, we understand that in general the administrators and staff of each of these facilities

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<sup>77</sup> "Nunca dejaron de trabajar: agricultor ignora zona de evacuación," *MiEnlace*, Oct. 26, 2007.

<sup>78</sup> "Fires Highlight Safety Needs of Migrant Workers," NPR, Oct. 25, 2007; <http://www.npr.org/templates/story/story.php?storyId=15634399&sc=emaf>

<sup>79</sup> José Fusté, Interview Notes with attorney specializing in farmworker labor issues in San Diego, Oct. 26, 28 & 30, 2007, on file with the ACLU.

<sup>80</sup> "Fires Highlight Safety Needs of Migrant Workers," NPR, Oct. 25, 2007.

<sup>81</sup> <http://www.nbcsandiego.com/news/14402192/detail.html?subid=10101561>

<sup>82</sup> <http://sosdfireblog.blogspot.com/2007/10/otay-mesa-voluntary-evacuation-lifted.html>

were appropriately sensitive to the hazards arising from the fire, including air quality problems.<sup>83</sup> However, we have concerns about air quality issues at SDCF. We welcome any further information on this issue.

To our knowledge, each facility was prepared to evacuate if necessary and had contingency plans to do so, though complete evacuation did not become necessary, as the fires did not ultimately pose an imminent threat to the facilities.<sup>84</sup> We understand that some juveniles may have been moved from East Mesa to Kearny Mesa as a precaution. If an evacuation was necessary, it is not clear to where the approximately 4,000 inmates and detainees would have been evacuated, especially in light of road closures. Officials said they would have been moved to other jails in the area with residential space.

Certain facilities were apparently aware of air quality hazards and took steps to protect staff, inmates, and detainees. For example, we understand that Donovan reduced its intake of outside air and kept inmates indoors to avoid exposure to smoke and particulate matter. George Bailey was prepared to use large exhaust fans to expel contaminated air and had breathing apparatus available to assist persons with breathing difficulties if necessary.<sup>85</sup>

However, we received information that although SDCF kept detainees inside, the interior air quality may have been significantly compromised. We have heard that detainees could smell smoke inside the facility and that at least two detainees were forced to seek medical attention because they had difficulty breathing. We have also heard that ash and small particles entered the facility from outside.<sup>86</sup> Such particulate matter can be dangerous to health.<sup>87</sup> When large fires are burning, the outside air intake for air conditioning systems should be closed.<sup>88</sup>

Because state and federal courts were closed from October 22 to October 26, the length of pretrial detention for certain persons was unavoidably extended due to disruption of the court's docket.<sup>89</sup> We are not aware that any prison or detention facility failed to honor a scheduled release date for any inmates during the fires.

Based on the information we have to date, it appears that in general the facilities responded to the situation professionally and correctly, though we have concerns about air quality and health hazards at SDCF. We are continuing our investigation and welcome further information.

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<sup>83</sup> David Blair-Loy, Interview Notes, Oct. 29, 2007, on file at the ACLU.

<sup>84</sup> See, e.g., Mark Arner, "San Diego County Wildfires 2007: ICE Prepares to Evacuate Otay Detention Center." *Union Tribune Fire Blog*, Oct. 22, 2007. <http://sosdfireblog.blogspot.com/2007/10/ice-prepares-to-evacuate-otay-detention-22.html>. ("Immigration and Customs Enforcement is preparing to evacuate its detention center in Otay Mesa, but has not done so as of 3 p.m. Monday, said spokeswoman Lauren Mack.")

<sup>85</sup> David Blair-Loy, Interview Notes, Oct. 29, 2007, on file at the ACLU.

<sup>86</sup> David Blair-Loy, Interview Notes, Oct. 31, 2007, on file at the ACLU.

<sup>87</sup> See, e.g., <http://www.sdapcd.org/air/common/PMh.html>.

<sup>88</sup> <http://www.sdapcd.org/air/smoke/smoke1.html>

<sup>89</sup> See, e.g., Superior Court of San Diego County, General Order of the Presiding Department-Order No. 102607, In Re: Court Closure of Oct. 22, 2007, through Oct. 29, 2007 Due to the San Diego County Wildfires, Oct. 26, 2007; Hon. Kenneth K. So, Presiding Judge. <http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/GENERALINFORMATION/NEWS/ANNOUNCEMENTS/10-26%20C%20FIRE%20GENERAL%20ORDER%2010-26-07.PDF>

## **D. RESPONSE OF SAN DIEGO SUPERIOR COURT TO WILDFIRES**

In response to the wildfires, the Presiding Judge of the Superior Court of San Diego County issued a General Order declaring that October 22, 2007 through October 26, 2007 would be considered court holidays.<sup>90</sup> The General Order accommodated litigants by extending filing deadlines and the effective date of any temporary restraining order due to expire during the court's closure.

As the General Order reflects, the Superior Court responded promptly to the crisis posed by the fires. The court also promptly reopened on Monday, October 29. The Court's efforts are acknowledged and appreciated. However, one provision of the General Order potentially authorizes infringement of constitutional rights in the weeks ahead, though the imminent crisis of the fires has receded.

Under the Fourth Amendment, anyone who is detained after arrest must appear before a judge within 48 hours of arrest, for a determination whether probable cause supports the arrest, except in case of "bona fide emergency or other extraordinary circumstance."<sup>91</sup>

In response to the fires, the General Order provides that the time period "within which a defendant charged with a felony offense must be taken before a magistrate is extended from 48 hours to seven days" and that the authorization for this extension is effective until November 26, 2007.<sup>92</sup>

The emergency conditions created by the wildfires justify abridgement of the 48-hour rule while the court was closed and for a limited time after the court reopened, in order to clear any backlog of arrests. However, once that backlog is cleared, it is difficult to see what emergency or extraordinary circumstance would justify postponing judicial review of detention beyond 48 hours after arrest.

The ACLU wrote to the Presiding Judge to respectfully suggest that the Superior Court's highest priority should be minimizing the time individuals are deprived of liberty without having been convicted of any crime.<sup>93</sup> To that end, we respectfully requested that the court resume the 48-hour time limit for arraignments as soon as possible, if necessary by assigning judges from non-criminal cases to clear any backlog or by holding arraignments on weekends as authorized by California law.

## **E. The Sheriff's Department's Policy and Practices at Checkpoints for Returning Residents**

On Friday, October 26, officials, including San Diego County Sheriff Bill Kolender and County Board of Supervisors Chairman Ron Roberts, held a press conference to brief the public and the media about the fires that had been ravaging the County and that were starting to abate in many

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<sup>90</sup> Id.

<sup>91</sup> *County of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

<sup>92</sup> Id.

<sup>93</sup> Letter from David Blair-Loy to the Hon. Kenneth Ko Re: Order No. 102607, Oct. 29, 2007.

areas. When asked about the fear that undocumented immigrants face returning to their communities, whether IDs will be checked, and whether Border Patrol and Immigrations and Custom Enforcement will be present, Sheriff Kolender's responses were ambiguous. Roberts said, "The Sheriff and the other law enforcement that have been checking people going back into their communities are not doing an immigration check, if that's what you're asking." Kolender added, "Some of the Border Patrol are."<sup>94</sup>

Several checkpoints were set up in areas in which evacuation orders had been recently lifted. As of Friday, they were expected to last one to three days. As of Monday, October 29, there was at least one checkpoint in operation. The checkpoints were operated by the Sheriff's Department, National Guard, U.S. Border Patrol, U.S. Marshalls, and other law enforcement agencies. The intent of the checkpoints was to insure that only residents of that area returned to the area.

The IRC felt the remarks and the Sheriff's policies and practices for the checkpoints needed clarification. The IRC also felt that Sheriff's Department was not adequately anticipating the checkpoints' impact on and intimidation of immigrant communities.

The Sheriff's Department's general policy on federal immigration enforcement is (1) that it does not have the resources to do the federal government's job<sup>95</sup> but (2) if Sheriff's deputies suspect someone of being undocumented they will detain the person and call Border Patrol. The IRC and others are critical of this policy, because the detaining and passing off to Border Patrol based on suspicion of immigration status is detrimental to public safety and leads to racial profiling. The San Diego Police Department's hand off to Border Patrol of an immigrant family at Qualcomm, including three children, one a U.S. citizen, as well as other intimidation and harassment documented in this report, had generated tremendous fear in immigrant communities and further fueled the IRC's concern about checkpoints regulating return to people's homes and neighborhoods.

ACLU Executive Director Kevin Keenan spoke to Undersheriff Bill Gore on three occasions on that Friday and Saturday about the checkpoints and urged the Sheriff's Department to suspend hand offs to Border Patrol during the period when people were trying to get back to their home communities. Gore said the Sheriff's Department was not concerned about immigration status but would maintain its general policy of detaining and handing over to Border Patrol people it thought were undocumented. He discounted the intimidation that maintaining this policy and the presence of Border Patrol would have on an already fearful immigrant community that needed to seek services and return to families, homes, and shelters. Keenan asked community leaders to weigh in with Gore to sensitize him to these concerns. Several did, and Keenan summarized his recommendation to Gore in an email, asking not for a public statement but clear, firm direction to his rank-and-file deputies at the checkpoints.<sup>96</sup> On behalf of the Department, Gore rejected the recommendation. Keenan and JOB Executive Director Norma Chavez publicly condemned the Sheriff's Department.<sup>97</sup>

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<sup>94</sup> Press Conference, Oct. 26, 2007, 1 p.m., County Office of Emergency Services, tape and transcript (on file at ACLU).

<sup>95</sup> John Marelius, "Brainstorming on Immigration: House Panel's Tour in Border-Patrol Debate Begins in Imperial Beach," *San Diego Union-Tribune*, July 6, 2006; [http://www.signonsandiego.com/uniontrib/20060706/news\\_1n6immig.html](http://www.signonsandiego.com/uniontrib/20060706/news_1n6immig.html)

<sup>96</sup> E-mail from Kevin Keenan to Bill Gore re: Checkpoints. Friday, Oct. 26, 2007.

<sup>97</sup> Statement of Kevin Keenan, ACLU of San Diego and Imperial Counties, and Norma Chavez, Justice Overcoming Boundaries. Oct. 27, 2007. See also KPBS interview with Kevin Keenan, Oct. 27, 2007, not available online.

The IRC's request that the Sheriff exercise such leadership was not extraordinary. What was extraordinary was that the Sheriff and other law enforcement agencies were operating checkpoints into people's neighborhoods, potentially checking the IDs of a displaced population estimated by the County on Friday to be still more than 45,000 people.<sup>98</sup> Also extraordinary was the extent to which this managed reentry operation stretched the Sheriff's Department's resources, which itself would have been justification to suspend its role in immigration enforcement.

Moreover, even federal agencies—whom the Sheriff states should be the ones doing immigration enforcement—have exercised such leadership in times of crisis. After the September 11 attacks, the Immigration and Naturalization Services (INS) commissioner issued a written statement and, for emphasis, delivered the following remarks at a press conference: “I want to personally urge the immigrant community to come forward, and assure everyone that INS will not seek immigration status information provided to local authorities in the rescue and recovery efforts.”<sup>99</sup> After the 2004 Hurricane Charley hit Florida, FEMA issued a statement in English and Spanish, declaring “Storm Victims Urged to Come Forward for Emergency Aid Relief Regardless of Immigration Status.”<sup>100</sup> Detention and hand-overs are not required by state law. Many law enforcement jurisdictions, including the City of San Diego, do not enlist its officers in federal immigration enforcement. The policy is the Sheriff's to decide. But, despite the tragedy and the extraordinary checkpoints, the Sheriff chose not to change his policy.

On Friday and over the weekend, Chavez and JOB mobilized a team of observers to monitor the checkpoints, the presence of Border Patrol, and other practices that would harm immigrants seeking to return home or access services. They found no instances of immigrants being denied access to neighborhoods.<sup>101</sup> IRC learned of no reports of Sheriff's Department detaining or handing over people to Border Patrol.

For this restraint and wisdom in implementation at the checkpoints, the Sheriff's Department deserves credit and the support of the community.

## **F. Relief Efforts in the Field**

For Spanish speakers, the disaster and relief assistance provided outside the main evacuation centers of Qualcomm then Del Mar left a great deal to be desired. Most of the governmental agencies involved in the relief work at these field centers were not ready to deal with the needs of the Latino population. With few notable exceptions, these agencies did not have enough bilingual staff—and in some instances, had *no* bilingual staff—to provide information about their services or to actually provide a service. These agencies also did not distribute promotional

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<sup>98</sup> Amy Isackson, “New Evacuations But a Gradual Quashing of Fire,” KPBS, Oct. 27, 2007; <http://www.kpbs.org/news/local?id=10024>

<sup>99</sup> National Immigration Law Center, “Administration's Failure to Reassure Leads to Fear, Isolation, and Hardship in Immigrant Communities Affected by Hurricanes.” *Immigrants' Rights Update*, p.4. Vol 19, No. 1. Oct. 21. 2005. [http://www.nilc.org/disaster\\_assistance/IRU6-05.pdf](http://www.nilc.org/disaster_assistance/IRU6-05.pdf)

<sup>100</sup> *Id.*, p. 5.

<sup>101</sup> American Friends Service Committee observed Friday that “the norm so far for acceptable papers has been that any sort of document with a person's name and address.” Leslie Berestein, “Turning Back at Roadblocks,” *San Diego Union-Tribune*, Oct. 26, 2007, <http://sosdfireblog.blogspot.com/2007/10/turning-back-at-roadblocks.html>.

materials to inform the Latino population living near these centers about what services were being offered, who was eligible for them, and what documentation was required to obtain them. Lack of bilingual staff and informational material had the result of creating a vacuum of information for evacuees. This environment was especially counterproductive for undocumented workers who, in some instances, did not even venture inside the evacuation centers for fear of being deported.

## **1. Valley Center High School Evacuation Center**

At this evacuation center, the need for bilingual speakers and for promotional materials in Spanish was readily apparent. According to IRC volunteers, most of the information given at this site was in English only, and evacuee translators and volunteer translators were providing most of the translation assistance at this site. A Red Cross volunteer stated that volunteers and evacuees were doing a great deal of the translation for at this site, and said, “Many of the English and Spanish-speaking evacuees had problems knowing how to prepare the food [dehydrated military rations]...even more for the Spanish speakers who walked away to eat their food without getting assistance because they could not read the instructions.”<sup>102</sup>

According to reports received by the IRC, on Sunday, October 28, 2007, at approximately 4:00 p.m., a fire department conducted a “Fire Information Briefing” for the evacuees of the Poomacha Fire. The briefing was given in English only; no translators were used. IRC volunteers estimated that approximately 20 percent of the audience was Latino. Also, IRC volunteers report that there were evacuees present who could have translated, but no one asked whether anyone needed translation or whether anyone could translate. The fire department distributed flyers as part of their briefing, but they were only in English as well.<sup>103</sup>

The American Red Cross was also present at this evacuation site and received very positive comments from IRC volunteers, with one minor exception—Red Cross did not have promotional materials for evacuees. Otherwise the Red Cross staff was described as “very welcoming” and were praised for having the capacity to feed families who had returned to their homes. The Red Cross manager tried to reassure evacuees that his organization would provide assistance with or without Social Security numbers.<sup>104</sup>

## **2. Fallbrook Evacuation Center**

At the Fallbrook Evacuation Center, IRC volunteers reported that the following agencies provided services for evacuees: (1) ARC, (2) Mexican Red Cross (MRC), Employment Development Department (EDD), Community Emergency Response Team (CERT), Salvation Army (SA), San Diego Housing Commission (SDHC), FEMA, Internal Revenue Service (IRS), California Department of Motor Vehicles (DMV), County of San Diego (CSD), and Health and Human Service (HHS). In spite of the great array of service providers, the Latino community was served inadequately.<sup>105</sup>

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<sup>102</sup> Juan Reyes and Patty Mejorado, Observation Notes, Oct. 27, 2007, on file at the ACLU.

<sup>103</sup> Tanya Davenport, Observation Notes, “Evacuation Site at Valley Center High School,” Oct. 28, 2007, on file at the ACLU.

<sup>104</sup> Ruth Kaplan, Conversation Notes, “Visit Info-Valley Center HS,” Oct. 28, 2007, on file at the ACLU.

<sup>105</sup> Juan Reyes and Patty Mejorado, Observation Notes, Oct. 27, 2007, on file at the ACLU.

“Out of the many people who were with the agencies present, there were very little who spoke Spanish,” said IRC volunteer Juan Reyes. For instance, for the majority of the time, the EDD had only one Spanish speaker. Spanish-speaking volunteers who were present to assist evacuees were overwhelmed and could serve only a fraction of the population in need.<sup>106</sup>

Perhaps most problematic, all evacuees were required to register and to fill out a survey in order to enter the center. The survey was only provided in English. If the survey was not filled out, those evacuees were not allowed to enter. As a result, many Spanish speakers did not enter the center and did not receive services. In speaking with them afterwards, IRC volunteers learned that many of the Spanish-speaking evacuees did not fill out the survey because they believed it included immigration-status-related questions. Finally, for those Latino evacuees who did submit the survey and enter the premises, as was previously stated, many agencies present did not have any or enough bilingual staff/volunteers nor correct information to assist them. According to IRC volunteers on site, other than the Employment Development Department and Health and Human Services, no other agency had Spanish-speaking employees present.<sup>107</sup>

Undocumented residents had the hardest time receiving services despite, in many cases, having the greatest need. IRC volunteers noted that the majority of the “residents [were] afraid to seek services due to the reports around the county that that the Border Patrol was confronting individuals at the evacuation centers.”<sup>108</sup> There were numerous reports of undocumented residents who were afraid to leave their communities for fear of deportation. They seemed to be unaware that Fallbrook High School was operating as an evacuation center.

According to an IRC volunteer’s report:

One of the greatest needs was immediate financial assistance with rent. Some residents were not able to leave the area and go to evacuation centers due to closed freeways, lack of transportation, and fear of Border Patrol, so they had to use their rent money to live off of and buy food for their families and find shelter. Only those who have a Social Security number and are in the U.S. legally could seek unemployment. Many were in distress due to the fact that there was no other agency to help them with this situation.<sup>109</sup>

The fear level was evident. The Spanish-speaking population said they were frightened to ask for services, even though many were legal residents or U.S. citizens.<sup>110</sup>

## **G. RESTRICTIONS ON PRESS FREEDOM DURING THE WILDFIRES AND AFTERMATH**

Firestorm coverage began during the day on Sunday, October 21, 2007, as Santa Ana winds began to roar at up to 70 miles per hour. Regional, state, national and international journalists converged on San Diego beginning Monday, October 22, as the breadth of the fires became apparent. Most local television stations covered the fires without interruption, finally breaking back to regular programming on Wednesday evening. KPBS lost its radio tower in the middle of

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<sup>106</sup> Id.

<sup>107</sup> Id.

<sup>108</sup> Id.

<sup>109</sup> Id.

<sup>110</sup> Id.

the Harris fire yet continued to provide minute-by-minute coverage through a unique partnership with 94.9 FM radio.<sup>111</sup> Anecdotal reports give the media strong grades for keeping the public informed about the fires' paths, progress in controlling them, and where and how to get assistance.

There were, however, a number of instances of the San Diego Police Department, other law enforcement agents, and the company Blackwater USA denying access to journalists who were trying to keep the public informed or threatening them with legal action.

Perhaps the most extraordinary and bizarre instance of press interference was FEMA's now famous fake news conference on Tuesday, October 23, 2007. According to the *New York Times*, "The questions from the staff were posed after FEMA gave reporters only 15 minutes notice for a news conference on Tuesday, meaning that other than television camera crews, no reporters showed up before questioning began. A toll-free telephone line was provided so reporters could listen in, but it was not set up to allow questions."<sup>112</sup> The stunt received universal condemnation, including from the director of the Department of Homeland Security. The deputy administrator for FEMA who arranged the press conference was terminated.<sup>113</sup> Although now the topic of idle cocktail party chatter and amazement, the incident is disturbing for the deep disregard for the role of the media, especially in an emergency, that is held by some in the Administration.

The role of the media is not only essential to helping people in a disaster situation, it is also essential to democracy, which is why it specially held up in the First Amendment to the U.S. Constitution.

### **Qualcomm Stadium: San Diego Police Department Harassment of News Cameraman**

On Tuesday, October 23, at approximately 2 p.m., several witnesses<sup>114</sup> reported to the IRC that a television cameraman Julio Vasquez of Channel 8 KFMB-TV had been harassed as he filmed the aftermath of the detention of twelve Latino evacuees, some of whom were subsequently deported to Mexico.

Vasquez gave the ACLU a detailed account of the incident.

"As I got there, everyone had been arrested and taken away. A lady was discussing the event with police officers. I started taping, trying to get some witness sound," Vasquez said. The officer immediately approached him and told him to stop taping, because he was an undercover officer. Vasquez told the officer, "You're wearing a uniform in public!" Another San Diego Police officer got between Vasquez and the first officer. The first officer said to Vasquez, "Why aren't you cooperating?" Vasquez replied, "I'm within my right to tape." The officer repeated that he was an undercover cop. According to Vasquez, "It sounded like an excuse, like he didn't want to be on TV."<sup>115</sup>

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<sup>111</sup> "Power Returned to KPBS Transmitter, KPBS, Oct. 26, 2007, [http://www.kpbs.org/about\\_us/press\\_room?id=10023](http://www.kpbs.org/about_us/press_room?id=10023)

<sup>112</sup> Eric Lipton, "Fake News Briefing By FEMA Draws Official Rebukes; *New York Times*, Oct. 27, 2007; [http://www.nytimes.com/2007/10/27/washington/27fake.html?\\_r=1&oref=slogin](http://www.nytimes.com/2007/10/27/washington/27fake.html?_r=1&oref=slogin)

<sup>113</sup> City News Service, "FEMA Responds to Criticism Over Staged News Conference," KPBS, Oct. 29, 2007; <http://www.kpbs.org/news/local?id=10056>

<sup>114</sup> Remigia Bermudez, Written Statement, Oct. 26, 2007, on file at the ACLU.

<sup>115</sup> Rebecca Rauber, Interview Notes, Oct. 30, 2007, on file at the ACLU.

The officer then pushed Vasquez's microphone down and came at him. The officer did not touch Vasquez, because there was a crowd control barrier and a female officer between them.

"They took my name and affiliation, and said they would tell my boss at my station, and said the relationship between officers and [the station] would be ruined," Vasquez said. Ultimately, "cooler minds prevailed. I think everyone was just under stress. I did feel victimized. At one point, the officer said I would be arrested, and I said, 'For what? Just being here?' He didn't have a leg to stand on. . . . Everyone was stressed out, but if they did something wrong, they should be held accountable."<sup>116</sup>

In a separate incident, on Wednesday, October 24, ACLU Executive Director Kevin Keenan was arriving at Qualcomm and checking in as a volunteer when he saw Will Carless, a reporter for the *Voice of San Diego*. They talked. Moments later, Keenan gestured to Carless to listen to the information the registration volunteer was giving him. She was revealing that she had been turning people away whom she thought might be undocumented due to the presence of Border Patrol inside the gate (see Qualcomm section above). But, Carless was prevented from hearing the first hand account by a public information officer who stepped up to Carless and started explaining the rules of access to the center, including that members of the media could not talk to volunteers without coordination with public information officers.<sup>117</sup>

### **Harris Fire: Reporter Threatened with Legal Action**

On Tuesday, October 23, 2007 a freelance journalist Miriam Raftery covering the fires for the *East County Californian* and the *Alpine Sun* was reporting on the Harris fire.<sup>118</sup> As she was driving through Potrero, she saw smoke rising from an area owned by the company Blackwater USA. The gate was open, she showed her press pass, and she was waved through by a firefighter. She took some photographs of the fire suppression efforts and interviewed a firefighter.

After posting the photographs (and later a story<sup>119</sup>) on the *Alpine Sun*'s website, Ms. Raftery said she began to receive threatening emails from the Vice President of Blackwater telling her that the property owner considered her to have been trespassing. The vice president said he would forward a complaint to the property owner's attorneys and that the company was going to complain to her editor.<sup>120</sup>

### **Evacuation Centers: Journalists Refused Access to Site**

On the morning of Thursday, October 25, KPBS Reporter Kenny Goldberg arrived at the Rancho Bernardo Glassman Recreation Center, a disaster assistance center, and was refused entry.<sup>121</sup> A police officer told him he could not go inside and instructed him to stand behind a barricade, about ten feet from the entrance. Goldberg told her this was illegal. According to Goldberg, she

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<sup>116</sup> Id.

<sup>117</sup> Kevin Keenan, Conversation Notes, October 24, 2007, on file at ACLU.

<sup>118</sup> Rebecca Rauber, Interview Notes, Oct. 30, 2007, on file at the ACLU.

<sup>119</sup> Miriam Raftery, "Residents await news on fates of homes and loved ones," *Alpine Sun*, Oct. 25, 2007; <http://www.thealpinesun.com/archive%202007/October%2025/as%20inside.html>

<sup>120</sup> Five forwarded email memos from BlackwaterUSA, on file at the ACLU.

<sup>121</sup> Rebecca Rauber Interview Notes and email, Oct. 30, 2007, on file at the ACLU.

replied, “That’s too bad. That’s the policy.” He asked to speak to a Police Information Officer. She said she would get someone to come out and talk to him.<sup>122</sup>

When a number of minutes had passed and no one came out, he complained to another officer, who repeated the same police policy and insisted that Goldberg remain behind the barricade.<sup>123</sup>

Finally, a police sergeant came out and told Goldberg that the police had to let victims access services without the press being around to interfere. The sergeant said there had been “press availability” the previous day. Goldberg replied that they had been unable to be there that day. The sergeant replied, “Tough.” Goldberg said the sergeant was “belligerent and aggressive” and “got right in my face.” He said the sergeant “went into another diatribe about keeping the press out.” Goldberg said they didn’t need to get into a discussion about why the policy was adopted, but that their policy was illegal. The sergeant cut him off, and said he was done talking to him about it.<sup>124</sup>

In a separate incident, KGTV anchor/reporter Kerstin Lindquist was trying to cover one of the Harris Fire’s evacuation shelters with a live news truck. The truck was turned away by a sheriff’s deputy on Tuesday, October 23, 2007, at about 3 p.m., at the intersection of Highway 94 and Jamacha Boulevard. Lindquist drove up behind the truck and tried to convince the deputy of their right to cover the story, but he refused to allow them through. Even though the shelter was where area residents were being evacuated to, the news team was unable to make the same route to cover the story. It was not until KGTV’s Managing Editor, J.W. August, called the sheriff’s department that the crew was allowed through.<sup>125</sup>

### **Disputes over Access between the Media and the San Diego Police Department Media Services Manager**

Monica Muñoz, the City Police Department’s Media Services manager, emailed members of the media a number of directives during the course of the wildfires, at least as early as October 24, 2007, in an email titled “Media Warning.” In it, she said, “Please understand that individuals who are caught in mandatory evacuation areas are subject to arrest under California Penal Code Section 409.5.” Fox 6 News Managing Editor Greg Todd replied to the email:

Monica- Your "Media Warning" needs some perspective. I can understand your thought process on this, but you should understand that California law guarantees the news media unrestricted access to disaster scenes unless they are directly interfering with emergency personnel, violating a specific law or that specific area is also a crime scene. And once they are no longer interfering with emergency personnel, they must be granted access. Also the news media, not government, determine who is a duly authorized media representative at the scene<sup>126</sup>.

Todd provided a summary of California law on press freedom supporting his position.

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<sup>122</sup> Id.

<sup>123</sup> Id.

<sup>124</sup> Id.

<sup>125</sup> Email, J.W. August, Oct. 31, 2007

<sup>126</sup> Email, Greg Todd, Oct. 24, 2007, on file at the ACLU.

Undeterred, Monica Munoz, the City Police Department's Media Services Manger e-mailed members of the media the following on October 29, 2007:

The media will be allowed to park only in certain areas of the RB [Rancho Bernardo] Recovery Center, but will not be allowed unrestricted access to the parking lot. An officer will work with you to find an appropriate location to park; and keep in mind you may need to move your vehicle after completing a live shot, The parking lot is extremely busy because of the service providers mini trailers; volunteer, staff and resident (victim) parking. There is limited room and serving the residents who have experienced this traumatic event is our top priority. We are also not allowing unrestricted access to the inside of the RB Recovery Center. If you are interested in setting up an interview, there will be a city PIO on site during the hours the center is open. Ask one of the staff at the check-in table and they will put your request in with the on-site PIO. Please notify your employees who will be sent out to the center.<sup>127</sup>

### **Foreign Journalists Denied Entry to Qualcomm**

A volunteer attorney staffing the registration table at Qualcomm Stadium reporting seeing the city employee in charge of access to the stadium deny entry to at least three members of the foreign press. The journalists had press passes from their media outlets and tried to provide further information but, according to the volunteer, were treated rudely and told to leave the premises immediately. The volunteer described one of the journalists, a female reporter from France, as being visibly upset, having flown all night to arrive at the evacuation center on Thursday, October 25, 2007 and be summarily turned away.<sup>128</sup>

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<sup>127</sup> Email, Monica Munoz, Oct. 29, 2007, on file at the ACLU.

<sup>128</sup> The attorney wishes to remain anonymous, for fear of repercussions by the city employee whose actions the attorney witnessed. Notes of the telephone conversation, conducted Oct. 29, 2007, are on file at the ACLU.

## IV. Recommended Reforms

The American Civil Liberties Union of San Diego & Imperial Counties, Justice Overcoming Boundaries in San Diego County, and the San Diego Immigrant Rights Consortium, which is made up of more than 25 organizations, call for the following five specific reforms:

1. Immediate cessation of identity checks in the disbursement of emergency shelter, food water and other supplies during a disaster.
2. Temporary cessation of immigration enforcement at emergency services centers for a short, reasonable period to allow the entire relief network to focus on meeting basic human needs, without being distracted by issues of immigration status. Create a clear “wall” between the agencies delivering humanitarian emergency services and law enforcement agencies responsible for immigration enforcement.
3. Training and deployment of language interpreters, particularly in the Spanish language, at evacuation sites and within relief agencies such as Red Cross and FEMA. Too often, our legal observers were called upon to serve as translators and interpreters because *too few people in an official capacity spoke Spanish, or languages other than English.*
4. Guarantee from civic leaders that all victims, including immigrants, of fires and other disasters can access vital assistance without fear of apprehension, inspection, or disparate treatment.
5. Formation of a task force with members from the emergency services sector, legal sector, public policy sector, law enforcement sector, community service sector, and civil rights sector to formulate clear policies and standards so that all parties—law enforcement officers, volunteer humanitarian workers, government officials, and disaster victims—are cognizant of what is reasonable and allowable in times of crisis.