



FOR IMMEDIATE RELEASE
May 20, 2010

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In Case You Missed It

CYFD Ignored Rule of Law

“The Richardson administration did not want to enforce the regulation, for whatever reason, so, rather than engage in the legal process to change the law, they just substituted their own view of what they wanted the law to be.”

ALBUQUERQUE, NM—Today in an op-ed, Heather Wilson (former U.S. representative) and Hal Stratton (former NM attorney general) responded to news that in 2006, the state’s Children Youth and Families Department (CYFD) suspended a regulation which would have required the department to report aliens to the feds.

Scrutiny over department practices increased when it was learned that CYFD knew Juan Gonzalez was in the country illegally when in 2005 and 2008 he was accused of raping or molesting three children. Recently, Gonzalez has been accused of molesting a six-year-old girl in Albuquerque.

Wilson and Stratton’s op-ed was published in today’s *Albuquerque Journal* and is reprinted below in its entirety.

CYFD Ignored Rule of Law

Albuquerque Journal

By [By Hal Stratton And Heather Wilson](#)

Former Attorney General Former Secretary of CYFD

May 20, 2010

Read online at: http://www.abqjournal.com/opinion/guest_columns/2022208118opinionguestcolumns05-20-10.htm

CYFD Ignored Rule of Law

After over 30 years of observing government in New Mexico, it is difficult to be shocked by incompetence or illegal acts on the part of some that serve in state government. However, the recent debacle by the governor and the state Children Youth and Families Department cannot go without comment.

This agency reports through its spokesman that in 2006 then secretary of CYFD, Mary-Dale Bolson, "suspended" a duly promulgated regulation that provides that "any time juvenile justice services staff determines a client is a foreign national the staff immediately notifies the bureau of immigration and customs enforcement (ICE)."

There's a catch here, however.

A duly promulgated regulation has the effect of law and cannot be "suspended" without going through the proper administrative procedure and due process of law.

Because CYFD acted as if this regulation did not exist, CYFD failed to notify ICE and released Juan Gonzalez when he was charged with molesting a 3-year-old girl and raping a 6-year-old boy in 2005 when he was found not competent to stand trial. He walked.

Then, in 2008 Gonzalez was arrested again for (allegedly) raping a 4-year-old.

CYFD again acted as if this regulation didn't exist. When the case fell apart because the 4-year-old and her family disappeared, CYFD didn't call ICE to have Gonzalez deported as they are required to do. They released him back into New Mexico society.

A first-year law student learns that neither a cabinet secretary, the governor nor even the president can "suspend" a validly promulgated regulation.

Due process requires that to amend or repeal any regulation, the agency must engage in an administrative procedure involving a hearing and an opportunity for the public to comment.

And, if the lawyers at CYFD, who reportedly advised the secretary that she could "suspend" the regulation had difficulty in law school, all they had to do was read the state CYFD statute on the matter which states "no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary."

This week, when their responsibility for this devastating chain of events became all too clear, the governor directed that CYFD partially comply with its own regulation and tell ICE when they have violent criminals or sex offenders in custody who are foreign nationals.

His lawyers apparently didn't do too well in law school, either.

He can't and shouldn't tell a department to only comply with their rules in some cases. If he wants to change the promulgated rule and stop telling ICE about illegal immigrants arrested for crimes like drug trafficking, stealing cars or burglary, he has to direct the department to engage in a rulemaking to change the regulations that should have been governing their conduct all along.

In fact, we wonder if he or the lieutenant governor, who chairs the Children's Cabinet, told Bolson to "suspend" the rules back in 2006.

It certainly would have been consistent with their policy views — policy views that they appear to be modifying now that their horrific consequences are so abundantly clear.

Neither the lawyers, nor the CYFD secretary nor the governor, for that matter, had any regard for the rule of law, due process, the Constitution or the victims....

They believed and apparently still believe they are above the law and that they are able to dictate what the law should be rather than what it actually is.

The Richardson administration did not want to enforce the regulation, for whatever reason, so, rather than engage in the legal process to change the law, they just substituted their own view of what they wanted the law to be.

And now, because of the administration's arrogance and chutzpah, another innocent child, a 6-year-old little girl playing at a local gym has her life shattered by the act of a (suspected) criminal that could have been prevented.

Well, governor, you're a little late. How about appointing secretaries and public servants to state government who really mean it when they swear to support the Constitution of the United States and the Constitution and laws of this state? And rather than directing them as to which laws they should enforce, have them enforce them all as enacted or promulgated.

And, please remember, as John Adams taught us, we are a government of laws, not of men — or at least we should be.

It works better that way.

Hal Stratton is the former N.M. attorney general and former chairman of the U.S. Consumer Product Safety Commission. Heather Wilson is the former Cabinet Secretary of CYFD and a former member of Congress.

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