LEGAL REPORT
January 2015

SUMMARY STATISTICS

	Open Cases	*Closed During 2015*
Direct	21	0
Amicus	7	1
Total	28	1

CASE UPDATES
(**new developments in bold**)

ADVANCING IMMIGRANTS' RIGHTS

ACLU of Arizona & ACLU of San Diego & Imperial Counties v. Department of Homeland Security **(new case) (direct)** – For years, advocates have documented persistent allegations of child abuse by Department of Homeland Security officials, in particular Border Patrol agents holding children in their custody. In June 2014, at the height of a surge of unaccompanied migrant children entering the United States, the ACLU filed an administrative complaint with DHS documenting 116 allegations of child abuse. Although high-ranking officials initially conceded that there were problems that needed investigation, DHS subsequently shut down all investigations. In December 2014, the ACLU Border Litigation Project filed a Freedom of Information Act request with DHS, seeking any and all records pertaining to allegations of child abuse or other mistreatment. The agency has failed to timely respond to the FOIA request. With Cooley LLP, the ACLU BLP has filed a federal lawsuit in the District of Arizona to compel DHS to search for, and turn over, those documents.

ACLU of San Diego & Imperial Counties v. Department of Homeland Security (direct) **–** The manner in which the government deports individuals has changed dramatically over the past two decades. Many individuals are now expelled without seeing a judge, speaking with an attorney, or knowing how or why they were removed. Expedited removal raises concerns not only because of the lack of judicial oversight, but also because of the potentially enormous consequences to individuals. In February 2014, we submitted two Freedom of Information Act requests to U.S. Customs and Border Protection (CBP), a component of the Department of Homeland Security. One request sought records demonstrating (1) the number of individuals deported through "expedited removal" and "voluntary return"; (2) the number of individuals CBP has referred for prosecution on charges of asylum fraud, illegal entry, and illegal reentry; and (3) the number of individuals CBP has referred to an asylum officer for a credible fear interview. The other sought legal memoranda, policies, and guidelines for CBP staff regarding expedited removal and voluntary return. CBP failed to respond to the request, forcing us to file suit on August 22, 2014, to compel disclosure of the documents we seek. **The court has rescheduled an early neutral evaluation conference originally set for December 22, 2014 to February 2, 2015, due to conflict with another case.**

M.S.P.C. et al. v. Johnson (direct) – On August 22, 2014, the ACLU of San Diego joined a broad coalition of national organizations and immigration attorneys to file a complaint for injunctive and declaratory relief in federal court challenging the processing of immigrant women and children in Artesia, New Mexico. We allege that the government has adopted unlawful expedited removal processes in Artesia that violate both federal immigration law and the constitutional right to due process. Plaintiffs include mothers and children who have received negative asylum determinations from U.S. officials and are at risk of immediate deportation. **After closing the Artesia detention center and granting immigration relief to the plaintiffs, the government has moved to dismiss the case as moot. We are evaluating our response.**

Southwest Key Programs v. City of Escondido (direct) – Since 2011, hundreds of thousands of unaccompanied children have entered the United States from Mexico and Central America. This year saw a humanitarian crisis emerge as unaccompanied children fled to the United States in record numbers. Most come from Guatemala, El Salvador, and Honduras, seeking refuge from violence and persecution. The Office of Refugee Resettlement (ORR), a component of the Department of Health and Human Services, is responsible for the care of unaccompanied children while their immigration cases are pending. ORR places children with contractors such as Southwest Key Programs, which provide housing and services under licensing and oversight by state child care agencies. Children remain under ORR-supervised care until they can be placed with a parent or close relative. Southwest Key already operates immigrant youth housing in Lemon Grove and El Cajon and received federal approval to expand its operations in San Diego County. It found an appropriate location in Escondido on the site of a former skilled nursing facility and submitted an application for the necessary permit. It engaged in extensive discussions with planning staff and held an open house for community members. Despite the undisputed fact that Southwest Key would bring millions of dollars and over 100 jobs into the local economy, it ran into a firestorm of opposition fueled by xenophobia, hostility, and bias. As a result, the Escondido Planning Commission denied the permit, notwithstanding staff's report that the proposed use presented no genuine land use concerns. Together with Brancart & Brancart and Cooley LLP—both of which joined our successful challenge to Escondido's undocumented immigrant rental ban in 2006—we represented Southwest Key in an appeal of the Planning Commission's decision to the City Council, which was filed August 1, 2014. At its October 15, 2014 hearing, the City Council voted 4-1 to deny the appeal, ignoring abundant evidence that the project presented no adverse impacts on traffic, parking, noise, security, or public health. **The decision became final with the Council's adoption of written findings on November 19, 2014, again by a 4-1 vote. We are evaluating litigation options.**

Rodriguez v. Swartz (direct) – On October 10, 2012, one or more Border Patrol agents shot and killed J.A., a minor, while he was walking peacefully down a street, unarmed, in Nogales, Mexico just across the border from the United States. Border Patrol refused to identify the agent or agents responsible for killing J.A. On July 29, 2014, the ACLU Border Litigation Project and the ACLU Immigrants' Rights Project, along with Morrison & Foerster LLP, Parra Law Offices, and Roberto Montiel Law Offices, filed a complaint in federal court on behalf of J.A.'s mother, Araceli Rodriguez, both on her own behalf and as personal representative of J.A.'s estate. Through initial discovery conducted with the court's permission, we learned the identity of an officer involved in the shooting. We then filed an amended complaint on September 10, 2014, naming the officer as a defendant. The complaint was filed temporarily under seal, but the court

ordered the officer to show cause why it should not be made public. **On November 13, 2014, the court denied the officer's request to keep the complaint sealed, finding there is no legal justification for refusing to identify the officer, Lonnie Swartz. The officer moved to dismiss the case on the ground that the Constitution does not apply to his actions. The motion is fully briefed, and we are waiting for a hearing date.**

Olivas v. Whitford (direct) – On June 12, 2014, we filed a habeas corpus petition and complaint for injunctive and declaratory relief in federal court challenging the Kafkaesque exile of U.S. citizen Oscar Olivas, who has been barred from returning to the United States for almost three years. As a result, Mr. Olivas remains in Mexico where he cannot work to support his family and where his young U.S. citizen daughter does not receive the special education she requires. The petition states that federal officers coerced Mr. Olivas's mother into signing a false confession that he had been born in Mexico and details his fruitless efforts to obtain a fair hearing proving his citizenship so that he can bring his family back to the United States. As directed by the court in an Order to Show Cause, the government responded to the petition and we filed a reply. The court then referred the case to a magistrate judge for expedited discovery. Afterward, the government moved to dismiss the case on August 12. **That motion has been fully briefed and remains pending as the case proceeds through discovery.**

United States v. Salazar-Garcia (amicus) – In a federal criminal case pending in San Diego, the court held a hearing and authorized release on bond for Alejandro Salazar-Garcia. U.S. Immigration and Customs Enforcement immediately took custody of Mr. Salazar-Garcia, and four months later, announced that it intended to remove Mr. Salazar to Mexico, prompting the U.S. Attorney's Office to move to revoke his bond. The district judge then revoked Mr. Salazar's bond and ordered him remanded to criminal custody, based solely on the allegedly imminent risk of his removal. Together with the national ACLU Immigrants' Rights Project, the National Immigration Project of the National Lawyers' Guild, and the UCLA School of Law Criminal Defense Clinic, we joined an amicus brief filed on May 20, 2014, urging the Ninth Circuit to reverse the revocation on the ground federal law does not allow denial or revocation of bail based on the potential removal of an individual who is otherwise eligible for bail and federal regulations provide means for ensuring that a noncitizen defendant is not removed from the country while a criminal case is pending.

Lopez-Venegas v. Johnson (direct) – On June 4, 2013, together with the ACLU of Southern California, the ACLU Immigrants' Rights Project, and Cooley LLP, we filed suit claiming that Border Patrol agents and Immigration and Customs Enforcement (ICE) officers routinely use misinformation, deception, and coercion to convince Mexican nationals to sign their own expulsion orders under guise of "voluntary departure." Officers have pressured hundreds, if not thousands, of Mexican nationals with deep roots in the United States into forfeiting their right to a fair hearing and a chance to live here lawfully. We represent individuals who have close family members in the United States and could have obtained relief against removal, but immigration officers misled them about the severe consequences of "voluntary departure," such as prolonged bars against re-entering the United States, and pressured them to sign their own expulsion documents. We also represent organizational plaintiffs—the Coalition for Humane Immigrant Rights of Los Angeles, the Pomona Economic Opportunity Center, and the San Bernardino Community Service Center—all of which have diverted scarce resources to combat these

practices. After motions, discovery, and negotiations, the parties executed a comprehensive settlement, including a landmark agreement to allow a class of individuals who took "voluntary departure" to return to the United States. By order issued August 28, 2014, the court preliminarily approved the class provisions. In addition to the class provisions, which are not effective until finally approved, the settlement immediately requires the government to undertake significant reforms to the way it implements voluntary departure. **To monitor the government's compliance with these reforms, we recently visited several Border and ICE offices. Receiving no objections to the class provisions of the settlement, we have moved for final approval of the settlement, which will be heard for February 9, 2015.**

Hernandez, et al. v. United States of America, et al. (amicus) **–** In June 2010, a Border Patrol agent standing on U.S. soil, shot and killed 15-year-old Sergio Hernandez just across the border in Mexico. Sergio's parents sued the agent for using excessive and deadly force under the Fourth and Fifth Amendments of the U.S. Constitution. The district court in Texas found that because Sergio was a Mexican national and was killed in Mexico that the U.S. Constitution did not offer him any protection. Along with the other ACLU border affiliates and the National Immigrants' Rights Project, we submitted an amicus brief to the Fifth Circuit Court of Appeals arguing that the case does not require analysis of whether the Constitution applies extraterritorially, because the agent was in the U.S. when he shot and killed Sergio, and that even if extraterritoriality analysis is proper that the Constitution applies extraterritorially under these circumstances. A Fifth Circuit panel issued a decision on June 30, 2014, holding that the substantive component of the Due Process Clause applies to the agent's conduct and he is not entitled to immunity. On November 6, 2014, the Fifth Circuit issued an order granting the government's petition for rehearing by the full court. **Because our previous amicus brief remains available to the court and explains our arguments in detail, we are not filing a second amicus brief. When the full court issues its decision, we will decide what if any steps are appropriate at that point.**

Franco-Gonzalez v. Holder (direct) – An estimated 15 percent of all immigration detainees have a mental disability. Yet unlike the criminal justice system, the immigration system has no standard procedures to resolve cases against detainees with mental disabilities who are incompetent to follow the proceedings against them or unable to represent themselves effectively. As a result, detainees with severe mental disabilities often languished in detention for years. We joined with the ACLU's Southern California and Arizona affiliates, ACLU Immigrants' Rights Project, Public Counsel, Mental Health Advocacy Services, Northwest Immigrant Rights Project, and Sullivan & Cromwell LLP to pursue a class action on this issue. We prevailed on key issues including class certification and preliminary injunctions, culminating in partial summary judgment ordering the government to appoint "Qualified Representatives" for class members who are incompetent to represent themselves (or to stop trying to deport such persons) and to provide a fair hearing where the government must prove that further detention is warranted for any class member who has been detained for more than six months. The court appointed a special master to assist in compliance with the court's ruling and implementing a system to determine competency in immigration proceedings. After considering the special master's report, the parties' responses, as well as our motions concerning monitoring, reopening of immigration cases for class members who were unlawfully removed from the country, and the appointment of Qualified Representatives, the court issued an order on June 4, 2014 resolving many remaining issues, including the definition of pro se competency, and ordered the parties to

work on a final implementation plan. After further briefing, the court issued an order implementing its injunction on October 29, 2014. The order requires the government to conduct mental health screenings of detainees, provide information regarding detainees' mental health to immigration judges, and establish a specified system for inquiring into and evaluating the competency of detainees to represent themselves. **The court held a hearing on January 9, 2015 to discuss how monitoring of the government's compliance should proceed.**

Sanchez de Gomez v. Baker (direct) – Guillermo Gomez-Sanchez is a long-time lawful resident of the United States and a Mexican citizen who suffers from serious mental illnesses. We filed a petition for writ of habeas corpus on his behalf, through his mother acting as his next friend, on March 26, 2010, after Mr. Gomez-Sanchez spent over four years in immigration detention. For over half that time, Mr. Gomez-Sanchez's case was administratively closed, because the government did not comply with the immigration judge's order to conduct an evaluation of Mr. Gomez-Sanchez's competency. Our petition raises challenges to the length of Mr. Gomez-Sanchez's detention under immigration statutes, the Constitution, and the Rehabilitation Act. Five days after we filed the petition, the government released Mr. Gomez-Sanchez on electronic monitoring and other conditions. On July 29, 2010, the court dismissed the case as moot, and we appealed, arguing the government cannot avoid scrutiny of its illegal detention practices simply by releasing the detainee after a case is filed. We presented oral argument to the Ninth Circuit panel on October 12, 2011, and continue to wait for a decision.

ADVANCING JUSTICE

Freedom of Expression

People v. Duncan **(new case) (amicus)** – Brandon Duncan writes and performs rap music under the name "Tiny Doo." The San Diego County District Attorney's office charged him with several counts of "gang conspiracy" under Penal Code section 182.5, which was adopted in 1998 as part of Proposition 21. Unlike a standard conspiracy statute, section 182.5 requires no agreement to commit a crime. Instead, it reaches anyone who "actively participates" in a gang and "willfully promotes, furthers, assists, or benefits from any felonious criminal conduct by members of that gang," severely punishing them as though they had committed the alleged felonies themselves. As an alleged "active participant" in a gang, Mr. Duncan is not charged with committing, attempting to commit, or agreeing to commit any underlying crime. Instead, he is charged with "promoting" or "benefiting" from alleged gang shootings by talking about them in his music. Because the First Amendment protects the right to engage in virtually all speech, including the right to talk about crime, we are filing an amicus brief explaining why the prosecution's interpretation of section 182.5 is unconstitutional as applied to Mr. Duncan and why the charges against him must be dismissed. Apart from the First Amendment, this case represents an extreme example of prosecutorial overreaching against people of color. Though it is appropriate to prosecute individuals who commit or agree to commit violent crimes, it is outrageous to sweep a musician into a gang dragnet merely because he writes and performs songs about crime.

Police Practices

People v. Macabeo (amicus) – This case involves a search and seizure question impacting millions of people: whether the police can search an individual "incident to arrest" before any arrest in fact occurs, when police have no intention of imminently arresting the individual, simply because an arrest is hypothetically possible. The California Court of Appeals held that police were authorized to search a bicyclist detained for a traffic infraction merely because that infraction created probable cause to arrest the bicyclist, even though the police had not in fact arrested the bicyclist or intended to arrest him until they discovered evidence of another crime during the search. If left standing, the Court of Appeals decision would untether the "search incident to arrest" rule from its justifications and allow warrantless searches of virtually anyone stopped for a traffic infraction regardless of whether an arrest in fact occurred or would have been imminent. On November 4, 2014, the California ACLU affiliates submitted a letter to the California Supreme Court as *amicus curiae* urging the court to grant review. **The court granted review on November 25, 2014. We expect to file an amicus brief on the merits at the appropriate time.**

Rights of the Accused

***People v. Anthony* (new case) (amicus)** – Obie Anthony spent 17 years in prison for a murder he did not commit. In October 2011, a judge granted his petition for release after the Northern California Innocence Project presented evidence that a key witness against him at trial had lied to the jury. In 2013, California adopted legislation supported by the ACLU that made it easier for exonerees such as Mr. Anthony to obtain compensation for wrongful imprisonment. When Mr. Anthony sought compensation, the state argued the 2013 law does not apply to him because it was adopted after his release. We joined the other California affiliates and Cooley LLP to file an amicus brief in the Court of Appeal arguing (1) application of the 2013 law is not retroactive, but instead the prospective application of procedures to current cases; and (2) even if it is retroactive, it is permissible because the Legislature clearly intended the 2013 law to apply to any compensation request that occurred after the law's passage, regardless of release date.

Prisoners' Rights

Armstrong v. Board of Supervisors (direct) – In violation of constitutional, statutory and administrative requirements, San Diego County jails were severely overcrowded. Even though a consent decree setting population caps for each facility was adopted in 1988, the County's only jail for women was still severely overcrowded in 1993, at which point the ACLU initiated contempt hearings. The Fourth District Court of Appeal affirmed the part of the lower court's decision holding the Sheriff in contempt, and the contempt finding and the attendant fines continued until 1997, when the order was lifted due to an acceptable stabilization in the prison population. After realignment shifted responsibility for many prisoners from the state to counties, we are watching the County to make sure it remains in compliance with the consent decree.

In the Matter of Overcrowding of Detainees at San Diego County Juvenile Hall (direct) – Immediately after court oversight of conditions at Juvenile Hall ended in 1996, the population at the facility increased to the point that there were eighty more children than beds. In mid-1998,

the ACLU contacted the San Diego County Counsel's office to resolve the crisis without resorting to new litigation. After meeting with the ACLU in September 1998, the presiding judge of the juvenile court limited the number of detainees at Juvenile Hall, which has yet to exceed that limit. The ACLU continues to monitor compliance.

ADVANCING DEMOCRACY

Covered California (direct) – On March 5, 2014, the ACLU of California, the ACLU National Voting Rights Project, Demos, and Project Vote sent the California Secretary of State and Covered California, the state's health benefit exchange, a formal notice of non-compliance with the National Voter Registration Act (NVRA). The notice was sent on behalf of the League of Women Voters of California, Young Invincibles, and four individual plaintiffs who had applied for health care coverage through Covered California and were not offered voter registration services. Because the notice letter was sent within 120 days of a federal election, the statutory notice period for full NVRA compliance was 20 days. Without full compliance, the ACLU and its co-counsel were prepared to file suit. On March 20, 2014, however, the plaintiffs, the Secretary of State, and Covered California Executive Director Peter Lee signed a settlement agreement under which plaintiffs agreed not to file suit long as Covered California (a) mails a letter and voter registration card to every household that submitted an application for healthcare coverage through Covered California between October 1, 2013, and April 15, 2014; and (b) incorporates voter registration and training into all of its application processes by the next open enrollment period slated for November 15, 2014. Covered California has mailed letters in multiple languages, with voter registration cards, to more than 2.6 million households and more than 5 million applicants. We continue to monitor and oversee compliance with the settlement.

Scott v. Bowen (direct) – All adult Californians have a constitutional right to vote unless "imprisoned or on parole for conviction of a felony" or mentally incompetent. But the California Secretary of State expanded this exclusion to include people who are neither imprisoned nor on parole but are on new forms of community supervision created by California's 2011 Criminal Justice Realignment Act. As a result, more than 58,000 Californians have been wrongfully disenfranchised. The Legislature created these new categories of criminal-justice supervision—"mandatory supervision" and "post-release community supervision" ("PRCS")—as innovative community-based alternatives to parole for persons recently incarcerated for low-level, non-serious felonies; people on these forms of supervision are not on parole, which is now reserved for people convicted of more serious crimes. Because people on PRCS and mandatory supervision are not on parole, they have a constitutional right to vote. On February 2, 2014, the ACLU of Northern California, along with the ACLU of San Diego and Imperial Counties, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Legal Services for Prisoners with Children, and Robert Rubin filed a lawsuit to ensure these Californians can exercise their right to vote. Plaintiffs include three individuals and two organizations, All of Us Or None and the League of Women Voters of California. The trial court issued a decision in our favor on May 7, 2014, holding that the state illegally stripped tens of thousands of people of their right to vote. The state appealed that decision. **The appeal is fully briefed, including amicus briefs supporting our position from the Sheriff of San Francisco and Brennan Center for Justice, and we are waiting for an argument date.**

DEFENDING CIVIL LIBERTIES

Religious Liberty

Jewish War Veterans of the United States of America, Inc. v. Rumsfeld (direct) – This case is the latest chapter in the ongoing challenge to the cross atop Mount Soledad. In an attempt to help the City of San Diego evade a series of unfavorable decisions that public ownership of the Mt. Soledad cross violated the California Constitution, the United States took title to the cross and its surrounding property through eminent domain in 2006. In response, the ACLU filed suit in federal court, arguing that the Establishment Clause of the First Amendment prohibits the government from sponsoring the cross on public land. In January 2011, the Ninth Circuit Court of Appeals found that "the Memorial," including the cross, "presently configured and as a whole, primarily conveys a message of government endorsement of religion that violates the Establishment Clause." On remand, the district court allowed the Mount Soledad Memorial Association (MSMA) to intervene, and on December 12, 2013, it permanently enjoined the government from displaying the cross and ordered that it be removed within 90 days. The court stayed its order pending resolution of any appeal. Both the government and MSMA appealed the district court's ruling, and MSMA unsuccessfully attempt to convince the Supreme Court to hear the case before a final decision in the Ninth Circuit. **After we filed our brief on December 15, 2014, the President signed the National Defense Authorization Act for Fiscal Year 2015, one section of which requires the Secretary of Defense to convey the Memorial to MSMA upon payment of appropriate compensation as determined by the Secretary. We are waiting to see whether and how the outcome of discussions between the government and MSMA will impact this appeal.**

Freedom of Expression and Information

Encinitas sign ordinance **(new case) (direct)** – The city of Encinitas stringently restricts the right to post political or other temporary yard signs in residential areas, prohibiting more than two signs except during the 30 days immediately prior to an election. This restriction substantially burdens the right to freedom of speech in what the Supreme Court has recognized is an "important and distinct medium of expression." The right to comment on multiple political or other issues through yard signs transcends the immediate run-up to an election, and campaigns depend heavily on building name recognition and support through such signs long before an election. The restriction is not justified by legitimate interests in traffic safety and aesthetics, given that the city has readily available alternatives to protect those interests without capping the number of yard signs. For example, the city can—and does—regulate the size and placement of such signs. In addition, the city is discriminating, intentionally or not, against residents of limited means by severely curtailing the right to use an unusually cheap, convenient, and effective means of communication. Representing an Encinitas resident, Peter Stern, we sent a letter to the city requesting that it amend the sign ordinance to comply with the First Amendment. If the city does not comply by January 15, 2015, we may take legal action.

Jacobson v. Department of Homeland Security **(new case) (direct)** – As part of the federal government's ongoing militarization of the U.S.-Mexico border region, the Border Patrol runs an aggressive program of checkpoints on freeways and rural roads throughout the Southwest. In the

rural community of Arivaca, Arizona, community members launched a checkpoint monitoring campaign to observe, photograph, and video record the actions of Border Patrol agents at a nearby checkpoint. The campaign arises from longstanding concerns about harassment and civil rights violations committed by Border Patrol agents at the checkpoint. Border Patrol responded by harassing and retaliating against the residents and forcing them to observe from such a large distance that they cannot effectively monitor checkpoint operations. As part of our Border Litigation Project, together with the ACLU of Arizona and the law firm of Covington & Burling LLP, we filed suit in Arizona federal court on November 20, 2014 to hold Border Patrol accountable for violating the First Amendment. On December 23, 2014, we asked the court to issue a preliminary injunction against further First Amendment violations while the case is pending. That motion remains pending.

Gill v. U.S. Department of Justice (direct) – On July 10, 2014, the ACLU of California, along with Bingham McCutchen LLP and Asian Americans Advancing Justice – Asian Law Caucus, filed a complaint for declaratory and injunctive relief in federal court alleging that the federal government's "suspicious activity reporting" program targets constitutionally protected conduct and encourages racial and religious profiling. Plaintiffs are five United States citizens – two photographers, one white man who is a devout Muslim, and two men of Middle Eastern and South Asian descent. Each plaintiff engaged in innocuous and lawful activity, some of which was protected by the First Amendment, yet all were reported as having engaged in "suspicious activities." As a consequence, reports about them were entered into counterterrorism databases, and they were subjected to unwelcome and unwarranted law enforcement scrutiny and interrogation. **On January 8, 2015, the court held a hearing on the government's motion to dismiss the case. We are waiting for a decision before the case can proceed further.**

City of San Jose v. Superior Court (amicus) – For several years, California courts have been grappling with the question whether electronic communications relating to official business are covered by the California Public Records Act (CPRA) when they are sent or received on non-official devices or accounts. To allow governments to circumvent CPRA obligations simply by routing official business through non-official devices or accounts would gut public disclosure law by curtailing if not eliminating disclosure of informal emails and other communications that provide critical insights into governmental operations beyond the often sanitized contents of formal reports. Yet that is exactly what the Sixth District Court of Appeal did in holding that such communications are not "public records" as defined in the CPRA. Together with Electronic Frontier Foundation, the California ACLU affiliates submitted an amicus curiae letter to the California Supreme Court on May 23, 2014, in support of granting review of that decision. By order dated June 25, 2014, the California Supreme Court granted review and depublished the Court of Appeal's decision. The case will now proceed to eventual briefing and decision, and we expect to submit an amicus curiae brief in support of reversing the Court of Appeal.

Askins v. Department of Homeland Security (direct) – This case is about protecting the fundamental First Amendment right to hold government accountable at the border. Ray Askins is an activist concerned about environmental issues at the border. While standing on a public street in Calexico, he took photographs of the port of entry building to illustrate a presentation he planned to give on vehicle emissions at ports of entry. Christian Ramirez is a human rights activist who photographed male Customs and Border Protection (CBP) agents frisking female

travelers as they were preparing to leave the United States. In both cases, border enforcement agents detained, harassed, and threatened them, temporarily confiscated their cameras, and deleted their photographs. Together with Morrison & Foerster, we filed suit on October 24, 2012, arguing CBP violated the First and Fourth Amendments. On April 12, 2013, the court issued an order denying our motion for preliminary injunction. On September 30, 2013, the court granted in part and denied in part the government's motion to dismiss, holding that CBP's policy against photography on port of entry property did not violate the First Amendment on the facts presented but giving us permission to amend the complaint to state additional facts relevant to the First Amendment issue. The government moved to clarify or reconsider the court's order. On April 17, 2014, the court denied reconsideration of its decision allowing us to amend but ordered further briefing on the question whether plaintiffs committed a violation of any federal statute or regulation that would justify their detentions. The supplemental briefing is complete, and we are waiting for a decision.

Escondido Special Event and Noise Ordinances (direct) – The City of Escondido's special event and noise ordinances violate the First Amendment in several ways that infringe the fundamental right to engage in speech in a traditional public forum such as a municipal park. First, the special event ordinance requires advance notice of at least 60 days to obtain a permit for a large demonstration, though the outer limit for a valid advance notice requirement is three days. Second, it contains no exception to the notice requirement for spontaneous demonstrations in response to breaking news. Third, it delegates excessive discretion to city officials to grant, deny, modify or revoke permits because of the content of speech. Fourth, it authorizes the city to require event organizers to indemnify the city or pay to insure or reimburse the city for risks arising from the actions of third parties beyond their control. Finally, the city's noise ordinance establishes excessively strict restrictions on amplified sound, which can be indispensable to effective political speech, in public parks. We sent a demand letter seeking to protect the ACLU's right to hold events in a public park and to suggest clarification or revision of the ordinances. In response to our letter, the city acknowledged the ordinance has substantial constitutional problems and agreed to issue permits necessary to hold a major event. The City then sent a draft of its revised special event ordinance. We later sent a letter explaining that the draft addresses some but not all of the First Amendment problems in the original ordinance. If the City does not correct the remaining problems, we will consider litigation.

Education Rights

D.J. v. State of California (direct) – One of every four public school students in California is an English learner. The California Constitution and numerous federal and state laws mandate the delivery of effective English language instruction to English Learner students. Each year, the state distributes state Economic Impact Aid and federal Title III funds for English Learner services to districts that report they are not providing the language instructional services required by law to all eligible students. The state has taken hundreds of millions of dollars from the federal government and represents that, in fact, every eligible student receives English Learner services. However, a review of the facts, including districts' own public reporting, showed that thousands of children were not receiving any services. For example, in the 2010-2011 school year, the Grossmont Union High School District reported to the California Department of Education that 1,389 of 3,368 English Learner students received no English language

instructional services—nearly half of all English Learner students in the district. After attempting to resolve the matter without litigation, this affiliate joined with ACLU of Southern California, Asian Pacific American Legal Center (now Asian Americans Advancing Justice), and Latham & Watkins LLP to file suit seeking to compel the state to ensure that all districts provide appropriate services to all English learner students. After a trial, the court entered judgment in our favor September 16, 2014, ordering the state to demonstrate how it will ensure districts provide appropriate services to English Learner students, with a report due in June 2015 to evaluate the effectiveness of the state's response. **On November 15, 2014, the state appealed the court's ruling.**

Williams v. State of California (direct) – The ACLU, as part of a large coalition of civil rights groups, sued the State of California in 2000 alleging that California was negligent in assuring equal access to public education, as public schools serving the poor children and children of color were lacking in basic resources. On August 13, 2004, a settlement was reached with the state, approved by the Court on March 23, 2005, that required all California public schools to be clean and functional, and all public school students to have qualified teachers and instructional materials. This affiliate is currently working on implementing the settlement in our territory.

LGBT Rights

People v. Fields **(new case) (amicus)** – On September 30, 2014, the California Court of Appeal issued a decision holding that it is constitutional to treat oral copulation with a minor who is 16 or 17 as a felony, though sexual intercourse with a minor of the same age is only a misdemeanor. We joined the other California affiliates in submitting a letter to the California Supreme Court urging it to grant review for three reasons. First, the disparate treatment is a continuing legacy of discriminatory "crime against nature" laws stigmatizing LGBT persons. Second, the decision conflicts with the reasoning of California precedent and exposes teenagers to punishment as felons for consensual and private sexual relationships. Third, the Court of Appeal's rationale for harsher punishment of oral copulation—deterrence of allegedly high-risk behavior by teenagers—is both illogical and contrary to public policy. The California Supreme Court is expected to decide whether to grant review by February 15, 2015.

Freedom from Discrimination

Ollier v. Sweetwater Union High School District (amicus) – This is a Title IX case brought against the Sweetwater Union High School District. After a thorough review of the evidence, the district court held that Sweetwater violated Title IX by failing to provide equal participation opportunities for female students in athletics, failing to provide existing female athletes with equal benefits and services, and retaliating against female athletes for advocating equal rights. After the school district appealed, we joined an amicus brief filed in the Ninth Circuit arguing that the district court correctly applied the law on two issues of particular importance: (a) proper deference to the Department of Education's interpretation of Title IX regarding opportunities for participation in athletics, and (b) Title IX's prohibition against retaliation. The court issued an opinion on September 19, 2014, affirming the judgment that the school district violated Title IX and substantially agreeing with our positions. **On November 25, 2014, the court denied the school district's petition for rehearing. The case is now closed.**