LEGAL REPORT
September 7, 2017

SUMMARY STATISTICS

	Open Cases	*Closed During 2017*
Direct	20	7
Amicus	4	10
Total	24	17

CASE UPDATES
(New developments in bold)

ADVANCING IMMIGRANTS' RIGHTS

Gomez-Sanchez v. Sessions **(new case) (direct)** – Guillermo Gomez-Sanchez is a Mexican national with a severe mental disability. He has lived in the United States as a lawful resident since 1990. After he was convicted of assault in 2004, the Department of Homeland Security initiated removal proceedings against him. During those proceedings, we represented him in a challenge to his prolonged detention, which resulted in his release and subsequent dismissal of the case as moot. He returned to live with his family in San Bernardino, and removal proceedings continued. Mr. Gomez-Sanchez argued that he would suffer persecution or torture based on his mental disability if he was deported. The immigration judge denied withholding of removal because he had been convicted of a "particularly serious crime," refusing to consider that Mr. Gomez-Sanchez suffers from a serious mental disorder that contributed to his action. The judge granted deferral of removal under the Convention Against Torture, a weaker shield against removal than withholding. Represented by the ACLU of Southern California, Mr. Gomez-Sanchez appealed to the Board of Immigration Appeals. The Board ruled against him, holding that "mental health is not a factor to be considered in a particularly serious crime analysis." The Board published its decision, making it binding on all immigration courts and impacting numerous individuals with mental health issues. The ACLU of Southern California petitioned for review to the Ninth Circuit, arguing that the Board improperly created a categorical rule for "particularly serious crime analysis," which requires individualized determinations of dangerousness, and that its rule unlawfully discriminates against people with disabilities under the Rehabilitation Act. The case has been fully briefed and set for argument September 13, 2017. The staff attorney originally slated to argue the case is no longer with the ACLU of Southern California. At that affiliate's request, our senior staff attorney, Bardis Vakili, will argue the case due to his familiarity with the record and relevant law from his previous representation of Mr. Gomez-Sanchez when employed at Casa Cornelia and ACLU of Southern California.

ACLU of San Diego & Imperial Counties v. Department of Homeland Security (direct) (Muslim ban FOIAs) – In a series of coordinated requests under the Freedom of Information Act (FOIA), multiple ACLU affiliates sought information from Department of Homeland Security (DHS) about the conduct of Customs and Border Protection (CBP) field offices in implementing the executive orders banning travel to the United States of individuals from several Muslim-majority

countries. The requests seek to uncover documents regarding CBP's chaotic and cruel enforcement against numerous individuals and investigate troubling reports that CBP ignored court orders. After DHS ignored the FOIA requests, we filed suit on April 12, 2017, together with similar suits elsewhere, with Davis Wright Tremaine LLP as co-counsel. On May 8, the government asked the Judicial Panel on Multidistrict Litigation to transfer the cases and consolidate them in the District of Columbia. **We opposed that request, and the Panel denied it after a hearing on July 27. The cases will now proceed as independent lawsuits in their respective courts, including the Southern District of California.**

United States v. Peralta-Sanchez (amicus) – Federal law allows "expedited removal" proceedings against certain individuals allegedly present in the United States without permission. Currently, expedited removal is used only against individuals present in the United States for less than 14 days and apprehended within 100 miles of a land border, but the current administration may apply it anywhere in the United States against anyone present less than two years, as allowed by statute. An individual has no right to appear before a judge in expedited removal. Instead, an immigration officer may order the individual removed without further hearing or review based on a limited record. On February 7, 2017, a panel of the Ninth Circuit held by a 2-1 vote that individuals have no right to representation by counsel in expedited removal, even at their own expense. We joined an amicus brief in support of rehearing on the ground that such proceedings create a grave risk of error because they allow low-level officers to make legal decisions for removal with little oversight, accountability, or opportunity for further review. **By order filed August 22, the panel granted the petition for rehearing and withdrew its previous opinion. In an unpublished decision on the same date, the court found that Mr. Peralta-Sanchez suffered no prejudice from any violation of his right to counsel. The case is now closed.**

Cancino Castellar v. Kelly (direct) – On any given day, federal immigration agencies incarcerate tens of thousands of longtime U.S. residents, victims of persecution, and other individuals, often in remote detention centers. In San Diego and Imperial Counties, the two main detention centers warehouse about 1,500 people. Those individuals often languish for months before they appear before a judge and learn why they are incarcerated, how they can defend themselves, and whether they can seek release. With the new administration promising to expand detention and deport millions more people, delays in immigration courts are likely to increase. To challenge these systemic delays, we filed a class action lawsuit on March 9, 2017, representing three clients currently detained in local facilities, including an 18-year-old high school senior who is eligible for the Deferred Action for Childhood Arrivals program, a mother of two U.S. citizen children who has lived here for many years, and a man who claims to be a U.S. citizen. With co-counsel Fish & Richardson P.C. and Law Offices of Leonard B. Simon P.C., we seek to represent a class of persons who have been confined for weeks or months without seeing a judge. The parties have completed briefing on our motion for class certification and the government's motion to dismiss. We are waiting for the court to set a hearing date.

Al-Mowafak v. Trump (direct) – On January 27, 2017, the president signed Executive Order No. 13,769, which banned entry into the United States from citizens of seven Muslim-majority countries (Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen) for 90 days, suspended refugee admissions from any country for 120 days, and indefinitely suspended admission of refugees

from Syria. The order also prioritized refugee claims based on religious persecution from individuals of a minority religion in their home countries. The text and history of the order show that the government intended to favor Christians over Muslims in entry, detention, interrogation, and removal. As a result, the order violated the First and Fifth Amendments, the Immigration and Nationality Act, and the Administrative Procedure Act. Representing several individuals and an organization, the California ACLU affiliates, joined by the ACLU National Immigrants' Rights Project and Keker Van Nest & Peters LLP, filed a class action challenging the executive order on February 2. The order was revoked and replaced by Executive Order No. 13,780 on March 6. Though the new order is less draconian than its predecessor, it presents similar legal problems. On March 13, we filed an amended complaint challenging the new order. After we filed motions for preliminary injunction and class certification, the case was placed on hold pending decision in the case of *Hawaii v. Trump*, which is pending in the Supreme Court and raises similar issues.

Hernandez v. Mesa (amicus) – While standing in the United States, Border Patrol Agent Jesus Mesa fired a shot that killed Sergio Adrian Hernandez, a 15-year-old Mexican boy on the Mexican side of a cement culvert that separates El Paso, Texas from Juarez, Mexico. Hernandez's parents filed suit, but the Court of Appeals for the Fifth Circuit dismissed their claims. The Supreme Court granted review to decide whether (a) the Fourth Amendment applies to this cross-border shooting; (b) the agent is entitled to qualified immunity against Fifth Amendment claims; and (c) the plaintiffs may pursue constitutional claims against the agent. The ACLU Immigrants' Rights Project (IRP), joined by the ACLU's southern border affiliates, filed an amicus brief arguing that cross-border shootings cannot be immunized from constitutional review simply because the victim happened to be killed a few feet from the dividing line between the United States and Mexico. The Supreme Court vacated the judgment and remanded the case to the Fifth Circuit to determine whether the plaintiffs may pursue a claim against the agent in light of the Court's recent decision in *Ziglar v. Abbasi*, which addressed constitutional claims against federal officers. The Court also held that the Fifth Circuit erred in granting qualified immunity based on facts not known to the agent at the time of the shooting. **On September 6, 2017, IRP and the southern border affiliates submitted an amicus brief to the Fifth Circuit arguing that the agent is subject to individual liability for constitutional violations alleged in the complaint.**

ACLU v. Department of Homeland Security (direct) (roving patrols FOIA) – The incidence of civil rights violations associated with Border Patrol's interior enforcement operations, which include checkpoints and "roving patrol" stops, is a matter of pressing public concern. There is little publicly available information regarding the extent or impact of Border Patrol's roving patrol operations or its agents' respect for limitations on their authority. In Southern California, Border Patrol agents operate in a number of metropolitan and rural areas at considerable distance from the U.S.-Mexico border. In July 2014, our Border Litigation Project, along with the ACLU of Southern California and UCI Law's Immigrants' Rights Clinic, submitted a FOIA request to both DHS and CBP seeking records related to "roving patrol" operations in the San Diego and El Centro Sectors. When the agencies failed to respond as required, we filed suit in February 2015. After extended negotiations and document production, we sought summary judgment on the ground that the government conducted an inadequate search and unlawfully withheld numerous records. The court issued an order February 10, 2017 denying both motions, ordering additional briefs and oral argument, and directing the government to submit certain documents

for *in camera* review. **The court heard supplemental argument on August 18, and we are awaiting its decision.**

ACLU of Arizona & ACLU of San Diego & Imperial Counties v. Department of Homeland Security (direct) (reports of child abuse FOIA) – For years, advocates have documented persistent allegations of child abuse by DHS officials, in particular Border Patrol agents. In June 2014, at the height of a surge of unaccompanied children entering the United States, the ACLU filed a complaint with DHS documenting 116 allegations of child abuse. Although high-ranking officials initially conceded that there were problems, DHS later shut down all investigations. In December 2014, the ACLU Border Litigation Project sent a FOIA request to DHS for any records pertaining to allegations of child abuse or mistreatment. DHS failed to timely respond. With Cooley LLP and the ACLU of Arizona, we filed a federal lawsuit in Arizona to compel DHS to search for and turn over those documents. Despite obstruction and delay by DHS, we have succeeded in compelling the agency to produce thousands of pages of documents. The parties have cross moved for summary judgment on the adequacy of DHS's search for responsive documents as well as the validity of exemptions DHS continues to assert for withholding certain documents. **On August 14, 2017, the district court granted summary judgment in part and denied it in part, ordering the government to undertake additional searches and supplement the record. The government filed a motion for reconsideration on August 28, which we will oppose.**

Rodriguez v. Swartz (direct) – In October 2012, Border Patrol agent Lonnie Swartz 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. 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 suit in federal court to challenge the shooting on behalf of J.A.'s mother, Araceli Rodriguez, both on her own behalf and as personal representative of J.A.'s estate. Swartz moved to dismiss on the ground that the Constitution does not apply to his actions. On July 9, 2015, the district court issued an order rejecting that contention. Swartz filed an immediate appeal with the Ninth Circuit, which put the case on hold in the trial court. The Ninth Circuit heard oral argument October 21, 2016 and placed the case on hold pending the Supreme Court's decision in *Hernandez v. Mesa*, a similar border shooting case in which the ACLU filed an amicus brief. On June 29, 2017, we submitted a notice of supplemental authority regarding the Supreme Court's decision in *Hernandez* and requested additional briefing to address the effect of *Hernandez*.

Olivas v. Whitford (direct) – On June 12, 2014, we filed a complaint and petition for writ of habeas corpus challenging the Kafkaesque exile of Oscar Olivas, who has been barred from returning to the United States since 2011. As a result, Mr. Olivas remains in Mexico where he cannot work to support his family and his U.S. citizen daughter does not receive the special education she requires. The complaint states that federal officers coerced Mr. Olivas's mother into signing a false confession that he had been born in Mexico rather than Los Angeles, as the government previously accepted, and details his efforts to obtain a fair hearing proving his citizenship so that he can bring his family back to the United States. After a bench trial, the district court found we did not prove that Mr. Olivas is a United States citizen. We appealed that order on the ground that the court erred in not requiring the government to disprove Mr. Olivas's

citizenship by clear and convincing evidence, given previous administrative findings that he was a citizen, on which he justifiably relied. The Ninth Circuit dismissed the appeal on the ground that certain claims remained technically pending in the district court, though we believed the order was appealable because it arose from denial of a habeas corpus petition and effectively decided all disputed issues. **On August 17, 2017, the district court granted the government's motion to dismiss the case, entering a final judgment that we appealed on August 18. Our opening brief is due November 28. In the district court, the government sought to charge Mr. Olivas for its costs of litigating the case, which we opposed on August 30.**

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 officers routinely used misinformation, deception, and coercion to convince people to sign their own expulsion orders under guise of "voluntary return." Officers pressured Mexican nationals with deep roots in the United States into forfeiting their right to a fair hearing and a chance to live here lawfully by misleading them about the severe consequences of "voluntary return," such as prolonged bars against re-entering the United States. After motions, discovery, and negotiations, the parties executed a comprehensive settlement, including a landmark agreement to allow the individual plaintiffs and a class of qualified persons to return to the United States. The agreement also requires the government to undertake reforms to the way it implements voluntary return. On February 25, 2015, the court approved the settlement, triggering a 120-day notice period, followed by a 180-day period to submit applications for return. By the close of the application period, we screened 3,597 individuals for class membership and submitted 116 applications. The government granted 79 applications and denied 37. We later submitted appeals on behalf of 10 individuals who were denied re-entry. The government agreed to allow six into the United States. The remaining four do not qualify for re-entry. The class provisions of the settlement are now closed. After extensive negotiations, we reached agreement to extend the reform provisions for an additional six months, until February 28, 2018, to compensate for the government's initial noncompliance with those provisions. We continue to monitor compliance with the reform provisions of the settlement.

ADVANCING JUSTICE

Police Practices

P.D. v. City of San Diego (direct) – In March 2016, San Diego police officers unlawfully stopped and frisked several African-American youths as they walked through Memorial Community Park. Without a warrant or parental consent, the officers took DNA samples after telling them they would not be released otherwise. On February 15, 2017, representing one of the juveniles and his mother, we sued the City of San Diego and the officers involved for conducting an unlawful search and seizure. The case challenges a policy that authorizes officers to obtain consent from juveniles to take DNA on the same terms as adults. We filed an amended complaint on April 7, clarifying certain claims in response to the City's request, after which the City filed its answer on April 19. In response to a motion to dismiss filed by certain officers, we filed a second amended complaint on May 5, which was answered on May 19. **At an early neutral**

evaluation on July 14, the parties agreed to most terms of a proposed settlement. The parties continue to negotiate the remaining terms in pursuit of a complete settlement.

Bonin v. Aldana (direct) – Stella Bonin is a naturalized U.S. citizen born in Uruguay who lives in Arizona. In February 2015, she was driving her elderly dog from Phoenix, Arizona to El Cajon, California for emergency veterinary care. As she was driving west on Interstate 8, Border Patrol agents stopped, interrogated, and harassed her for no valid reason. Although she told them she was a U.S. citizen and showed them her passport card, they forced her to drive to the Campo Border Patrol Station, where they continued to interrogate and harass her. They also searched her car based on a pretext, throwing her belongings on the ground and damaging the car but finding nothing unlawful. After this ordeal, during which Ms. Bonin was forced to leave the door open for observation while she used the bathroom, she was finally released and allowed to continue to El Cajon. CBP ignored a FOIA request for relevant documents. We filed suit in federal court for violations of the Fourth Amendment and FOIA. On June 19, 2017 we moved for permission to withdraw as counsel due to irreconcilable differences and a breakdown of communications. **By order filed August 2, the court granted the motion. The case is now closed.**

Jones v. Hernandez (direct) – In August 2014, U.S. Border Patrol agents assaulted U.S. citizen and former Navy SEAL Alton Jones while he was visiting Border Field State Park with his wife and young child. Mr. Jones was taking a jog through the park when he was surrounded and tackled by Border Patrol agents, who arrested and held him overnight without charge, explanation, or access to a lawyer. We filed suit on August 8, 2016, and after two amendments to the complaint, the case presents three sets of claims: (1) violation of Mr. Jones's constitutional rights by individual agents; (2) torts committed against Mr. Jones for which the United States is responsible under the Federal Tort Claims Act; and (3) violation of the government's obligations under the Freedom of Information Act. The government counterclaimed against Mr. Jones for allegedly assaulting an agent involved in the incident. The case is now in discovery. **By order entered July 17, 2017, the court denied our motion to compel production of documents relating to the decision not to file criminal charges against Mr. Jones. On August 16, the court ordered us to produce an annotated map of the area where Mr. Jones was arrested but sustained our objection to the government's overbroad demand for all social media postings by Mr. Jones since 2010. On August 18, the individual defendants moved for dismissal or entry of summary judgment on all claims against them. Our brief in opposition is due September 18. The law firm of Munger, Tolles & Olson LLP has joined the case as cooperating counsel.**

Orr v. Plumb (amicus) – In a federal case arising from a traffic stop by a California Highway Patrol officer, the jury found the officer liable for unlawful arrest and excessive force and awarded the plaintiff $125,000 in damages. When the plaintiff sought attorney fees as provided by federal law, the court reduced the fees on the ground that the verdict, for which the officer was indemnified, would not deter future violations by other officers. Plaintiff appealed the fee award to the Ninth Circuit. With the National Police Accountability Project, the California ACLU affiliates filed an amicus brief arguing that the district court's decision threatened to undermine civil rights enforcement by disregarding binding precedent on the deterrent effect of both damages verdicts and fee awards.

Rights of the Accused

Briggs v. Brown (amicus) – In November 2016, California voters approved Proposition 66, a measure to expedite death penalty appeals. The ACLU opposed Proposition 66 because it would move complicated death penalty appeals from the state Supreme Court to local county courts, forcing the state to hire hundreds of unqualified attorneys to litigate death penalty cases before inexperienced judges. It would also increase the risk that California will execute an innocent person because it removes protections for those who have been wrongfully convicted. Immediately after the election, this action was filed in the California Supreme Court to challenge Proposition 66. The court stayed enforcement of Proposition 66 on December 20, 2016. With the Innocence Network, the California ACLU affiliates filed an amicus brief on March 30, 2017 supporting the challenge. **In a decision filed August 24, the California Supreme Court upheld Proposition 66, except that it found the five-year limit on the completion of appellate and initial habeas corpus review is aspirational rather than mandatory. The case is now closed.**

Phillips v. State of California (direct) – Because public defenders do not receive the resources necessary to represent their clients, thousands of Fresno residents must navigate the criminal justice system without the minimum legal representation guaranteed by the Constitution. In Fresno County, public defender attorneys are forced to shoulder up to four times the recommended number of clients, leaving so little time that attorneys have little if any meaningful communications with clients. The failing public defense system violates the Constitution and perpetuates racial inequalities that plague the criminal justice system. In a case spearheaded by the ACLU of Northern California, we joined the other California affiliates and the national ACLU to file suit against the State of California, Governor Brown, and County of Fresno seeking an overhaul of the County's indigent defense system. On March 12, 2016, the court denied motions by the state and county to dismiss the case. The state filed a petition for writ of mandamus seeking review of the trial court's decision, which the Court of Appeal summarily denied. The case is now in discovery.

In re Ricardo P. (amicus) – The California Supreme Court granted review on the question whether juvenile courts can require minors on probation to submit to warrantless searches of their electronic devices in cases unrelated to the use of such devices to commit any crime. With the Electronic Frontier Foundation, the California ACLU affiliates filed an amicus brief arguing that the routine imposition of such conditions unreasonably violates rights to privacy and expression and undermines juvenile rehabilitation.

Drug Law Reform

Harris v. City of Fontana (direct) – In November 2016, California voters approved Proposition 64, which allows adults 21 and older to possess up to one ounce of marijuana and cultivate up to six marijuana plants inside their residences out of public view. While the new law allows cities to regulate cultivation, they must do so reasonably and cannot prohibit it entirely. As did other cities, the City of Fontana adopted an ordinance that is so restrictive as to operate as a de facto ban on cultivation. With co-counsel O'Melveny & Myers LLP, the ACLU's California affiliates and the Drug Policy Alliance filed suit against Fontana on June 5, 2017, arguing that the

ordinance is preempted by Proposition 64 and otherwise violates the California Constitution. **The city filed its answer on July 6, and the case is in discovery.**

DEFENDING CIVIL LIBERTIES

LGBT Rights

Minton v. Dignity Health (direct) – Evan Minton is a transgender man who was scheduled to receive a hysterectomy in August 2016 at Mercy San Juan Medical Center, a hospital in the Dignity Health chain. Two days prior to the appointment, when a nurse called to discuss the surgery, Minton mentioned that he is transgender. The next day, the hospital canceled the procedure. With co-counsel Covington & Burling LLP, the ACLU's California affiliates and the national ACLU filed suit against Dignity Health for unlawfully denying care to a transgender patient. **On August 30, 2017, the court dismissed the complaint on the ground that Mr. Minton was able to obtain the surgery at another hospital, but the court granted us leave to amend the complaint, which we intend to pursue.**

e3 Civic High School (direct) – In late 2014, the executive director of e3 Civic High School, a charter school located in the San Diego Central Library building, unlawfully interfered with the establishment of a gay-straight alliance club known as Spectrum, demonstrating her bias against LGBT students and violating students' rights to freedom of speech. After we wrote to the school, we were assured the school would comply with the Equal Access Act and other relevant law. During March 2015, we again wrote to the school to object to the executive director's interference with Spectrum's operation and right to freedom of speech, and we were again assured the school would comply. In October 2015, the executive director denied admission to a transgender student, apparently in violation of state law prohibiting charter schools from discriminating based on gender, gender identity, or gender expression. By letter sent April 22, 2016, with our co-counsel Pillsbury Winthrop Shaw Pittman LLP, we demanded an immediate response from the school's board of directors. Through counsel, e3 denied any wrongdoing. We continued to investigate by requesting relevant documents under provisions of the school's charter requiring it to comply with the California Public Records Act. After the school ignored both our original request and subsequent demand letter, we filed suit on December 6, 2016 to compel disclosure of the requested documents. In response, e3 produced a batch of documents. The school filed an answer on February 9, 2017 and has produced additional documents, which we are reviewing to determine if the response is complete.

Freedom of Expression and Information

Hassell v. Bird (amicus) – Dawn Hassell is an attorney who sued a former client, Ava Bird, for posting defamatory reviews on Yelp. After Bird failed to answer the complaint, Hassell obtained a default judgment ordering Bird to remove the reviews and also directing Yelp to take them down, although Yelp was not a party and had not been given an opportunity to appear and defend against the lawsuit. The trial court rejected Yelp's arguments that the order violated due process, freedom of speech, and section 230 of the Communications Decency Act, which generally protects online platforms from liability due to speech posted by third parties. After the Court of Appeal affirmed, the California Supreme Court granted review. On May 7, 2017, the California

ACLU affiliates joined with several other organizations in an amicus brief arguing that the judgment violates the First Amendment and due process because it was entered against a nonparty without a trial to determine whether the challenged statements were defamatory, and also violates section 230 by imposing liability on Yelp even if it is not technically named as a party. To hold otherwise would lead to circumvention of section 230, which is a bulwark of free expression online.

The Koala v. Khosla (direct) – University of California campuses collect student activity fees for the purpose of funding a wide range of speech by student organizations. By delegation from the university, student governments allocate those funds to support events, meetings, speeches, or the publication of newspapers. *The Koala,* a student newspaper at UCSD known for outrageous satire, has received funding through that process, as have numerous other student organizations, including the publishers of other student papers. After *The Koala* published a satire of safe spaces and trigger warnings containing numerous racial epithets and stereotypes, the UCSD administration condemned it, as it had a right to do. The student government then terminated funding for the publication of student newspapers but not other forms of student speech, including printed materials other than newspapers. That decision violated the First Amendment because it singled out the press, unreasonably disqualified student newspapers from funding that remains available to other organizations, and derived from opposition to *The Koala*'s viewpoint. After a demand letter and negotiations were unsuccessful, we filed suit on May 31, 2016, with co-counsel Ryan Darby. The district court eventually dismissed the case on February 28, 2017, and we appealed that decision on March 22. **Our opening brief to the Ninth Circuit was filed July 31. Two amicus briefs were submitted in support of our position, one by the Foundation for Individual Rights in Education and Cato Institute, the other by Student Press Law Center, American Society of News Editors, Associated Press Media Editors, Association of Alternative Newsmedia, College Media Association, First Amendment Coalition, Reporters Committee for Freedom of the Press, and Society of Professional Journalists.**

Jacobson v. Department of Homeland Security (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 throughout the Southwest. In the rural community of Arivaca, Arizona, community members launched a 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. After briefing and argument, the court denied our motion for a preliminary injunction in September 2015 and granted the government's motion to dismiss in September 2016, after which we appealed to the Ninth Circuit. After our opening brief was filed, the Cato Institute, Center for Investigative Reporting, and National Press Photographers Association filed amicus briefs supporting our position. **Following the government's brief on June 9, 2017, we filed our reply brief on August 23. The case is now fully briefed, and we are waiting for an argument date.**

Gill v. U.S. Department of Justice (direct) – On July 10, 2014, the California ACLU affiliates, 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. After denying the government's motion to dismiss the case and ordering production of relevant documents, the court granted the government's motion for summary judgment, effective March 29, 2017. We filed a notice of appeal on May 28. **Our opening brief is due November 3.**

Askins v. Department of Homeland Security (direct) – This case is about protecting the First Amendment right to hold government accountable at the border. Ray Askins is an activist concerned about environmental issues. 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 at San Ysidro. In both cases, border enforcement agents detained, harassed, and threatened them, temporarily confiscated their cameras, and deleted their photographs. We filed an action claiming that CBP violated the Constitution by prohibiting all photography at ports of entry. The court eventually held that CBP's policy does not violate the First Amendment but gave us permission to amend the complaint. After conducting further investigation, we filed an amended complaint on November 5, 2015, updating the facts to reflect new construction at Calexico and San Ysidro and refining our claims. After the district court dismissed the case, we appealed on May 17, 2016. The appeal is fully briefed, with amicus briefs supporting our position from the Cato Institute, Reporters Committee for Freedom of the Press, and seven media organizations including the San Diego Union-Tribune and Los Angeles Times. We are waiting for the court to schedule an argument date.

Privacy Rights

Lewis v. Superior Court (amicus) – While investigating a physician, the California Medical Board obtained his patients' controlled substance prescription records from the Controlled Substance Utilization Review and Evaluation System (CURES), a statutory program that does not require a warrant or subpoena based on individualized suspicion. The investigation ultimately found only minor recordkeeping violations. On review, the Court of Appeal rejected the physician's claim that the statute violates the privacy rights of patients, holding that CURES contains sufficient safeguards to prevent unwarranted disclosure and access. After the California Supreme Court granted review, the California ACLU affiliates filed an amicus brief arguing that the physician has standing to assert his patients' privacy rights and the warrantless search of prescription records violates the state and federal constitutions. **On July 17, 2017, the court agreed the physician has standing to assert patients' privacy rights but held the Medical**

Board did not violate those rights by obtaining records from the CURES database, on the ground that the state has a vital interest in protecting patients and controlling the distribution of dangerous drugs and the relevant statutes prohibit public disclosure and limit the degree to which patients' privacy is invaded. The case is now closed.

Reproductive Justice

Chamorro v. Dignity Health (direct) – Rebecca Chamorro lives in Redding and is a patient at Dignity Health's Mercy Medical Center, the only hospital in Redding with a labor and delivery ward. She decided with her doctor that she would get a tubal ligation during her scheduled C-section in late January 2016. But the hospital refused her doctor's request to perform the procedure, citing religious directives written by the United States Conference of Catholic Bishops that classify sterilization procedures as "intrinsically evil." For Chamorro, there are no hospitals within a 70-mile radius that have birthing facilities and do not follow these directives. After Dignity Health refused to comply with a letter demanding that it authorize the tubal ligation, the California ACLU affiliates, the national ACLU, and Covington & Burling filed suit on behalf of Ms. Chamorro and Physicians for Reproductive Health, arguing that to withhold pregnancy-related care, including but not limited to tubal ligation, for other than medical reasons violates California law. The court denied an emergency motion to prevent Dignity Health from using the religious directives to interfere with Ms. Chamorro's care so that her doctor can perform the procedure during her scheduled delivery, but the case continued through the litigation process. An amended complaint was filed February 29, 2016, after which Dignity Health moved to dismiss. By order filed August 1, 2016, the court dismissed all but one of our claims, allowing us to proceed on the claim that Dignity Health is engaging in an unlawful business practice. The court also denied a motion to intervene by the California Medical Association. The case is now in discovery. **On August 25, 2017, the court granted our motion to compel discovery into relevant practices at all Dignity Health hospitals in California, not merely Mercy Medical Center in Redding.**

MONITORING

Armstrong v. Board of Supervisors – 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 Court of Appeal affirmed the contempt finding, which remained in effect until 1997. After realignment shifted many prisoners from the state to counties, we are watching the County to make sure it remains in compliance with the decree.

In the Matter of Overcrowding of Detainees at San Diego County Juvenile Hall – 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. The juvenile court then limited the number of detainees at Juvenile Hall, which has yet to exceed that limit. The ACLU continues to monitor compliance.