LEGAL REPORT
March 9, 2018

SUMMARY STATISTICS

	Open Cases	*Closed During 2018*
Direct	25	0
Amicus	10	0
Total	35	0

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

ADVANCING IMMIGRANTS' RIGHTS

Ms. L. v. Immigration and Customs Enforcement **(new case) (direct)** -- Fearing death in the Congo, Ms. L. escaped with her daughter, eventually arriving at the San Ysidro port of entry in November 2017. To protect her safety, she is not identified in the complaint. She was given a screening interview with an asylum officer, who determined her fear of persecution was credible and she had a significant possibility of receiving asylum. Despite that determination, she was locked away in the Otay Mesa Detention Center, while her daughter was sent to a facility in Chicago. When the officers separated them, Ms. L could hear her daughter screaming that she wanted to stay with her mother. The girl sat traumatized and alone for months. On February 26, 2018, with the national ACLU Immigrants' Rights Project, we filed suit to end the forced separation of mother and daughter. On March 6, the government released Ms. L. from custody but continues to detain her daughter pending verification of parenthood. We continue to seek their prompt reunification. On March 9, we filed an amended complaint with an additional plaintiff, seeking to pursue a class action to prevent future separation of families seeking asylum.

City and County of San Francisco v. Trump **(new case) (amicus)** – On January 25, 2017, the president issued Executive Order 13768, which threatened to withdraw federal funding from local governments that did not participate in immigration enforcement. After San Francisco and Santa Clara County challenged the order, the district court enjoined its enforcement, holding that it violates the separation of powers, constitutional principles of federalism, and due process. The administration appealed, and on February 12, 2018, the ACLU's California affiliates joined the national ACLU and numerous other organizations in an amicus brief documenting the harms resulting from conscription of local governments into immigration enforcement.

Thuraissigiam v. Department of Homeland Security **(new case) (direct)** -- Vijayakumar Thuraissigiam fled Sri Lanka after being abducted, beaten, and tortured for his political activities. He is a Tamil, an ethnic minority group that is persecuted in Sri Lanka, who was active in supporting a Tamil political party and candidate. In the aftermath of the civil war in Sri Lanka, Tamils have been subjected to a consistent and extreme pattern of abduction and torture. Tamils removed to Sri Lanka after seeking asylum abroad are routinely assumed to be traitors, arrested, and tortured. After fleeing Sri Lanka in 2016, Mr. Thuraissigiam eventually reached the United

States, where he was taken into immigration custody in 2017. The government issued an expedited removal order against him after improperly determining that he did not have a credible fear of persecution and torture if returned to Sri Lanka. With the national ACLU Immigrants' Rights Project, we filed a habeas petition on January 19, 2018 seeking to prevent his removal. On March 8, the court dismissed the case for lack of jurisdiction to review the expedited removal order. We filed an immediate appeal to the Court of Appeals, and on March 9 we filed an emergency motion with that court for a temporary stay of Mr. Thuraissigiam's removal, which the court granted the same day, ordering the government to respond by March 12.

Barajas Varela v. USCIS (direct) – On December 12, 2017, together with the ACLU of Southern California and Latham & Watkins LLP, we filed suit to challenge the government's delay in deciding the naturalization application of Specialist Hector Barajas Varela, the cofounder and director of the Deported Veterans Support House in Tijuana, Mexico. After serving in the Army for six years, he was honorably discharged in 2001 but later deported after a conviction for unlawful discharge of a firearm, which was considered an "aggravated felony" under immigration law at the time. The Ninth Circuit later ruled that the crime for which he was convicted is not categorically an aggravated felony, and in April 2017, the governor pardoned him, eliminating his conviction for immigration purposes. He applied for naturalization in March 2015 and was interviewed in November 2016. The government ignored a statutory mandate to decide his naturalization application within 120 days of the interview. Our lawsuit asks the district court to decide the application or direct the government to do so promptly. **On February 28, 2018, the court entered an agreed order dismissing the case to allow the government to adjudicate the naturalization application within 30 days, with all rights reserved to challenge the government's actions if necessary.**

Gomez-Sanchez v. Sessions (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 staff attorney originally slated to argue the case is no longer with the ACLU of Southern California. Our senior staff attorney, Bardis Vakili, argued the case on September 13, 2017, 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. After one of the assigned judges, the Hon. Alex Kozinksi, resigned from the bench on December 19, the Hon. Kim McLane Wardlaw was substituted in his place. We are waiting for the court to decide the case or issue a notice of reargument if needed.

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 U.S. Customs and Border Protection (CBP) local field offices in implementing Executive Orders banning individuals from several Muslim-majority countries from traveling to the United States. The FOIA requests seek documents regarding CBP's chaotic and cruel enforcement of the Executive Orders to investigate troubling reports that local CBP officers ignored federal court decrees suspending the Executive Orders. After DHS ignored the FOIA requests, we filed suit on April 12, 2017 with Davis Wright Tremaine LLP as co-counsel, at the same time as 12 similar lawsuits were filed throughout the country. The Judicial Panel on Multidistrict Litigation denied the government's request to consolidate the cases in the District of Columbia. The cases are proceeding independently in their respective district courts. In this district, following a scheduling conference on November 6, 2017, the court rejected CBP's claims that it lacked the resources to timely respond to our request and ordered the agency to process 1,000 pages of responsive records each month. We have begun to receive records and have initiated document review.

Cancino Castellar v. Nielsen (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. **On February 8, 2018, the court dismissed the complaint for lack of jurisdiction under a particular immigration statute. Based on the Supreme Court's decision in *Jennings v. Rodriguez*, which was issued February 27 and found the same statute did not bar jurisdiction over similar claims, we filed a motion to reconsider the order of dismissal on March 8.**

Al-Mowafak v. Trump (amended to *Roe v. Trump*) (direct) – On January 27, 2017, the president signed an executive order banning citizens of seven Muslim-majority countries from entering the country for 90 days, suspending refugee admissions from any country for 120 days, and indefinitely suspending 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 on March 6, and on March 13, we filed an amended complaint challenging the second order. After we filed motions for preliminary injunction and class certification, the case was placed on hold pending other similar litigation. On September 24, the administration indefinitely banned immigrants and many categories of nonimmigrants from five Muslim-majority countries, and on October 24, it indefinitely suspended the admission of refugees from eleven countries, nine of which are majority Muslim, as well as relatives of refugees previously admitted to the United States. On December 8, we amended our complaint, which is now captioned *Roe v. Trump*, and moved for a preliminary injunction against the latest restrictions. As we were briefing that motion, the restrictions were enjoined in separate litigation. At our request, the court stayed our case while that injunction remains in place.

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 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 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 the Immigrants' Rights Clinic at UC Irvine School of Law, 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, the parties cross moved for summary judgment. We claimed 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. After hearing supplemental argument on August 18, the court issued an order November 6 granting in part and denying in part the motions for summary judgment. The court agreed with us that the government improperly withheld the majority of CBP's "Enforcement Law Course" and ordered it to disclose that record, although the government intends to appeal. The court also ordered the government to produce various Border Patrol Academy training materials for *in camera* review, and we are waiting for a decision on whether those documents must be made public.

ACLU of Arizona & ACLU of San Diego & Imperial Counties v. Department of Homeland Security (direct) (CBP 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 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 concerning disclosure of certain agents' names. In January 2018, the government produced additional documents as a result of the order requiring supplemental searches. We are still waiting for a decision on the motion for reconsideration.

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 appealed to the Ninth Circuit, which heard oral argument October 21, 2016 and later 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. After the Supreme Court decided *Hernandez* in June 2017, the parties filed supplemental briefs and continue to await the court's decision.

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 and eventually entered judgment against Mr. Olivas. We appealed on the ground that the court erred in not placing the burden on 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. **After the government's brief was filed January 29, 2018, our reply brief is due March 22.**

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 16, 2018, to compensate for the government's initial noncompliance with those provisions. We continue to monitor compliance with the reform provisions of the settlement. Following negotiations resulting from our notice of additional noncompliance with certain provisions of the agreement, the government agreed to take certain measures and extend compliance with those provisions to May 18, 2018.

ADVANCING JUSTICE

Police Practices

Jane Roe v. San Diego Police Department **(new case) (direct)** – "CalGang" is a shared database, accessible by law enforcement agencies, which lists individuals allegedly designated as gang members or associates based on subjective criteria susceptible to abuse and racial profiling.

As the California State Auditor found, the database suffers from inadequate oversight that resulted in numerous errors and violations of privacy rights. In response, California adopted legislation supported by the ACLU to provide a process for judicial review of gang database listings. The legislation took effect January 1, 2018. On February 15, we filed one of the earliest cases under the new law to demand our client's removal from the database. Because the client is a juvenile, the case is filed in the name of his mother, with both remaining anonymous in the interest of privacy and safety. The case is scheduled for hearing on June 21, with briefs due March 16.

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. **In light of pending state legislation (AB 1584) that would prohibit police departments from taking DNA from juveniles without parental involvement, the court continued all deadlines until October 1, 2018 at the request of the parties to facilitate settlement negotiations.**

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, with Munger, Tolles & Olson LLP joining us as cooperating counsel. After briefing on the agents' motion for summary judgment, the court issued an order November 9, 2017 declining to dismiss our claim for unlawful detention but dismissing our excessive force and unlawful search claims, except for the search claim as to one agent, though with leave to amend. The court dismissed without leave to amend our First Amendment claim for retaliation due to Mr. Jones's verbal challenge to the agents, holding federal law does not recognize a First Amendment damages claim in this context. On December 1, we filed a third amended complaint, which the agents answered on December 15, although one agent moved to strike the unlawful search claim against him. We opposed that motion on December 29 and await the court's decision. **On January 12, 2018, we moved for summary judgment dismissing the counterclaim as barred by the statute of limitations, because the government obtained assignment of the agent's claims after they expired. The motion is fully briefed and awaiting decision.**

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

Association for Los Angeles Deputy Sheriffs v. Superior Court (amicus) – This case concerns the relationship between the constitutional obligation of prosecutors to disclose exculpatory evidence to the defense and California laws, known as *Pitchess* statutes, limiting disclosure of officer personnel files. In 2016, the Los Angeles County Sheriff's Department proposed procedures designed to more efficiently notify prosecuting agencies about exculpatory material in officer personnel files. The procedures are similar to those already in place for several years at California Highway Patrol, San Francisco Police Department, and other law enforcement agencies across the state. However, on July 11, 2017, the Court of Appeal ruled that the procedures violated the *Pitchess* statutes. That ruling would effectively prevent law enforcement agencies from ever telling prosecutors about exculpatory evidence in officer personnel files, a result inconsistent with decades of precedent. To safeguard the due process right to a fair trial, the California ACLU affiliates submitted a letter in support of a petition for review to the California Supreme Court, arguing that the statutes, properly construed, do not prohibit disclosure of exculpatory information to prosecutors. The court granted review on October 11, and we intend to file an amicus brief on the merits.

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 on

October 27, 2016 arguing that the routine imposition of such conditions unreasonably violates rights to privacy and expression and undermines juvenile rehabilitation. The case is fully briefed and awaiting an argument date.

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.

ADVANCING EQUITY

Access to Justice

***People v. Dueñas* (new case) (amicus)** – California has adopted a myriad of criminal fines, fees, assessments that are among the highest in the country. As the Chief Justice of the California Supreme Court recently observed, this regime has created "an inequity when we have taken a fines, fees, and assessment accountability system and turned it into a revenue-generating system for government services." Velia Dueñas is an indigent, homeless, and disabled mother of two who was ordered to pay fees and a fine that the trial court believed were mandated by California law regardless of ability to pay. With the ACLU's other California affiliates, we joined an amicus brief filed January 23, 2018 arguing it is unconstitutional to impose such fees and fines without regard to ability to pay.

LGBT Rights

***A.G. v. County of Los Angeles* (new case) (amicus)** – This is a wrongful death case brought by a minor for the killing of his father, who had treated A.G. as his son under California law although he was not a biological or adoptive parent. The trial court held wrongful death claims can be brought only by children for their biological or adoptive parents. With the National Center for Lesbian Rights, Los Angeles LGBT Center, and others, the ACLU's California affiliates joined an amicus brief filed February 5, 2018 arguing that the trial court's ruling violated the Constitution and California law, especially in light of the significant number of LGBT parents who are not biological or adoptive parents.

***Quine v. Kernan* (new case) (amicus)** – The California Department of Corrections and Rehabilitation limits the right of transgender women to possess certain items of personal property available to non-transgender women and requires that transgender men buy types of clothing that it provides to non-transgender prisoners at no cost. With the ACLU's other California affiliates, represented by Cooley LLP, we joined an amicus brief filed January 18, 2018 arguing that the policy is subject to heightened constitutional scrutiny because such

discrimination against transgender people based on transgender status is discrimination based on sex that is ordinarily prohibited by the Equal Protection Clause.

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. Our amended complaint was filed September 9, 2017. The court dismissed the case without leave to amend on November 17. **We have appealed that decision.**

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.

Rights of the Poor

Tony Diaz vs. City of San Diego **(new case) (amicus)** – On February 22, 2018, together with Think Dignity, we filed an amicus brief supporting Mr. Diaz's appeal of his conviction for violating San Diego's vehicle habitation ordinance. Our brief argues the ordinance is unconstitutionally vague because it provides inadequate notice of the prohibited conduct and invites arbitrary enforcement, giving officers virtually unfettered discretion to use their own prejudices or those of city officials in determining whether and when to enforce it. The ordinance is enforced almost exclusively against unsheltered individuals as part of a larger pattern of neglect and criminalization of homelessness. A hearing date has not yet been set for the appeal.

DEFENDING CIVIL LIBERTIES

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, Hassell obtained a default judgment ordering Bird to remove the reviews and directing Yelp to take them down, although Yelp was not a party and had not been given an opportunity to appear and defend. 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 1, 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 case has been set for argument on April 3, 2018, with a decision expected within 90 days afterward.**

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 in February 2017, and we appealed to the Ninth Circuit. Two amicus briefs were filed 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. The case is fully briefed and awaiting an argument date.

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. The district court denied our motion for a preliminary injunction and granted the government's motion for summary judgment, after which we appealed to the Ninth Circuit. The Cato Institute, Center for Investigative Reporting, and National Press Photographers Association filed amicus briefs supporting our position. **On February 13, 2018, in a published opinion, the Court of Appeals reversed the district court and remanded for development of the factual record necessary to decide the First Amendment issues presented by the case.**

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, and the case remains on appeal.

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 to the Ninth Circuit. The Cato Institute, Reporters Committee for Freedom of the Press, and seven media organizations including the San Diego Union-Tribune and Los Angeles Times filed amicus briefs supporting our position. **The case was argued on February 16, 2018. We are waiting for a decision.**

Reproductive Justice

ACLU et al. v. Wright (direct) – On October 6, 2017, the Trump Administration issued interim final rules that would allow nearly all employers to deny their employees insurance coverage for contraception based on religious or moral objections. On the same day, the California ACLU affiliates and national ACLU, with co-counsel Simpson, Thatcher & Bartlett LLP, filed suit to challenge the rules, arguing that they violate the Establishment Clause and equal protection by authorizing and promoting religiously motivated and other discrimination against women seeking reproductive health care. **By agreement of the parties, on March 8, 2018 the court stayed this case pending resolution of an appeal in another case raising similar issues.**

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 case is now in discovery.

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.