AMERICAN CIVIL LIBERTIES UNION FOUNDATION
San Diego and Imperial Counties

LEGAL REPORT
March 5, 2020

STATISTICS

	Open Cases	*Closed During 2019*
Direct	22	9
Amicus	6	10
Total	28	19

CASE UPDATES
(New developments in bold)

ADVANCING EQUITY

Economic Inequity

Sigma Beta Xi, Inc. v County of Riverside (direct) – Riverside County operated a "Youth Accountability Team" (YAT) in public schools, treating students like criminals. As an arm of local law enforcement, YAT disproportionately targeted students of color for behaviors such as truancies, poor grades, disrupting classroom time and other discipline problems, and placed them on punitive probation supervision without procedural safeguards. Students and parents were not provided with specific information about the offense they were accused of committing, the terms of probation, or advisement of their legal rights. Although YAT began as part of the Juvenile Justice Crime Prevention Act (JJCPA), aimed at curbing crime and delinquency in at-risk youth, it instead funneled thousands of children into the school-to-prison pipeline for non-criminal offenses. On behalf of three students and the non-profit mentoring organization Sigma Beta Xi, with co-counsel at ACLU Foundation, ACLU Foundation of Southern California, ACLU Foundation of Northern California, National Center for Youth Law, and Sheppard Mullin LLP, we filed suit on July 1, 2018 arguing the program violates the First, Fourth, and Fourteenth Amendments and the California Constitution. After intensive negotiations, the parties reached agreement on a settlement, which the court has preliminarily approved. The hearing on final approval and attorney fees has been scheduled for April 6, 2020. (Melissa Deleon)

Villafana v. County of San Diego (direct) – San Diego County's "Project 100%" program (P100) is likely the only welfare policy in the country requiring virtually every applicant for cash aid benefits (CalWORKs locally, TANF nationally) to submit to an unannounced home search and interrogation by law enforcement investigators when their applications raise no basis for suspecting fraud. P100 harms families not only because of the stigma and privacy violations resulting from the home searches, but also because applicants do not know when the searches will occur, and therefore go days or weeks thinking that they must remain home at all times, lest

they be denied crucial benefits. Applicants experience anxiety and stress and have reported feeling as though they are under house arrest. On June 26, 2018, we filed suit with Fish & Richardson P.C. in San Diego Superior Court challenging P100 under a California law prohibiting state-funded programs from discriminating on the basis of race, gender, and other protected categories. After briefing and argument, the trial court dismissed the case for failure to state a claim, and we appealed. Our opening brief was filed December 12, 2019. **The County's brief is due March 12, 2020.** (Melissa Deleon, Jonathan Markovitz)

LGBT Rights

Wood v. Crunch Fitness (direct) **–** Christynne Wood is a transgender woman who has been a member of Crunch Fitness in El Cajon for approximately 11 years. In 2016, she began her gender transition to female and notified Crunch management and employees of her transition. Thereafter, she was threatened and harassed while using the men's locker room. She reported the incidents to Crunch management and provided medical records verifying her gender identity, along with documentation of her legal gender and name change, but Crunch refused to allow her to use the women's locker room. Ms. Wood filed a complaint with the California Department of Fair Employment and Housing (DFEH), which enforces state law against discrimination in business establishments. After DFEH filed suit against Crunch, we intervened on behalf of Ms. Wood, with co-counsel ACLU Foundation of Southern California and Nixon Peabody LLP, and the case went into discovery. Ruling on an issue of first impression in California, the trial court held that attorney-client privilege did not attach to Ms. Wood's communications with DFEH lawyers during prelawsuit investigation. The California Supreme Court granted review of that issue and transferred it to the Court of Appeal for decision. In the meantime, the trial court's hearing on summary judgment has been postponed to April 20, 2020, and trial has been continued to July 24, 2020. **The privilege issue will be argued in the Court of Appeal on March 10.** (Melissa Deleon in trial court; David Loy in Court of Appeal)

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 Catholic 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 Foundations in California and the national ACLU Foundation filed suit against Dignity Health for unlawfully denying care to a transgender patient. The court dismissed the case on the ground that Mr. Minton was eventually able to obtain the surgery at a non-Catholic Dignity Health hospital. We appealed, supported by amicus briefs from the National Center for Lesbian Rights and California Medical Association. On September 17, 2019, the Court of Appeal reversed the dismissal, holding that Dignity Health's initial refusal to perform the procedure supported a potential discrimination claim, regardless of whether it later allowed the procedure at a different hospital. The California Supreme Court denied Dignity Health's petition for review on December 18, returning the case to the trial court. **Dignity Health intends to seek review in the United States Supreme Court.** (David Loy)

ADVANCING IMMIGRANTS' RIGHTS

Doe v. Wolf (direct) – We represent the parents of a family that is seeking asylum in the United States. They fled their home in Guatemala after they were extorted and their daughter was raped and threatened with death. Traveling through Mexico, the family was assaulted at gunpoint and robbed. After arriving in the United States, they were forced to remain in Mexico while their asylum cases were pending, under so-called "Migrant Protection Protocols" ("MPP"). As with other families that express fear of return to Mexico, they were entitled to a non-*refoulement* interview with asylum officers based on the government's obligation not to return people to countries where they fear persecution or torture. The outcome of a non-*refoulement* interview turns on complex factual and legal issues. It can determine if a person lives or dies. Border Patrol detains families awaiting non-*refoulement* interviews in appalling conditions and refuses to allow detained families to talk with their lawyers before the interviews or to allow lawyers to participate in the interviews. On November 5, 2019, we filed a class action to challenge this systemic denial of the right to counsel. We won a temporary restraining order ensuring access to counsel for the plaintiffs on November 12. The plaintiffs were released from custody after an asylum officer decided they should not be returned to Mexico. **On January 14, 2020, the court granted our motions to certify the class and enter a preliminary injunction upholding access to counsel for persons detained pending non-*refoulement* interviews. We published a practice advisory and educated immigration practitioners about the injunction, which has already benefited persons seeking asylum.** (Monika Langarica, Jonathan Markovitz, Bardis Vakili, Kimberly Grano)

United States v. Hernandez-Becerra (amicus) – The Federal Defenders of San Diego appealed to the Ninth Circuit on behalf of Claudia Hernandez-Becerra, an 18-year-old person convicted of a misdemeanor for entering the United States without legal inspection. Since July 2018, people like Ms. Hernandez-Becerra have been subjected to Operation Streamline, in which they are given mass hearings and forced to decide quickly whether to take a plea bargain or go to trial. Most people in Operation Streamline come to court after being held in Border Patrol detention facilities known as "hieleras," or "iceboxes," in which they suffer sleep deprivation, extreme temperatures, food deprivation, and little or no medical care. In support of the appeal, we co-signed an amicus brief written by the New York School of Law Immigrants' Rights Clinic that was filed April 17, 2019. The brief argues that inhumane conditions of confinement severely impact the mental state of persons subjected to Operation Streamline and render their guilty pleas invalid without searching judicial inquiry.

Board of Immigration Appeals Amicus Invitation 18-06-27 (amicus) – When a state court grants post-conviction rehabilitative relief, such as withdrawal of a plea, expungement, or dismissal of charges because the defendant completed probation or other requirements, the conviction is not necessarily eliminated for immigration purposes and can still form the basis for deportation. In 2015, California adopted AB 1352, a bill co-sponsored by the ACLU, which acknowledged that the State's Deferred Entry of Judgment (DEJ) statute misinformed defendants that if they pled guilty and completed the DEJ program, there would be no adverse consequences to their plea, when in fact immigration consequences would still attach. AB 1352 created new Penal Code section 1203.43 to allow defendants who completed the DEJ program to withdraw their guilty pleas altogether because they were obtained based on inaccurate and legally insufficient

information. On June 27, 2018, the Board of Immigration Appeals solicited amicus briefs to address various questions regarding section 1203.43 and its impact in immigration proceedings, including whether it is preempted by federal law. In response, on July 25, the ACLU Foundation's Immigrants' Rights Project and ACLU Foundations in California filed a brief arguing the Board lacks authority to decide whether federal law preempts section 1203.43 and in any event federal law does not preempt the statute. (Bardis Vakili)

Usubakunov v. Barr (direct) – In October 2017, Mr. Usubakunov, his adult stepson and stepson's wife, and his 13-year-old son came to the United States to seek asylum after the political activities of his stepson led to threats and persecution. Rather than let them present their related cases together, DHS put them into separate proceedings, detaining Mr. Usubakunov in Otay Mesa, detaining his stepson and wife over 150 miles away in Adelanto, and sending his child to a facility in Chicago as part of DHS's family separation policy. He has since been released from detention and reunified with his son. We are representing Mr. Usubakunov in an appeal of his asylum denial, based on due process violations that are occurring with increasing frequency in removal proceedings. First, the immigration judge violated Mr. Usubakunov's right to counsel by denying a continuance of his asylum hearing so that the *pro bono* attorney he had found, who had a conflict that day, could appear on his behalf. Second, the immigration judge violated his right to present evidence on his behalf by failing to assist him in procuring the corroborating testimony of his adult stepson. With no lawyer and no corroborating witness, the judge found him not credible and denied his claim. Meanwhile, in a separate detention center in front of a separate immigration judge, his stepson was found credible and granted asylum. Together with Catholic Charities, we appealed to the Board of Immigration Appeals based on the due process violations in Mr. Usubakunov's case. After the BIA dismissed the appeal, we filed a petition for review in the Ninth Circuit. The American Immigration Council and Women's Refugee Commission submitted amicus briefs in support of our position. **After our reply on February 10, the case is fully briefed, and we are waiting for an argument date.** (Bardis Vakili)

Aleman Gonzalez v. Sessions (direct) – On March 27, 2018, the ACLU Foundations in California, together with Van Der Hout, Brigagliano & Nightingale, LLP, Centro Legal de la Raza, and the Law Offices of Matthew H. Green, filed suit in the Northern District of California to challenge prolonged detention without bond hearings for individuals who have been found to have a reasonable fear of persecution or torture if deported. The court granted our motions for a preliminary injunction and class certification, holding that all class members are entitled to bond hearings, after which the government appealed to the Ninth Circuit. The court heard oral argument on November 13, 2019, and we are waiting for a decision. (Bardis Vakili)

Regents of the University of California v. Department of Homeland Security (amicus) – The University of California and others sued the Trump administration challenging revocation of Deferred Action for Childhood Arrivals (DACA). The district court issued a nationwide injunction concerning DACA renewals, and the government appealed. The ACLU Foundations in California joined the ACLU Foundation Immigrants' Rights Project in an amicus brief supporting the plaintiffs. The Ninth Circuit affirmed the district court's injunction. The Supreme Court granted the government's petition to review the case on June 28, 2019. The Court heard argument on November 12. A decision is expected before the end of the Court's current term in June 2020. (Bardis Vakili)

Ms. L. v. Immigration and Customs Enforcement (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 seek asylum. After passing a credible fear interview, 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 ACLU Foundation Immigrants' Rights Project, we filed suit to end the forced separation of mother and daughter. We converted the case to a class action to prevent future separation of families seeking asylum, and 2,814 children in the original class have been identified as separated from their parents, and nearly all of them have been reunited with parents or placed according to parents' wishes. The court granted our motion to require reunification of parents separated from their children on or after July 1, 2017, after we learned the government did not include these children in its original tally, and required the government to identify all members of the expanded class. **As of March 4, 2020, the government identified 1,556 children who are potentially in the expanded class, and the ACLU and its steering committee for contacting impacted families reached 395 parents or their attorneys. The government has provided no contact information for 105 children's families and asserts that another 421 should be properly excluded from the class. We intend to contact these 421 to confirm whether they should be excluded. For nearly 600 additional children, the contact information provided did not result in reaching a parent, and we are considering other methods of outreach and have already established toll-free numbers in the U.S., Guatemala, Honduras, Mexico, and El Salvador. The ACLU has received 51 calls thus far and is following up. After we filed a motion to reunify more than 900 other children with their parents, the court largely ruled against us on January 13, 2020, holding that separated parents with "criminal histories" remain outside the class definition and the failure to reunify them did not violate the injunction. However, it also held that before separating a family based on "parentage concerns," the government must conduct a DNA test to confirm parentage. In a status report on March 4, the government stated it had separated 88 parents in FY 2020 and only conducted DNA testing "when available and appropriate." Citing cost and resource concerns, it claimed that separations may happen before DNA testing in certain cases. We are evaluating options to compel compliance with the court's order regarding DNA testing. Finally, the parties are negotiating protocols and procedures for the agencies to adopt to better track separated children and facilitate information-sharing among the various federal agencies involved.** (Bardis Vakili)

Thuraissigiam v. Department of Homeland Security (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, and 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 ACLU Foundation Immigrants' Rights Project, we filed a habeas petition on January 19, 2018 seeking to prevent his removal. The district court

dismissed the case for lack of jurisdiction. We appealed to the Ninth Circuit, in which our position was supported by amicus briefs from refugee and human rights organizations and scholars of immigration law and habeas corpus. The Ninth Circuit reversed the district court and held Mr. Thuraissigiam has a right to judicial review of the procedures leading to his expedited removal order. Given the length of Mr. Thuraissigiam's detention, we asked ICE to release him on humanitarian grounds, which it ignored. As a result, we filed a second habeas petition on June 11, 2019 seeking his release or at least a bond hearing. Shortly afterward, ICE released him to live with his sponsor while the case remains pending. Over our objection, the Supreme Court granted review of the Ninth Circuit's decision on October 18. **The case was argued in the Supreme Court on March 2, 2020. A decision is expected before the end of June.** (David Loy, Sarah Thompson)

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. 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. Mr. Gomez-Sanchez appealed to the Board of Immigration Appeals, which ruled against him, holding that "mental health is not a factor to be considered in a particularly serious crime analysis." With the ACLU Foundation of Southern California, we 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 court ruled in our favor, holding that mental health is a relevant factor that immigration courts must consider in deciding what is a "particularly serious crime," and later awarded attorney fees of $107,203.89. We continue to represent Mr. Gomez-Sanchez to complete his removal proceedings. **The next immigration court hearing is scheduled for May 21, 2020.** (Bardis Vakili, Monika Langarica)

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 can languish for months before they appear in immigration court and learn why they are incarcerated, how they can defend themselves, and whether they can seek release. With the current 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 suit on March 9, 2017 with Fish & Richardson P.C. and Law Offices of Leonard B. Simon P.C. seeking to represent a class of persons who have been confined for weeks or months without seeing a judge. After two rounds of briefing and an intervening Supreme Court decision, the court held it has jurisdiction over due process claims against prolonged detention without presentment to a judge. On June 11, 2019, the court denied the government's motion to dismiss on the merits, finding that plaintiffs stated claims for violation of their due process rights, but declined to decide our motion for class

certification that was filed at the same time as the complaint. **After a hearing on January 15, 2020, we are waiting for a decision on our motion to compel discovery.** (Bardis Vakili, Jonathan Markovitz, Kimberly Grano)

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 conceded 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 Foundation of Arizona, we filed suit in Arizona to compel DHS to search for and turn over those documents. Despite obstruction and delay by DHS, we succeeded in compelling the agency to produce thousands of pages of documents. The district court granted summary judgment in part and denied it in part, ordering the government to undertake additional searches and produce certain records. The government produced additional documents and filed a motion for reconsideration concerning disclosure of certain agents' names, which the court denied. The government appealed. The Ninth Circuit heard argument on May 16, 2019. The parties are now in mediation before the Circuit Mediation Office. (Mitra Ebadolahi, Sarah Thompson)

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 Foundation 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. The district court rejected Swartz's argument that the Constitution does not apply to his actions. Swartz appealed to the Ninth Circuit, which held the Fourth Amendment protected a Mexican citizen standing in Mexico against the use of unreasonable deadly force, and the complaint states a claim that the force used was excessive. The court found that on the facts alleged, the agent violated clearly established law and was not entitled to qualified immunity. Finally, the court rejected arguments that the agent could not be subject to a damages lawsuit for his actions. Swartz filed a petition for review the Supreme Court, which we opposed. In May 2019, the Supreme Court granted review in a parallel case from the Fifth Circuit, *Hernandez v. Mesa*, without taking action on the petition in this case. The ACLU filed an amicus brief in support of petitioner Jesus C. Hernandez on August 9, 2019. **The Supreme Court decided *Hernandez* on February 25, 2020, ruling 5-4 that federal law does not recognize a civil cause of action for cross-border killing. On March 2, 2020, the Court vacated the Ninth Circuit's decision in *Rodriguez* and remanded for consideration in light of *Hernandez*.** (Mitra Ebadolahi)

Olivas v. Whitford (direct) – On June 12, 2014, we filed a complaint and petition for writ of habeas corpus challenging the ongoing banishment of Oscar Olivas, who spent his life in the United States as U.S. born citizen. However, despite the government's repeated acknowledgment

of his citizenship for more than 40 years, he was barred from returning to the United States in 2011 because the government belatedly challenged his U.S. birth. As a result, Mr. Olivas was stranded in stateless exile in Mexico. After a bench trial, the district court held that Mr. Olivas bore the burden to prove his U.S. birth, notwithstanding his justifiable reliance on the government's prior determinations that he was a citizen. The court found Mr. Olivas did not meet his burden. 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 his longtime reliance on previous administrative findings that he was a citizen. The Ninth Circuit reversed, holding that that the district court erred in requiring Mr. Olivas to bear the burden of proof. After briefing and argument, the district court issued judgment in favor of Mr. Olivas on August 22, 2019, holding that excluding him from the United States "violates his constitutional rights as a natural-born U.S. citizen." **After the government appealed, it moved to vacate the district court's decision based on alleged newly discovered evidence. We are preparing our opposition to the motion, which is due April 13, 2020.** (Bardis Vakili)

ADVANCING JUSTICE

Police Practices

S.B. 1421 litigation (direct) – In 2018, the California Legislature passed Senate Bill 1421, a landmark law co-sponsored by the California ACLU affiliates that requires disclosure of certain records relating to police misconduct and use of force. Police unions opposed the bill, and once it took effect on January 1, 2019, they filed lawsuits against local governments throughout the state to undermine the law by arguing it does not apply to records created before that date. In Contra Costa, Los Angeles, San Diego, and San Francisco courts, the California ACLU affiliates and family members of victims of police violence intervened to defend S.B. 1421. In allowing us to intervene, the San Diego court prohibited us from asking for attorney fees if we won. On March 1, 2019, the San Diego court held that S.B. 1421 applies to all covered records regardless of when they were created. The unions did not appeal that ruling. Because of the public interest in protecting the right of community members to seek public records and deterring third parties from filing unfounded lawsuits to delay or prevent disclosure, we appealed the decision prohibiting us from seeking fees. In other cases, after we prevailed on the merits in Contra Costa, Los Angeles, and San Francisco, the unions appealed only from the Contra Costa decision, but the Court of Appeal rejected their position in a published opinion. On August 25, the City of San Diego finally disclosed records relating to the killing of Raul Rivera, the brother of our client Flora Rivera. On the attorney fee issue, our reply brief was filed December 12. Briefing is complete, and we are waiting for an argument date. (David Loy, Jonathan Markovitz)

Nehad v. Browder (amicus) – On April 30, 2015, San Diego police officer Neal Browder shot and killed Fridoon Nehad. Mr. Nehad was an immigrant from Afghanistan who had battled mental illness and post-traumatic stress disorder after serving in the Afghan army. Officer Browder responded to call about a disturbance involving Mr. Nehad. Mistakenly informed Mr. Nehad had a knife, Officer Browder killed Mr. Nehad within seconds of arriving at the scene. Mr. Nehad's family sued the officer and City of San Diego. The district court granted summary judgment in favor of the defendants, and the family appealed. The ACLU Foundations in California filed an amicus brief in the Ninth Circuit arguing that the district court's decision

should be reversed because it gave undue weight to the officer's claim of subjective fear in light of evidence showing the officer failed to issue any warning or consider any less deadly alternatives to protect Mr. Nehad and himself before opening fire. The Ninth Circuit agreed with our position and reversed the district court decision, remanding the case for trial. The court denied Defendants' petition for rehearing on October 2, 2019. **Defendants filed a petition for review by the Supreme Court on February 25, 2020.** (David Loy)

Rights of the Accused

Laurissa C. v. Superior Court (amicus) – Laurissa C. is a minor charged with attempted murder. The San Diego District Attorney wants to prosecute her as an adult, taking her out of the rehabilitative juvenile system and exposing her to a long prison sentence. In November 2016, after nearly two decades of allowing prosecutors the discretion to charge minors directly in adult court for certain crimes, the electorate adopted Proposition 57 to keep cases in juvenile court and "[s]top the revolving door of crime by emphasizing rehabilitation, especially for juveniles." Proposition 57 created a presumption that all minors are suitable for rehabilitation through juvenile court and placed the burden on the prosecution to prove that a minor should be charged as an adult. In deciding whether to transfer a minor to adult court, the juvenile court must consider factors such as the degree of criminal sophistication, prior history, success of prior attempts at rehabilitation, whether rehabilitation can be accomplished while the juvenile court still has jurisdiction, and the gravity and circumstances of the crime. Here, Laurissa had no prior delinquent history or failed attempts at rehabilitation. The unanimous recommendation of the experts, including the prosecution's own expert, was to keep her case in juvenile court. Nevertheless, the judge transferred Laurissa's case to adult court based solely on the gravity and circumstances of the alleged crime. The Court of Appeal summarily affirmed that decision, and Laurissa petitioned the California Supreme Court to review the case or transfer it for decision to the Court of Appeal. On December 27, 2019, we submitted an amicus letter arguing that the juvenile court's ruling is inconsistent with Proposition 57 because it misinterpreted and conflated the transfer factors and ignored evidence supporting rehabilitation. **On February 13, 2020, the court granted the petition and transferred the case to the Court of Appeal for decision on the merits. We anticipate filing an amicus brief at a later time.** (Bardis Vakili)

In re Humphrey (amicus) – In January 2018, the Court of Appeal held that equal protection and due process prohibit the state from detaining persons before trial simply because they cannot afford bail. To justify pretrial detention, the court must find that detention is necessary to serve the state's interests in protecting the public and ensuring a person's appearance in court, and in evaluating the amount of bail, the court must consider an individual's ability to pay. In response to requests for the California Supreme Court to review or depublish the decision, the ACLU Foundations in California submitted an amicus letter opposing review or depublication. After the court granted review, we filed an amicus brief on October 9, 2018. (David Loy)

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. The ACLU Foundations in California joined with the ACLU Foundation to file suit against the State of California, Governor Brown, and County of Fresno seeking an overhaul of the County's indigent defense system. The case is now in discovery. (David Loy)

DEFENDING CIVIL LIBERTIES

Freedom of Expression and Information

Guan v. Wolf (direct) – On multiple occasions in 2018 and 2019, journalists Bing Guan, Go Nakamura, Mark Abramson, Kitra Cahana, and Ariana Drehsler were tracked, detained, and interrogated by the Department of Homeland Security after reporting on conditions at the U.S.-Mexico border. Border officers targeted them for secondary screening, compelled them to disclose information about their sources and observations as journalists, and searched their photos and notes. Each was identified in a secret government database leaked to NBC San Diego in March 2019. The database contained their headshots and personal information, including name, date of birth, occupation, and whether they had already been interrogated. Three of the headshots were crossed out with a bold 'X.' A fourth, which was not crossed out, warned "Pending Encounter." On November 20, 2019, we filed suit with co-counsel at the ACLU Speech, Privacy, and Technology Project and New York Civil Liberties Union. Filed in the Eastern District of New York, home of two of the plaintiffs, the case alleges that the government violated the First Amendment by chilling journalists from reporting the news out of fear of being detained and questioned. **The government intends to file a motion to dismiss the case. The court ordered the parties to submit a proposed briefing schedule by March 6, 2020.**

Porter v. Gore (direct) – Susan Porter participated in regular weekly protests at the district office of Representative Darrell Issa in Vista. On October 17, 2017, deputy sheriffs arrived at the protest in response to neighborhood complaints. After the deputies arrived, Ms. Porter moved her car and beeped her horn in support of the protest. A deputy sheriff cited her for violating California Vehicle Code § 27001, which prohibits using a vehicle horn for any purpose except giving a warning or sounding a theft alarm. The citation was eventually dismissed when the deputy failed to appear in court. On June 11, 2018, with co-counsel Foley & Lardner LLP, we filed suit on behalf of Ms. Porter to challenge the statute, arguing that it violates the First Amendment by prohibiting nearly all use of a horn for expressive purposes. Denying motions to dismiss, the court held we state a claim that the statute violates the First Amendment as applied to political speech such as Ms. Porter's. **We filed motions to compel discovery from the defendants and await the court's decision. Otherwise, the parties have completed fact discovery and entered expert discovery.** (David Loy)

The Koala v. Khosla (direct) – University of California campuses collect student activity fees to fund a wide range of speech by registered 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. 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, 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 Ninth Circuit ruled in our favor on July 24, 2019, reversing the district court and holding we state claims under the First Amendment. The court denied UCSD's petition for rehearing on November 15. **While the appeal was pending, *The Koala*'s registration lapsed, but *The Koala* recently applied to re-register. Nonetheless, on January 7, 2020, UCSD moved to recall the Ninth Circuit's mandate and vacate the decision as moot. The Ninth Circuit denied the motion on February 14, holding the case is not moot because *The Koala* would become eligible for funding, but for the challenged disqualification, once it has completed the process of re-registration. UCSD must answer or otherwise respond to the complaint by March 13.** (David Loy)

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. Together with the ACLU Foundation 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. 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, 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. The case is now in discovery. Due to repeated obstruction by the government, we filed a motion to compel production of essential documents, which remains pending. (Mitra Ebadolahi, Sarah Thompson)

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. 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 Ninth Circuit reversed and held we state a claim that CBP's policy violates the First Amendment. Arnold & Porter Kaye Scholer LLP then joined as co-counsel. The case is in discovery. The court held a settlement conference on December 13, and negotiations are continuing. (Mitra Ebadolahi, Sarah Thompson)

Reproductive Justice

Chamorro v. Dignity Health (direct) – Rebecca Chamorro lives in Redding and was 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 ACLU Foundations in California, ACLU Foundation, and Covington & Burling filed suit on behalf of Ms. Chamorro and Physicians for Reproductive Health, arguing that it violates California law to withhold pregnancy-related care, including but not limited to tubal ligation, for other than medical reasons. The court denied Dignity Health's motion for summary judgment. **The case is scheduled for hearing May 18, 2020.** (David Loy)

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 we 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. (David Loy)

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, we 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. We continue to monitor compliance. (David Loy)