ACLU Michigan

LEGAL DOCKET
FALL 2018

The ACLU of Michigan's legal docket is published annually. This year's docket summarizes the cases with activity in 2017 and 2018.

IMMIGRANTS' RIGHTS

Iraqis Face Torture or Death if Deported. In June 2017 hundreds of Iraqis in Michigan and throughout the country were arrested by Immigration and Customs Enforcement (ICE), which intended to deport them immediately to Iraq, a country where many had not lived since they were young children. Most have been living in the United States for decades, but were previously ordered deported to Iraq—either for technical immigration violations or for previous criminal convictions. As a matter of policy, the United States has not deported people to Iraq because of dangerous country conditions, and because the Iraqi government has refused to issue travel documents. In March 2017, however, Iraq agreed to accept some U.S. deportees back into the country in exchange for being removed from President Trump's travel ban list. Suddenly, all of the 1400 Iraqis with an old removal order were targets. The ACLU filed a class action lawsuit in federal court to stop the deportations on the grounds that they would likely result in persecution, torture or even death for those deported, either because they are members of minority religions or because they are Western-affiliated. In July 2017 Judge Goldsmith granted a nationwide preliminary injunction barring deportation of Iraqis while they access the immigration court system, giving them time to file motions to reopen their immigration cases based on the changed country conditions or legal developments in the decades since their cases were decided. ICE did not, however, release the Iraqis, instead insisting on keeping them locked up for what could be years while they pursue immigration relief. In January 2018 Judge Goldsmith granted a second injunction ordering the Department of Homeland Security to provide the Iraqis with bond hearings, which allowed around 150 class members to return home to their families while they fight their immigration cases. Both injunctions are on appeal to the Sixth Circuit, which heard argument in April 2018. In the meantime, hundreds of Iraqis have been able to access the immigration court system, and many are winning their immigration cases. (*Hamama v. Adducci*; ACLU of Michigan Attorneys Miriam Aukerman, Bonsitu Kitaba-Gaviglio and Michael J. Steinberg, and Legal Fellows Juan Caballero and Monica Andrade; additional attorneys include Lee Gelernt, Judy Rabinowitz and Anand Balakrishnan of the National ACLU; ACLU of Michigan Cooperating Attorney Margo Schlanger of U-M Law School, Kimberly Scott, Wendy Richards, and Erika Giroux of Miller Canfield; David Johnson, Linda Goldberg and William Swor; and co-counsel Nadine Yousif and Nora Youkhana of CODE Legal Aid; Susan Reed and Ruby Robinson of the Michigan Immigrant Rights Center; and Mariko Hirose of the International Refugee Assistance Project.)

Donald Trump's Muslim Ban. When campaigning for president, Donald Trump called for a ban on Muslims entering the United States. In January 2017, one week after his inauguration, President Trump banned travel for immigrants from seven Muslim-majority countries and halted the refugee resettlement program. His executive order was almost immediately halted by federal courts in lawsuits filed across the country, including by Judge Victoria Roberts in Detroit who enjoined portions of the executive order that prevented lawful permanent residents from the barred countries from returning to the United States. The ACLU of Michigan, together with the Arab American Civil Rights League (ACRL), challenged the order on behalf of individuals whose families were separated due to the ban and on behalf of organizations whose work was impaired and members harmed, including ACRL, ACLU, the American Arab Chamber of Commerce, the Arab American and Chaldean Council, and the Arab American Studies

Association. The litigation in Michigan initially focused on the Trump administration's refusal to turn over key documents that the ACLU sought in discovery, with the administration claiming that the federal court was powerless to order production of presidential papers. In June 2017, before that issue could be decided, Judge Roberts stayed the case pending a decision on the constitutionality of the ban by the U.S. Supreme Court in other cases challenging the ban. In June 2018 the Supreme Court ruled that the lower courts erred in granting a preliminary injunction against the ban because they applied the wrong legal standard. We plan to amend our the complaint in the Michigan case and proceed under the standard set by the Supreme Court. (*Arab American Civil Rights League v. Trump*; ACLU Attorneys Miriam Aukerman, Dan Korobkin, and Michael J. Steinberg; Cooperating Attorneys Jason Raofield and Nishchay Maskay of Covington & Burling and Margo Schlanger and Samuel Bagenstos of U-M Law School; co-counsel Nabih Ayad, Rula Aoun, Kassem Dakhlallah, Mona Fadlallah, Ali Hammoud, and Natalie Qandah.)

Lawsuit For Muslim Ban Records. When President Trump announced his Muslim ban, chaos erupted at airports and border crossings nationwide. People flying home to their families were detained at airports, lawful permanent residents were stranded outside the country, and the government's interpretation of who was banned kept changing. After multiple federal courts across the country issued injunctions suspending the ban, reports surfaced that the government was flouting the court orders. In February 2017 the ACLU of Michigan, along with 49 other ACLU affiliates, filed Freedom of Information Act (FOIA) requests with local U.S. Customs and Border Protection (CBP) offices to expose how Trump administration officials interpreted and executed the president's Muslim ban at over 55 international airports across the country, acting in violation of federal courts that ordered a stay on the ban's implementation. We filed a second FOIA request a week later seeking similar information about implementation of the Muslim ban at Michigan's land border with Canada. In April 2017, after the government failed to respond to our FOIA requests, ACLU affiliates across the country, including in Michigan, brought 13 federal lawsuits to obtain the requested records. Under a production schedule set by Judge Judith Levy, CBP is now producing documents that paint a detailed picture of the chaos and cruelty of the ban. (*ACLU of Michigan v. U.S. Department of Homeland Security*; ACLU Attorneys Miriam Aukerman and Michael J. Steinberg and Legal Fellow Juan Caballero; Cooperating Attorneys Gabriel Bedoya, Andrew Pauwels, and Andrew Goddeeris of Honigman.)

Mass Detention of Asylum Seekers. In March 2018 the ACLU filed a class action lawsuit challenging the Trump administration's mass detention of asylum seekers fleeing persecution, torture, or death in their countries of origin. Ordinarily, immigrants who present themselves at the border, request asylum, and are determined during an initial interview to have a credible asylum claim are eligible for "parole" into the community while they wait for a hearing to determine their immigration status. But immigration field offices throughout the country, including in Detroit, stopped granting parole almost all cases and now detain nearly all immigrants seeking asylum. In July 2018 a federal judge in Washington, D.C. granted our motion for a preliminary injunction, ruling that the Fifth Amendment's Due Process Clause requires immigration judges to grant release on bond to immigrants who are not a flight risk or danger to public safety. (*Damus v. Nielsen;* National ACLU Attorneys include Judy Rabinovitz, Michael Tan and Stephen Kang; ACLU of Michigan Attorneys Michael J. Steinberg and Abril Valdes.)

Is All of Michigan a Warrantless Border Zone? Federal law permits United States Border Patrol officers to search vehicles without a warrant within a "reasonable distance" of the border, which outdated regulations define at 100 miles. Border Patrol, by treating the Great Lakes as an international boundary, considers the entire State of Michigan to be within the warrantless 100-mile zone. The ACLU of Michigan and coalition partners filed a Freedom of Information Act (FOIA) request for more information about these warrantless searches, but Border Patrol failed to respond. In November 2016 we sued in federal court to obtain the records. The records produced so far are heavily redacted, but nevertheless paint a disturbing picture: almost one in three people processed by Border Patrol are U.S. citizens, and almost 40% are U.S. citizens or foreigners who are legally present in the country; less than 2% of foreign citizens stopped are recorded as having a criminal record; and over 63% were first stopped by another agency, like local police, suggesting significant entanglement between local law enforcement and Border Patrol. Although CBP provided some information in response to our lawsuit, it redacted all geographic information from the records, making it impossible to determine where in Michigan CBP is operating and how far from the actual border the agency is conducting warrantless searches. We therefore filed a motion asking the court to order the records produced in unredacted form. In August 2018 Judge Mark Goldsmith heard oral argument, and we are awaiting a decision. (*Michigan Immigrant Rights Center v. U.S. Department of Homeland Security*; ACLU Attorneys Miriam Aukerman and Michael J. Steinberg and Legal Fellow Juan Caballero; Cooperating Attorneys Samuel Damren and Corey Wheaton of Dykema.)

Family Separation. In May 2018 Attorney General Jeff Sessions announced a new "zero tolerance" immigration policy that resulted in the forced separation of thousands of young children from their families when they crossed the border. The ACLU filed a federal lawsuit to stop family separation, and in June 2018 a federal judge issued a nationwide injunction, ordering the government to reunite all children with their parents. Three fathers from Central America who were separated from their toddlers at the Texas border after seeking asylum in the United States were transferred to Michigan to reunite with their children. One of the fathers had been sleeping on the floor of a cell alongside his 3-year-old son in a Texas detention center when he was awakened and told to leave the cell for processing; he did not see his son again for three months. In July 2018 the ACLU of Michigan represented two of the fathers in the reunification process and immigration court proceedings. They were reunited with their respective three-year-old sons and are now living with relatives in other states. (ACLU of Michigan Attorney Abril Valdes).

Immigration Agents Searching Greyhound Buses. The Greyhound bus company allows federal agents from Customs and Border Protection (CBP) to board its buses and ask passengers for their "papers" even when CBP has no warrant, no probable cause, and no specific person they're looking for. In January 2018 CBP boarded a Greyhound bus in Detroit, questioned two passengers about their immigration status, demanded that they produce documentation, and took one of them into custody. Similar incidents were reported throughout the country. When questioned about the incidents by the media, Greyhound claimed that it was required to cooperate with CBP. In March 2018 the ACLU of Michigan along with ACLU affiliates in nine other states wrote a letter to Greyhound explaining that, as a private company, it is not required to allow government agents to board its buses unless they have a warrant or probable cause. We urged Greyhound to assert its Fourth Amendment rights, and those of its passengers, to be free from unreasonable searches and seizures by government agents. ACLU volunteers also

distributed "know your rights" materials at the Greyhound bus station in Detroit to provide passengers with information about what to do if CBP boarded their bus. (ACLU of Michigan Attorneys Abril Valdes and Michael J. Steinberg, and Legal Fellow Monica Andrade.)

Immigrant Justice Partnership. President Trump has unleashed a deportation force, terrorizing immigrant communities and ripping families apart. Anecdotal reports suggest that immigration agents are engaging in widespread civil rights abuses, including racial profiling and illegal detentions. To document these abuses, identify systemic problems, and hold the government accountable, in February 2017 the ACLU and the Michigan Immigrant Rights Center (MIRC) created the Immigrant Justice Partnership (IJP). IJP sends trained lawyers to assist immigrants who have been arrested, offers Know Your Rights trainings to affected communities, and promotes city policies that welcome immigrants. In March 2018 we sponsored a habeas corpus training for attorneys who were interested in representing immigrants unjustly held in detention; the training was attended by more than 80 attorneys from throughout the state. In June 2018 we filed a complaint with the Department of Homeland Security regarding the lack of medical and mental health care provided to immigrants detained in the Detroit area. And in August 2018 we sent a letter to law enforcement agencies to clarify that, despite the Trump administration's recent decision to deny asylum to survivors of domestic violence in other countries, immigrants who are survivors of domestic violence in the United States remain eligible for legal protections and special visas. (ACLU Attorneys Abril Valdes, Miriam Aukerman and Michael J. Steinberg, and Legal Fellows Monica Andrade and Juan Caballero; MIRC Attorneys Susan Reed, Ruby Robinson, Anna Hill and Ana Devereaux.)

RACIAL JUSTICE

Discriminatory Tax Foreclosures. African Americans in Wayne County are suffering from a tax foreclosure crisis more severe than any this region has seen since the Great Depression. But unlike the Great Depression, thousands of homeowners today are at risk of losing their homes for taxes they never should have been required to pay in the first place. Even though taxes in Michigan must be based on the true cash value of a home, the City of Detroit failed to reduce the tax assessments to match the plummeting values following the Great Recession. Also, although homeowners who meet the federal poverty guidelines are excused from paying property taxes, Detroit's process for obtaining the poverty exemption is so convoluted that few people who qualify actually receive the benefit. These policies have a gross disparate impact on African American homeowners, who are ten times more likely to lose their homes than non-African Americans. In 2016 the ACLU of Michigan, NAACP Legal Defense and Educational Fund (LDF), and Covington & Burling law firm filed a lawsuit against the City of Detroit and the Wayne County Treasurer, asserting violations of the Fair Housing Act and due process. The judge ruled that the homeowners properly stated a claim against both Detroit and the county treasurer, but nonetheless dismissed the case against the county treasurer on jurisdictional grounds. In July 2018 we reached a historic settlement agreement with Detroit that has the potential to save the homes of thousands of low-income residents. Under the terms of the settlement, (1) those homeowners set to lose their homes to tax foreclosure in 2018, 2019 or 2020 who qualify for a poverty exemption can buy their homes back for $1000, to be paid, if necessary, in interest-free installments; (2) Detroit will create a streamlined, user-friendly poverty exemption application process; (3) Detroit will mail a notice to homeowners each year

about the existence of the poverty exemption and other programs for low-income homeowners; (4) Detroit will contribute $275,000 to the United Community Housing Coalition fund to help low-income homeowners in tax foreclosure buy their homes back; and (5) Detroit will pay damages to the named plaintiffs. (*MorningSide Community Organization v. Sabree*; attorneys include Michael J. Steinberg, Bonsitu Kitaba-Gaviglio, Dan Korobkin, Mark Fancher, and Brooke Tucker of the ACLU; Coty Montag and Ajmel Quereshi of LDF; and Shankar Duraiswamy, Amia Trigg, Donald Ridings, Wesley Wintermyer, Sarah Tremont, and Jason Grimes of Covington & Burling.)

Water Shutoffs in Detroit. In 2014 the Detroit Water and Sewage Department (DWSD) commenced the largest residential water shutoff in U.S. history and terminated water service to over 20,000 Detroit residents for lack of payment, without regard to residents' health needs or ability to pay. DWSD's internal documents revealed that due to its sloppy billing practices, it had not charged many customers for sewer service for several years. DWSD demanded a lump sum payment from its customers for those sewer charges which many of the city's impoverished residents could not afford to pay. Other documents also revealed that residential customers with delinquent accounts were frequently billed for charges incurred by previous tenants. Due to the lack of notice provided to these customers before the shutoffs, as well as the fact that DWSD's commercial customers with delinquent accounts were not similarly targeted for service termination, the ACLU and NAACP Legal Defense Fund (LDF) wrote a joint letter to DWSD in 2014 that outlined why the shutoffs violated the residents' constitutional rights to due process and equal protection. The ACLU and LDF then served as expert consultants in a lawsuit filed in bankruptcy court on behalf of civil rights organizations and residents without water that sought to restore water service to the city's residents and stop future shutoffs. In 2014 Bankruptcy Judge Steven Rhodes dismissed the lawsuit. On appeal, the ACLU of Michigan joined the legal team. Unfortunately, in 2016 the Sixth Circuit affirmed the dismissal of the case. Since that time, ACLU staff and volunteer attorneys have represented several individual water customers in administrative proceedings and have used their stories to make a case for a water affordability plan to the Board of Water Commissioners and recommend revisions to DWSD's shut-off policies and procedures. In June 2018, after media reports of plans to shut off the water of 17,000 households, we wrote letters to DWSD and the Detroit Health Department on behalf of a coalition of attorneys, warning that shutoffs on that scale can cause disease epidemics and create a public health emergency. (*Lyda v. City of Detroit*; ACLU Attorneys Kary Moss, Mark Fancher, Bonsitu Kitaba-Gaviglio and Brooke Tucker; Monique Lin-Luse and Veronica Joice of LDF; co-counsel Alice Jennings, Jerry Goldberg, Kurt Thornbladh, Julie Hurwitz, John Philo, Sofia Nelson, Lori Lutz, Desiree Ferguson, Lorray Brown, Hugh Davis, Cynthia Heenan, Marilyn Mullane, Anthony Adams, and Matthew Erard.)

Racially Hostile Work Environment in the Detroit Police Department. In January 2017 Detroit Police Chief James Craig was provided with the report of the Committee on Race and Equality (CORE), a special investigative committee he had established in response to complaints of discrimination within the department. The report found that high-ranking command staff had engaged in racial discrimination, intimidation, and retaliation, that the department had a "racial problem," and that racism was directed from command staff to the rank and file. Chief Craig rejected the findings of the report, however, and suspended CORE's work. Just days later, Johnnie Strickland, an African American police officer who had been with the department for ten years, was confronted, accosted, handcuffed and detained without cause by several white

officers. Officer Strickland was off-duty and inadvertently entered a suspected crime scene under investigation. Although Strickland identified himself as a police officer, one white officer continually screamed profanities in Strickland's face and sarcastically ridiculed his tenure on the police force, calling him "stupid," "dumb," and an "idiot." Another white officer purposely tightened handcuffs in order to cause injury, and still another conducted an unauthorized, unjustified K-9 search of Strickland's vehicle. In August 2018 the ACLU of Michigan filed a federal lawsuit on Officer Strickland's behalf, alleging racial discrimination, a racially hostile work environment, and retaliation. (*Strickland v. City of Detroit*; ACLU Attorneys Mark Fancher and Michael J. Steinberg; Cooperating Attorney Leonard Mungo.)

Wall Street's Predatory Mortgages in Detroit. In 2012 the ACLU filed a groundbreaking class action on behalf of African American Detroit homeowners against the Wall Street bank Morgan Stanley for its role in shaping the high-risk predatory loans that contributed to the foreclosure crisis and the collapse of once-vibrant Detroit neighborhoods. The ACLU represents five African American homeowners who are facing foreclosure due to the risky and abusive loan terms they received through the now-bankrupt subprime lender New Century. Between 2004 and 2007, Morgan Stanley purchased loans from New Century and, as its most significant customer, shaped New Century's lending irresponsible and destructive practices. By 2007, Detroit was number one of the hundred largest metropolitan areas with the highest foreclosure rates. Nearly 45,000 homes stood vacant by 2008, creating virtual wastelands in Detroit. Moreover, this devastation had a clear racial character: New Century's African American customers in the Detroit area were 70 percent more likely to get a subprime loan than white borrowers with similar financial characteristics. The lawsuit was the first of its kind, brought on behalf of homeowners, seeking to hold a Wall Street bank accountable under the Fair Housing Act for the devastation to communities of color. In 2013 Morgan Stanley's motion to dismiss the case was denied, allowing the ACLU to proceed with our claim under the Fair Housing Act. Unfortunately, in 2014 the trial judge denied the ACLU's motion to certify a class of approximately 6,000 African American homeowners in Detroit who obtained predatory New Century Mortgages. The Court of Appeals affirmed the class action ruling in July 2016, and the case was voluntarily dismissed in July 2017. (*Adkins v. Morgan Stanley*; attorneys include Brooke Tucker, Sarah Mehta and Michael J. Steinberg of the ACLU of Michigan; Larry Schwartztol, Dennis Parker and Rachel Goodman of the National ACLU; Stuart Rossman of the National Consumer Law Center; and Elizabeth Cabraser of Leif Cabraser.)

Housing Discrimination in Hamtramck. In 1971 legendary federal judge Damon Keith held that the City of Hamtramck had "intentionally planned and implemented a series of urban renewal projects and other government programs designed to remove a substantial portion of Black citizens from the city, in violation of plaintiffs' federal statutory and constitutional rights." The litigation that generated that ruling has had a long life span, and in 2017 the case found its way before the court again when some of Hamtramck's African American residents filed a motion requesting a court order enforcing a decades-old consent judgment in the case. In their motion, the residents complained that Hamtramck's current tax assessment practices are purposeful efforts to purge African American homeowners from the city. Specifically, they alleged that homes owned by black families have been assessed at elevated rates multiple times during an assessment cycle, making it unreasonably difficult for homeowners to satisfy resulting tax requirements. In February 2017 the ACLU of Michigan filed a friend-of-the-court brief pointing out that historically, taxation has been a convenient tool for placing a special burden on

minority populations—particularly when there are efforts to impact a city's racial demographics. We further argued that the alleged tax assessment practices in Hamtramck, if true, are consistent with a pattern of racial exclusion and discrimination occurring in other regions of the country. The residents' motion to enforce the consent judgment remains pending. (*Garrett v. City of Hamtramck*; ACLU Attorneys Mark Fancher and Michael J. Steinberg.)

Traffic Stop Quotas Create Racial Profiling Hazard. After a state trooper complained to the department of civil rights, the Michigan State Police issued a public statement in March 2016 admitting that troopers are evaluated in part on whether they make at least 70 percent of the collective average number of traffic stops made at the post to which they are assigned. In August 2016 the ACLU of Michigan wrote to the director of the Michigan State Police urging that this policy be terminated because of the risk that it would lead to racial profiling. Because of the policy, troopers with an insufficient number of stops facing imminent evaluation are more likely to target for groundless or arbitrary stops individuals whom they perceive to be powerless to effectively complain, which disproportionately includes people of color. Additionally, we inquired about whether troopers record the racial identities of drivers stopped, and whether there are procedures in place to monitor racial patterns of stops and to remedy practices that are racially discriminatory. In response to the ACLU's concerns, the Michigan State Police acknowledged that troopers have the capacity to record the racial identities of persons stopped, but it has been such an irregular practice that the agency lacks reliable information about the race of the drivers it stops. In January 2017 the law enforcement agency revised its policies to require that state troopers record the race of all drivers that they stop. Following the change in policy, we used Freedom of Information Act requests to obtain records reflecting the racial identities of drivers stopped. These records revealed disturbing racial patterns of stops made by certain members of a unit charged with the task of drug interdiction. In June 2018 we wrote to the Michigan State Police highlighting these problems and requesting that the agency engage the services of an expert qualified to determine whether the agency is engaged in racial profiling. (ACLU Attorney Mark Fancher.)

Police Failure to De-escalate. In September 2017 an Ann Arbor police officer unnecessarily grabbed and slapped handcuffs on Ciaeem Slaton, a 16-year-old African American student, at the Ann Arbor Transit Center. In response, concerned community members staged a protest about the incident and asked the ACLU of Michigan to investigate. After reviewing a video of the incident and the police report, we sent a letter to the Ann Arbor police department raising questions and concerns about whether the confrontation between Ciaeem and the officer could have been avoided altogether if the officer had proper de-escalation training. The letter requested that the department review its de-escalation and use-of-force policies in light of the incident. An Ann Arbor police official and the city attorney then met with the Washtenaw County ACLU Lawyers Committee to discuss the incident and explain the new policy and training on de-escalation techniques that the city was implementing. (ACLU Attorneys Mark Fancher and Michael J. Steinberg; Cooperating Attorneys John Shea, Nick Roumel, and Gayle Rosen.)

Felony Employment Exclusion. Isaac Calland was a longtime, respected employee of New Light Recovery Center in Detroit where he counseled substance abusers. In March 2017 the State of Michigan directed the recovery center to terminate Mr. Calland's employment because of a state law that prohibits anyone convicted of Medicaid fraud from working for a Medicaid

provider. As part of our work opposing overbroad felony employment bans due their unjustified disparate impact on people of color, the ACLU of Michigan investigated Mr. Calland's case and found that his only conviction was for unlawful receipt of food stamps, an offense that has nothing to do with Medicaid fraud. In April 2017 we wrote a letter to the state highlighting its error, and Mr. Calland was reinstated to his position. (ACLU Attorney Mark Fancher.)

EMU Students Protesting Racist Graffiti Threatened With Expulsion. In 2016 racial slurs were repeated spray-painted on Eastern Michigan University buildings and dorms, including statements promoting the KKK and calls for black students to leave the university. In the best American tradition, students of color and allies began to organize and demonstrate in a peaceful manner. One of the protests involved an evening sit-in in the student center, where the students chanted for a short period and then settled in to do homework and talk. When the student center closed, half the students left at the request of the campus police and the others stayed until morning without incident and then left. In response to this harmless protest against hate and intolerance, EMU singled out four African American students who helped organize the sit-in for expulsion proceedings. In November 2016 the ACLU of Michigan wrote a letter and engaged in other advocacy on behalf of the students. In February 2017 the university president agreed to drop the charges. (ACLU Attorneys Michael J. Steinberg and Mark Fancher.)

FREEDOM OF SPEECH

Flint Town Hall Arrests. In April 2017 the City of Flint invited members of the public to a town hall at House of Prayer Missionary Baptist Church to discuss the city's response to the continuing water crisis. Upon arrival, the public encountered several police officers and bodyguards who demanded that no hats be worn in the sanctuary as required by church rules and policy. Those who objected were denied entry into the public meeting, and some were arrested for complaining about the public meeting being held in a religious institution where religious rules were enforced by the police. In March 2018 the ACLU of Michigan filed suit against the city and its police for violations of the arrestees' constitutional rights. (*Palladeno v. City of Flint*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Michael J. Steinberg; Cooperating Attorneys Greg Gibbs, Muna Jondy, Glenn Simmington, Ann Gibbs, and Alec Gibbs.)

The Juggalos Are Not a Gang. In 2014 the ACLU of Michigan filed a federal lawsuit against the FBI for stigmatizing all fans of a popular hip hop and rap group as a "gang." Dedicated fans of the music group Insane Clown Posse (ICP) refer to themselves as "Juggalos," much like dedicated fans of the Grateful Dead are known as "Deadheads." Many Juggalos proudly display ICP logos and symbols on their clothing, jewelry, bumper stickers, and as tattoos. Based on a few isolated criminal incidents involving Juggalos, the federal government officially designated the Juggalos as a "gang." As a result, completely innocent Juggalos who are not involved in criminal activity are being harassed by police, denied employment, and otherwise stigmatized because of the clothing and tattoos that they use to identify themselves. In 2014 Judge Robert Cleland dismissed our case on standing grounds, but in 2015 the Sixth Circuit reversed, holding that Juggalos and ICP have suffered injury and therefore have standing to challenge the gang designation. In 2016 Judge Cleland dismissed the case a second time, holding that the Juggalos did not suffer "legal consequences" and therefore could not challenge the designation under the Administrative Procedures Act. We appealed, but unfortunately in December 2017 the Sixth

Circuit affirmed the dismissal of the case. Although the Juggalos did not win in court, the case was very successful in other ways, including raising public awareness about the absurdity of the gang designation, causing the FBI to admit to the court that only a "small number" of Juggalos were engaged in criminal activity, and putting local law enforcement agencies on notice that they can be sued for targeting Juggalos. (*Parsons v. U.S. Department of Justice*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Saura Sahu, Emily Palacios and Ray Fylstra of Miller Canfield; co-counsel Howard Hertz and Farris Haddad.)

Academic Freedom Threatened by Subpoena in Defamation Case. PubPeer.com is an online forum for scientific discussion and critique of published research. Many of its participants comment anonymously so that they need not fear professional retribution if they criticize the scholarship of their peers, colleagues and future potential employers. Based on that anonymity, PubPeer's users have highlighted problems with important research papers, often leading to corrections or retractions to the benefit of the scientific community. In 2014 a prominent scientist at Wayne State University filed a defamation lawsuit against anonymous commenters who had criticized his research on PubPeer's website. Using the court's subpoena power, he demanded that PubPeer disclose any information it had that could help identify the commenters. Since the days of the *Federalist Papers* and *Common Sense*, anonymous speech has been recognized as central to the free-speech tradition. Although truly defamatory speech is not protected by the First Amendment, negative opinions and rhetorical commentary are not defamatory and are entitled to First Amendment protection. The ACLU represented PubPeer in arguing that the website had a First Amendment right not to disclose the identity of its anonymous users because their speech was constitutionally protected. We filed a motion to quash the subpoena in December 2014. In March 2015 the Wayne County Circuit Court granted our motion in part, but ordered PubPeer to disclose identifying information about one of the online comments. Both sides appealed. In December 2016 the Michigan Court of Appeals ruled in PubPeer's favor, holding that the First Amendment protects the identity of the anonymous commenters from disclosure. In January 2017 Dr. Sarkar decided to drop his lawsuit. (*Sarkar v. Doe*; National ACLU Attorney Alex Abdo and Brennan Fellows Samia Hossain and Benjamin Good; ACLU of Michigan Attorney Dan Korobkin; co-counsel Nicholas Jollymore.)

"True Threats" Case. Under the First Amendment, the "true threats" doctrine holds that allegedly threatening speech cannot be punished unless the government can prove that the speaker meant to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual. In July 2016 racial tension over unjustified police violence against young black men was at an apex, when Alton Sterling and Philando Castile were fatally shot by police officers in Louisiana and Minnesota, respectively. In a moment of anger, an African American man named Nheru Littleton, a military veteran and factory worker in Detroit, posted the following statement on his Facebook page: "All lives won't matter until black lives matter! Kill all white cops!" When the police investigated, Mr. Littleton apologized, explained that he had been drinking when he posted the statement, and had no intent to harm anyone. Wayne County Prosecutor Kym Worthy declined to press charges, explaining that the statement was very offensive but was protected by the First Amendment. In a highly unusual move Attorney General Bill Schuette overruled Worthy and directed his office to prosecute Littleton for "terrorist threats," a felony offense that carries up to 20 years in prison. In February 2017 the ACLU of Michigan filed a friend-of-the-court brief in Wayne County Circuit Court in support of Littleton's motion to dismiss the criminal prosecution. We argued that although Mr. Littleton's

statement was offensive and upsetting, it was political speech and was not a "true threat." The judge disagreed and scheduled the case for trial. Littleton appealed, and in May 2017 we filed another friend-of-the-court brief in the Michigan Supreme Court. After receiving our brief, the Supreme Court put Littleton's trial on hold while it considered our First Amendment arguments. However, in October 2017 the Supreme Court declined to take further action on the case. Mr. Littleton pleaded guilty and was sentenced to ten months in jail. (*People v. Littleton*; ACLU Attorney Dan Korobkin.)

Jury Nullification Pamphlets. Jury nullification refers to the controversial decision of a jury to acquit a criminal defendant even when the evidence supports a conviction, typically when the jury believes that the law itself is unjust or being applied unjustly. Judges themselves do not inform juries about this power, and attorneys are not permitted to discuss it in the courtroom. However, there is nothing illegal about individual citizens and advocacy groups informing the general public about jury nullification through websites, pamphlets, and other forms of communication. In 2015 Keith Wood stood on a public sidewalk near a courthouse in Big Rapids offering pamphlets about jury nullification to passersby. Based on this conduct he was arrested, tried, and convicted of jury tampering, a crime that is typically prosecuted when an advocate attempts to influence individual jurors in a particular case. In April 2018 the ACLU of Michigan filed a friend-of-the-court brief in the Michigan Court of Appeals supporting Mr. Wood. Our brief argued that handing out informational pamphlets on a public sidewalk is entitled to the highest level of First Amendment protection, and the state has alternative ways to prevent jury tampering that are less restrictive of Mr. Wood's First Amendment rights. (*People v. Wood*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorney Gautam Hans of U-M Law School.)

Facebook Censorship in Newaygo County. Lori Shepler is an animal welfare advocate who opposes the practice of declawing cats and operates a website and Facebook page dedicated to that purpose. Cheryl McCloud operates a non-profit animal rescue shelter in Newaygo County. Shepler contacted McCloud, expressed her opposition to McCloud's practice of declawing cats, and posted references to McCloud's cat declawing activities on Facebook. There was no allegation that Shepler threatened McCloud or her animal shelter. But other persons, some of whom follow Shepler's web site and Facebook page, contacted McCloud and her associates, expressing their opposition to declawing cats, sometimes with inflammatory rhetoric. In December 2017 McCloud persuaded a judge in Newaygo County to issue a personal protection order prohibiting Shepler from continuing to post online about McCloud or her shelter. In March 2018 the ACLU of Michigan filed a friend-of-the-court brief in support of Shepler's motion to vacate the order, explaining that the First Amendment protects Shepler's speech, and the speech of others cannot justify censoring Shepler. The case settled. (*McCloud v. Shepler*; ACLU Attorney Miriam Aukerman; Cooperating Attorney Michael Nelson.)

Students Suspended for "Unapproved" Political Speech. Following the mass school shooting in Parkland, Florida in February 2018, hundreds of thousands of high school students across the country planned a nationwide walkout for 17 minutes in an effort to urge lawmakers to institute gun reform measures. In preparation for the walkout, the Utica Academy for International Studies (UAIS) created a set of rules dictating what students could say during their political protest. The rules required the students to stick to "pre-identified chants" as they marched outside the school, and any posters they wished to carry during their walkout would need to be

submitted to administrators for advance approval. Incredibly, the rules also provided that no "political messages" would be permitted. Several students who refused to be silenced by school administrators were suspended for peacefully participating in the walkout and holding up signs with political messages. In April 2018 the ACLU of Michigan wrote a letter to school demanding that the suspensions be rescinded because UAIS's rules against political speech during a demonstration were a blatant violation of the students' clearly established constitutional rights to express their opinions on the critically important issue of gun control. UAIS responded promptly stating that it had removed the suspensions from the students' permanent records, issued a public statement confirming its commitment to free speech rights of all its students, and promised to respect students' First Amendment rights in the future. (ACLU Attorneys Michael J. Steinberg and Bonsitu Kitaba-Gaviglio.)

Censorship of Classic Book on Racism. The 1952 book *Black Skin, White Masks* by Frantz Fanon is a political and psychological critique explaining the reason people of color sometimes experience feelings of dependency and inadequacy by virtue of living in colonial societies or countries dominated by white culture. Although the book is widely acclaimed and relevant today, the Michigan Department of Corrections (MDOC) has placed this classic on its banned book list, meaning that prisoners cannot obtain or read it. In April 2018 the ACLU of Michigan joined with the Thurgood Marshall Civil Rights Center at Howard Law School in writing a letter to the MDOC explaining how the censorship violates inmates' free speech rights and urging that the book be removed from the list of prohibited publications. (ACLU Legal Director Michael J. Steinberg; Professor Justin Hansford of Howard University Law School.)

Political Speech and Youth Curfews on the Detroit RiverWalk. The public walkway and parkland along the Detroit River in Detroit is managed by a private non-profit called the Detroit RiverFront Conservancy. However, until recently, the Conservancy was treating the land as private property. In 2013 the ACLU of Michigan wrote a letter explaining that because the Conservancy is performing a public function in running a public park, it is bound by the First Amendment. In response, the Conservancy allowed a peace and justice group called Women in Black to march and claimed that it would amend its policies. However, in 2015 the Conservancy denied several individuals and small groups the right to petition, walk with signs or gather on public grounds without a permit. Additionally, it instituted a year-round 6 p.m. curfew for anyone under 18 years old who was not accompanied by parents or guardians even though the general curfew for 16- and 17-year-olds in Detroit is generally 11 p.m. The ACLU wrote another demand letter and, in response, the Conservancy agreed to lift its general youth curfew and adopt better free speech policies. However, the Conservancy had still not removed the unconstitutional rules from its website by the summer of 2017. Following a meeting with representatives of the ACLU, the Conservancy posted the new free speech policies on its website, but has thus far insisted that it is going to enforce the youth curfew. (ACLU Attorneys Michael J. Steinberg and Bonsitu Kitaba-Gaviglio; Cooperating Attorneys Syeda Davidson and Ralph Simpson.)

RELIGIOUS FREEDOM

Religious Prisoners Deprived of Halal and Kosher Food. In 2013 the ACLU of Michigan won a class action lawsuit against the Michigan Department of Corrections (MDOC) on behalf

of Muslim prisoners whose meals did not comply with the halal requirements of Islam. Soon after this important religious freedom victory for Muslim inmates, we learned that MDOC had stopped ordering pre-packaged kosher meals for Jewish inmates. Instead, it adopted a "one size fits all" vegan diet that it claimed met the religious requirements of all religions. However, the vegan food is prepared in the same kitchen as non-kosher food and is served using the same utensils that are used for non-kosher food. This "cross-contamination" violates kosher laws. In 2016 the ACLU of Michigan and the MSU Civil Rights Clinic agreed to represent a Jewish prisoner who was challenging the denial of a kosher diet as a violation of his religious freedom. In March 2018 Judge Linda Parker denied MDOC's motion to dismiss and in August 2018 granted the prisoners' motion for class certification. (*Dowdy-El v. Caruso*; *Arnold v. Heyns*; ACLU Legal Director Michael J. Steinberg; Cooperating Attorney Daniel Quick of Dickinson Wright; MSU Civil Rights Clinic Director Daniel Manville.)

Legislative Prayer. The Jackson County Board of Commissioners opens its public meetings with an invocation delivered by one of its nine commissioners. The commissioners all deliver overtly Christian prayers, often in the name of Jesus Christ, and do not allow members of other faiths to lead the prayer. Citizens who attend the meetings have little choice but to participate, even if doing so violates their conscience. When Peter Bormuth rose during the public-comment period at a board meeting and asked the commission to alter its prayer practice, at least one commissioner turned his back on him. After Bormuth filed suit, arguing that this prayer practice violated the Establishment Clause, one of the commissioners publicly referred to him as a "nitwit." Another warned against allowing invited guests to give invocations for fear that they would express non-Christian religious beliefs. The trial court dismissed his lawsuit, a split panel of the Sixth Circuit reversed, and the full Sixth Circuit agreed to re-hear the case "en banc." In March 2017 the ACLU joined a friend-of-the-court brief filed in the Sixth Circuit, arguing that the Jackson County Commission's practice of opening all its meetings with exclusively Christian prayers violates the Establishment Clause. Unfortunately, in September 2017 the full Sixth Circuit ruled against Bormuth and upheld the commission's legislative prayer practice. In June 2018 the U.S. Supreme Court declined to review the case. (*Bormuth v. Jackson County*; ACLU of Michigan Attorneys Dan Korobkin and Michael J. Steinberg; National ACLU Attorneys Dan Mach and Heather Weaver; Richard Katskee and Bradley Girard of Americans United for Separation of Church and State.)

Only Christians May Own Homes in Northern Michigan Community. Bay View Association near Petoskey owns more than 300 acres of land on Lake Michigan with 30 public buildings, 450 cottages, and two inns. Under Michigan law, Bay View is a unit of government vested with governmental powers, including the power to levy and collect taxes, the power to deputize law enforcement officials, and the power to make and enforce civil and criminal laws. But Bay View allows only practicing Christians to own the cottages—thereby excluding Jews, Muslims and all those not active in a church. In February 2017 the ACLU of Michigan wrote to Bay View explaining that its discriminatory housing policy is unconstitutional and urged it, consistent with the will of the majority of Bay View residents, to open up home ownership to all. The Association refused and the residents sued. In April 2018 the ACLU filed a friend-of-the-court brief in support of the residents, explaining how the blatant discrimination at Bay View harkens back to a shameful period of housing discrimination in our country against Catholics, Jews and people of color. (*Bay View Chautauqua Inclusiveness Group v. Bay View Association*;

National ACLU Attorneys Heather Weaver and Daniel Mach; ACLU of Michigan Legal Director Michael J. Steinberg.)

Air Force JAG Officer's Right to Wear Hijab. Maysaa Ouza, as a daughter of immigrants in Dearborn, always knew she wanted to give back to her country. Upon graduating from law school, she applied for and was accepted into the competitive Air Force JAG Corps. However, she later learned that in order to enter basic training, she would have to remove her hijab, even though wearing the traditional Muslim head covering was a central tenet of her religion. In November 2017 the ACLU intervened on behalf of Lieutenant Ouza, arguing that the government did not have a compelling interest in preventing her from wearing the hijab. In response, the JAG Corps reversed its decision and granted a request for a religious accommodation to hear a hijab for basic training. In May 2018 she became the first Air Force JAG Corps officer authorized to wear hijab. (ACLU Attorneys Heather Weaver, Daniel Mach, Art Spitzer, and Michael J. Steinberg; Cooperating Attorney Kassem Dakhlallah.)

Bible Distribution to Public School Students. In March 2017 the ACLU of Michigan received a complaint that representatives of Gideons International were permitted to enter Union City Middle School to distribute bibles and "Life Books" with religious teachings to fifth grade students in their classrooms. Throughout the country, federal courts have consistently held that the distribution of Gideon Bibles in public school classrooms during school hours is unconstitutional because it is a governmental endorsement of religion in violation of the Establishment Clause of the First Amendment. The ACLU wrote a letter to the superintendent requesting that the school district immediately put an end to the practice. In response, the superintendent assured the ACLU that the practice would not continue. (ACLU Attorneys Michael J. Steinberg and Bonsitu Kitaba-Gaviglio.)

SEARCH AND SEIZURE

Supreme Court Victory in Cell Phone Tracking Case. In the age of smart phones, information that is automatically collected by cell phone towers has the potential to reveal an enormous amount of personal information about our whereabouts, including the types of doctors we see, how often we attend church, and whose houses we sleep in at night. In 2015 the ACLU led a coalition of public interest groups in filing a friend-of-the-court brief in the Sixth Circuit, arguing that such information should not be available to law enforcement unless it is obtained through a search warrant signed by a judge. In 2016 the Sixth Circuit issued a split decision rejecting our argument, holding that the government did not conduct a "search" for Fourth Amendment purposes when it obtained cell phone location information from wireless carriers, and therefore did not need a warrant. We then assumed direct representation of the defendant and asked the U.S. Supreme Court to take the case. In June 2018 the Supreme Court reversed, holding for the first time that citizens have a reasonable expectation of privacy in the data that tracks their cell phone location over time. This pathbreaking decision will finally help usher the Fourth Amendment into the 21st century. (*Carpenter v. United States*; ACLU of Michigan Attorneys Dan Korobkin and Michael J. Steinberg; National ACLU Attorneys Nathan Freed Wessler, Ben Wizner, Brett Kaufman, Cecillia Wang, Jennifer Granick, and David Cole; co-counsel Harold Gurewitz.)

Police Taking Photograph and Fingerprints Without Probable Cause. Keyon Harrison, an African American 16-year-old, was walking home from school when he saw another youth with a model truck and paused to look at it. Grand Rapids police, who later claimed that two youth looking at a toy truck is so suspicious that it justifies a police investigation, stopped Keyon, took his picture, and fingerprinted him. Even though Keyon did nothing more than admire a toy, his picture and fingerprints are now in a police database. The Grand Rapids police have used this "photograph and print" procedure on about 1000 people per year, many of whom are African American youth. Keyon and Denishio Johnson, another African American youth who was similarly printed and photographed, sued to end the practice. In 2016 the ACLU of Michigan filed a friend-of-the-court brief in the Michigan Court of Appeals arguing that allowing police to seize biometric data when no crime is committed is a dangerous erosion of the Fourth Amendment. In 2017 the Court of Appeals issued a decision holding that the City of Grand Rapids could not be held liable because its policy only allowed, but did not require, the police to take photographs and fingerprints—a decision that could make it much harder to hold municipalities accountable for civil rights violations in state court. We took over direct representation in the case and appealed to the Michigan Supreme Court. In July 2018 the Supreme Court issued a major decision on municipal liability in favor of our clients, holding that cities can be held liable for authorizing unconstitutional conduct by their employees. The case is now back before the Court of Appeals to decide whether police may seize biometric data like fingerprints without probable cause. (*Johnson v. VanderKooi*; ACLU Attorneys Miriam Aukerman, Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Margaret Hannon and Ted Becker and of U-M Law School.)

Police Arresting Innocent People for Trespassing. For years, the Grand Rapids Police Department has solicited business owners to sign "Letters of Intent to Prosecute Trespassers." These letters do not articulate a business owner's desire to keep a specific person off their property and are not directed at any particular person. Instead, police officers use these generalized letters to decide for themselves who does not "belong" on premises that are generally open to the public. In many cases, the police arrest people who have done nothing wrong, including patrons of the business. In 2013 the ACLU brought a federal lawsuit to challenge the use of these letters to make arrests without the individualized probable cause required by the Fourth Amendment. The plaintiffs include Jacob Manyong, who allegedly "trespassed" when his vehicle entered a business parking lot for several seconds as he pulled out of an adjacent public parking lot, and Kirk McConer, who was arrested for "trespassing" when he stopped to chat with a friend as he exited a store after buying a soda. An expert commissioned by the ACLU to analyze trespass incidents in Grand Rapids found that African Americans are more than twice as likely to be arrested for trespassing than whites. In addition to the federal case, the ACLU filed a friend-of-the court brief in the Michigan Court of Appeals on behalf of Demetrius Maggit, who had been unlawfully arrested under the same policy. In May 2017 the Michigan Court of Appeals agreed with the ACLU and held that the City's use of the letters was unconstitutional. In June 2017 Grand Rapids announced that they would no longer use the letters as a basis for trespass arrests. In the federal case, both parties filed motions for summary judgment in 2014 and we are awaiting a decision from Judge Paul Maloney. (*Hightower v. City of Grand Rapids*; *People v. Maggit*; ACLU of Michigan Attorneys Miriam Aukerman and Michael J. Steinberg, and Legal Fellow Marc Allen; National ACLU Attorney Jason Williamson; Cooperating Attorneys Julia Kelly, Bryan Waldman, and David Moran of U-M Law School.)

Forfeiture Reform. Police abuse of forfeiture laws are legend. For years, police in Michigan were able to confiscate cars for suspected "vice" activity based on only a "preponderance of the evidence" that a crime was committed. After intense lobbying efforts, the legislature strengthened due process protections by elevating the government's burden of proof to "clear and convincing evidence." However, in Wayne County, car forfeitures continued to be prosecuted under the more relaxed standard. We are providing direct representation on appeal to John Knoelk, a lifelong resident of Detroit, whose car was confiscated based on the accusation that he used it to pick up a prostitute. Mr. Knoelk was never arrested or charged with a crime, and at his forfeiture trial the primary evidence against him was the testimony of a police officer who saw a woman she "believed" to be a prostitute get into his car. At the end of the trial the judge said the government had proved its case by a preponderance, even though the law had been changed to require proof by clear and convincing evidence. The case is pending before the Michigan Court of Appeals. (*In re Forfeiture of 2006 Dodge Charger*; ACLU Attorney Dan Korobkin.)

Police Brutality in Taylor. In April 2016 white police officers in Taylor pulled over Calvin Jones, a 26-year-old African American man, purportedly for running a stop sign. Jones' wife and younger brother were also in the car at the time of the stop. During the encounter, the officers shattered Jones' window, violently wrestled him from his car, and held him in a dangerous chokehold until he blacked out. After his arrest, Mr. Jones was stripped to his underwear and detained for several hours in a cold holding cell. These events began when Jones demanded an explanation for the stop before he would produce his license and registration. Although the officers were not legally obligated to provide an explanation at the time of the stop, doing so is widely considered proper police procedure in order to avoid escalation and reduce tension. After learning of the incident, the ACLU of Michigan arranged for Jones' criminal defense, and his charges were dismissed. We also obtained disturbing dashboard camera footage of the entire episode. In May 2017 we filed an internal affairs complaint against the officers involved and publicly released the video footage. In August 2017 the internal affairs complaint concluded with no finding of fault on the part of the officers, but the department revised its policies to require its police officers to advise all drivers they pull over of the basis for the stop. In addition, the department has instituted mandatory officer training on appropriate demeanor during a traffic stop and how to avoid confrontational situations. Since that time we have continued to investigate abuses by the Taylor police. We have obtained highly disturbing video footage of the Taylor police engaging in abusive conduct toward two other persons in the holding cell. In one case it was necessary for us to sue to obtain access to the video. (*People v. Jones*; *ACLU of Michigan v. City of Taylor*; ACLU Attorneys Mark Fancher and Michael J. Steinberg; Cooperating Attorneys Robert Riley of Honigman, Victoria Burton-Harris, and John Shea.)

Lawsuits for Information About Multi-Agency Task Force Raids. The ACLU of Michigan has worked to expose and address Fourth Amendment abuses by inter-agency police task forces and police raids. In 2014 we learned that a task force involving the Highland Park police and federal immigration agents raided a late-night dance and music event in Detroit, resulting in numerous arrests, forfeitures and allegations of mental and physical abuse by law enforcement officers. When we sent the Highland Park Police Department a public records request in an attempt to learn more about the incident, they failed to provide the requested documents. Similarly, in 2015 we learned that another multijurisdictional task force operating in Hamtramck,

Ecorse and Highland Park was seizing people's cars for having invalid insurance, even when the cars' owners were victims of a fraudulent insurance scam and had no idea their insurance was invalid. The task force was reportedly snatching cars from people's driveways without a warrant and refusing to return the cars unless the owner paid hundreds of dollars in fees. We sent the Hamtramck Police Department a public records request in an attempt to learn more about the task force's operations, but our request was denied without explanation. Following these blatant violations of the Freedom of Information Act, we filed two separate lawsuits to obtain the requested records. In the Highland Park case, the court ruled in our favor in August 2016, but Highland Park filed an appeal, which remains pending. In the Hamtramck case, the case was settled in March 2017 after Hamtramck turned over the records we requested and agreed to pay our attorneys' fees. (*Steinberg v. City of Highland Park*; *ACLU of Michigan v. City of Hamtramck*; ACLU Attorney Dan Korobkin and Legal Fellow Linda Jordan; Cooperating Attorney Ralph Simpson.)

Police Shoot Dogs When Searching Home. In January 2016 Detroit police officers arrived at the home of Nikita Smith with a search warrant. Ms. Smith told the police that she owned three dogs and offered to put them in a separate room so they would not get in the way of the search. When the officers entered her home, they handcuffed Ms. Smith and immediately shot all three dogs to death. Smith sued the police for violating her Fourth Amendment rights when they killed her dogs without reason to believe they posed a threat, but the district court dismissed her lawsuit on the grounds that she did not have a "license" to keep the dogs under Michigan law. In October 2017 the ACLU of Michigan filed a friend-of-the-court brief in the Sixth Circuit explaining that the lower court improperly equated compliance with licensing requirements under state law with legitimate property interests under the Fourth Amendment. Property not properly licensed might be subject to lawful seizure, but the manner of that seizure must be reasonable because the owner still has a Fourth Amendment interest in the property. Shooting a dog when it poses no threat is not reasonable, regardless of whether the dogs are licensed. (*Smith v. City of Detroit*; ACLU Attorney Dan Korobkin; Cooperating Attorney David Moran of U-M Law School.)

Knock and Talk. When the police don't have enough evidence to get a search warrant, they sometimes employ a procedure they have nicknamed "knock and talk" to investigate further. Courts have ruled that a police officer has the same right as an everyday citizen (for example, a Girl Scout selling cookies) to visit your house, knock on your front door, and ask to speak with you. Unfortunately, abuses of the "knock and talk" technique are now rampant. In one case, when no one answered the front door, the police started walking around the property knocking on back doors and side doors until they spotted some marijuana through a window in the back of the house. In 2015 the ACLU of Michigan filed a friend-of-the-court brief in the Michigan Supreme Court, arguing that the police need a warrant before they roam around your back yard peering into your windows. In July 2016, however, the Supreme Court dismissed the appeal without deciding the issue. That same month we filed another friend-of-the-court brief in a similar case before the Michigan Supreme Court, arguing that a so-called "knock and talk" violates the Fourth Amendment when it is conducted in the middle of the night. In June 2017 the Michigan Supreme Court agreed with us and held that the police were trespassing, and therefore violating the Fourth Amendment, when they woke up suspects and their families in the middle of the night to interrogate them in their homes. (*People v. Radandt*; *People v. Frederick*; ACLU

Attorney Dan Korobkin; Cooperating Attorneys David Moran of U-M Law School and Christine Pagac; John Minock and Brad Hall of CDAM.)

LGBT RIGHTS

Funeral Home Director Fired for Being Transgender. Aimee Stephens worked as director of a Detroit-area funeral home for six years, responsible for preparing and embalming bodies. Although she is transgender, she initially hid her female appearance and identity from her employer during her employment, presenting as male. When Ms. Stephens informed her employer that she had been diagnosed with gender dysphoria and would begin presenting as female at work, she was fired. The ACLU of Michigan represented Ms. Stephens in filing a complaint with the Equal Employment Opportunity Commission (EEOC), arguing that the funeral home, by firing her for presenting as female, engaged in unlawful gender stereotyping in violation of Title VII of the Civil Rights Act. After investigating the case, the EEOC concluded that Ms. Stephens' employer had violated her rights under Title VII and in 2014 filed a lawsuit on her behalf in federal court. This case, along with another filed the same day in Florida, is the first time the EEOC has challenged discrimination against transgender employees under Title VII. The funeral home then retained counsel from the right-wing group Alliance Defending Freedom and, for the first time, asserted that it had a "religious freedom" right to fire Ms. Stephens. In 2016 Judge Sean Cox accepted the funeral home's religious freedom defense and granted summary judgment to the funeral home. Judge Cox ruled that the funeral home had violated the Civil Rights Act by firing Ms. Stephens, but that a separate federal law known as the Religious Freedom Restoration Act immunized the funeral home from liability. On appeal, the ACLU intervened on behalf of Ms. Stephens and participated in briefing and oral argument. In March 2018 the Sixth Circuit reversed the trial court's decision, holding that Title VII protects transgender employees from discrimination and that the funeral home owner's religious beliefs do not justify violating federal antidiscrimination law. In July 2018 the funeral home asked the U.S. Supreme Court to review the case. (*EEOC v. Harris Funeral Homes*; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin; National ACLU Attorneys John Knight, James Esseks, Gabriel Arkles and Brian Hauss.)

Discrimination by Foster Care and Adoption Agencies. In September 2017 the ACLU filed a federal lawsuit challenging Michigan's practice of permitting state-contracted child placement agencies to reject qualified same-sex couples based on the agencies' religious beliefs. The State of Michigan is responsible for approximately 13,000 children who are in the state's foster care system, usually because they were removed from their families due to abuse or neglect. Although the state is responsible for finding appropriate foster and adoptive families to care for these children, it has contracted out public adoption and foster care services to private agencies, which it pays with taxpayer dollars. Even though adoption and foster care placement is a public function, the state allows these publicly funded agencies to discriminate against same-sex couples based on the agencies' religious beliefs. This practice is not only unconstitutional, it denies innocent children in need of a home the opportunity to be placed with loving families who want to care for them. In March 2018 St. Vincent Catholic Charities and individuals affiliated with that organization were permitted to intervene on the side of the state. In July 2018 Judge Paul Borman heard argument on the defendants' motions to dismiss, and we are awaiting a decision. (*Dumont v. Lyon*; ACLU of Michigan Attorneys Jay Kaplan and Michael J. Steinberg;

National ACLU Attorneys Leslie Cooper and Dan Mach; Cooperating Attorneys Ann-Elizabeth Ostrager, Jason Schnier, Garrard Beeney, and Ryan Galisewski of Sullivan & Cromwell.)

Defending School District's LGBT-Friendly Policies. In November 2017 the school board in Williamston did the right thing by enacting policies that support the rights of LGBT students to be free from discrimination and bullying. A right-wing group representing a few parents then sued the school district, claiming that the LGBT-inclusive policies violate the religious liberty of Christian families who don't want their children to be exposed to "alternative sexual lifestyles." In March 2018 the ACLU filed a motion to intervene in the case on behalf of Stand with Trans, an organization that provides support to transgender youth and their families, and the Gay Straight Alliance student group at Williamston High School. We argued that the lawsuit should be dismissed, as LGBT students will be at risk for discrimination if school districts are not permitted to have LGBT-inclusive non-discrimination policies. (*Reynolds v. Talberg*; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin; National ACLU Attorneys Shayna Medley-Warsoff and John Knight; Cooperating Attorneys Deborah Kovsky-Apap and Matthew Lund of Pepper Hamilton.)

Insurance Coverage for Medically Necessary Health Care. Jasmine Glenn and Jamie O'Brien are transgender women who have insurance coverage through Michigan's Medicaid program, which contracts with private insurance companies, Priority Health and Meridian Health, to provide Medicaid services. As a result of the non-discrimination provisions of the Affordable Care Act, also known as Obamacare, both insurance companies initially approved coverage for vaginoplasty surgery, agreeing with Ms. Glenn and Ms. O'Brien's medical providers that this procedure was medically necessary. However, due to delays in scheduling the surgery, requests for pre-authorization of the surgical procedure had to be resubmitted. Priority and Meridian have now reversed course and are denying coverage for the procedure, not disputing its medical necessity, but pointing to new policies that now have blanket exclusions for gender confirmation surgeries for transgender beneficiaries. The ACLU of Michigan filed internal appeals with the insurance companies, which upheld the initial denials. We then filed for external review with the Department of Insurance and Financial Services (DIFS), the state insurance regulatory agency. DIFS upheld these denials in August 2018, and we are now seeking judicial review in the Kent County and Monroe County Circuit Courts. (*Glenn v. Department of Insurance & Financial Services*; *O'Brien v. Department of Insurance & Financial Services*; ACLU Attorney Jay Kaplan.)

Judge Refuses to Grant Legal Name Change. Sophia Lothamer, a transgender woman, filed a petition for a legal name change in Hillsdale County Circuit Court. She complied with all the requirements of Michigan's name change statute, including being fingerprinted, having a criminal background check, and publishing notice of her hearing in the local legal news. However, when she arrived at court for what should have been a routine hearing, Chief Judge Michael Smith refused to grant her petition for a legal name change, stating she would have to come back when she completed gender confirmation surgery, which is not required under Michigan law. In May 2018 the ACLU of Michigan sent a letter to Judge Smith explaining that he had no legal authority to impose a surgical requirement for a legal name change and doing so would be unconstitutional. In response Judge Smith ordered Ms. Lothamer's case reassigned to a different judge, stating in his order his "religious convictions" precluded him from granting her

relief. In June 2018 we represented her at a hearing before a different judge, and Ms. Lothamer was able to obtain her legal name change. (*In re Lothamer*; ACLU Attorney Jay Kaplan.)

Voir Dire on LGBT Bias. Before potential jurors can be selected for a trial, a question-and-answer process known as "voir dire" is used to test whether they can be impartial, unbiased, and don't have any conflicts of interest. In Wayne County, Jeffrey Six was put on trial for criminal financial fraud. As part of his defense he alleged that his former domestic partner, a man, was the one who actually engaged in the fraudulent transaction. Because this defense would require jurors to learn that he is gay, his attorneys requested that the jury voir dire include an inquiry into the jurors' attitudes regarding gay relationships. The judge denied the request and Mr. Six was convicted. In July 2018 we joined Lambda Legal in filing a friend-of-the-court brief in the Michigan Court of Appeals arguing that the right to a fair trial and an impartial jury requires voir dire regarding anti-gay bias when the fact of an LGBT relationship is inextricably bound up with the issues to be decided at trial. (*People v. Six*; ACLU Attorney Jay Kaplan; Ethan Rice, Richard Saenz, and Max Isaacs of Lambda Legal.)

Social Security Benefits for Legally Adopted Child. Before same-sex marriage was made legal in Michigan, unmarried same-sex couples often had difficulty jointly adopting children in Michigan. Some judges, however, allowed second-parent adoptions, where a non-biological parent joins with a biological parent to adopt a child they are raising together. T.J. McCant adopted in this way in 2005, receiving a valid order of adoption from a Shiawassee County judge. Later, McCant became disabled and applied for Social Security benefits that any disabled parent can receive to help raise his or her legal child. An administrative law judge in the Social Security Administration denied benefits, stating that McCant's adoption is invalid because unmarried couples are not permitted to jointly adopt children under Michigan law. The ACLU of Michigan represented McCant in appealing this decision to the Social Security Appeals Council in 2014. We argued that unmarried couples are allowed to adopt, and in any event once a valid adoption order is issued by a state judge, the child is entitled to the same benefits that would be due to a legally adopted child in any other family. In November 2014 the Appeals Council remanded the case to the local field office for reconsideration of its initial decision. In January 2018 an administrative law judge issued a decision in McCant's favor, awarding back benefits from 2011 through the present. (ACLU Attorney Jay Kaplan.)

Hormone Therapy for Transgender Prisoner. Josie Mills is a prisoner in the custody of the Michigan Department of Corrections (MDOC). Although classified by MDOC as male, she has identified as female since she was a child. Prior to her incarceration she was diagnosed with gender dysphoria and was prescribed estrogen. When Ms. Mills entered Michigan's prison system, however, her hormone therapy was abruptly terminated. MDOC's own doctors confirmed her gender dysphoria diagnosis, but MDOC refused to authorize continued female hormone therapy for Ms. Mills even though that is the widely accepted standard treatment for gender dysphoria within the medical community. This failure to provide appropriate treatment took a serious toll on Ms. Mills' medical and mental health, and in 2015 she castrated herself in prison and was hospitalized for several days. Even after this terrible incident, MDOC continued to refuse estrogen treatment, at one point even offering testosterone therapy instead, which is clearly contrary to accepted medical standards. Beginning in January 2016 the ACLU of Michigan began advocating on Ms. Mills's behalf, urging MDOC to undertake a comprehensive review and reconsideration of its treatment of Ms. Mills. MDOC responded by eventually

reversing its position, and Ms. Mills was able to begin female hormone therapy in August 2016. In June 2017 MDOC issued a new policy improving transgender health care. Under the new policy, hormone therapy may be made available to prisoners based on an evaluation by an MDOC medical team with expertise in gender dysphoria, and Ms. Mills was able to have her estrogen dosage increased to levels appropriate to her female gender identity. (ACLU Staff Attorney Jay Kaplan.)

Transgender Athlete on the Girls' Track Team. Justice Prins is a middle school student in the Western School District in Parma. In 2016 her parents requested that she be able to run on the girls' cross country track team. The school district refused, stating that because she is transgender she would have an unfair competitive advantage on the track team. In April 2017 the ACLU of Michigan sent a letter to the district explaining that according to medical and scientific experts Justice would not have an unfair advantage, and warning that excluding Justice from the girls' track team violates her rights under Title IX of the Civil Rights Act and the Equal Protection Clause of the Constitution. The district responded in July 2017 by amending its policy to require consideration of medical information when making decisions regarding transgender student participation in gender segregated sports. Under the new policy, Justice was able to run with the girls' team in the Fall 2017 season. (ACLU Attorney Jay Kaplan.)

WOMEN'S RIGHTS

Discriminatory Health Care. In December 2016 we joined a friend-of-the-court brief defending the Affordable Care Act (ACA), otherwise known as Obamacare. The ACA contains a provision that prohibits healthcare providers who receive federal funds from discriminating against patients because they seek reproductive care or because they are transgender. A group of religiously affiliated healthcare organizations, including a healthcare center in Alma, Michigan, is suing the federal government to challenge this provision. The healthcare organizations claim that the anti-discrimination provision of ACA is itself discriminatory because it violates their religious beliefs. In our brief, the ACLU argued that everyone is entitled to their religious beliefs, but healthcare providers who receive federal funds are not entitled to discriminate against patients. In August 2017 the case was stayed while the Trump Administration considers whether and how it intends to enforce the antidiscrimination provisions at issue. (*Religious Sisters of Mercy v. Burwell*; ACLU of Michigan Attorneys Michael J. Steinberg, Dan Korobkin, and Jay Kaplan; National ACLU Attorneys Brian Hauss, Louise Melling, Brigitte Amiri, Josh Block, James Esseks, and Dan Mach.)

Hospital Policy Banning Tubal Sterilizations Based on Religion. Jessica Mann is a woman with a life-threatening brain tumor. In 2015 Ms. Mann was scheduled to give birth by caesarean section delivery at Genesys Hospital in Grand Blanc. Ms. Mann's doctors advised her also to undergo tubal ligation/sterilization at the time of her delivery because another pregnancy would increase the risks to her posed by her tumor, as would forcing her to undergo an additional procedure after the delivery. Tubal sterilization is the most common form of permanent birth control in the world, and it is most safely administered during a C-section. However, because Genesys is a Catholic-affiliated hospital, its policies are driven by religious directives rather than what is safest and medically appropriate for women. Due to Genesys's ban on this medical procedure, women who give birth at this hospital may now be forced to wait until they are healed

from their C-section and then find another facility where they will undergo a second surgery that involves more risks and more healing time. In Ms. Mann's case, she was forced to switch hospitals to a new doctor—one who has no relationship with her and no experience treating her serious medical condition—with less than a month left in her pregnancy. In 2014 the ACLU of Michigan wrote to the Michigan Department of Licensing and Regulatory Affairs urging state authorities to take action against Genesys because its policy violates the standard of care required of licensed health care providers under state and federal law. In June 2016 state officials informed us that they would not take enforcement action. In October 2016 the ACLU filed an administrative complaint on Ms. Mann's behalf with the Office for Civil Rights of the U.S. Department of Health and Human Services. Following the change in presidential administration, however, we voluntarily withdrew the complaint in February 2017. (ACLU of Michigan Attorneys Brooke Tucker and Dan Korobkin; National ACLU Attorneys Julia Kay and Brigitte Amiri.)

Sex Discrimination Against Championship Wrestler. Marina Goocher, a national champion college wrestler, is banned from competing in her sport because she is a woman. Ms. Goocher is the only female member of the University of Michigan-Dearborn's club wrestling team. Although she competed successfully against male wresters throughout high school, the National Collegiate Wrestling Association (NCWA) refuses to allow women to wrestle men. Because there are no other women on her team and no other women wrestlers in the entire Midwest conference, NCWA rules say she must sit out the entire regular season. The only time she can wrestle women is the national championships at the end of the season—a tournament she won her freshman, sophomore and junior years. In October 2017 the ACLU joined with the National Women's Law Center and the Women's Sports Foundation in writing a letter urging the NCWA to change its rules so that Ms. Goocher and other women in her situation can compete against men during the regular season. Our letter explained that the rule deprives women of an equal opportunity to wrestle which is both discriminatory and exposes public universities that participate in the NCWA to liability. Unfortunately, NCWA responded by blaming Ms. Goocher for not recruiting enough women to her team so that she could compete and suggesting that she travel hundreds of miles on her own dime to compete in non-NCWA tournaments. (ACLU of Michigan Attorneys Bonsitu Kitaba-Gaviglio and Michael J. Steinberg; National ACLU Attorneys Galen Sherwin and Lenora Lapidus; Neena Chaudhry of the National Women's Law Center; Deborah Slaner Larkin of the Women's Sports Foundation.)

PRISONERS' RIGHTS

Kids Sentenced To Die in Prison. The United States is the only country in the world that sentences juveniles to life in prison without the possibility of parole. This inhumane practice is condemned throughout the world and is prohibited by international law. Yet, in Michigan, there are over 360 prisoners who were sentenced to life without parole for offenses committed before the age of 18, including some who were as young as 14. These cases even include individuals who did not actually commit the homicide, but were convicted as an aider-and-abettor or under the "felony murder" doctrine. In 2011 the ACLU filed a class-action lawsuit in federal court challenging the practice as unconstitutional cruel and unusual punishment. In 2012 the U.S. Supreme Court ruled in *Miller v. Alabama* that mandatory laws that impose automatic life-without-parole punishments on juveniles are unconstitutional. In Michigan, however, the state

refused to apply the *Miller* ruling to juveniles who are already in prison, insisting that they are not entitled to resentencing and must never even have their cases reviewed by a parole board. In 2013 Judge John Corbett O'Meara agreed with the ACLU and ruled that all juveniles serving mandatory life sentences must be given parole hearings. The state appealed. While the appeal was pending, the U.S. Supreme Court ruled in *Montgomery v. Louisiana* that its *Miller* ruling was retroactive. The *Montgomery* decision triggered into effect a new law that been passed by the Michigan legislature in anticipation that *Miller* might be declared retroactive. The new law provided for retroactive resentencings that would allow some youth to be resentenced to life without the possibility of parole, and set a harsh mandatory sentencing range for everyone else. In light of these new developments, in December 2017 the Sixth Circuit ruled that we could no longer bring a categorical challenge to all life-without-parole sentences. However, in April 2018 Judge Mark Goldsmith ruled that the new law's harsh sentencing regime was an unconstitutional ex post facto law because it retroactively took away good-time credits that hundreds of class members had earned while serving their unconstitutional life sentences. In August 2018 the Sixth Circuit affirmed Judge Goldsmith's ruling, which will give hundreds of prisoners an earlier opportunity for release and will save taxpayers millions of dollars. (*Hill v. Snyder*; ACLU of Michigan Attorneys Dan Korobkin and Michael J. Steinberg; National ACLU Attorneys Steven Watt, Ezekiel Edwards and Brandon Buskey; co-counsel Deborah LaBelle and Ron Reosti.)

Mistreatment of Women at the Muskegon County Jail. At the Muskegon County Jail, male guards have routinely viewed naked or partially naked female inmates while they are showering, dressing, or using the toilet; the women have been denied feminine hygiene products, so that they bleed into their clothes; and female prisoners have rarely if ever been allowed any exercise outside of their cells. After attempting for almost two years to work with Muskegon County to resolve these systemic problems, in 2014 the ACLU of Michigan filed a federal class action lawsuit to bring the jail into compliance with constitutional standards. Judge Janet Neff denied the jail's motion to dismiss the women's cross-gender viewing and exercise claims; she ruled against the women on the feminine hygiene claim, but that issue was appealed. In July 2017 we reached a settlement involving for damages, attorneys' fees, and policy reforms. Jail guards must now announce themselves before entering housing units of the opposite sex, and the entry of male staff and trustees into female housing units will be limited (such as not during shower times); feminine hygiene products will regularly be distributed at the same time as medication; women will be able to request gym access; and cell lock-downs will be limited to 15 hours. (*Semelbauer v. Muskegon County*; ACLU Attorneys Miriam Aukerman, Dan Korobkin and Michael J. Steinberg, and Legal Fellows Marc Allen, Juan Caballero and Sofia Nelson; Cooperating Attorneys Stephen Drew, Adam Sturdivant and Robika Garner of Drew, Cooper & Anding, and Kevin Carlson.)

Retaliation for Reporting Abuse and Neglect. Sharee Miller, a prisoner at Huron Valley Women's Prison, was fired from her job at the prison for seeking help for mentally ill women prisoners who were being abused and neglected by the guards. Ms. Miller's job at the prison was to keep watch over prisoners who were at risk of suicide or self-harm. On multiple occasions she saw guards abuse mentally ill women by leaving them hogtied and naked for hours, depriving them of water, and refusing to advise medical authorities even when a prisoner was foaming at the mouth. Ms. Miller's internal complaints within the prison were ignored, so she ultimately alerted outside organizations such as the Department of Justice and advocacy

groups. When she did so, she was punished for violating "confidentiality" rules. In 2015 the ACLU of Michigan filed a lawsuit to prevent the prison from punishing prisoners who report abuse and neglect. In March 2017 Judge Sean Cox denied the state's motion to dismiss, allowing the case to proceed. In June 2018 the state filed a motion for summary judgment, and oral argument is scheduled for October. (*Miller v. Stewart*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Daniel Quick, Jerome Crawford, Chelsea Smialek, Kathleen Cieslik, Emily Turbiak, and Alma Sobo of Dickinson Wright.)

Secret Video of Prisoner's Death. In 2016 a Michigan prisoner named Dustin Szot died under suspicious circumstances. He was allegedly involved in an altercation with another inmate, and prison guards shocked him with a Taser. Spencer Woodman, an independent journalist who reports nationally on criminal justice issues, learned that the entire incident was captured on video and requested a copy of the footage under the Freedom of Information Act (FOIA). The Michigan Department of Corrections (MDOC) refused to release the video, claiming that its disclosure would somehow undermine prison security. In April 2017 the ACLU of Michigan filed a lawsuit on Woodman's behalf, arguing that the state had no legitimate justification for keeping the video secret. During discovery, we learned that the MDOC staff has a policy of automatically denying all FOIA requests for videos, without even viewing the video in question to determine whether or how its disclosure would threaten security. In August 2018 Court of Claims Judge Cynthia Stephens ruled that MDOC's policy was illegal and ordered the state to provide her with the videos for an in-chambers review. She also ordered the state to immediately release any audio that accompanied the video. (*Woodman v. Michigan Department of Corrections*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Robert Riley, Marie Greenman, and Olivia Vizachero of Honigman.)

"Postcard-Only" Mail Policies. In a disturbing new trend that has been sweeping the country, some jails are prohibiting inmates from sending or receiving any mail unless it is written on one side of a small postcard. Although most jails say they are trying to prevent contraband, few have documented any serious contraband problems with the mail system because they are already allowed to open and search all envelopes and packages that enter or exit the jail. Such severe restrictions on inmates' ability to communicate with their families and loved ones is also counterproductive to public safety since studies have shown that prisoners are less likely to re-offend when they are able to maintain close ties with families and other support networks in the community. In 2012 the ACLU of Michigan filed a friend-of-the-court brief in a federal lawsuit challenging several restrictive mail policies at the Livingston County Jail, including its postcard-only policy. In 2014 we filed our own lawsuit because the Livingston County Jail refused to deliver the ACLU's legal mail. In September 2016 we reached a settlement that required the jail to fix its policies on legal mail and pay our attorneys' fees. In May 2017 the non-ACLU case settled and several reforms were made, but the postcard-only policy was not eliminated. (*Prison Legal News v. Bezotte*; *ACLU Fund of Michigan v. Livingston County*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Tara Mahoney and John Rolecki of Honigman, and Nakisha Chaney.)

Prisoners Excluded From Civil Rights Act. A civil rights lawsuit was filed in state court on behalf of young men who had been sent to adult prisons in Michigan when they were under the age of 18 and were sexually assaulted by adult male prisoners and female prison guards. The state moved to dismiss the case, arguing that prisoners are not protected by Michigan's civil

rights law, known as the Elliott-Larsen Civil Rights Act (ELCRA), because in 1999 the Michigan legislature amended ELCRA to specifically remove prisoners from the protections of that law. The trial court denied the state's motion to dismiss because the 1999 amendment had been struck down as unconstitutional in an earlier case, and the state had not appealed that ruling. The Michigan Court of Appeals reversed by a vote of 2-1, holding that the state was not bound by the earlier ruling and the 1999 amendment to ELCRA was not unconstitutional. In February 2016 the ACLU of Michigan helped lead a coalition of ten civil rights organizations in filing a friend-of-the-court brief in the Michigan Supreme Court, urging review and reversal of the Court of Appeals' decision. We argued that targeting an unpopular group of people (in this case, prisoners) for removal from the general coverage of our state's civil rights laws was unconstitutional and dangerous. We also argued that once a law is struck down as unconstitutional and that ruling becomes final, the state is bound by that ruling if it participated in the previous case. In March 2016 the Michigan Supreme Court decided the appeal on other grounds, but vacated the parts of the Court of Appeals' decision that we challenged in our brief. In March 2018 a different panel of the Court of Appeals adopted the dissenting opinion from the prior panel's decision, ruling that the exclusion of prisoners from ELCRA was unconstitutional. (*Doe v. Department of Corrections*; ACLU Attorney Dan Korobkin; Cooperating Attorney Rick Hills of NYU Law School.)

DISABILITY RIGHTS

Supreme Court Victory for Five-Year-Old's Right To Bring Service Dog to School. In a sweeping decision that should tear down barriers to justice for students with disabilities across the country, the ACLU of Michigan won a unanimous victory in the U.S. Supreme Court on behalf of Ehlena Fry, a young girl with cerebral palsy who was barred from bringing her service dog to school. Because of her disability, Ehlena needs assistance with many of her daily tasks. Thanks in part to the contributions of parents at Ehlena's elementary school, Ehlena's family raised $13,000 to acquire a trained, hypoallergenic service dog named Wonder. Wonder performed several tasks for Ehlena, assisted her with balance and mobility, and facilitated her independence. Nonetheless, her school district refused to allow Wonder in the school. The ACLU of Michigan initially negotiated an agreement with the district to allow Ehlena to bring Wonder to school on a trial period for a couple of months; however, the district required Wonder to sit in the back of the classroom away from Ehlena and was not allowed to accompany Ehlena to recess, lunch, library time, and other activities. The ACLU then filed a complaint with the U.S. Department of Education's Office for Civil Rights, which ruled that the school district violated Ehlena's rights under the Americans with Disabilities Act. Ehlena's family ultimately made the difficult decision to transfer to a new school where Wonder would be welcome. In 2012 the ACLU filed a federal lawsuit against her former school district. Judge Lawrence Zatkoff dismissed the case, reasoning that the Frys could not bring a lawsuit because they did not first exhaust administrative remedies, and in 2015 the Sixth Circuit affirmed. The Supreme Court agreed to hear our appeal, and in February 2017 the Supreme Court reversed, ruling 8-0 in favor of Ehlena. The case has been remanded to the trial court for further proceedings. In August 2018 Judge Sean Cox denied both parties' motions for summary judgment and referred the case to mediation. (*Fry v. Napoleon Community Schools*; Cooperating Attorney Samuel Bagenstos of U-M Law School; ACLU of Michigan Legal Director Michael J. Steinberg; National ACLU Attorneys Susan Mizner and Claudia Center; Cooperating Attorneys Peter

Kellett, James Hermon, Jill Wheaton and Brandon Blazo of Dykema, and Gayle Rosen and Denise Heberle.)

Seven-Year-Old Handcuffed at School. In 2015 a Flint police officer assigned to work at an elementary school handcuffed Cameron McCadden, a seven-year-old child with a disability, when he did not immediately respond to the officer's instruction. Cameron was not a threat to himself or others and was handcuffed for nearly an hour solely on account of his disability-related behavior. The ACLU made extensive attempts to work with Flint to enact policy changes to ensure that no other schoolchildren with disabilities were subjected to abusive treatment Cameron experienced, and we established an alliance with community groups calling for police officers to withdraw from elementary schools. In July 2018, after negotiations with the city proved unsuccessful, we filed a federal lawsuit against the City of Flint and the local chamber of commerce that operated the after-school program where the handcuffing occurred. (*McCadden v. City of Flint*; ACLU of Michigan Attorneys Mark Fancher and Michael J. Steinberg; Cooperating Attorneys Jonathan Marko, Mark Finnegan and Denise Heberle; National ACLU Attorneys Susan Mizner and Claudia Center.)

Lawsuit for Special Education Records. Ever since the State of Michigan created the controversial Education Achievement Authority (EAA) to take over failing schools in Detroit, there have been complaints that students with disabilities are not receiving adequate special education services. The EAA outsourced special education services to a for-profit company called Futures Education of Michigan, paying the company millions of taxpayer dollars to serve our most vulnerable children. Details regarding this private company's actual services, however, remained elusive. After the EAA failed to provide public records regarding its contract with and oversight over Futures, the ACLU of Michigan filed a lawsuit under the Freedom of Information Act in 2015 to obtain the documents. The EAA failed to respond to the lawsuit, and in July 2015 a judge ordered the EAA to turn over the requested records. Only some of the requested records were produced, however, and the litigation continued. In April 2017 the court ruled again in the ACLU's favor, ordered the EAA to turn over additional documents, and awarded the ACLU attorneys' fees. (*Tolbert v. Michigan Education Achievement Authority*; Cooperating Attorney Ralph Simpson.)

Parents With Disabilities. In October 2016 we joined the National Disability Rights Network, the Arc Michigan and the Arc of the United States in filing a friend-of-the-court brief in the Michigan Supreme Court in a case the involves the termination of parental rights where the parent is known to have a cognitive or developmental disability. When the state takes custody of a child, it cannot permanently terminate a parent's legal rights without first making reasonable efforts to safely reunify the family by developing a case "service plan" for the parent to follow. In this case, a mother made the painful decision to relinquish her children into foster care after her family support system fell apart, leaving her homeless and overwhelmed. The mother was also cognitively impaired, and she received a full diagnosis along with recommendations for specialized services with an organization that help parents with such disabilities. However, the Michigan Department of Health and Human Services (DHHS) refused to follow these recommendations and demanded that the mother follow a standard service plan that failed to take into consideration her disability. When the mother failed to show improvement in the standard service plan, the trial court terminated her parental rights. On appeal, we argued that DHHS violated the Americans with Disabilities Act (ADA) by failing to make any effort to

accommodate the mother through a service plan that would have provided her with the specialized services tailored to her disability. In May 2017 the Michigan Supreme Court issued a decision agreeing with our position, ruling that the state, in attempting to reunify the family, was obligated to modify its standard procedures in ways that are reasonable necessary to accommodate the mother's disability under the ADA. (*In re Hicks*; ACLU Attorneys Michael J. Steinberg and Dan Korobkin; Jill Wheaton and Courtney Kissell of Dykema.)

DUE PROCESS

Food Assistance Cut Off Without Due Process. The Michigan Department of Health and Human Services (DHHS) cut off food assistance to Walter Barry, a low-income, developmentally disabled adult, because Mr. Barry's identity had been used by someone else who committed a crime. Under a DHHS policy that automatically denies food assistance to anyone with an outstanding felony warrant, Mr. Barry's benefits were terminated, even after he proved at an administrative hearing that the warrant was based on a crime that was committed by someone else. Under federal food assistance law, states cannot terminate assistance based on outstanding warrants unless the state first determines that the person receiving benefits is in fact fleeing from justice. In 2013 the Center for Civil Justice and the ACLU of Michigan filed a class action lawsuit seeking to ensure that individuals like Mr. Barry do not go hungry due to the state's unlawful policy. In 2015 Judge Judith Levy issued a decision ruling that DHHS could not deny benefits to people like Mr. Barry and certifying a class of approximately 20,000 people who are eligible for retroactive or future assistance as a result of the case. The state appealed, and in August 2016 the Sixth Circuit affirmed Judge Levy's decision, clearing the way to restore an estimated $60 million in retroactive food assistance benefits owed to low-income households. In 2017 and 2018 we negotiated with the state over how retroactive benefits would be paid, and we are continuing to monitor DHHS to ensure that new policies that are being enacted comply with federal law and constitutional due process. (*Barry v. Lyon*; ACLU Attorney Miriam Aukerman and Legal Fellow Sofia Nelson; Jacqueline Doig, Katie Linehan and Elan Nichols of the Center for Civil Justice.)

Retroactive Sex Offender Registration Law. In a groundbreaking ruling, the Sixth Circuit Court of Appeals ruled that the severe restrictions imposed by the Michigan legislature on former sex offenders long after they were convicted violated the Constitution. In 2006 and 2011 the Michigan legislature amended Michigan's sex offender registration law by barring current and future registrants from living and working in a large portion of the state, restricting use of the internet, forbidding attendance of church if children were present, requiring compliance with onerous reporting requirements, and extending the amount of time they remained on the registry. The ACLU of Michigan, working with the University of Michigan's clinical law program, challenged the law in federal court on behalf of six registrants—including a man who was never convicted of a sex offense and several men convicted of consensual sex with younger teens, one of whom he has since married. In 2015 Judge Robert Cleland ruled that the law's geographic ill-defined exclusion zones, "loitering" prohibition and several reporting requirements could not be enforced because they are unconstitutionally vague. In August 2016 the Sixth Circuit went further, ruling that that the retroactive application of all of the amendments to those convicted before 2006 violates the U.S. Constitution's rule against ex post facto laws. In October 2017 the U.S. Supreme Court declined to review the Sixth Circuit's ruling. Meanwhile, in September

2016 we filed a second case seeking to enforce the Sixth Circuit decision on behalf of a woman who was being forced to quit her job at a homeless shelter, where she had worked for eight years, because she is on the registry for a consensual teenage sex offense. In March 2017 Judge Mark Goldsmith granted a preliminary injunction in her favor, ruling that the law restricting where registrants can work could not be retroactively applied to her. The Wayne County Prosecutor has appealed. Despite the Sixth Circuit's ruling, the State of Michigan has failed to bring Michigan's registry into compliance. Therefore, in June 2018 we filed a class action lawsuit to ensure that Michigan's roughly 44,000 registrants obtain the benefit of the rulings in the earlier case. (*John Does #1-5 v. Snyder*; *Roe v. Snyder*; *John Does #1-6 v. Snyder*; ACLU Attorneys Miriam Aukerman, Dan Korobkin and Michael J. Steinberg, and Legal Fellows Sofia Nelson, Marc Allen, Juan Caballero and Monica Andrade; U-M Clinical Law Professor Paul Reingold; Cooperating Attorney William Swor; co-counsel Alyson Oliver and Cameron Bell.)

Sex Offender Registration for Dismissed Charges. In 1993, when Boban Temelkoski was 19 years old, he touched the breasts of an underage girl. He was permitted to plead guilty under the Holmes Youthful Trainee Act (HYTA), a diversion program for young offenders that promises youth who successfully complete probation that their cases will be dismissed without a conviction and their records sealed. Although Mr. Temelkoski held up his end of the bargain, the Michigan legislature later amended the Sex Offender Registry Act requiring him to register as a sex offender more than a decade after his criminal case was dismissed and his records sealed. In 2012 Mr. Temelkoski filed a motion in state court to be removed from the registry. The trial judge granted the motion, but in 2014 the Michigan Court of Appeals reversed, ordering Mr. Temelkoski back on the registry. The ACLU of Michigan co-counseled his appeal in the Michigan Supreme Court, which decided in January 2018 that requiring Mr. Temelkoski to register violates his right to due process because the state has broken the promises it made to him when he pleaded guilty as a teenager decades ago. (*People v. Temelkoski*; ACLU Attorneys Miriam Aukerman and Michael J. Steinberg; co-counsel David Herskovic.)

VOTING RIGHTS

Promote the Vote. The ACLU of Michigan is the leading proponent of Promote the Vote, a proposed constitutional amendment to strengthen voting rights and modernize our election system in Michigan with no-reason absentee voting, same-day voter registration, and other important reforms. We helped collect over 430,000 petition signatures which is more than enough to guarantee a spot on the ballot in November 2018. However, when reviewing the petitions, the Bureau of Elections refused to count any signatures that its staff perceived to be different from the digitized signatures in the state's qualified voter file (QVF), even though QVF signatures could be decades old and voters who are signing a petition are often in a rush and have no idea that their signatures are supposed to match. Moreover, experts recognize that unless multiple handwriting samples and specialized training are provided, signature comparisons are virtually standardless, highly unreliable, and should not be used in elections. In August 2018 the ACLU of Michigan filed an emergency lawsuit in federal court to stop the standardless signature comparison process and certify Promote the Vote for the ballot. After we filed our lawsuit, the Bureau of Elections recommended that Promote the Vote be placed on the ballot. (*Promote the Vote v. Johnson*; ACLU of Michigan Attorneys Sharon Dolente, Dan Korobkin, and Michael J.

Steinberg; National ACLU Attorneys Julie Eberstein and Emily Zhang; Andrew Nickelhoff and Mary Ellen Gurewitz of Sachs Waldman.)

Ballot Access for Redistricting Proposal. In an effort to end the extreme partisan gerrymandering that threatens to undermine the legitimacy of our system of representative government, the ballot committee Voters Not Politicians submitted more than 425,000 signatures to put a constitutional amendment on the November 2018 ballot. If approved by the voters, the initiative would give responsibility for drawing legislative districts to an independent citizens redistricting committee. In May 2018 an organization funded by the Michigan Chamber of Commerce filed a lawsuit to prevent the ballot initiative from going on the ballot, arguing that the proposed constitutional amendment was a "revision" of Michigan's Constitution rather than an amendment. When the case reached the Michigan Supreme Court, the ACLU of Michigan filed a friend-of-the-court brief in favor of ballot access. In July 2018 the Michigan Supreme Court agreed and, by a vote of 4-3, ordered the state to put the initiative on the November 2018 ballot. (*Citizens Protecting Michigan's Constitution v. Secretary of State*; ACLU Attorney Sharon Dolente; Cooperating Attorney Andrew Nickelhoff of Sachs Waldman.)

Emergency Manager Law. Public Act 436 gives unelected "emergency managers" sweeping, far-reaching powers to displace or in some cases even dissolve local governments and school districts. A coalition of civil rights groups challenged the law in federal court, and the state filed a motion to dismiss. In 2013 the ACLU of Michigan filed a friend-of-the-court brief explaining that under international law, the declaration of a state of emergency allowing the suspension of political rights is permissible only when there is an emergency that "threatens the life of the nation." In other countries where that standard has been met, there have been terrorist activities, general strikes, natural disasters, economic anarchy, civil war and other events on a comparable scale that have essentially shut down the government or the economy. Notwithstanding their economic challenges, Detroit and other Michigan cities under emergency management continue to function; the nature and quality of the "emergencies" in those cities pale in comparison to those that justify the suspension of political rights under international law. Additionally, the implementation of the emergency manager law runs afoul of international law's prohibition of practices that have the "purpose or effect" of racial discrimination. The installation of emergency managers in cities like Pontiac, Flint, Benton Harbor, River Rouge, Highland Park, and of course Detroit disproportionately impact the political rights of people of color. In 2014 Judge George Caram Steeh granted the state's motion to dismiss. The ACLU of Michigan joined the plaintiffs' legal team on appeal, but in September 2016 the Sixth Circuit affirmed the dismissal. In March 2017 we asked the U.S. Supreme Court to take the case, but the petition was denied. (*Phillips v. Snyder*; ACLU Attorneys Mark Fancher and Michael J. Steinberg; additional co-counsel include the Sugar Law Center, the Center for Constitutional Rights, Constitutional Litigation Associates, Herbert Sanders, Goodman & Hurwitz, Miller Cohen, and Sam Bagenstos of U-M Law School.)

Retaliatory Election Fraud Prosecution. Rev. Edward Pinkney is a longtime community activist in Benton Harbor who has waged crusades against gentrification and what he regards as abuses of power by the Whirlpool Corporation and emergency managers assigned to the city. His activities have earned him the animosity of the local power structure, and he has been the target of criminal prosecutions for acts alleged to have occurred while engaged in politics. Several years ago, for example, the ACLU of Michigan represented Rev. Pinkney when he was

sent to prison for writing a newspaper editorial that criticized a local judge and condemned the criminal justice system as racist. Most recently, Rev. Pinkney helped coordinate a campaign to recall the city's mayor, whom Rev. Pinkney and others believed to be a stooge of the emergency manager and the other forces Rev. Pinkney has challenged through the years. Although enough signatures were collected on recall petitions to put the issue on the ballot, the election was cancelled based on allegations that the dates next to the petitions' signatures were illegally changed. The finger was pointed at Rev. Pinkney, and in 2014 he was tried and convicted of election fraud by an all-white jury that was permitted to hear irrelevant and inflammatory evidence of Rev. Pinkney's political activities. In 2015 the ACLU of Michigan filed a friend-of-the-court brief in the Court of Appeals arguing that Rev. Pinkney's conviction should be reversed, and in 2016 we participated in oral argument. We argued that that allowing the jury to hear irrelevant evidence about Rev. Pinkney's controversial but legal political activism violated the First Amendment and his right to due process, and that Rev. Pinkney was charged with engaging in conduct that was never clearly defined by the law as constituting a felony offense. In 2016 the Court of Appeals affirmed Rev. Pinkney's conviction, but the Michigan Supreme Court agreed to review the case and specifically ordered additional briefing on the two issues that we had advanced in the Court of Appeals. In May 2018 the Michigan Supreme Court unanimously reversed Pinkney's conviction on grounds that it was based on a statute that did not establish a substantive crime. By that time Rev. Pinkney had returned home after serving 30 months in prison. (*People v. Pinkney*; ACLU Attorneys Mark Fancher, Dan Korobkin and Michael J. Steinberg; Cooperating Attorney Richard Friedman of U-M Law School.)

Voters with Disabilities. In April 2017 the ACLU filed a friend-of-the-court brief in the Sixth Circuit in support of a lawsuit that would prohibit discrimination against blind voters. In several states, such as Oregon, Wisconsin and New Hampshire, an online ballot-marking tool allows blind voters to mark absentee ballots privately and independently, without forcing them to rely on sighted individuals to cast their ballot for them. Our brief argues that this accommodation is legally required under the Americans with Disabilities Act (ADA). In November 2017 the Sixth Circuit reversed the lower court's dismissal of the case, ruling that the plaintiffs had stated a claim and were entitled to prove their case. (*Hindel v. Husted*; attorneys include ACLU of Michigan Legal Director Michael J. Steinberg and National ACLU Attorneys Sophia Lin Larkin and Claudia Center.)

ENVIRONMENTAL JUSTICE

Safe Water for the People of Flint. After the State of Michigan stripped the residents of Flint of their ability to elect local representatives, state-appointed officials decided to use the Flint River as a water source without adding corrosion controls. As a result, lead leached from the water pipes and poisoned the drinking water, causing untold harm to the people of Flint. ACLU of Michigan investigative journalist Curt Guyette helped to expose the water crisis, and the ACLU of Michigan and the Natural Resources Defense Council (NRDC) filed a federal lawsuit against state and city officials seeking a court order requiring them to comply with the Safe Drinking Water Act. The goal of the lawsuit, filed in January 2016, was to require the state and the city to replace the lead pipes and, in the meantime, ensure that officials deliver safe drinking water. In 2016 Judge David Lawson granted our request for door-to-door bottled water delivery and filter installation, and soon after recommended that the parties enter mediation. In March

2017 we reached an unprecedented settlement for $97 million requiring the state and city to replace all lead and galvanized pipes throughout Flint in the next three years, allocate resources for health and wellness programs, continue door-to-door filter installation and education, and extensively monitor Flint's tap water for lead. We continue to monitor compliance and, when necessary, file motions to enforce aspects of the settlement. In 2017 we were required to ask the court to order that Flint comply with the agreement on filter installation, and in August 2018 the court held an evidentiary hearing on the question of whether the City has sufficient funds left to replace all the lead pipes. (*Concerned Pastors for Social Action v. Khoury*; ACLU Attorneys Michael J. Steinberg, Bonsitu Kitaba-Gaviglio and Brooke Tucker; Dimple Chaudhary, Sarah Tallman, and Jared Knicley of NRDC; co-counsel Glenn Simmington.)

Flint Residents May Sue For Constitutional Violations. Flint citizens filed class action lawsuits in both federal and state court for damages caused by the water crisis. In federal court, they brought claims that the malfeasance of government officials violated their constitutional rights. The district judge dismissed the federal lawsuit, ruling that the residents' constitutional claims were preempted by the federal Safe Drinking Water Act (SDWA). On appeal, the ACLU of Michigan and the Natural Resources Defense Council (NRDC) filed a friend-of-the-court brief in the Sixth Circuit arguing that Congress never intended to strip citizens of the right to seek a remedy under the Constitution when it enacted the SDWA. In July 2017 the Sixth Circuit agreed and reinstated the federal damages cases. (*Mays v. Snyder*; ACLU Attorneys Michael J. Steinberg and Bonsitu Kitaba-Gaviglio; Dimple Chaudhary, Sarah Tallman, and Jared Knicley of NRDC.)

Paying for Poisoned Water. The people of Flint are charged the highest water rates in the country even though the water flowing through their pipes was unsafe to drink and 40% of residents live below the poverty line. Compounding the trauma, in May 2017 the City of Flint sent approximately 8,000 notices to residents stating that liens would be placed on their homes if water fees from 2015—the height of the water crisis—were not paid. Eventually, if the liens were not lifted, they could be used to seize and foreclose on the residents' homes. Although the mayor said that the city was merely following state law regarding tax liens for unpaid water bills, in fact the city is under no such legal obligation. The ACLU of Michigan and the NAACP Legal Defense and Educational Fund (LDF) wrote a letter to Flint's mayor and city council, calling for a moratorium on liens for unpaid water bills. The letter argued that since the city did not fulfill its duty to provide water fit for drinking, Flint residents should not have to pay for it—much less lose their homes over it. In May 2017 Flint's city council passed a one-year moratorium on the liens. Unfortunately, Flint's Receivership Transition Advisory Board (RTAB), which must approve ordinances that could impact the city's budget, rejected the ordinance in June 2017. The county treasurer, however, announced that she would not foreclose on any homes in Flint over unpaid water bills. (ACLU Attorneys Kary Moss, Michael J. Steinberg and Bonsitu Kitaba-Gaviglio; Sherrilyn Ifil, Coty Montag and Ajmel Quereshi of LDF.)

EDUCATION

Special Education in Flint. In October 2016 we filed a major class action lawsuit against the State of Michigan and local school districts over the systemic failure to provide an adequate education for children with disabilities in Flint. In the wake of the Flint water crisis, in which the

population of an entire city (including approximately 30,000 children) was exposed to lead, our investigation revealed that the public school system lacks the resources, support and expertise needed to properly screen children for disabilities, to address the educational needs of children who have or are at risk of developing disabilities, and to ensure that students with disabilities are not unfairly disciplined, restrained, or excluded from public education. The lawsuit seeks broad systemic reform to make sure that the children in Flint's public schools are not left behind as the city struggles to recover from lead poisoning. Early efforts to settle the case were unsuccessful, and in September 2017 Judge Arthur Tarnow denied the defendants' motions to dismiss. In October 2017 we filed a motion for a preliminary injunction to require the state to provide comprehensive neuropsychological screening for all children who had been exposed to lead. In April 2018 the state agreed to settle that part the case by funding a first-of-its-kind initiative that will provide every child in Flint with access to an independently-run, state-of-the-art screening program designed to detect disabilities associated with lead exposure. The case remains pending on two additional claims: the need to provide adequate special education services who are identified as having a disability, and reform of the system by which children are unfairly disciplined for behavior caused by their disabilities. (*D.R. v. Michigan Department of Education*; ACLU Attorneys Kristin Totten, Dan Korobkin, and Kary Moss; Greg Little, Jessica Levin, and David Sciarra of the Education Law Center; Lindsay Heck and Greg Starner of White & Case.)

Taxpayer Money Appropriated for Private Schools. For nearly fifty years, Michigan's Constitution has strictly prohibited taxpayer funding of private and religious schools. However, in 2016 the legislature appropriated $2.5 million to "reimburse" private and parochial schools for complying with mandates that all schools in Michigan must abide by. Governor Snyder signed the appropriation into law but asked the Michigan Supreme Court to issue an "advisory opinion" on whether it was constitutional. In August 2016 we filed a friend-of-the-court brief arguing that the appropriation should be struck down because it violates the state constitutional requirement that reserves public education funding exclusively for public schools. However, the Michigan Supreme Court declined to issue an advisory opinion, so we formed a coalition with public school administrators, teachers, and parents to file a lawsuit in March 2017 challenging the constitutionality of the funding. In April 2018 the Michigan Court of Claims ruled in our favor, declared the statute unconstitutional, and issued a permanent injunction prohibiting the state from funding private schools. The state appealed, and we are awaiting a decision. In a separate lawsuit, a religious coalition claimed that the Michigan Constitution's funding restriction is itself unconstitutional under the Free Exercise Clause of the First Amendment because it prohibits the funding of religious schools. In May 2018 we filed a friend-of-the-court brief explaining that Michigan's funding restriction is constitutional because it applies neutrally to all private schools regardless of whether they are religious. After we filed our brief, the challengers dropped their lawsuit. (*In re Request for Advisory Opinion Regarding Constitutionality of 2016 PA 249*; *Council of Organizations & Others for Education About Parochiaid (CAP) v. Michigan*; *Immaculate Heart of Mary v. Michigan*; ACLU Attorney Dan Korobkin; Cooperating Attorney Peter Hammer of Wayne State Law School; Jeffrey Donahue and Andrew Gordon of White Schneider; Brandon Hubbard, Phillip DeRosier and Ariana Pellegrino of Dickinson Wright.)

FAIR COURTS

The Right to Bail. Except in extraordinary circumstances, persons accused of a crime have a right to be released while awaiting trial. Jeffrey Stoltz was charged with financial crimes in May 2017 in Kent County. The prosecutor asked for money bail, which would require Stoltz to put up cash in order to be released, but Judge Jeffrey O'Hara found that a personal recognizance bond was appropriate because Mr. Stoltz had appeared in court for every proceeding and had no criminal history. Mr. Stoltz, maintaining his innocence, took the case to trial, which began in April 2018. However, the prosecutor then dismissed the case, and refiled it the same day, this time drawing a different judge, Judge Mark Trusock. In July 2018, after Mr. Stoltz rejected a plea offer, Judge Trusock raised his bail to $200,000 cash, which Mr. Stoltz could not afford. Mr. Stoltz was sent to jail to await a trial scheduled for September. He lost his job, and his wife and children can scarcely make ends meet. In August 2018 the ACLU of Michigan filed an emergency appeal on Mr. Stoltz's behalf, arguing that Michigan law requires release on personal recognizance unless the court determines that the person will not appear or would be a danger if released, findings that Judge Trusock did not make in this case. Unfortunately, the Court of Appeals denied the emergency motion by a vote of 2-1. We have appealed to the Michigan Supreme Court. (*People v. Stoltz*, ACLU Attorneys Miriam Aukerman and Dan Korobkin; Cooperating Attorneys Julia Anne Kelly and Kenneth Tableman; co-counsel Daisy Benavidez.)

Funding Michigan's Court System. Although the court system is a public service, like schools, roads and libraries, the costs of the court system fall disproportionately on those least able to afford it: low-income criminal defendants. Typically public services are funded through taxes, reflecting the fact that the state provides those services for everyone's benefit. Courts, however, are treated differently from other public services: they obtain much of their funding from the fines, fees and costs they impose on people who are indigent. As a result, even the smallest of offenses can result in an enormous and financially crippling bill. In March 2018 the Michigan Supreme Court agreed to hear a case about whether certain court costs are unlawfully imposed because they are a tax. The ACLU of Michigan joined the Criminal Defense Attorneys of Michigan (CDAM) and the Legal Services Association of Michigan (LSAM) in filing a friend-of-the-court brief, arguing that the costs are an impermissible tax and emphasizing the inequity of the current system for court funding. The outcome of the case could significantly affect how Michigan's courts are funded. (*People v. Cameron*; ACLU Attorney Miriam Aukerman; Anne Yantus of CDAM and Robert Gillett of LSAM.)

PRIVACY AND TECHNOLOGY

Project Green Light. The Detroit Police Department has encouraged Detroit businesses to join a police surveillance program called "Project Green Light" (PGL). PGL participants must install sophisticated surveillance video equipment with a live, direct video feed to the Detroit Police Department—which enables the government to watch, record and track the behavior of all customers and employees inside and outside the business around the clock. In exchange, the police department promises to treat all calls for police help from participating businesses as "priority one" calls. The businesses must also install a bright flashing green light on the premises. Recently, Detroit officials have discussed passing an ordinance that would make the program mandatory for businesses that remain open after 10 p.m. Hundreds of businesses, eager

to get better police service in a city where police response times are notoriously slow, have joined the program. Since March 2018 the ACLU of Michigan has been raising privacy and constitutional concerns over this citywide surveillance system. We have pointed to numerous studies showing that government surveillance of innocent people can be abused and do not deter crime. In fact, to the extent PGL participants' calls receive priority treatment over other serious calls for police assistance, PGL may be making Detroiters less safe. We are currently developing a report analyzing PGL. (ACLU Legal Director Michael J. Steinberg; Cooperating Attorneys Eric Williams and Ralph Simpson.)