ACLU Michigan

LEGAL DOCKET
FALL 2020

The ACLU of Michigan's legal docket is published annually. This year's docket summarizes the cases with activity in 2019 and 2020.

CRIMINAL LAW REFORM

Bail Reform. Tens of thousands of people in Michigan are locked up in jail, before being tried or convicted of any crime, because of cash bail. Throughout the state, it is common for judges to require people who have been arrested to post cash for their release —in other words, to buy their freedom—or else remain incarcerated while they await trial, even for very minor charges. In April 2019 the ACLU filed a federal class action lawsuit against the judges of the 36th District Court in Detroit, arguing that this practice is unconstitutional because it creates a two-tiered legal system in which the freedom of a person who is presumed innocent depends entirely on their ability to afford bail, a clear violation of due process and equal protection. Locking people up while they await trial inflicts devastating harm on the lives of people who are arrested and their families, including job loss, child custody issues, eviction, and missed medical or educational commitments. This practice also coerces many defendants accused of lesser crimes to plead guilty just to get out of jail. And the harm caused by using cash bail falls disproportionately on people of color, who already bear the brunt of overpolicing and racism in the criminal legal system. In response to our lawsuit, the judges filed a motion to dismiss. In August 2019 briefing was put on hold to allow the parties to engage in settlement talks that will hopefully result in reform without the need for further litigation. (*Ross v. Chief Judge of 36th District Court*; ACLU of Michigan Attorneys Phil Mayor, Dan Korobkin, and Michael J. Steinberg; National ACLU Attorneys Brandon Buskey and Twyla Carter, and Aaron Lewis, James Garland, Mitch Kamin, Amia Trigg, Wesley Wintermyer, Marta Cook, Julia Brower, and Laura Beth Cohen of Covington & Burling.)

Pretrial Release During the COVID-19 Pandemic. As the COVID-19 pandemic swept through Michigan, jails and prisons became epicenters of contagion, and public health experts urged officials to decarcerate as much possible. As soon as the crisis began, the ACLU of Michigan created a template motion that could be used by criminal defendants and their attorneys to argue in court for pretrial release. That template has been used by defense attorneys around the state to get their clients out of jail, and in several cases we provided direct representation on appeal. In March 2020 we won an appeal in the Michigan Court of Appeals on behalf of Moneasha Ferguson, a single mother who was sent to jail by the trial judge because she was 20 minutes late to court due to her bus running late. And in May 2020 we won an appeal in the Michigan Supreme Court on behalf of Donald Chandler, who had been denied pretrial release despite suffering from serious medical conditions. But in a third case, filed in April 2020 on behalf of a man in his sixties with no criminal history who could not afford to pay his bail, our appeal was denied. (*People v. Ferguson*; *People v. Chandler*; *People v. Tesfai*; ACLU Attorneys Phil Mayor and Dan Korobkin; co-counsel Will Nahikian, Michael L. Steinberg, and Marcus Chmiel.)

Kids Sentenced to Die in Prison. In Michigan, over 360 children have been sentenced to life without the possibility of parole. In 2011 the ACLU filed a class action lawsuit in federal court challenging the practice as unconstitutional cruel and unusual punishment. In 2013 Judge John Corbett O'Meara agreed with the ACLU and ruled that all juveniles serving mandatory life sentences in Michigan must be given parole hearings. The state appealed. While the appeal was pending, the U.S. Supreme Court ruled in a different case that juveniles serving life without

parole must be resentenced. The Michigan legislature enacted a new law 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 2017 the Sixth Circuit ruled that we could no longer bring a categorical challenge to all life-without-parole sentences. However, in 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. The Sixth Circuit affirmed Judge Goldsmith's ruling, which is giving hundreds of prisoners an earlier opportunity for release and will save taxpayers millions of dollars. Meanwhile, we are continuing to litigate claims that the state is unreasonably delaying constitutionally required resentencings and is denying access to the rehabilitative programming that is critical to parole. In June 2020 Judge Goldsmith denied the state's motion for summary judgment on the programming claim, and in August 2020 he denied the state's motion to dismiss the delay-in-resentencing claim. We have also joined the Juvenile Law Center in filing friend-of-the-court briefs in the Michigan Supreme Court arguing that life without parole is unconstitutional for 18-year-olds and life with the possibility of parole is unconstitutional unless important safeguards are in place to ensure that the opportunity for release is meaningful and realistic. (*Hill v. Whitmer*; *People v. Stovall*; *People v. Manning*; ACLU of Michigan Attorneys Dan Korobkin and Bonsitu Kitaba-Gaviglio, National ACLU Attorneys Steven Watt and Brandon Buskey, and co-counsel Deborah LaBelle; Marsha Levick and Karen Lindell of the Juvenile Law Center and Tessa Bialek of Quinnipiac University School of Law.)

Retroactive Punishment Under Registration Law. 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, requiring compliance with onerous reporting requirements, and extending the amount of time they remained on the registry. In 2012 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 2016 the Sixth Circuit issued a groundbreaking decision ruling that the retroactive application of the amendments to those convicted before 2011 violates the United States Constitution's rule against ex post facto laws. But despite the Sixth Circuit's ruling, the State of Michigan failed to bring Michigan's registry into compliance, leaving the state's 44,000 registrants at risk of prosecution unless they comply with the law's onerous and unconstitutional requirements. Therefore, in 2018 we filed a class action lawsuit to ensure that all Michigan registrants obtain the benefit of the rulings in the earlier case. In February 2020 Judge Robert Cleland ruled in favor of the class. Judge Cleland further ruled that SORA's exclusion zones and certain reporting requirements are unconstitutionally vague for all registrants, and that strict liability prosecutions under SORA are impermissible. The court has deferred entry of the judgment to allow the legislature time to pass a new law. In the meantime, the court has suspended enforcement of SORA's exclusion zones, reporting requirements and fees during the COVID-19 pandemic. The ACLU of Michigan has also filed friend-of-the-court briefs in the Michigan Supreme Court and the Sixth Circuit in other cases addressing similar issues. (*John Does #1-5 v. Snyder*; *John Does #1-6 v. Snyder*; *People v. Betts*; *Willman v. U.S. Attorney General*; ACLU Attorneys Miriam Aukerman, Dan Korobkin, Michael J. Steinberg, Sofia Nelson, Marc Allen, Juan Caballero, Monica Andrade and Elaine

Lewis; U-M Clinical Law Professor Paul Reingold; co-counsel Alyson Oliver and Cameron Bell.)

Police Taking Photographs 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 1,000 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 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. The ACLU of Michigan took over direct representation in the case and appealed to the Michigan Supreme Court. In 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 was then remanded to the Court of Appeals to decide whether police may seize biometric data like fingerprints without probable cause, but in November 2019 the Court of Appeals ruled that forcing someone to provide their fingerprints is not a search under the Fourth Amendment. In February 2020 we filed another appeal with the Michigan Supreme Court. (*Johnson v. VanderKooi*; ACLU of Michigan Attorneys Miriam Aukerman and Dan Korobkin; National ACLU Attorney Nathan Freed Wessler; Cooperating Attorneys Margaret Hannon and Ted Becker of U-M Law School.)

Police Arresting Innocent People for Trespassing. For years, the Grand Rapids Police Department solicited business owners to sign "Letters of Intent to Prosecute Trespassers." These letters did not articulate a business owner's desire to keep a specific person off their property and were not directed at any particular person. Instead, police officers used 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 arrested people who did 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 retained by the ACLU for the case found that African Americans are more than twice as likely to be arrested for trespassing than whites. In 2018 Judge Paul Maloney also ruled in our favor in the federal case. The city paid our clients damages in April 2019, and we were able to reach a settlement on attorneys' fees in January 2020. The city has also made significant changes to the use of the no-trespass letters. (*Hightower v. City of Grand Rapids*; ACLU of Michigan Attorneys Miriam Aukerman, Michael J. Steinberg and Marc Allen; National ACLU Attorney Jason Williamson; Cooperating Attorneys Julia Kelly and Bryan Waldman.)

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 have become rampant. In 2016 the ACLU of Michigan filed a friend-of-the-court brief in 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 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. Following additional proceedings on remand, in June 2019 the prosecutor asked the U.S. Supreme Court to review the Michigan Supreme Court's ruling and we provided direct representation in opposing Supreme Court review. In October 2019 the Supreme Court denied the prosecutor's petition. (*People v. Frederick*; ACLU Attorney Dan Korobkin; Cooperating Attorney David Moran of U-M Law School; co-counsel John Minock and Brad Hall of Criminal Defense Attorneys of Michigan.)

Legal Hurdles to Holding Law Enforcement Accountable. In 2014 college student James King was walking down the street in Grand Rapids when two men stopped him, demanded to know his name, and took his wallet. Thinking he was being mugged, Mr. King ran. The men followed him, pinned him to the ground, beat him, and choked him until he was unconscious. The men were not actually muggers, but rather officers from a federal-state task force who had mistaken Mr. King for a fugitive. King sued both the officers and the United States Government in federal court, and the case is now before the United States Supreme Court to decide whether a ruling that King cannot sue the federal government will also bar him from suing the officers individually. In August 2020 the ACLU filed a friend-of-the-court brief arguing that the so-called "judgment bar" of the Federal Torts Claims Act does not prevent individual federal law enforcement officers from being held accountable for misconduct. (*Brownback v. King*; National ACLU Attorneys David Cole and Jennesa Calvo-Friedman; ACLU of Michigan Attorney Miriam Aukerman.)

Wrongful Conviction for Failure to Register. As a result of amendments to Michigan's sex offender registration law, some people who were previously required to register are no longer required to do so. Unfortunately, the Michigan State Police failed to remove some people from the registry after these amendments despite the change in the law. In a terrible miscarriage of justice, Anthony Hart was arrested, convicted of failing to register, and sent to prison for over a year even though he should not have been on the registry in the first place. After the mistake was discovered, he was released from prison, and he sued the State of Michigan for failing to remove him from the registry. The Michigan Court of Appeals ruled against him, holding that the Michigan State Police could not have foreseen that their failure to remove people from the registry could result in their wrongful conviction and imprisonment. The Michigan Supreme Court granted review of Mr. Hart's case, and the ACLU of Michigan filed a friend-of-the-court brief on his behalf, detailing the history of the registration law and explaining why it was entirely foreseeable that the state's errors would lead to wrongful arrests and convictions. Unfortunately, in July 2020 the Michigan Supreme Court dismissed the appeal, thus allowing the Court of Appeals decision to stand. (*Hart v. State of Michigan*; ACLU Attorneys Phil Mayor and Dan Korobkin.)

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 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. In November 2019 the Supreme Court dismissed the case without issuing a decision. Chief Justice Bridget McCormack, in a separate opinion, highlighted the conflicts created when the budgets of lower courts are determined by how much revenue they raise through imposing costs. She urged the legislature to act on the recommendations of a trial court funding commission "before the pressure placed on local courts causes the system to boil over." (*People v. Cameron*; ACLU Attorney Miriam Aukerman; co-counsel Anne Yantus of CDAM and Robert Gillett of LSAM.)

County Refuses to Return Bail Money to Families and Friends. People who are accused of a crime must often rely on their family or friends to put up the money to bail them out. As part of our bail reform work, the ACLU of Michigan learned that courts in Grand Traverse County were keeping the money that friends and family paid to get people out of jail rather than returning it at the end of the case. Such a policy was unconstitutional, contrary to Michigan law, and needlessly led to people being incarcerated because it discouraged family and friends from helping bail people out of jail. In February 2020 we wrote a letter to the chief judge and sheriff demanding that the county abandon its illegal policy. The letter was widely covered in local media, and the county abandoned its policy within the week. (ACLU Attorney Phil Mayor.)

DISABILITY RIGHTS

Supreme Court Victory for 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. In 2012 we filed a federal lawsuit. 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 2017 the Supreme Court reversed, ruling 8-0 in favor of Ehlena. The case was then remanded to the trial court for further proceedings. Judge Sean Cox denied both parties' motions for summary judgment and referred the case to mediation. The case settled in November 2019. (*Fry v. Napoleon Community*

Schools; Cooperating Attorney Samuel Bagenstos of U-M Law School; ACLU of Michigan Attorney Michael J. Steinberg; National ACLU Attorneys Susan Mizner and Claudia Center; Cooperating Attorneys Peter Kellett, James Hermon, Jill Wheaton, Ryan VanOver 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 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. In 2019 Judge Denise Page Hood denied the city's motion to dismiss. In August 2020 the case was settled. In addition to a trust for funds to address Cameron's needs, policy changes were adopted that include, among other things, no use of restraints on children when there is no danger or threat; avoidance of use of police officers in school disciplinary matters; use of the lowest level of enforcement for elementary school-aged children; and special training in de-escalation, implicit bias, disabilities and other subjects relevant to proper responses in child disciplinary matters. (*McCadden v. City of Flint*; ACLU of Michigan Attorneys Mark P. Fancher and Michael J. Steinberg; Cooperating Attorneys Jonathan Marko, Mark Finnegan and Denise Heberle; National ACLU Attorneys Susan Mizner, West Resendes and Claudia Center.)

Performance Cancelled Because Actors Have Down Syndrome. DisArt a disability arts and culture organization that scheduled a series of public performances in Grand Rapids during the Art Prize festival. One of the events was a drag show performed by local actors alongside Drag Syndrome, a group of performers from the U.K. who are living with Down Syndrome. The owner of the performance venue, local business and political figure Peter Meijer, cancelled the drag show performance, questioning whether the performers had the capacity to make their own decisions and stating that persons with disabilities are "special souls" and "should be protected." DisArt then presented Meijer with assurances that the performers did have the capacity to understand and consent to their performances, but Meijer refused to reconsider his position. In September 2019 the ACLU of Michigan filed a complaint on DisArt's behalf with the Michigan Department of Civil Rights, alleging discrimination on the basis of disability and sex. (ACLU Attorney Jay Kaplan.)

EDUCATION

Special Education in Flint. In 2016 the ACLU of Michigan and the Education Law Center filed a 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. In 2017 Judge Arthur Tarnow denied the defendants' motions to dismiss. We then 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 2018 the state agreed to settle that part of 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. Following additional discovery and negotiations, in August 2020 we settled the remaining claims in the case. The settlement includes at least $9 million from the state to establish a fund for special education services for students impacted by the water crisis, $2 million in additional funding from the county, and a commitment to undertake a comprehensive assessment and modification of Flint-area special education plans and policies over the next year. (*D.R. v. Michigan Department of Education*; ACLU Attorneys Kristin Totten and Dan Korobkin; Greg Little, Jessica Levin, Elizabeth Athos and David Sciarra of the Education Law Center; Lindsay Heck and Greg Starner of White & Case.)

Taxpayer Money Appropriated for Private Schools. For 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 legal requirements that apply to all schools in Michigan. In 2017 the ACLU of Michigan formed a coalition with public school administrators, teachers, and parents to file a lawsuit challenging the constitutionality of the funding, arguing that the appropriation should be struck down because it violates the state constitutional requirement that reserves public education funding exclusively for public schools. In 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 the Michigan Court of Appeals reversed by a vote of 2-1. We then appealed to the Michigan Supreme Court, which announced in June 2019 that it would take the case. (*Council of Organizations & Others for Education About Parochiaid (CAP) v. Michigan*; ACLU Attorney Dan Korobkin; co-counsel Jeffrey Donahue and Andrew Gordon of White Schneider, and Brandon Hubbard, Phillip DeRosier and Ariana Pellegrino of Dickinson Wright.)

The Right to Literacy. In 2018 the ACLU of Michigan filed a friend-of-the-court brief in the Sixth Circuit Court of Appeals supporting a group of students in Detroit who sued the state over its lack of support for literacy in the public schools. Several years ago, we were unsuccessful in seeking a ruling in state court that the Michigan Constitution guarantees a right to an adequate public education, including the right to read. This case seeks a similar ruling, except in federal court and under the United States Constitution. In April 2020 the Sixth Circuit issued a stunning ruling recognizing a fundamental right to literacy under the United States Constitution. Unfortunately the full Sixth Circuit then voted to rehear the case and vacated the opinion. The case eventually settled. (*Gary B. v. Snyder*; ACLU Attorney Dan Korobkin; Cooperating Attorney Peter Hammer of Wayne State Law School.)

Benton Harbor Struggles to Save Its High School. Benton Harbor, Michigan has a population that is 85 percent African American, and the poverty rate is 48 percent. By 2011 the school district's debt had ballooned to $18 million. In 2018 Dr. Robert Herrera was appointed as the

district's "CEO" and he was given four years to turn the district around. However, Dr. Herrera resigned in 2019 and newly-elected Governor Gretchen Whitmer proposed closing the district's high school, igniting a storm of controversy across the state. In August 2019 the ACLU of Michigan sent a letter warning the governor that closing the school would eliminate one of the only remaining educational, cultural and civic centers in a community that has endured decades of discrimination, marginalization and poverty. The letter also urged the governor not to appoint an emergency manager, as doing so would deny the people of Benton Harbor the right to democratic self-government. Subsequently, Governor Whitmer initiated a working committee made up of diverse interests in the Benton Harbor community to examine options for preserving the high school. (ACLU Attorneys Mark Fancher, Dan Korobkin and Michael J. Steinberg.)

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 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. 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 2017 we reached an unprecedented settlement for $97 million requiring the state and city to replace all lead and galvanized pipes throughout Flint, 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. The city has hired a new project management company and is now on track to complete excavations and replacements at all remaining homes in Flint by the end of 2020. (*Concerned Pastors for Social Action v. Khouri*; ACLU Attorneys Bonsitu Kitaba-Gaviglio, Michael J. Steinberg and Dan Korobkin; Dimple Chaudhary, Sarah Tallman, and Jared Knicley of NRDC; co-counsel Glenn Simmington.)

Flint Residents May Sue For Constitutional Violations. Flint residents 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 rights under the United States Constitution. 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 2017 the Sixth Circuit agreed and reinstated the federal damages claims. Meanwhile, in state court, the plaintiffs brought claims arguing that the state violated their right to bodily integrity in violation of the Michigan Constitution by switching the city's water source to the Flint River and deceiving the public about its toxicity. The state sought dismissal of the lawsuit,

arguing that there is no constitutional right to bodily integrity, that the state was immune from suit, and that damages were not available for violations of the state constitution. When the case reached the Michigan Supreme Court, we again joined NRDC in filing a friend-of-the-court brief supporting the plaintiffs. In July 2020 the Supreme Court ruled that the plaintiffs' claims could go forward. A $600 million settlement soon followed. (*Mays v. Snyder*; *Mays v. Governor*; ACLU Attorneys Bonsitu Kitaba-Gaviglio, Michael J. Steinberg and Dan Korobkin; Dimple Chaudhary, Kaitlin Morrison, Sarah Tallman, Jared Knicley and Jared Orr of NRDC, and Nicholas Leonard of the Great Lakes Environmental Law Center.)

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 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—during the height of the water crisis—were not paid. Eventually, if the liens were not lifted, they could be used to 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. Flint's city council passed a moratorium on the liens, and the county treasurer announced that she would not foreclose on any homes in Flint over unpaid water bills. However, in 2019 the city again mailed out over 20,000 notices stating that liens will issue for unpaid water bills. The ACLU and LDF wrote again to the mayor and the country treasurer, condemning the city's actions, arguing that there are alternative means of collecting unpaid fees, and requesting that no liens be placed on Flint homes. (ACLU Attorneys Kary Moss, Michael J. Steinberg and Bonsitu Kitaba-Gaviglio; Sherrilyn Ifil, Coty Montag, Sparky Abraham, and Ajmel Quereshi of LDF.)

FREEDOM OF SPEECH

Ban on Political Canvassing in Wixom Neighborhoods. For citizens who want to advocate for political change at the local level, the First Amendment right to neighborhood canvassing is crucial. The Supreme Court has long afforded the highest level of constitutional protection to those who walk door to door for the purpose of speaking with willing and interested residents about political ideas. But in Wixom, the city council enacted an ordinance that allows entire neighborhoods to erect signs prohibiting door-to-door political canvassing, such as asking residents whether they are registered to vote. One local political activist was canvassing in support of Democratic candidates a few weeks before the November 2018 midterm elections when a resident threatened to call the police if he did not immediately leave the neighborhood. Attempts to persuade the city to repeal their ordinance were unsuccessful, so in April 2019 the ACLU of Michigan filed a federal lawsuit against the city and neighborhood association. After we filed a motion for preliminary injunction, Wixom's city council repealed the ordinance and the neighborhood association removed its anti-canvassing signs. The case settled in September 2019. (*Action for Liberation v. City of Wixom*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Michael J. Steinberg; Cooperating Attorneys Heather Cummings and Sheila Cummings.)

Candidate Charged With Crime for Political Speech. Anuja Rajendra came in third place last summer in the Democratic primary for a state senate seat. Just a few months later, she was facing criminal charges in Washtenaw County, and potentially up to 90 days in jail, for stating in a campaign mailer, "As a mom of four and as your State Senator, I want my kids and all kids in Michigan to have the same opportunity for quality education and success." Ms. Rajendra was charged under a state law that makes it a crime to "give the impression that a candidate for public office is the incumbent" when he or she is not. The ACLU of Michigan represented Ms. Rajendra, arguing that any law making political speech a crime is a blatant violation of the First Amendment, and that charging Ms. Rajendra under these circumstances was an outrageous abuse of prosecutorial discretion. In January 2019 Judge Elizabeth Hines granted our motion to dismiss, ruling that the statute is unconstitutional on its face. When Judge Hines announced her ruling from the bench, the entire courtroom burst into applause. (*People v. Rajendra*; ACLU Attorneys Michael J. Steinberg and Dan Korobkin; Cooperating Attorneys John Shea, David Blanchard, and Frances Hollander.)

Flint Town Hall Arrests. In 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 2018 the ACLU of Michigan filed suit against the city and its police for violations of the arrestees' constitutional rights. In March 2020 the case settled after the city agreed not to impose church rules at town hall-style meetings, require its police officers to undergo First Amendment and de-escalation training, clear the plaintiffs' arrest records, and pay damages and attorneys' fees. (*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.)

Synagogue Protesters. For over 15 years, a small group of anti-Israel activists have been protesting in front of a synagogue in Ann Arbor. Although the protests are peaceful and quiet, and the participants stay on a public sidewalk, they are very controversial and are viewed by many as anti-Semitic. In 2019 a member of the synagogue filed a federal lawsuit against the protesters, seeking a court-ordered injunction to stop the protests and damages for emotional distress. In March 2020 the ACLU of Michigan filed a friend-of-the-court brief condemning the protesters' speech and tactics but arguing that the speech is nonetheless protected by the First Amendment. We pointed out that if the lawsuit against these protesters is allowed to proceed, activists who peacefully protest on public sidewalks about a wide range of issues, including abortion rights, animal welfare, and the environment, could be targets of litigation, which would have an overall chilling effect on speech and political activity for ordinary citizens. In August 2020 Judge Victoria Roberts dismissed the lawsuit, ruling that the protests are protected by the First Amendment. The plaintiffs have filed an appeal. (*Gerber v. Herskovitz*; 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. Mr. Wood's conviction was affirmed through multiple levels of appeal. But in 2019 the Michigan Supreme Court agreed to review the case. The ACLU of Michigan filed a friend-of-the-court brief arguing that handing out informational pamphlets on a public sidewalk is entitled to the highest level of First Amendment protection, and the state had alternative ways to prevent jury tampering that are less restrictive of Mr. Wood's First Amendment rights. In July 2020 the Michigan Supreme Court overturned Mr. Wood's conviction on statutory grounds. (*People v. Wood*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorney Gautam Hans of U-M Law School.)

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 June 2019 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 Attorney Michael J. Steinberg; Professor Justin Hansford of Howard University Law School.)

FREEDOM OF RELIGION

County Threatens to Demolish Amish Homes. When a community of "old order" Amish families moved to a rural area of Lenawee County, many from neighboring communities where they had lived in peace for generations, county officials insisted that they must use running water and modern sewage systems that conflict with the order's religious practice of rejecting the use of modern technology. Despite efforts to educate local officials about the religious practices of the Amish, the County posted notices on Amish homes calling them "unfit for human habitation." In October 2019 Lenawee County filed lawsuits against every Amish family in the county asking a court to kick the Amish off their own property and demolish their homes. The ACLU of Michigan is representing the Amish families to defend their right to adhere to their religious beliefs while not harming anyone else. In December 2019 we filed counterclaims against the County for violating the Amish families' constitutional rights to religious liberty as well as the Fair Housing Act. (*Lenawee County Health Department v. Eicher*; ACLU Attorneys Phil Mayor and Dan Korobkin; Cooperating Attorney John Shea; co-counsel Rick Schulte, Steve Behnke and Jacob Bender.)

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 prisoners, we learned that MDOC had stopped ordering pre-packaged kosher meals for Jewish prisoners. 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 2018 Judge Linda Parker denied MDOC's motion to dismiss and in 2018 granted the prisoners' motion for class certification. In January 2020 the court approved a settlement agreement in which MDOC is required to provide certified kosher meals to Jewish prisoners who request them. (*Dowdy-El v. Caruso*; *Ackerman v. Washington*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorney Daniel Quick of Dickinson Wright; MSU Civil Rights Clinic Director Daniel Manville.)

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, people of other faiths and all those not active in a church. In 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 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. In July 2019 Bay View finally backed down, and the court approved a consent decree with federal oversight to ensure an end to religion-based housing discrimination in the community. (*Bay View Chautauqua Inclusiveness Group v. Bay View Association*; National ACLU Attorneys Heather Weaver and Daniel Mach; ACLU of Michigan Attorney Michael J. Steinberg.)

IMMIGRANTS' RIGHTS

Vulnerable Immigrants Freed from Jail During the COVID-19 Crisis. Immigration and Customs Enforcement (ICE) warehouses many immigrants in Michigan jails while seeking to deport them from the country. During a pandemic, this practice is not just inhumane, it can be deadly, particularly for people who are older or have medical vulnerabilities. People in jails are crowded together cheek by jowl in unsanitary conditions with no ability to socially distance or protect themselves from the virus. In April 2020 the ACLU sued ICE, arguing that keeping immigrants with vulnerabilities locked up during the pandemic violates their constitutional right to safe conditions of confinement. Judge Judith Levy agreed. After initially releasing 12 people through a series of individual orders, Judy Levy certified a class of immigration detainees held at the Calhoun County Jail, and adopted a bail application process to decide whether vulnerable class members should remain locked up there. As of early September 2020, a total of 20 people

have been freed through the case, and the bail process is continuing. We also brought a lawsuit on behalf of five immigrants detained in St. Clair and Monroe County, but there Judge Stephen Murphy denied release. (*Malam v. Adducci*; *Albino-Martinez v. Adducci*; ACLU of Michigan Attorneys Miriam Aukerman, Dan Korobkin, Monica Andrade and Elaine Lewis; additional attorneys include Anand Balakrishnan, My Khanh Ngo and Eunice Cho of the National ACLU and Jeannie Rhee, Mark Mendelson, and associates and counsel from Paul Weiss.)

U.S. Citizen Turned Over to ICE for Deportation. We are representing Jilmar Ramos-Gomez, a U.S. citizen and Marine Corps veteran who was wrongfully turned over to Immigration and Customs Enforcement (ICE) for deportation proceedings. Mr. Ramos-Gomez, who suffers from PTSD as a result of his military service in Afghanistan, was arrested by the Grand Rapids police in 2018 after trespassing at a local hospital. An off-duty police captain named Curt VanderKooi saw Mr. Ramos-Gomez's picture on the news and asked ICE to check his "status," despite having no reason to think he was undocumented other than his name and Latino appearance. ICE then issued an immigration detainer request for Mr. Ramos-Gomez, resulting in the Kent County Jail placing him in federal custody until his family could prove he was a U.S. citizen and get him released. An ACLU of Michigan investigation revealed that Captain VanderKooi, who is supposed to have no role in immigration enforcement, has contacted ICE on over 80 occasions, each time asking them to check the immigration status of a person of color. In 2019 Captain VanderKooi was suspended without pay, the Grand Rapids police announced a new policy that prohibits officers from inquiring about a person's immigration status or contacting ICE for civil immigration enforcement, and the City of Grand Rapids settled Mr. Ramos-Gomez's claim for $190,000. Similarly, Kent County adopted a new policy requiring a judicial warrant before turning someone over to ICE. ICE, however, refused to accept responsibility, and in November 2019 we filed suit. We also sued Calhoun County under the Freedom of Information Act to obtain records about Mr. Ramos-Gomez's detention in their jail. The case against Calhoun County is now in the Michigan Court of Appeals after the trial court dismissed our lawsuit based on an obscure federal regulation that the county says prohibits the public from seeing all local records about people held for ICE. (*Ramos-Gomez v. Adducci*; *ACLU of Michigan v. Department of Homeland Security*; *ACLU of Michigan v. Calhoun County*; ACLU Attorneys Miriam Aukerman, Dan Korobkin, Monica Andrade and Elaine Lewis; Cooperating Attorneys Anand Swaminathan, Matthew Topic, Joshua Burday, Merrick Wayne, Megan Pierce, and Matthew Topic of Loevy & Loevy; additional attorneys include Julia Kelly, Richard Kessler and Hillary Scholten.)

Iraqis Face Torture or Death if Deported. In 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. Most have been living in the United States for decades, but were previously ordered deported, either for technical immigration violations or for past convictions. Because the Iraqi government had long refused to issue travel documents for potential deportees, the United States has been unable to deport them. But when Iraq agreed to accept some U.S. deportees, suddenly all 1400 Iraqis with an old deportation 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 death for those deported. In 2017 Judge Mark Goldsmith issued a 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. Subsequent orders in 2018 required the government to provide Iraqis with bond hearings and release those who had been detained longer than six months, freeing hundreds of people from detention. But the government appealed, and in decisions in December 2018 and January 2020 the Sixth Circuit reversed, each time by a vote of 2-1. Despite the legal setbacks in the Sixth Circuit, the case has allowed hundreds of Iraqis to access the immigration court system, as well as to fight their immigration case from home, rather than in detention. Many are winning their immigration cases, and some have even become citizens. But a few have been deported, and one of our clients, Jimmy Al Dauod, died in Iraq. The case is now back before the district court on remand. (*Hamama v. Adducci*; ACLU of Michigan Attorneys Miriam Aukerman, Bonsitu Kitaba-Gaviglio, Dan Korobkin, Michael J. Steinberg, Monica Andrade, Juan Caballero and Elaine Lewis; additional attorneys include Lee Gelernt, Judy Rabinowitz and Anand Balakrishnan of the National ACLU; ACLU of Michigan Cooperating Attorneys Margo Schlanger of U-M Law School, Kimberly Scott, Wendy Richards, Andrew Blum, Erika Giroux, and Russel Bucher of Miller Canfield, with support from James Angyan and Katie Witowski; 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 joined with the Arab American Civil Rights League (ACRL) in challenging the order in the Detroit case. In 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, but in July 2019 Judge Roberts ruled that our case can proceed under the standard the Supreme Court set. In November 2019 the government sought and obtained permission to appeal to the Sixth Circuit Court of Appeals. We are arguing that the plaintiffs are entitled to discovery to establish whether the executive order is based on national security concerns or discrimination against Muslims. (*Arab American Civil Rights League v. Trump*; ACLU Attorneys Miriam Aukerman, Dan Korobkin, Michael J. Steinberg, Monica Andrade and Elaine Lewis; Cooperating Attorneys Jason Raofield, Nishchay Maskay and Alyson Sandler of Covington & Burling, Julian Mortenson of Miller Canfield, 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. 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 ordered by Judge Judith Levy, CBP produced documents in our case that paint a detailed picture of the chaos and cruelty of the ban. The case settled in August 2019 when the government agreed to pay our attorneys' fees. (*ACLU of Michigan v. U.S. Department of Homeland Security*; ACLU Attorneys Miriam Aukerman, Michael J. Steinberg, Juan Caballero and Elaine Lewis; Cooperating Attorneys Gabriel Bedoya, Andrew Pauwels, and Andrew Goddeeris of Honigman.)

Is All of Michigan a Warrantless Border Zone? Federal law permits Customs and Border Protection (CBP) officers to search vehicles without a warrant within a "reasonable distance" of the border, which outdated regulations define at 100 miles. CBP, 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 CBP failed to respond. In 2016 we sued in federal court to obtain the records. 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. In 2018 we reached a settlement agreement that requires CBP to provide city/township-level geographic information. In March 2020 we finally received the last of the documents. Our analysis of those records showed disturbing patterns of racial profiling and abuse, as well as extensive and damaging entanglement between local law enforcement and CBP. We are preparing a full report on our findings. (*Michigan Immigrant Rights Center v. U.S. Department of Homeland Security*; ACLU Attorneys Miriam Aukerman, Monica Andrade and Juan Caballero; Cooperating Attorneys Samuel Damren, Dante Stella, Nina Gavrilovic, and Corey Wheaton of Dykema.)

Asylum Seeker Gets His Day in Court. Due to the Trump administration's hostility to immigration, refugees who seek asylum under the laws of the United States are being threatened with deportation without the ability to present their asylum claims in court. Estuardo Calvo, an immigrant from Guatemala, filed an emergency petition for habeas corpus in federal court in Detroit to stay his deportation, and the government argued that the court had no jurisdiction over the case. The case was assigned to Judge Arthur Tarnow, who invited the ACLU to file a friend-of-the-court brief. We filed our brief in January 2019, arguing that the denial of federal courts' jurisdiction would violate the provision of the United States Constitution that prohibits the suspension of habeas corpus. After we filed our brief, the government agreed to stay the deportation until judicial review was complete. (*Calvo v. Whitaker*; ACLU of Michigan Attorneys Miriam Aukerman and Michael J. Steinberg; National ACLU Attorneys Anand Balakrishnan and Lee Gelernt.)

Public School Requires Applicants to Disclose Immigration Status. Over 35 years ago, the Supreme Court ruled that all children have a constitutional right to attend public schools regardless of their immigration status. Despite this clear rule of law, the Creative Montessori Academy in Southgate, which is a public charter school, required families who want to enroll their children there to disclose their immigration status. Their online enrollment form included a drop-down menu that required parents to identify their undocumented children as an "illegal

alien." Parents were also required to produce a driver's license or state ID, which are not available to undocumented residents. In April 2019 the ACLU of Michigan wrote a letter to the school explaining that their enrollment process unconstitutionally prevents undocumented children from attending the school. After receiving our letter, the school responded that it plans to change its enrollment form so that all students can attend. (ACLU Attorneys Abril Valdes and Michael J. Steinberg.)

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. For example, in one widely publicized incident, 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. In February 2020 Greyhound announced that it would no longer allow CBP agents on its buses to conduct routine immigration checks without a warrant. (ACLU of Michigan Attorneys Monica Andrade, Abril Valdes, and Michael J. Steinberg.)

Immigrant Justice Partnership. President Trump has unleashed a deportation force, terrorizing immigrant communities and ripping families apart. In 2017 the ACLU and the Michigan Immigrant Rights Center (MIRC) created the Immigrant Justice Partnership (IJP) to document these abuses, identify systemic problems, and hold the government accountable. 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 June 2017 we wrote a letter signed by nearly 300 attorneys and organizations demanding that ICE stop arresting individuals at courthouses, which undermines immigrants' willingness to report crimes and limits their access to the justice system. In March and December 2018 we trained approximately 150 attorneys to represent detained immigrants in habeas corpus proceedings and bond hearings. 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. In September 2018 we filed a civil rights complaint with the Department of Homeland Security regarding the Calhoun County Jail's decision to deny in-person visits with immigration detainees. In June 2019 we provided extensive recommendations to the Michigan State Police (MSP) about policy changes to ensure impartial policing and prevent entanglement between the MSP and federal immigration authorities. And in August 2019 we wrote to county sheriffs, prosecutors and police chiefs urging them to stop detaining people in local jails at the request of ICE without a court order. (ACLU Attorneys Miriam Aukerman, Michael J. Steinberg, Abril Valdes, Monica Andrade and

Juan Caballero; MIRC Attorneys Susan Reed, Ruby Robinson, Anna Hill, Eva Alvarez and Ana Devereaux.)

LGBT RIGHTS

Supreme Court Victory for Transgender Rights. 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. In 2016 Judge Sean Cox ruled in favor of the funeral home. On appeal, the ACLU intervened on behalf of Ms. Stephens and participated in briefing and oral argument. In 2018 the Sixth Circuit reversed the trial court's decision, holding that Title VII protects transgender employees from discrimination. The United States Supreme Court then agreed to hear the case along with two others regarding discrimination based on sexual orientation. In June 2020 we won a stunning victory in the Supreme Court, which ruled discrimination against LGBT employees is illegal under Title VII. The case is now back in the district court to determine damages and attorneys' fees. (*EEOC v. Harris Funeral Homes*; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin; National ACLU Attorneys John Knight, James Esseks, Gabriel Arkles, Chase Strangio, and David Cole.)

Discrimination by Foster Care and Adoption Agencies. In 2017 the ACLU filed a federal lawsuit challenging Michigan's practice of permitting state-funded 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. Even though adoption and foster care placement is a public function, the state allowed publicly funded agencies, some of which are faith-based, to discriminate against same-sex couples. In 2018 Judge Paul Borman denied the state's motion to dismiss our lawsuit. In February 2019 the case settled when the new Whitmer administration agreed to a non-discrimination policy for all contracts with adoption and foster care agencies. However, in March 2019 two faith-based agencies filed new lawsuits against the state, claiming that the non-discrimination policies violated their right to religious liberty. In September 2019 Judge Robert Jonker granted a preliminary injunction in one of the cases, preventing the state from enforcing its non-discrimination policy pending further review. Meanwhile, we have filed motions to intervene in the new cases in order to defend the settlement agreement from our previous case. Judge Jonker denied our motion to intervene in one of the cases, but in May 2020 the Sixth Circuit reversed. (*Dumont v. Lyon*; *Buck v. Gordon*; *Catholic Charities West Michigan v. Mich. Dep't of Health & Human Services*; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin; National ACLU Attorneys Leslie Cooper and Dan Mach, and Garrard Beeney, Ann-Elizabeth Ostrager, Jason Schnier, Hannah Lonky, and James Mandilk of Sullivan & Cromwell.)

Defending School District's LGBT-Friendly Policies. In 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 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 (GSA) student group at Williamston High School. We also argued that the lawsuit should be dismissed, as LGBT students will be at risk of discrimination if school districts are not permitted to have LGBT-inclusive non-discrimination policies. In July 2019 the court granted our motion to intervene on behalf of the GSA. Our motion to dismiss remains pending. (*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.)

Protection for Transgender People Under Hate Crimes Statute. Michigan has a statute that enhances punishment for assaults that are motivated by race, religion, national origin, or gender. Although the ACLU generally opposes statutes that enhance punishments, there are many civil rights laws that prohibit discrimination on the basis of sex or gender and the ACLU believes that they should be interpreted as protecting LGBT people from discrimination. In 2018 a woman named Kimora Steuball was shot and seriously injured by a man who was harassing her for being transgender. The assailant was prosecuted under Michigan's hate crimes law, but the Michigan Court of Appeals ruled that the law does not cover crimes motivated by animus against transgender people. If the decision stands, it will likely affect whether people who are fired from their jobs or denied services in stores and restaurants based on their gender identity will be protected by any of Michigan's civil rights laws. In July 2020 the ACLU filed a friend-of-the-court brief asking the Michigan Supreme Court to take the case and rule that assaulting someone because they are transgender is an assault motivated by gender in violation of state law. (*People v. Rogers*; National ACLU Attorney John Knight; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin.)

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 2018 the ACLU of Michigan 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. In January 2020 the Michigan Court of Appeals remanded the case back to the trial court for an explanation as to why the voir dire was not allowed. (*People v. Six*; ACLU Attorney Jay Kaplan; co-counsel Ethan Rice, Richard Saenz, and Max Isaacs of Lambda Legal.)

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. Although Ms. Glenn and Ms. O'Brien's medical providers determined that gender confirmation surgery was medically necessary, Priority and Meridian denied coverage, pointing to their policies that had blanket exclusions for gender confirmation surgery. The ACLU of Michigan represented both claimants in administrative proceedings, arguing that the blanket exclusions were unlawful. In September 2018 the Michigan Department of Health and Human Services instructed Michigan Medicaid insurance programs to remove blanket exclusions from their policies, citing the nondiscrimination requirements of the Affordable Care Act. Meridian settled with Ms. O'Brien by reimbursing her for the expenses associated with her surgery. In November 2018 we filed a complaint with the Michigan Department of Civil Rights against Priority Health regarding its discriminatory policy. (ACLU Attorney Jay Kaplan.)

Transgender Inmate Held in Solitary Confinement. Claire Mercer is a transgender woman who was sentenced to serve time in the Mason County Jail in March 2019. When jail officials learned she was transgender, they immediately placed her in solitary confinement, not because there had been threats to her safety, but because the jail had never dealt with a transgender inmate before. Solitary confinement meant that Ms. Mercer was confined to a cell 23 hours per day and denied opportunities that other inmates had, like programming, exercise, and spending some time outdoors. The jail also refused to provide her medically prescribed hormone medication. In July 2019 the ACLU of Michigan sent a letter to the county sheriff, complaining that Ms. Mercer's treatment violated the Eighth Amendment and equal protection. After receiving our letter, the jail agreed to provide Ms. Mercer with her hormone medication and allowed her to participate in some program activities with the general jail population and to receive mental health counseling. In August 2019 we asked the Michigan Department of Civil Rights to conduct a formal investigation. (ACLU Attorney Jay Kaplan).

OPEN GOVERNMENT

Public Access to Citizen Complaints. Some police departments in Michigan refuse to disclose citizen complaints about police misconduct, asserting that these complaints are "personnel records" exempt from disclosure under the Freedom of Information Act. The ACLU of Michigan sued the East Lansing Police Department over this issue in 2016 and obtained a consent judgment requiring disclosure. Recently, a similar case surfaced involving the Norton Shores Police Department. The ACLU of Michigan filed a friend-of-the-court brief in the Michigan Court of Appeals arguing that all citizen complaints should be disclosed, and we were granted permission to argue the case as well. In July 2019 the Court of Appeals issued a decision agreeing with our position. (*Rudd v. City of Norton Shores*; ACLU Attorney Dan Korobkin.)

POVERTY

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 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 to ensure that the retroactive benefits were properly paid. In 2019 and 2020 we have continued to negotiate with DHHS to ensure that the new policies they are developing comply with federal law and due process. (*Barry v. Lyon*; ACLU Attorneys Miriam Aukerman and Sofia Nelson; Jacqueline Doig, Katie Linehan, Elan Nichols, Mario Azzi and Linda Jordan of the Center for Civil Justice.)

PRISONERS' RIGHTS

COVID-19 in County Jails. During the COVID-19 crisis, jails and prisons have failed to take basic measures to protect incarcerated people from catching the deadly coronavirus. Social distancing in jail is impossible, quarantining and contact tracing procedures have been lax or non-existent, and jails have failed to take simple hygiene measures like ensuring that people had sufficient soap and cleaning supplies. In April 2020 the ACLU of Michigan and coalition partners filed a federal class action lawsuit against the Oakland County Jail for violating the constitutional rights of detainees by exposing them to an unacceptable risk of contagion. We even uncovered evidence that the jail transferred people from safer parts of the facility to places where the outbreak was the worst as punishment for complaining about jail conditions. Judge Linda Parker granted our motions for a temporary restraining order and preliminary injunction, ordered the jail to improve its conditions and policies, and established a process for medically vulnerable inmates to seek release on bail. Unfortunately, in July 2020 the Sixth Circuit Court of Appeals reversed by a vote of 2-1. The case is now back in the district court for further proceedings, including more comprehensive discovery regarding the jail's response to this public health crisis. In a separate lawsuit by other organizations against the Wayne County Jail, we filed a friend-of-the-court brief asking the Michigan Court of Appeals and the Michigan Supreme Court to review a lower court's decision denying relief, but the appellate courts refused to act. (*Cameron v. Bouchard*; *Wayne County Inmates v. Wayne County Sheriff*; ACLU Attorneys Phil Mayor and Dan Korobkin; ACLU Cooperating Attorneys Syeda Davidson and Margo Schlanger; Krithika Santhanam and Thomas Harvey of the Advancement Project; Alex

Twinem and Alec Karakatsanis of Civil Rights Corps; Cary McGehee and Kevin Carlson of Pitt McGehee Palmer & Rivers; Allison Kriger of LaRene & Kriger.)

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 2019 Judge Sean Cox denied the state's motion for summary judgment and scheduled the case for trial. The Michigan Department of Corrections then agreed to settle the case by changing its policy to allow prisoners to report mistreatment to an outside government oversight agency or state-designated protection and advocacy organization. Ms. Miller was also reinstated to her position, compensated for her lost wages, and had her record cleared of having been terminated for violating prison rules. (*Miller v. Stewart*; ACLU Attorney Dan Korobkin; Cooperating Attorneys Daniel Quick, Jerome Crawford, Chelsea Smialek, Kathleen Cieslik, Emily Burdick, Lina Irvine, 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 prisoner, 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 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 June 2019 the Michigan Court of Claims ruled that MDOC's policy was illegal and ordered the state to turn over the video footage. The case is now in the Michigan Court of Appeals in a dispute over attorneys' fees. (*Woodman v. Michigan Department of Corrections*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Robert Riley, Marie Greenman, Olivia Vizachero, and Rian Dawson of Honigman.)

Executive Orders to Protect Incarcerated People During COVID-19. As the COVID-19 pandemic swept through Michigan, it presented a dire threat to the tens of thousands of people incarcerated in Michigan's overcrowded and unhygienic jails and prisons, many of whom are medically vulnerable. The ACLU of Michigan, along with partners around the state, rapidly mobilized to urge the governor to issue executive orders to facilitate speedy and safe reduction of population in our jails and prisons. In March 2020 Governor Whitmer issued an executive order, reflecting a number of specific recommendations made by the ACLU and our partners, and instructing local sheriffs and courts to take aggressive measures to reduce the population levels

in Michigan's county jails. Unfortunately, the governor did not issue a similar order to facilitate the safe release of medically vulnerable inmates from Michigan's prisons, which have experienced some of the highest infection and death rates in the country. We continue to advocate for executive action to protect over 30,000 people in Michigan's state prisons, where deadly COVID-19 outbreaks continue. (ACLU Attorneys Phil Mayor and Dan Korobkin; Margo Schlanger of U-M Law School and Jonathan Sacks of the State Appellate Defender Office.)

PRIVACY AND TECHNOLOGY

Search Warrants for Cell Phone Data. When police obtain a search warrant, the Fourth Amendment requires that the scope of the search be limited to a particular place and for evidence of the particular crime being investigated. In the modern era, a person's electronic devices hold vast amounts of data, and a warrant to search a person's cell phone can dangerously circumvent these constitutional protections by opening up a person's private life to intrusive snooping by law enforcement. In 2016, police from the Oakland County Sheriff's Department obtained a warrant to search Kristopher Hughes's cell phone for evidence of drug trafficking. To carry out the search, they downloaded the entire contents of his phone, but did not file charges. Then, months later, they went back to the download and searched the data for evidence of a completely separate criminal act, a robbery. In July 2020 the ACLU filed a friend-of-the-court brief in the Michigan Supreme Court arguing that the second search violated the Fourth Amendment because the police did not get a new warrant. Without a requirement for the second warrant, we argued, a search of someone's electronic device will too quickly turn into a fishing expedition, allowing law enforcement to rummage through the details of a person's entire life. (*People v. Hughes*; National ACLU Attorneys Jennifer Granick and Brett Kaufman; ACLU of Michigan Attorneys Dan Korobkin and Bonsitu Kitaba-Gaviglio; co-counsel Stuart Friedman of the Criminal Defense Attorneys of Michigan.)

Facial Recognition. Michigan has the sad distinction of being a leader in the use of facial recognition surveillance technology, which has been shown to be inaccurate, racially biased, and an unprecedented threat to personal privacy. In 2016 the Detroit Police Department purchased facial recognition software and used it for years without approval from the Board of Police Commissioners. In August 2019 the ACLU of Michigan and a coalition of civil rights organizations sent a letter urging the Detroit Police Department to end the use of this dangerous recognition technology. In 2020 the kind of miscarriage of justice we had long warned about came to light. In January, Detroit police officers arrested Robert Williams on his front lawn, in front of his wife and two young daughters, on charges that he had stolen watches from a Shinola store in Detroit. The arrest was based entirely on a facial recognition scan from security footage at the Shinola store, but it was dead wrong: Mr. Williams was not the man in the security footage and was nowhere near the store at the time of the theft. In June 2020 the ACLU of Michigan filed a formal complaint with the Detroit Police Department asking the police to apologize to Mr. Williams and his family for what happened, and repeating our plea for the department to stop using facial recognition technology. The story attracted nationwide media attention and city officials publicly apologized, but the Detroit Police Department continues to use facial recognition for law enforcement purposes. (ACLU Attorney Phil Mayor with community outreach coordinator Rodd Monts and communications strategist Abdullah Hassan; co-counsel Victoria Burton-Harris.)

RACIAL JUSTICE

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 customers for those charges which many of the city's impoverished residents could not afford to pay. Other documents also revealed that residents with delinquent accounts were billed for charges incurred by previous tenants. The ACLU of Michigan joined a lawsuit that sought to restore water service to the city's residents and stop future shutoffs, but in 2016 the Sixth Circuit affirmed the lower courts' dismissal of the case. Advocacy resumed in 2018 in response to media reports of plans to shut off the water of 17,000 households. In 2019 the ACLU and a coalition of attorneys unsuccessfully petitioned the Michigan Department of Health and Human Services, and then Governor Whitmer, to declare a public health emergency and impose a moratorium on shutoffs to prevent the spread of disease. Then, an investigation by our partners at the NAACP Legal Defense Fund (LDF) revealed dramatic racial disparities in water shutoffs, as they are far more likely to occur in majority-Black neighborhoods than in neighborhoods where Blacks are less than 50% of the population. In July 2020 the coalition filed a new lawsuit alleging that the water shutoffs violate due process, equal protection, the Fair Housing Act, and state law. (*Lyda v. City of Detroit*; *Taylor v. City of Detroit*; ACLU Attorneys Mark Fancher, Bonsitu Kitaba-Gaviglio and Dan Korobkin; additional attorneys include Alice Jennings of Edwards & Jennings, Coty Montag and Monique Lin-Luse of LDF, Lorray Brown, Melissa El-Johnson, Kurt Thornbladh, John Philo, Jerry Goldberg, Desiree Ferguson, Anthony Adams, and Erin Mette.)

Discriminatory Tax Foreclosures. Homeowners in Detroit are experiencing a severe tax foreclosure crisis, with many losing their homes based on their inability to pay taxes that never should have been assessed 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 plummeting property 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 became so convoluted that few people who qualify could actually receive the benefit. These policies have a grossly 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 Fund (LDF), and the Covington & Burling law firm filed a lawsuit asserting violations of the Fair Housing Act and due process. 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, homeowners who qualify for a poverty exemption can buy their homes back for $1000, and Detroit created a streamlined, user-friendly poverty exemption application process. Detroit also paid damages to the named plaintiffs and contributed $275,000 to a fund that will help low-income homeowners. In 2019 and 2020 we continued to work with the city and community partner organizations to make sure that the settlement is properly implemented through a three-year enforcement period. (*MorningSide Community Organization v. Wayne County Treasurer*; ACLU Attorneys Michael J. Steinberg, Bonsitu Kitaba-Gaviglio, Dan Korobkin, and Mark Fancher; Coty Montag and

Ajmel Quereshi of LDF; and Shankar Duraiswamy, Amia Trigg, Donald Ridings, Wesley Wintermyer, Sarah Tremont, and Jason Grimes of Covington & Burling.)

Racially Hostile Work Environment in the Detroit Police Department. In 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, Johnny 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 2018 the ACLU of Michigan filed a federal lawsuit on Officer Strickland's behalf, alleging racial discrimination, a racially hostile work environment, and retaliation. As part of our discovery in the case, the court ordered Chief Craig to sit for a deposition. In November 2019 Judge Nancy Edmunds dismissed the lawsuit, ruling that there was not enough evidence of discrimination, racial hostility, and retaliation to proceed with the case. We are appealing to the Sixth Circuit. (*Strickland v. City of Detroit*; ACLU Attorneys Mark P. Fancher, Michael J. Steinberg and Dan Korobkin; Cooperating Attorney Leonard Mungo.)

Traffic Stop Quotas Create Racial Profiling Hazard. In 2016 the Michigan State Police (MSP) disclosed that troopers are evaluated in part on how many traffic stops they make. The ACLU of Michigan wrote to MSP's director 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 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, MSP acknowledged that it lacked reliable information about the race of the drivers it stops, and in 2017 revised its policies to require that state troopers record that information. 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 2018 we wrote a letter to MSP highlighting these problems and requesting that the agency hire an expert qualified to determine whether the agency is engaged in racial profiling. When a new MSP director was appointed in 2019, we renewed our request for an independent study. In September 2020 MSP announced that it would hire an independent firm to conduct a study and make traffic stop data available online. (ACLU Attorney Mark Fancher.)

Jaywalking While Latino. In April 2019 the ACLU of Michigan filed a complaint with the Michigan Department of Civil Rights (MDCR) based on the discriminatory treatment by the Grand Rapids Police Department (GRPD) of a 15-year-old Latino youth. The teen and his friend were walking on a quiet residential street in Grand Rapids when Officer Austin Diekevers approached them with his hand on his holstered gun, told them to put their hands on their heads while he checked if they had warrants, and then, when the teens tried to leave, drew his gun on the youths. Our complaint coincided with several other high-profile incidents of racial profiling by GRPD officers, and community outrage over such selective enforcement of jaywalking laws against children of color helped spur demands for police reform. The MDCR, after holding several listening sessions in Grand Rapids, announced an official investigation into systemic racism by the GRPD in May 2019. (ACLU Attorneys Miriam Aukerman and Elaine Lewis; Cooperating Attorney Anthony Greene.)

Racism in Paw Paw Public Schools. The public high school in Paw Paw, Michigan still uses the racial slur "Redskin" and offensive imagery of a Native American as a mascot for its athletic program. Advocacy by Native Americans in the area to change the mascot was beaten back with excessive hostility, aggression, and racial animus. After receiving multiple complaints about this controversy and other signs of racial discrimination and harassment in the Paw Paw Public Schools, the ACLU of Michigan investigated and uncovered a pattern of extremely disturbing incidents, including the display of swastika, hostile use of the N word and other racial slurs, and students being told to "go back to Mexico." When we approached the school district with an offer to collaborate in attempting to improve the environment, we were ignored. In January 2019 we formally filed a complaint with the United States Department of Education's Office for Civil Rights, charging that the school district's deliberate indifference to a racially hostile educational environment violates Title VI of the Civil Rights Act of 1964. In December 2019 the Department of Education announced that it would investigate the school district's treatment of Native Americans. In March 2020 the school district finally acknowledged the harm caused by its offensive Native American branding and discontinued its use. (ACLU Attorney Mark Fancher.)

Racial Insensitivity in Brighton Public Schools. The ACLU of Michigan is representing a white mother and her adopted African American son in a challenge to racial insensitivity in the Brighton school district. When her child was in second grade and the only black child in his class, he decided to grow dreadlocks. In response to inquiries about his hair by classmates, his teacher placed a knit cap with artificial dreadlocks attached to the inside band on the child's head and told the class the child's hair would resemble the artificial locks when fully grown. When the child was told to look at himself in the bathroom mirror, the other students laughed at him. The child's mother complained that the teacher humiliated her son by using him as an involuntary prop, but the principal dismissively claimed that the child was given advance notice of the demonstration and welcomed it. The principal also refused the mother's request to arrange cultural competence training for the staff. In February 2019 we filed a complaint asking the Michigan Department of Civil Rights to investigate. (ACLU Attorney Mark Fancher.)

Police Shooting in Detroit. In July 2020 a squadron of Detroit Police Department officers approached a young African American man to make an arrest on a residential street. Hakim Littleton, the arrestee's companion, apparently drew a pistol and fired a shot in the direction of the officers, who returned fire in a hail of bullets, killing Littleton. In the immediate aftermath of

the incident, Police Chief James Craig released video footage of the event along with narrative commentary of what occurred. The ACLU of Michigan joined in coalition with other legal and community organizations to question the account given by the police after our review of the video footage revealed factual inconsistencies and contradictions in the police account. Most notably, the video appears to show that Littleton had been fully subdued by officers and was alive on the ground when one officer fired a shot into Littleton's head at close range. The coalition called for an independent investigation and also produced its own narrated video of the killing. (ACLU Attorney Mark Fancher; coalition partners include the Black Legacy Coalition, National Lawyers Guild, Detroit Council of Elders, Detroit Justice Center, East Michigan Environmental Action Coalition, Hush House Black Community Museum, James and Grace Lee Boggs Center, Michigan Coalition for Human Rights, Michigan Liberation, Moratorium Now Coalition, National Conference of Black Lawyers, Neighborhood Defender Service of Detroit, Riverwise Magazine, Wayne County Criminal Defense Bar Association, and We the People of Detroit.)

Excessive Force by Police. In May 2020 Washtenaw County Sheriff's deputies responded to a call concerning gunshots and related disturbances in Ypsilanti Township. In the course of the deputies' investigation, one officer encountered Sha'teina Grady El, an African American woman who was on the scene because of concerns that her daughter was involved in the incident under investigation. A video recording of the encounter appears to show the deputy striking Ms. Grady El three times with force with his fist in or about her head. She was then placed under arrest. Given the factual complexity of the events, sensitivity to then recent tragic events related to the relationship of law enforcement to communities of African descent, and the very disturbing video images of a police officer violently pummeling Ms. Grady El, the ACLU of Michigan sent a letter to the county prosecutor and the Michigan attorney general requesting that charges not be brought against Ms. Grady El. The social harm of prosecuting Ms. Grady El, we wrote, would outweigh any benefits given pre-existing tensions between police and the black community and questions that would be raised about the violent circumstances of the arrest. (ACLU Attorney Mark Fancher; Cooperating Attorney Gayle Rosen.)

Call for De-escalation Reforms in Jackson. In January 2019 police officers in Jackson killed a 29-year-old Black/Latino man named Joey Ramirez. According to reports, police officers responded to a complaint that Mr. Ramirez was attempting to break into someone's home. When officers arrived, Mr. Ramirez fled, and officers gave chase and eventually shot him, acting in what the prosecutor later concluded was self-defense. In January 2020, on the first anniversary of the incident, the ACLU of Michigan sent a set of recommendations to Jackson County Sheriff and the city's chief of police regarding methods to diminish the potential for injury and loss of life. Our recommendations noted that, before Ramirez was fatally wounded by police gunfire, he and the police were engaged in a protracted foot chase, which is often standard policy when a suspect flees. But we explained that police departments across the country are examining their policies on foot pursuit and in some cases revising them to protect their officers and the public. Some departments have adopted policies of non-pursuit, particularly in cases where the identity and residence of the suspect are known and a later arrest can be made. Other de-escalation techniques were also recommended. (ACLU Attorney Mark P. Fancher.)

VOTING RIGHTS

Absentee Voting Rights in Flint. Michigan voters overwhelmingly passed Proposal 3 in 2018, which enshrined in Michigan's Constitution the right to vote an absentee ballot in the 40 days before an election, either at home by mail or in person at the voter's local clerk's office. In the weeks leading up to the August 2020 primary election, however, the city clerk's office in Flint remained closed to the public, preventing voters from exercising their constitutional right to obtain and cast their absentee ballots in person. And Flint voters who had requested their absentee ballots by mail were not receiving them, despite a state-law requirement that clerks issue absentee ballots immediately upon receiving a voter's request. In July 2020 the ACLU of Michigan filed an emergency lawsuit against the Flint city clerk to prevent the disenfranchisement of thousands of Flint voters. Following a two-day hearing, Judge Celeste Bell ruled that the city clerk was violating her clear legal duties under the Michigan Constitution and state election law, and ordered the clerk to have her office open to the public every day until the election and to process all applications for absentee ballots within 24 hours of receipt. In September 2020 we asked the judge to rule that the same requirements applied to the general election in November. (*Barkey v. Brown*; ACLU Attorneys Dan Korobkin, Sharon Dolente and Phil Mayor; Cooperating Attorneys Alec Gibbs and Muna Jondy, and Shankar Duraiswamy and Sarah Suwanda of Covington & Burling.)

Deadline for Absentee Ballots. When Michigan voters approved Proposal 3 in 2018, the Michigan Constitution was amended to provide a constitutional right to vote by mail at any point during the 40 days before an election. The legislature, however, has refused to repeal a statute that requires all mailed-in ballots to arrive in the clerk's office no later than election day. In May 2020 the ACLU filed a lawsuit challenging the old statute, arguing that Proposal 3 now provides a right to have your vote counted if your ballot is postmarked by election day. The lawsuit took on heightened importance as mail-in voting has skyrocketed during the COVID-19 pandemic just as the ability of the Postal Service to timely process and deliver mail has plummeted. Unfortunately, in July 2020 the Court of Appeals, by a vote of 2-1, rejected our claims, and in the Michigan Supreme Court, by a vote of 4-3, refused to consider our appeal. In August 2020 we filed a motion for reconsideration. (*League of Women Voters of Michigan v. Secretary of State*; ACLU of Michigan Attorneys Dan Korobkin and Sharon Dolente; National ACLU Attorneys Theresa Lee and Dale Ho; Stanton Jones, Elizabeth Theodore, Daniel Jacobson, Kolya Glick and Samuel Callahan of Arnold & Porter; co-counsel Mark Brewer.)

Promoting the Vote. In May 2020 Secretary of State Jocelyn Benson mailed every registered voter in Michigan an application to vote by mail in the August and November elections. After the ACLU and coalition partners successfully advocated for the passage of Proposal 3 in 2018, it is now a constitutional right to vote by mail in Michigan. And in the midst of a pandemic it is especially important to encourage voters to cast their ballot without crowding into polling places on election day. Opponents, however, brought a series of lawsuits challenging Secretary Benson's authority to mail the applications. In June 2020 the ACLU of Michigan joined the League of Women Voters in filing a friend-of-the-court brief arguing that the Secretary of State has that authority as part of her constitutional duty to ensure that all voters have an equal opportunity to vote by mail. In August 2020 Judge Cynthia Diane Stephens agreed with our analysis and dismissed the lawsuits. (*Black v. Benson*; ACLU Attorneys Dan Korobkin and

Sharon Dolente; Cooperating Attorneys Shankar Duraiswamy and Tarek Austin of Covington & Burling; co-counsel Mark Brewer.)

Collecting Petition Signatures During a Pandemic. Hundreds of candidates and ballot question committees were stymied in their efforts to collect petition signatures during the COVID-19 shutdown and stay-at-home orders. Although many states eliminated or eased their rules for collecting signatures to accommodate candidates and advocates during the crisis, Michigan made no changes to its signature collection requirements. In April 2020 the ACLU of Michigan filed friend-of-the-court brief in federal court arguing that, in the midst of a pandemic, Michigan's signature collection rules imposed a severe burden on the First Amendment rights of candidates and voters. Judge Terrence Berg agreed with us and ordered the state to make accommodations for candidates seeking ballot access. (*Esshaki v. Whitmer*; ACLU Attorney Dan Korobkin; Cooperating Attorney Michael J. Steinberg of U-M Law School, with student attorneys Katie Chan, Diane Kee and Brian Remlinger on the brief.)

Signature Gathering for Ballot Initiatives. In 2018 the legislature enacted a mean-spirited anti-petitioning law that will make it more difficult to collect enough signatures to place new initiatives on the ballot. The new law will put a cap on the number of signatures that can be collected from any one congressional district (thereby diluting the ability of African American voters to place initiatives on the ballot), and will require paid petition circulators to register with the state before they can start collecting signatures. Attorney General Dana Nessel announced that she would consider issuing an attorney general's opinion regarding the constitutionality of the new statute and invited interested parties to submit legal memos to assist her office. In February 2019 the ACLU of Michigan submitted a 12-page letter arguing that the new law violates the Michigan Constitution, the First Amendment, and the Voting Rights Act. In May 2019 Nessel issued a formal attorney general's opinion adopting our analysis and declaring the new statute unconstitutional. The case was then taken up in court, and in February 2020 the ACLU filed a friend-of-the-court brief in the Michigan Supreme Court again arguing that the new law is unconstitutional. (*League of Women Voters of Michigan v. Secretary of State*; ACLU Attorneys Sharon Dolente and Dan Korobkin; Cooperating Attorneys Sam Bagenstos and Eli Savit of U-M Law School.)

"Adopt and Amend" Undermines Right to Vote on Ballot Initiatives. In 2018 citizens collected enough signatures to place initiatives on the ballot that would raise the minimum wage and guarantee paid sick time. But instead of allowing citizens to vote on these important measures at the November 2018 election, the Michigan legislature adopted them into law in order to keep them off the ballot—and then proceeded to gut them as soon as the election was over. This cynical move, which is unprecedented in Michigan history, was challenged in the Michigan Supreme Court through a request by the legislature for an advisory opinion about whether the "adopt and amend" strategy is constitutional. In June 2019 the ACLU of Michigan filed a friend-of-the-court brief arguing that it is not. We were joined on the brief by the League of Women Voters of Michigan and the American Association of University Women of Michigan. Unfortunately, in December 2019 the Supreme Court issued an order dismissing the case and declining to issue a ruling. (*In re Request for Advisory Opinion Regarding Constitutionality of 2018 PA 368 & 369*; ACLU Attorneys Sharon Dolente and Dan Korobkin; Cooperating Attorney Eli Savit of U-M Law School.)

Typographical Error in Recall Petition. After State Representative Larry Inman was indicted, a group citizens circulated petitions to recall him from office, which is a right of the people specifically enumerated in the Michigan Constitution. The Bureau of Elections refused to consider the petitions because they contained a typo. State law requires the "reasons for recall" on a petition to be the same as the reasons approved in advance by Board of State Canvassers, but the typo created a discrepancy in text, not in meaning. The ACLU of Michigan filed a friend-of-the-court brief in the Michigan Supreme Court arguing that the state, by creating hypertechnical traps for the laypeople who often draft recall petitions, was subverting the democratic right to recall elected representatives enshrined in the Michigan Constitution. In December 2019 the Michigan Supreme Court ruled that the typo could not be used as a reason to reject the petitions. Ultimately, not enough petition signatures had been collected, and Inman was not recalled. (*Hardy v. Secretary of State*; ACLU Attorneys Dan Korobkin and Sharon Dolente; Cooperating Attorney Sam Bagenstos of U-M Law School.)

WOMEN'S RIGHTS

Cross-Examination in University Sexual Assault Misconduct Hearings. A federal civil rights law known as Title IX requires universities to protect students from sexual harassment and assault in campus, including taking effective measures to investigate complaints. Public universities are also required to provide due process to students who are accused of wrongdoing. In a new policy established by the University of Michigan in January 2019, a student accused of sexual assault is permitted to personally cross-examine their alleged victim at a hearing. The new policy was established after a federal court ruled that some form of cross-examination is required by due process in some cases. However, the court was careful to state that cross-examination could be carried out by an attorney or advocate, rather than by the student who is accused of the assault. In September 2019 the ACLU wrote a letter urging the university to rescind its new policy. We explained that the ACLU supports the right to cross-examination, but allowing the accused to personally conduct the cross-examination is highly traumatic to survivors, would deter students from reporting sexual assaults on campus, and is not required to comply with due process. We asked the university to create a new policy that provides attorneys or advocates to each side to conduct any cross-examination required by law. In May 2020 the United States Department of Education issued new federal regulations that prohibit the kind of one-on-one cross-examination that we objected to in our letter. In August 2020 the university changed its policy to conform with the new federal requirements. (ACLU of Michigan Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin, with Civil Liberties Fellow Katie Bart; Cooperating Attorney John Shea; National ACLU Attorneys Sandra Park and Emma Roth.)

Religious Refusal at Meijer Pharmacy. Rachel Peterson was about 11 weeks into her pregnancy when she had a miscarriage. Her doctor prescribed a medication to treat the miscarriage and reduce the risk of infection. But the pharmacist on duty at a Meijer pharmacy in Petoskey refused to fill her prescription, saying that "as a good Catholic male," he could not "in good conscience" provide her with the medicine because he believed it was her intention to use it to end a pregnancy. He also refused to allow Ms. Peterson to speak with another pharmacist or transfer her prescription to another pharmacy. In October 2018 we wrote a letter to Meijer on Ms. Peterson's behalf, stating what the pharmacist did was discriminatory and violated the state's public accommodation laws. In March 2019 Meijer agreed to change its policy to ensure

that customers will receive their prescriptions without undue delay or interference. Under the new policy, if a pharmacist has a religious objection to filling any prescription, a second pharmacist must take over immediately and fill the prescription. In the very rare instance when a second pharmacist is not on site, Meijer must have the prescription delivered from another location within 30 minutes. Customers must receive their prescriptions seamlessly without knowing that a pharmacist objected, and no Meijer employee may "shame" customers for taking a medication prescribed by their doctor. Meijer trained all pharmacy staff on the new policy, and new employees will be trained as part of their orientation. (ACLU Attorneys Michael J. Steinberg and Bonsitu Kitaba-Gaviglio, with Policy Strategist Merissa Kovach.)