

COURT FINDS IMMIGRATION OFFICIALS VIOLATED CONSTITUTION IN DETAINING U.S. CITIZEN

Thanks to a lawsuit filed by the ACLU of Rhode Island, a federal court ruled that federal immigration officials and the state of Rhode Island violated the Constitution in detaining a U.S. citizen without probable cause while the federal government investigated her immigration status. The ruling came down just days before President Donald Trump issued an executive order that essentially called for state and local officials to actively participate in the conduct that the court ruled violated Ada Morales's constitutional rights.



ACLU of RI Plaintiff Ada Morales

The ACLU lawsuit on behalf of Ms. Morales, who was born in Guatemala and became a naturalized U.S. citizen in 1995, arose after she was arrested on a minor state criminal charge. Immigration and Customs Enforcement (ICE) agents then issued an immigration hold against her. A judge had ordered her release, but the state Department of Corrections held her for an additional 24 hours solely because of the ICE detainer, and even after she repeatedly told officials she was a U.S. citizen and offered to show them her naturalization certificate and passport.

The detention, the ACLU lawsuit charged, violated her constitutional right to freedom from unreasonable searches and seizures. In a strongly worded opinion, U.S. District Judge John J. McConnell Jr. agreed, writing that Morales's "illegal detention revealed a dysfunction of constitutional proportion at both the state and federal levels and a unilateral refusal to take responsibility for the fact that a United States citizen lost her liberty due to a baseless immigration detainer through no fault of her own." The judge also said the facts surrounding her unlawful detention "should concern all Americans."

"The decision is the latest in a series of court decisions from across the country underscoring the serious legal and constitutional flaws in the use of immigration detainers, reinforcing that states and localities should avoid getting mixed up in the federal government's unlawful immigration practices," said Cody Wofsy, an attorney with the ACLU's Immigrants' Rights Project.

"As a new presidential administration implements mass deportations, this court ruling is an important reminder of the dangers to liberty that all of us face from overzealous government agencies. We are hopeful that the decision sends a strong message about the importance of the courts in safeguarding the rights of all," said Steven Brown, Executive Director of the ACLU of Rhode Island.

"We are honored to represent Ms. Morales and work with the ACLU on this important matter, and are grateful that the court recognized just how painful and unjust this detention was for Ms. Morales and her family," said Mark Ford, a partner at Wilmer Cutler Pickering Hale and Dorr LLP, pro bono counsel in this case.

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FROM THE DESK OF THE EXECUTIVE DIRECTOR

In the past few months, we've had an unprecedented outpouring of support for our work. If you're a new member, welcome. To our new and existing members alike – thank you. We need you now more than ever.

As highlighted in this issue of our newsletter, the new presidential administration is exhibiting a frightening and blatant disregard for civil liberties – such as with the “Muslim ban” executive order – and for facts – such as with a baseless call for voter fraud investigation. This appears to be just the tip of the iceberg.

Not surprisingly, many of you have expressed alarm, and others, outright fear. As a result, we've been very busy – both at the federal and state levels. In addition to responding to civil liberties threats and challenges from the new administration, we're also diligently continuing our legislative, legal and public education work at the state level – to prevent a roll-back of civil liberties in Rhode Island, and to defend those whose rights have been denied. Just ask Ada Moraes or David Alves – two recent ACLU plaintiffs whose stories are highlighted in this issue of our newsletter.

Indeed, it's at the state level that progress can happen in the face of a federal government that is hostile towards civil liberties. Your membership makes that progress – and all of our work – possible. Thank you.

– Steven Brown



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ACLU OF RHODE ISLAND FILES DEMAND FOR DOCUMENTS ON IMPLEMENTATION OF TRUMP'S IMMIGRATION BAN

The ACLU of Rhode Island has filed a Freedom of Information Act (FOIA) request with the U.S. Customs and Border Protection (CBP) local field office in Boston to expose how Trump administration officials are interpreting and executing the President's immigration ban, and in particular how they may be acting in violation of federal courts that ordered a stay on the ban's implementation. The FOIA request was filed jointly with the ACLU affiliates in Maine, Massachusetts, New Hampshire and Vermont as part of a coordinated ACLU effort.

“The public has a right to know if public officials are complying with their constitutional obligations,” said Steven Brown, Executive Director of the ACLU of RI.

Media reports indicate that CBP officials detained and deported individuals even after federal courts ordered them to stop enforcing the executive order following a court challenge from the ACLU and other agencies.

The Trump administration has yet to fully disclose how many refugees, visa holders, and legal permanent residents were affected by this action.

The FOIA request seeks records relating to CBP's interpretation and implementation of the court orders, and documents concerning the number of people who were detained at airports under the President's executive order. The request will proceed even if, as media reports are indicating, the executive order is replaced with a new one.

ACLU RESPONSE TO PRESIDENTIAL EXECUTIVE ORDERS ON IMMIGRATION

The ACLU of Rhode Island responded to President Donald Trump's executive orders on immigration that, among other things, propose the deportation of immigrants merely for being charged with offenses and seek to sanction so-called “sanctuary cities” with a loss of federal funds.

The ACLU is preparing a comprehensive package of immigrant-protective measures that municipalities in Rhode Island, and the state itself, could adopt to mitigate the harm to immigrant communities that the executive orders would cause.

The ACLU also said it would be prepared to legally assist municipalities threatened with a loss of funding for adopting lawful policies that protect their immigrant communities.

“Notwithstanding the President's disturbing saber-rattling, there are clear constitutional limits on his ability to punish cities that decide they do not want to be in the business of enforcing federal immigration law. Many public officials, including representatives of law enforcement, recognize that promoting trust in the immigrant community is a critical component of policing, and that the crackdowns envisioned by the President undermine, rather than promote, public safety,” said ACLU of RI Executive Director Steven Brown.



ACLU of RI Plaintiff David Alves

SETTLEMENT REACHED IN LAWSUIT AGAINST WOONSOCKET POLICE FOR MISTREATMENT OF DEAF DETAINEE

The ACLU of Rhode Island and the R.I. Disability Law Center have favorably settled a federal civil rights lawsuit on behalf of a profoundly deaf man who was not provided an interpreter after he was arrested and detained overnight by Woonsocket police for allegedly making an obscene gesture. The groups expressed hope that the settlement, which addresses important issues regarding municipal agency obligations to

accommodate people who are deaf or hard of hearing, will serve as a model for police departments across the state.

Plaintiff David Alves was arrested in July 2015, when he and some friends were celebrating a friend's birthday at the City Side Club in Woonsocket. After a verbal altercation between the bouncer and the group, police were called. On his way out of the bar, Alves gestured toward the bouncer with the American Sign Language sign for "bullshit," which police at the scene interpreted as giving them the middle finger. Immediately after making the sign, Alves was arrested for violating a city ordinance against "mak[ing] an obscene gesture."

Rather than issue Alves a citation, police booked him and held him at the station overnight. While there, Alves's requests for a sign language interpreter were ignored. When a deaf friend came to the station to check up on him, a police officer handed the friend a note saying that Alves would "be out in the morning no problem . . . he just needs to take it as a learning experience." In the morning, he was released from custody and issued a summons to appear at court on the ordinance violation. A few months later, a Municipal Court judge dismissed the criminal charge.

The lawsuit, filed by ACLU volunteer attorney V. Edward Formisano and RI Disability Law Center attorney Kate Bowden, argued that city officials violated Alves's statutory and constitutional rights by unlawfully arresting and detaining him, charging him with violating an unconstitutional City criminal ordinance, subjecting him to discrimination on account of his disability, and failing to accommodate his disability.

Under the settlement agreement, the City acknowledged that it had repealed the "disorderly conduct" provision under which Alves was arrested, and which the lawsuit claimed was unconstitutional, and agreed to adopt and implement a detailed "Effective Communication Policy" for working with people who are deaf or hard of hearing. The City further agreed to notify the public of their rights to auxiliary aids and services and to train staff on working with people who are deaf and hard of hearing. Alves was also awarded \$25,000 in damages and attorney fees.

"KNOW YOUR RIGHTS" RESOURCES AVAILABLE

Lately, we've gotten a lot of requests for our Know Your Rights information on anti-Muslim discrimination, police practices, and protests and demonstrations. Given the recent deportation raids, Trump's executive orders, and the nationwide protests that have sprung up in response, we're not surprised.

Here is a sampling of what we have available:

- What to Do if You're Stopped by Police, Immigration or the FBI
- Facing Anti-Muslim Discrimination
- Wearing a Hijab
- Protests and Demonstrations

Visit www.riaclu.org/know-your-rights for a full list and to access the free, downloadable PDFs.

ACLU REPORT EXAMINES VOTING PROBLEMS IN NOVEMBER ELECTION

Coming on the heels of false allegations by President Trump of widespread voter fraud, the ACLU of Rhode Island issued a report indicating that some lawful voters were turned away from the polls in November due to the state's controversial voter ID law. The report documented a number of other concerns based on observations from a few dozen ACLU volunteer poll monitors during the 2016 general election. The findings generally mirror those contained in a report the ACLU issued after the 2012 Presidential election.



While acknowledging that polling in most locations went smoothly, the report details problems in some locations caused by the state's voter ID law, polling place location confusion, and various technical issues that created some frustrated – and, in a few instances, disenfranchised – voters.

2016 was the first Presidential election year where photo ID was required to vote. The law requires that any person failing to present an authorized ID must be offered a provisional ballot. Nevertheless, in at least two polling locations, ACLU poll monitors found that voters without proper ID were

summarily turned away by poll workers, preventing them from exercising their right to vote.

This past election was also the first in which new voting machines were used. While some technical difficulties were to be expected with the use of new technology in a large election, some issues went far beyond simple glitches. In Pawtucket, the city's three-page ballot led to major malfunctions with the machines, and a shortage of equipment created frustration, chaos and very long lines.

Based on the poll monitors' findings, the ACLU report outlines specific recommendations regarding best practices for public policy changes, such as:

- Repealing the Voter ID law
- Changing the practices around provisional ballots and how they are determined to be counted partially or in full
- Increasing the number of polling locations, technicians, and scanners
- Expanding and promoting early voting; and
- Establishing an auditing and manual recount process

The report concluded: “[A]s a state and a nation we must continue to protect everyone’s right to vote. Rhode Island has taken some steps in the past years to do this, but more can and should be done. It is important that we acknowledge the deficiencies so that they may be properly addressed for the next election cycle.” After meeting with the ACLU to discuss the report’s findings, the Board of Elections’ executive director expressed support for expanding the counting of provisional ballots as recommended by the ACLU.

In condemning President Trump’s baseless accusations about widespread voting fraud in the November election, the ACLU of RI noted that Rhode Island bore some responsibility for giving this falsehood credence. By enacting voter ID legislation five years ago, the ACLU said, Rhode Island played into the unfounded fears about in-person identification fraud that the President was exploiting.

ACLU/RI DEFENDS FIRST AMENDMENT IN NUMEROUS VENUES

While the ACLU of RI keeps busy with its litigation program, it's important to remember how many successes the Affiliate routinely scores without the need for any legal action. Summarized below are a few of our recent victories outside the courtroom, all focusing specifically on our work in support of First Amendment rights:



- After receiving a complaint from a Foster resident who had been barred from distributing literature at the Town's financial meeting, the ACLU demanded that the Town revise its policy or face litigation. Within a week, town officials advised ACLU volunteer attorney C. Alexander Chiulli that the ban would no longer be enforced.
- In response to a demand for action from the ACLU, the Providence school district sent a strongly worded letter to all school officials reminding them of students' rights not to participate in the Pledge of Allegiance for any reason. The ACLU had called for the reminder after learning that a middle school teacher told students they had to stand for the Pledge unless they adequately "articulated their reason for not standing."
- ACLU opposition persuaded a member of the Cranston City Council to withdraw a resolution asking that the General Assembly add "political activity or belief" to the list of activities that would constitute a "hate crime" under state law, providing for enhanced criminal penalties. The ACLU argued that imposing increased criminal penalties and mandatory prison time for criminal conduct motivated by animus towards a person's political beliefs would give "the ruling political faction tremendous power over dissenting voices."
- Objections from the ACLU, the RI Press Association and the New England First Amendment Coalition prompted a Providence City Council committee to postpone voting on a proposal that would make it illegal to leave unsolicited newspapers on a person's property. Under the ordinance, doing so would have been deemed "littering" with a \$50 fine attached to each violation. In written testimony, the groups argued: "The unsolicited distribution of literature or pamphleteering is deeply rooted in this country's history. It promotes an informed citizenry, encourages political discourse and is perhaps the most effective and cost-efficient way for people to communicate with other residents. To this day, community newspapers, as well as non-profit organizations, political campaigns and others, rely on pamphleteering."
- The ACLU came to the support of RI Future writer and videographer Steve Ahlquist after Cranston City Council Chair Michael Farina initially told him he could not videotape a Cranston City Council meeting. At Ahlquist's insistence, Farina ultimately allowed the taping to proceed but said he planned to revise Council rules to formally institute such a ban. The ACLU sent a letter to the Council pointing out that the ban raised serious constitutional concerns and violated the state's open meetings law, which led to the proposal's apparent demise.

2017 LEGISLATIVE PREVIEW: PRO-ACTIVE CIVIL LIBERTIES LEGISLATION

The 2016 legislative year saw some important pro-civil liberties legislation make its way to the Governor's desk and, perhaps more importantly, a great number of anti-civil liberties measures die. This year's bills are still being introduced, so we'll cover a number of them in the next issue. In the meantime, below are just some of the *positive* civil liberties bills the ACLU is working on this year. For updates on these and other bills, visit our website at www.riaclu.org. (NOTE: Some of the bills do not yet have bill numbers assigned to them.)

CRIMINAL JUSTICE

Juvenile Sentencing (H 5183, S 0237)

This legislation aims to address the issuance of long sentences against juveniles who are charged as adults. As the U.S. Supreme Court has noted, adolescence is marked by “transient rashness, proclivity for risk, and inability to assess consequences.” Yet many who commit their crimes as children are viewed as incapable of rehabilitation, and incarcerated long into their adulthood. Under the proposed legislation, juveniles who are sentenced as adults would automatically come before the parole board after fifteen years, regardless of the length of their sentence, giving these young adults the chance to prove their fitness to return to society. The ACLU testified in support of this legislation sponsored by Representative Christopher R. Blazewski and Senator Harold M. Metts.

ACLU HOSTS ADVOCATE TRAININGS

We recently hosted two advocate trainings for ACLU members to learn how to stand up for their rights at the State House. Attendees heard from advocates and former lawmakers on how to get involved in the legislative process. Trainings covered how to track important legislation; how to reach legislators; how to connect with fellow advocates; and how to testify before committees. Attendees left ready to participate in our state government and make a difference on the issues they care about. Thanks to the Hera Gallery and the United Way for allowing us to make use of their facilities for these trainings.

Justice Reinvestment Package

During 2016, the General Assembly seemed poised to pass a number of important bills aimed at improving the criminal justice system. The package of six bills sprang from the Governor's Justice Reinvestment Working Group, and followed nearly a year's worth of work between government officials and community advocates. Each of these bills passed the Senate but, in a disappointing turn of events, the House failed to act on any of the legislation before the end of the 2016 session. In efforts to revive these efforts, early in the 2017 session the package was once again introduced.

The bills include legislation clarifying the definition of misdemeanor and felony (H 5115, S 0011) and amending the appropriate penalties, a bill adjusting the way probation and parole are imposed, and legislation establishing a Superior Court diversion program (H 5064, S 0010). Early in February, the Senate once again passed the package of bills and referred them to the House Judiciary Committee where they are still being held for further study.

Child Support (H 5553)

Based on new federal regulations, this legislation sponsored by Rep. Grace Diaz and Sen. Erin Lynch Prata would establish a formal process for the incarceration of an individual to be taken into consideration for the purposes of modifying child support orders. That does not always happen now, leaving indigent offenders, once they are released from prison, with huge debts that are impossible for them to pay off.

CIVIL RIGHTS

Shackling of Pregnant Prisoners (S 0282)

Legislation sponsored by Senator Erin Lynch Prata and Rep. Shelby Maldonado will strengthen the state's limitation on shackling pregnant incarcerated women. A restrained pregnant woman cannot move freely or control her balance, placing both her and her fetus at risk. While state law generally prohibits shackling pregnant women during transport to a medical facility, this legislation will additionally prohibit shackling to or from a court proceeding during an inmate's third trimester, and require state officials to annually report on the number of pregnant women incarcerated and restrained.

Gender Rating in Insurance (H 5109)

Nationwide, women have historically been charged more for the same health insurance as men, solely because of their gender, leaving women less able to purchase vital health care coverage. This practice is generally illegal under the Affordable Care Act, but gaps in Rhode Island law allow the practice to continue. The potential repeal of the ACA by Congress further solidifies the need for protections at the state level. Passage of legislation being sponsored by Representative Katherine Kazarian and Senator Susan Sosnowski will keep gender rating out of Rhode Island, regardless of any changes to federal law.

OPEN GOVERNMENT

38 Studios Public Records (H 5347)

This legislation would make public any records generated or obtained by the Rhode Island state police or Attorney General in their investigation of the 38 Studios scandal. The ACLU assisted sponsor Rep. Charlene Lima in drafting the legislation, and House Judiciary Committee has approved the measure. Citing the strong public interest in their release, the ACLU and other open government groups had been calling for disclosure of the documents since last year.



PRIVACY

Abortion (H 5343, S 274)

With the constitutional protections of *Roe v. Wade* hanging in the balance in light of a divided U.S. Supreme Court, Rep. Edith Ajello and Sen. Gayle Goldin have introduced legislation that would codify the principles of that seminal court decision into state law. The House bill includes more than thirty co-sponsors, the most legislative support for abortion rights that the ACLU has seen in decades.

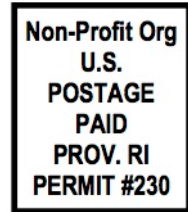
FBI Access to DMV Photos (H 5211)

According to a report from the General Accountability Office released in the spring of 2016, Rhode Island was set to become one of 18 states in the process of negotiating agreements with the FBI to facilitate their access to driver's license images for purposes of facial recognition matching. At that time, the ACLU raised concerns about it and the DMV agreed to not proceed with the collaboration. This legislation, proposed by Representative Charlene Lima, would codify a prohibition on such data-sharing and would ensure that the privacy of every Rhode Islander is protected when they go to the DMV.

ACLU WELCOMES NEW DEVELOPMENT AND COMMUNICATIONS ASSOCIATE

We're pleased to welcome Nicole Cordier as our new Development and Communications Associate. Nicole joins us from New York, where she previously worked on youth outreach for the National ACLU. Prior to that, she was Media Relations Associate for S.I.E.C.U.S. – an organization that advocates for comprehensive sex-ed. Nicole is looking forward to helping defend and promote civil liberties at the ACLU of Rhode Island.

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RETURN SERVICE REQUESTED

THANK YOU!!

A huge thank you to all the local businesses, bands and organizations who have recently taken it upon themselves to host fundraisers for the ACLU of RI – including:

- Breathing Time Yoga, Pawtucket, RI
- New Harvest Coffee & Spirits, Providence, RI
- Epic Theater Company, Cranston, RI
- Frog & Toad, Providence, RI
- Columbus Theater, Providence, RI
- Hera Gallery, Wakefield, RI
- South County Art Supply, Wakefield, RI
- The Western Stars band, Providence, RI

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Channel 13 (Channel 32 on Verizon FIOS)
Tuesdays 10:00 pm
Fridays 3:30 pm

**Channel 18 (Channel 38 on Verizon FIOS),
Providence and N. Providence**
Wednesdays 9:00 pm

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