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New Jersey

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REPORTER

Settlement of NJ Civil Rights Suit Promises Necessary Reform Affirming Transgender, Intersex, and Non-Binary People in Prison

For 18 months, Sonia Doe was confined in four different men’s prisons, despite the Department of Corrections knowing she is a woman.

Now, as the result of a lawsuit brought by Sonia Doe (a pseudonym), represented by the ACLU-NJ and attorney Robyn Gigl of Gluck Walrath LLP, New Jersey’s Department of Corrections has agreed to adopt major policy changes to recognize and respect the gender identity of people in prison.

The new agency-wide policy, which went into effect July 1 following a June 28 settlement agreement, provides a presumption of housing in line with gender identity rather than sex assigned at birth. Only a few other states in the nation have such protections in place. The policy also includes provisions guaranteeing access to gender-affirming property, use of appropriate pronouns and honorifics, and privacy protections, among others.

“When I was forced to live in men’s prisons, I was terrified I wouldn’t make it out alive,” said Sonia Doe. “While I still have nightmares about that time, it’s a relief to know that as a result of my experience the NJDOC has adopted substantial policy changes so no person should be subjected to the horrors I survived.”

Between the time Ms. Doe entered prison in March 2018 and filing

her lawsuit against the NJDOC in August 2019, NJDOC staff tried to force Ms. Doe to live as a man and discriminated against her because she is transgender. Within weeks of the filing, which included 10 counts for violations of New Jersey’s Law Against Discrimination and State Constitution, the NJDOC transferred Sonia Doe to Edna Mahan Correctional Facility for Women, a move that her lawyers had asked the Court to order.

“The settlement of this lawsuit puts in place systemic, far-reaching policy changes to recognize and respect the gender identity of people in prison. The new policy places New Jersey in the vanguard of states committed to protecting transgender, intersex, and non-binary people in prison,” said ACLU-NJ Staff Attorney Tess Borden.

As part of the settlement, all NJDOC corrections officers, regardless of rank or facility, will have to sign an acknowledgment that they have read the policy, and the NJDOC will provide additional targeted training on its provisions to certain high-level staff. Transgender, intersex, and non-binary people face extraordinary risks of emotional and physical harm. A National Center for Transgender Equality survey found that 21 percent of transgender women in men’s facilities experienced

Continued on page 3



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—Sonia Doe

As a result of a lawsuit brought by Sonia Doe (a pseudonym), New Jersey’s Department of Corrections has agreed to adopt major policy changes to recognize and respect the gender identity of people in prison.

Photo by Ben Bowers Photography

TRIBUTE

In Memoriam: A Tribute to Frank Askin

No number of words can do justice to what Frank Askin did in service to the cause of justice itself.

For more than 50 years, Frank Askin devoted everything within him to the principles of liberty, equality, fairness, and personal freedom. Even a word like devotion — it doesn’t suffice to capture truly how fully Frank served making the world better. He found creative ways to use intellect, empathy, and rigor to outmaneuver the forces seeking to diminish our freedoms.

Frank was a national ACLU board member, and ACLU general counsel — in other words, at the organization with a historic number of appearances before the Supreme Court, they chose Frank as their trusted adviser.

He founded and led the Rutgers Constitutional Law Clinic — which would become the Constitutional Rights Clinic — in the 1960s, often partnering with the ACLU-NJ as co-counsel. His leadership and brilliant strategy helped the law school earn the moniker The People’s Electric Law School.

He served on the board of the ACLU of New Jersey, and he litigated some of the organization’s most important cases. In the aftermath of the Newark Rebellion, in which police brutalized the city, he represented people whose rights had been violated through unjust arrests and acts of



Frank Askin (center left) was a pioneering legal mind who worked with the ACLU for decades to expand our liberties. Pictured here accepting an award of recognition from the ACLU-NJ, with former ACLU-NJ Executive Director Udi Ofer (left), former ACLU-NJ Legal Director Ed Barocas (center right), and ACLU Executive Director Anthony Romero (right).

police violence. He took on secret dossiers kept on file by the Jersey City Police Department, and he fought government surveillance programs to keep tabs on activists. He won a case before the U.S. Supreme Court in 1979 to set the standard of reasonable suspicion for police to stop drivers, and he became known nationally as a pioneering legal mind on cases concerning random police stops. He



Photos by Amanda Brown

litigated landmark cases to establish free speech in two key modern public squares with private governance: shopping malls and in communities run by homeowners’ associations. He secured the right of homeless people to vote. He consistently acted with foresight to seize on emerging civil liberties issues. He sought re-enfranchisement of people on probation and on parole in the courts, and although he lost the battle, his argument ultimately won the war, with legislation to restore the right to vote for formerly incarcerated people signed in 2020.

Even that reflection is only a surface introduction to the legacy Frank leaves. And, crucially, his legacy lives on through the generations of lawyers and advocates who learned under Frank to practice the discipline of making our world a more just, freer place. He didn’t just apply the Constitution to legal issues, but found new applications for the Constitution to expand our liberty. **ACLU**

POLICE REFORM

A Year After George Floyd’s Murder, Steps Toward Justice in Policing

George Floyd should be alive today. Instead, he was killed by Minneapolis police on May 25, 2020. His death sparked a year of mourning and protests — and changed the world. More than a year later, there are steps toward justice in policing that we must take, nationwide and in New Jersey.

The ACLU-NJ is working to shine a light on policing, demand accountability, and place power in the hands

of communities, not police. A newly formed statewide coalition, New Jersey Communities for Accountable Policing, NJ-CAP, brings together the dozens of community organizations, civil rights groups, and grassroots activists who are demanding change.

Together with NJ-CAP, we’re calling on the Legislature to pass a comprehensive police reform package, with a few amendments that would strengthen the following bills:

- Making records of police misconduct public (A5301/ S2656)
- Embracing strong Civilian Complaint Review Boards (CCRBs) (A4656/S2963)
- Limiting the use of chokeholds (A4284/S2617)
- Limiting the use of deadly force (A4526/S3825)
- Ending qualified immunity (A4578/S3730)

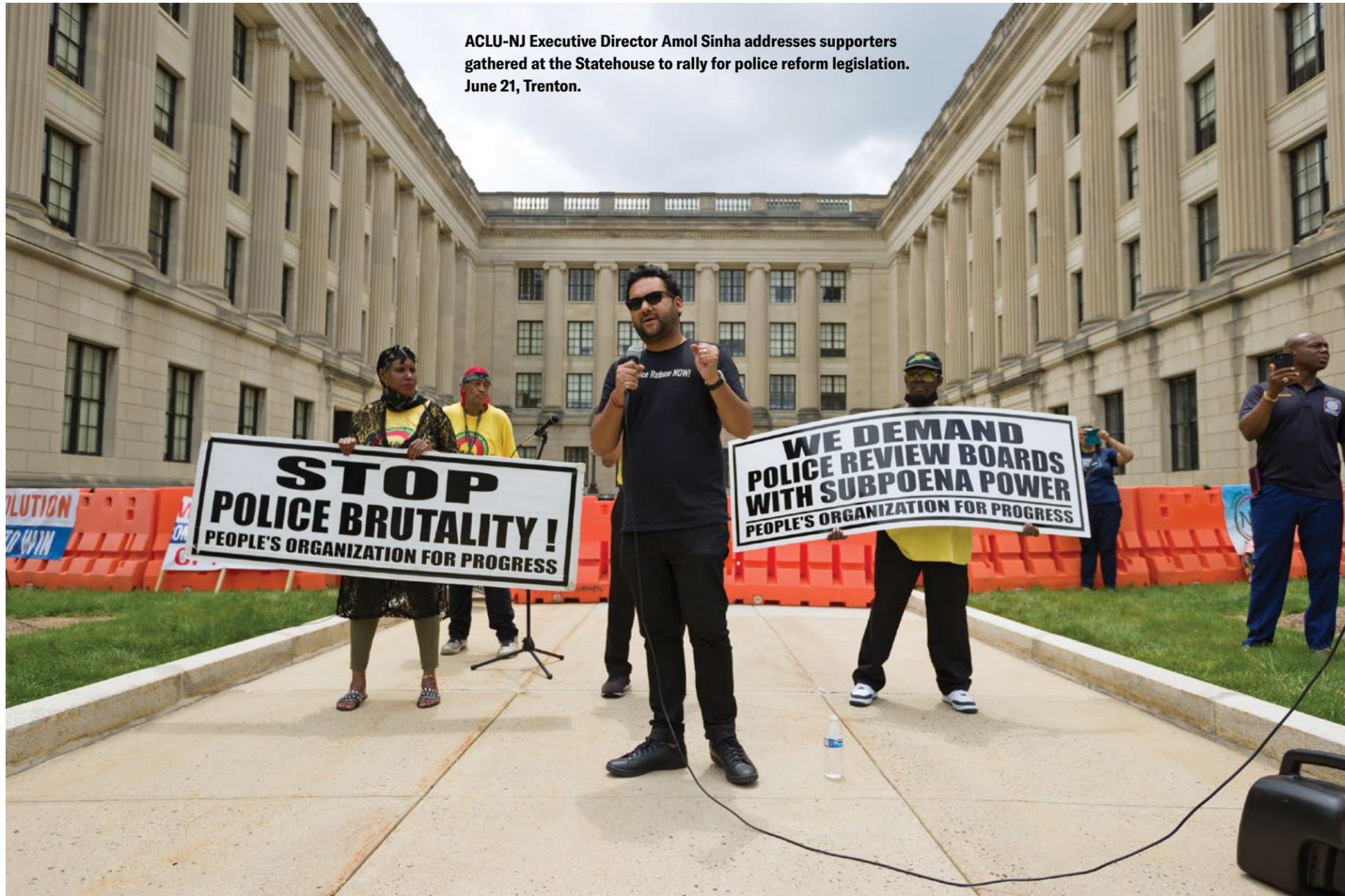
On June 21, the ACLU-NJ joined partners from NJ-CAP at a rally at the statehouse to urge lawmakers to pass police reform legislation, including A4656/S2963, to protect essential CCRB powers by law. ACLU-NJ Executive Director Amol Sinha addressed the crowd: “There are attempts to undermine every single one of the pieces of legislation. Don’t be fooled. A CCRB without its core elements is not true accountability — it’s just accountability theater.” **ACLU**



Supporters gathered outside of the Statehouse to rally for police reform legislation, including CCRBs with subpoena power. June 21, Trenton.



Newark Mayor Ras Baraka rallies with protesters advocating for police reform legislation. June 21, Trenton.



ACLU-NJ Executive Director Amol Sinha addresses supporters gathered at the Statehouse to rally for police reform legislation. June 21, Trenton.



Justice, Accountability, and Systemic Racism:

Q&A with Senior Staff Attorney Karen Thompson

In the last year, ACLU-NJ Senior Staff Attorney Karen Thompson has worked on cases that speak to the national moment in civil rights. She shares her perspective on working toward racial justice and police accountability in New Jersey through the legal system and changes in the law.

Are there themes that you see throughout your work?

We see a common thread of inequality that weaves through every case at the ACLU, and we see systems in place that create and sustain disparities. Our work is to work toward parity.

How do your cases relate to the national landscape of racial justice, past and present?

My cases are microcosms of macro issues. Although our cases are uniquely New Jerseyan, all of the issues we face as an ACLU affiliate are nationwide, 50-state issues.

For example, the anger that welled up in Newark after yet another act of police-inflicted violence created the first request for civilian oversight of police in New Jersey in 1968. Yet today, more than 50 years later, we're fighting the same fight: for a CCRB with real subpoena powers, and for accountability and transparency in policing in the Legislature.

How is racism upheld in the law in ways that we don't see?

In our work, we see that racist practices are buttressed by a scaffolding of racist law. Doing research for an argument, I came across laws segregating cemeteries in the U.S. — if a dog's human was Black, it was illegal for that dead dog to be buried next to a dog whose human was white.

This ridiculousness is the structural part of racism, where culture, expectations, and moral codes are created and deeply impact the psyches of Americans. This carefully crafted diminishment of Black folks' worth is equally and oppositely met by a carefully crafted false inflation of white Americans' worth. In experiencing these ridiculous exclusions, you either pretend it isn't happening at all, or convince yourself it is happening because "they" deserve it. As ACLU lawyers, we have to recognize these racist threads and how deeply interwoven they are in the legal system. We have to tweeze out the subtleties of how those racist bones still hold up the muscles of the system. It's important that people understand white supremacy doesn't exist as some sort of free-floating, random thing. It is deliberate, it is thought out, it is carefully manicured and maintained.

When you think of the audacity of the arguments made in the past (segregated pet cemeteries!), it makes me think that everything must be as audacious in the other direction towards the cause of equality and parity.

Are there any particular cases that have affected you?

A case I worked on, *State v. Garcia*, involved a man who was arrested allegedly for assault, but there was strong evidence that it was self-defense. At the scene, his family assiduously tried to tell police Mr. Garcia was defending himself, although English was not their first language. The police basically ignored them, but the family recorded the interaction on their phone. At trial, the prosecutor successfully fought to keep the video hidden from the jury. Then, knowing full well what was on the recording, he told the jury that Mr. Garcia could not have acted in self-defense, because if so, someone would have said something and no one did.

Thankfully, the Supreme Court found the prosecutor's conduct was so prejudicial, they overturned the sentence, and Mr. Garcia was released from prison where he'd been held for over a year. Seeing that sort of deception — and knowing this is one of the rare instances in which it's successfully revealed — it's chilling. The prosecutor blithely goes about trying to get a conviction using a false narrative, and then all of the prosecutorial resources of the state are deployed to protect that conviction on two appeals, and to protect these sorts of wrongs that go beyond Mr. Garcia's experience. All the while, Mr. Garcia's life, his family's peace of mind, his child's access to his father — they are all disrupted. It's the ease with which this sort of pain is inflicted on people that never ceases to shake me to my core. It's also what gets me going every morning.

You're working on challenges to qualified immunity — can you talk about why that's so important, and how you think we can achieve change?

Qualified immunity (QI) is a doctrine created in the courts that protects state and local officials, including law enforcement officers, from civil liability unless the official has violated a clearly established constitutional right, which has been interpreted in such a way as to make that "established right" hard to prove. This doctrine has become the cornerstone of a near-zero accountability policy for law enforcement.

This is particularly dangerous because it means there are few incentives to behave differently; it means that brutality can go without consequence.

Ending QI begins to create the racial repair that we need after centuries of brutal and violent policing. With real legal accountability for police misconduct, communities have more reasons to believe that individual officers are invested in respecting people's constitutional rights because it could impact them personally.

We have drafted language for a bill repealing QI that would serve to strengthen those protections while also creating much-needed accountability between police officers and communities. [ACLU](#)

Sonia Doe

Continued from page 1



Photo by Ben Bownens Photography

As a result of a lawsuit brought by Sonia Doe (a pseudonym), New Jersey's Department of Corrections has agreed to adopt major policy changes to recognize and respect the gender identity of people in prison.

physical abuse, and 20 percent reported sexual violence.

"Having a policy that now explicitly recognizes the dignity of transgender, intersex, and non-binary people begins a new chapter at the DOC. While we know trans, intersex, and non-binary people still face

extraordinary risk of harm, it is our hope that this policy will shepherd in a new era in New Jersey prisons of protecting and affirming transgender, intersex, and non-binary people's lives," said Gigl.

The settlement comes as New Jersey grapples with years of

officer-perpetrated abuse at the Edna Mahan Correctional Facility for Women, resulting in a U.S. Department of Justice investigation, a Governor-directed internal investigation, and a criminal probe by the Office of the Attorney General. It also comes as New Jersey reaffirms its commitment to meaningful

corrections oversight and searches for a new corrections ombudsperson.

In addition to the policy change, the NJDOC will pay Sonia Doe \$125,000 in damages as well as attorneys' fees. The lawsuit, entitled *Sonia Doe v. New Jersey Department of Corrections et al.*, was filed in Mercer County. [ACLU](#)

As a result of the settlement, New Jersey agreed to adopt major policy reforms regarding transgender, intersex, and non-binary people in state prisons. The new policy establishes:

- A presumption that all people will be housed in line with gender identity, not sex assigned at birth, and a commitment that placement in line with gender identity will never be considered a management or security problem solely due to a person's gender identity
- Intake procedures that include questions about gender identity and pronouns, and recognition of self-attestation
- A prohibition on harassment and discrimination by staff based on a person's actual or perceived gender identity
- A requirement that staff use appropriate pronouns, such as she/her, he/him, and they/them, and honorifics, such as Mr., Ms., and Mx.
- Guarantees regarding gender-affirming undergarments, clothing, and other personal property
- Heightened privacy protections, including for showering and cross-gender searches
- An acknowledgment that medical and mental health treatment, including gender-affirming care, will be provided as medically appropriate
- A plan for all custody staff to receive and read the new policy, as well as additional training for certain high-level staff members

Protesters Oppose Hudson County Attempt to Silence People Who Oppose Immigration Detention

The ACLU-NJ represents five protesters who were sued by Hudson County officials in December, in a draconian attempt to limit their free speech. The court issued a restraining order against the protesters, and after an extensive discovery process, the ACLU-NJ asked the court to terminate the restraining order and dismiss the entire suit by Hudson County officials. The court held hearings in May and June, and a decision is expected in the fall.

“This case is about the people’s right to speak and protest against a government policy. Our clients were using public sidewalks to express themselves and should be subject to the same laws as everyone else who uses them,” said ACLU-NJ Legal Director Jeanne LoCicero. “These officials went to court to insulate themselves from opposing views. It’s not just a misuse of public resources, it’s also unconstitutional.”

The court order set harsh restrictions on speech:

- Protests can occur only during the hour between 7 p.m. and 8 p.m. once every two weeks
- Protesters cannot come within 200 feet of the commissioners’ homes, and for County Executive DeGise they are relegated to a specific corner in Jersey City
- Demonstrations are restricted to 10 people
- Protesters have to provide 24 hours’ notice to law enforcement.



“With these extreme restrictions in place, it’s clear that for this targeted group of people, speech is no longer free,” said ACLU-NJ Executive Director Amol Sinha. “Government officials cannot single out one cause to silence. Hudson County officials have made clear that they don’t want to hear from ICE opponents in official forums, but they cannot criminalize those views and silence opponents of the ICE contract throughout the entire county.”

The case, captioned *DeGise et al. v. Torres et al.*, was filed in New Jersey Superior Court, Hudson County. **ACLU**

TRIBUTES

- In honor of Peter Abatemarco**
Atiera Abatemarco
- In memory of Gwendolyn Acree**
Loretta Weinberg
- In memory of Linda Beebe**
Marc & Michelle Beebe
- In memory of Puneet Bhandari**
Narendra Bhandari
- In honor of Liddy Boland**
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Victor Sloan & Sandra Gong
- In honor of the ACLU-NJ Staff**
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- In memory of Sybil Stokes**
Claire Roberts
- In memory of Leonard Weinglass**
Jerald Baranoff
- In memory of Carol & Stanley Wild**
Jeffrey & Susan Wild

Tributes are contributions made to honor or remember special friends, family, colleagues, and occasions. To have your tribute appear in the *Civil Liberties Reporter*, please contact the ACLU-NJ office at: 973-642-2086 or P.O. Box 32159, Newark, NJ 07102.

WE THE PEOPLE

DARING TO CREATE A MORE PERFECT NJ

Watch your email for an invitation to this virtual event!

September 17, 2021

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INSIDE:

- Affirming Trans, Intersex, & Non-binary People in Prison** 1
- Frank Askin Tribute** 1
- Police Reform** 2
- Q&A with Senior Staff Attorney Karen Thompson** 3
- Hudson County Protests**..... 4

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