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CIVIL LIBERTIES REPORTER

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www.aclu-nj.org



Pretrial Justice Reform Means People Awaiting Trial Are Detained Based on Risk, Not Money

In 2016, before our state's historic bail reform law had taken effect, 9,000 people waited in New Jersey's jails before trial. Many were there for just one reason: they could not afford cash bail. Now, since the reforms took effect January 1, defendants are held not based on how much money they have, but the level of risk they pose. A score assesses those risks in three areas: non-appearance at trial, new criminal activity, and new violent activity.



Since taking effect January 1, pretrial justice reform has meant people charged with crimes are held based on the risk they pose rather than their ability to pay money bail. PHOTO BY JOE GRATZ, CC BY 1.0

The groundbreaking reforms, which were achieved through an unprecedented coming together of strange bedfellows, have already overcome an early hurdle. On Feb. 15, the New Jersey Council on Local Mandates ruled that pretrial justice reform could continue intact, after the New Jersey Association of Counties accused the law of being an unfunded mandate. Because the reforms enacted portions of the New Jersey Constitution, specifically speedy-trial protections and equal protection for criminal defendants, pretrial justice reform was allowed to proceed.

"Holding someone who is presumed innocent prior to trial can only be justified in extraordinary circumstances," said ACLU-NJ Senior Staff Attorney Alexander Shalom, who has led the ACLU-NJ's work to strengthen pretrial justice reform. "New Jersey's pretrial justice reforms give meaning to important constitutional protections that were not being observed on their own."

The ACLU-NJ has argued the first cases in the state to define the contours of the reforms that protect the rights of defendants. The first case, *State v. Habeeb Robinson*, which the ACLU-NJ argued at the New Jersey Supreme Court March 29, concerns a defendant's right to see materials that the state has used as justification to detain him.

Two defendants were held in jail at prosecutors' urging, even though the prosecution provided no witnesses' testimony or evidence to show why detention was necessary. Prosecutors did not even explain the circumstances of the arrests, much less the extraordinary circumstances that they thought made it necessary to hold the defendants in jail.

In another case in which the ACLU-NJ participated, a defendant opted for a plea bargain before trial and was sentenced to probation. The sentence the prosecutor recommended for the offense did not require incarceration, and yet the same prosecutor had argued for detention in the run-up to a trial.

"Pretrial justice reform is a fundamental part of ending mass incarceration and inserting a greater degree of fairness back into the criminal justice system," said Shalom. "These reforms have already made New Jersey a fairer place, and we need to ensure that New Jersey keeps the strongest protections of civil rights and civil liberties possible."

Read more about the ACLU-NJ's pretrial justice reform advocacy: <https://www.aclu-nj.org/pretrial> [ACLU](#)

He Got a U.S. Visa After the Taliban Targeted Him—Customs Detained Him Instead

ACLU-NJ part of legal team defending Afghan man who helped U.S. military

Abdul wasn't sure what to expect when he arrived in America for the first time at Newark Liberty International Airport, traveling with a Special Immigrant Visa. He had received the visa after his work for U.S. military forces in Afghanistan made him a target of the Taliban.



Dozens of people, including clergy and veterans, stood vigil for the release of Abdul, a Special Immigrant Visa holder who was detained upon arrival at Newark Airport. He came to America after his work for the U.S. military in Afghanistan made him a target of the Taliban.

What he did not expect was for that visa to be revoked at the airport after he arrived, and for federal agents to tell him he would have to immediately return to Afghanistan, even though he

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Fighting Hate and Standing with Muslim Communities

ACLU-NJ to 150+ Muslim organizations: We've got your back

In the wake of Donald Trump's inauguration, more than 150 New Jersey organizations, Islamic leaders, refugee resettlement agencies, and student associations received a letter from the ACLU-NJ. It was a pledge to protect and defend the civil rights of Muslim New Jerseyans amid recent displays of anti-Muslim bigotry and the anti-immigrant, anti-Muslim policy proposals that were a centerpiece of Trump's campaign.

"It's important to us that you know the ACLU of New Jersey will do everything in its power to help defend your rights if they are threatened, as well as the rights of your fellow worshippers, community members, and your families," the letter said.

The ACLU-NJ will challenge discrimination or unlawful surveillance, conduct presentations and distribute information about constitutional rights, and help ensure that New Jersey's Muslim communities are prepared for any threats to civil rights and liberties.

Staff members regularly give Know Your Rights presentations for congregations, schools, and other groups, and the ACLU's website offers Know Your Rights materials in a variety of languages, including Arabic, Farsi, and Urdu. Most recently in New Jersey, the ACLU-NJ joined a brief supporting a congregation of Muslim worshippers who experienced religious discrimination



"The ACLU-NJ will do everything in its power to help defend your rights," read a letter sent to 150+ Muslim community members and groups, including the Islamic Center of Jersey City, pictured.

as they sought approval to build a mosque in Bernards Township. We have also advocated for people who have been refused service because they wore modest clothing in accord with Islamic traditions. We have and will continue to assist individuals who are called for FBI interviews about Muslim communities.

Some groups reached out to let the ACLU-NJ know how much the letter meant to them. "You have inspired, encouraged, and lifted our spirits more than you could ever imagine," said a letter from an imam at a mosque in Essex County. The ACLU-NJ's letter emphasized the ACLU's historic role defending the rights of people to express their religious beliefs and live freely without persecution, regardless of faith or ethnicity, from challenging the unconstitutional internment of Japanese Americans after Pearl Harbor to dragnet sweeps of people of Middle Eastern and South Asian descent after Sept. 11. As one of the most diverse states in the nation, with Ellis Island in our backyard, New Jersey has a particular responsibility to make sure every person in every community here can live freely and without fear of discrimination. As the letter noted, "In times of division, we see an opportunity to build and strengthen bridges." The ACLU-NJ stands with the Muslim community. [ACLU](#)

ACLU-NJ Suit Leads to Strong Protections of the Right to Film Cops

West New York’s policy, adopted at urging of ACLU-NJ, is one of the strongest protections of public’s right to film in U.S.

Cesar Sanchez was arrested for filming the West New York police in 2015. Now, because of him, West New York has adopted one of the country’s strongest policies to protect the right of the public to film the police.

The ACLU of New Jersey and Town of West New York announced an agreement in January that led West New York to institute policies that proactively secure the right to photograph and record police.

The policy specifies that individuals have the right in public and private settings to record the police, as long as their actions don’t interfere with police

July 2015 on his way home from work, Sanchez saw police forcefully arresting two teenagers. When Sanchez pulled out his phone, planning to record, the officers told him to put his phone away. Declining at first, he eventually complied. But when the police asked for identification, he refused, explaining that it was his legal right not to present ID.

“I’m thankful that West New York’s policy will almost guarantee that no one in the town will have their rights violated again just for filming the police,” Sanchez added. “That was the primary

thing I was looking for in this suit: to ensure that people are free to exercise their rights without fearing jail time for it.”

The police arrested Sanchez in retaliation for filming the scene and for declining to show his identification when the police had no justification—both of which are legal. The ACLU-NJ represented Sanchez in municipal court, and after the prosecutor dropped the charges against Sanchez, the ACLU-NJ sued in hopes that West New York would change its policy to reflect that the First Amendment allows people to film the police unobtrusively.

“Cellphone cameras have become an essential tool for holding police accountable to the public they serve and protect,” said ACLU-NJ attorney

Rebecca Livengood, who represented Sanchez. “West New York’s policy promotes transparency in police conduct and respect between police and the public.”

In 2015, the ACLU of New Jersey released Mobile Justice, a smartphone app available on Apple and Android devices that allows users to record police interactions and send them to the ACLU to monitor for possible rights violations. The app also informs users of their rights when interacting with police.

Mobile Justice is available for free on Android and Apple iOS platforms at: <https://www.aclu-nj.org/theappplace> [ACLU](#)



West New York put in place a robust policy protecting the right to film police. It resulted after the ACLU-NJ filed suit defending the rights of a man who was arrested for filming officers.

conduct. The new policy also sets up a system for supervision and training to implement the changes.

“It’s gratifying that something so personally distressing, an unfair arrest, has paved the way for one of the strongest protections of people’s right to film police,” Sanchez said. “The tensions people face when exercising their individual rights to try to hold police accountable aren’t confined to West New York or New Jersey, but something felt by people all over the country.”

The settlement came as the result of a suit alleging that Sanchez was unlawfully arrested. In

Abdul

Continued from page 1

had endured a two-year vetting process to come here. But that’s exactly what happened on March 13.

The ACLU-NJ—along with the International Refugee Assistance Project and Seton Hall University School of Law—successfully petitioned the Third Circuit Court of Appeals to stop his deportation on an emergency basis. They, along with pro bono immigration attorney Jason Camilo, are now fighting for Abdul to stay in the country that promised him a visa.

“Abdul is finally starting to get some of the protections that all immigrants deserve, but his ordeal is far from over,” said ACLU-NJ Deputy Legal Director Jeanne LoCicero. “We know that abuses by border agents are not limited to his case, and we will continue to do everything in our power to hold Customs and Border Protection to the standards of our Constitution.”

Abdul, a citizen of Afghanistan, worked for five years in dining facilities on an American military base, eventually living on the base because of the threats to his safety. When the Taliban targeted him for working for the Americans, the U.S. started the process of granting him a special immigrant visa. Special immigrant visas are reserved for people put in danger because they worked with the U.S. government, and recipients must undergo a rigorous two-year vetting process.

“We are relieved that the Court of Appeals acted so quickly to halt the government’s arbitrary and unjust attempt to return Abdul to Afghanistan without due process,” said Farrin Anello, Visiting Assistant Clinical Professor at Seton Hall University School of Law Center for Social Justice. “But the case is not over: we urge the government to take responsibility for its mistake, restore his visa, and release him from detention.”

At a vigil on April 6, a day before Abdul’s hearing to ask for release while he applied for asylum, dozens of activists and New Jersey residents, who had never even seen his face, held vigil for Abdul’s rights and humanity. One of his attorneys, Victoria Dorum, a student at Seton Hall University School of Law, said that when she spoke to Abdul, he wasn’t angry – she said that the overwhelming sense she got from him was confusion about why this was happening.

“Reneging on our promises to allies on the ground reflects poorly on the United States and makes it more difficult for our troops to find local expertise necessary to their operations and our national security,” said Elizabeth Foydel, Policy Counsel of the International Refugee Assistance Project. [ACLU](#)

An Appeals Court Argued a Black Man’s “Calm Demeanor” Meant He Didn’t Invoke His Right to Silence

“That’s all I got to say.”

This sounds like an assertion of your right to remain silent, doesn’t it? The ACLU of New Jersey took on this question in New Jersey Supreme Court on February 27.

S.S., a Black man in his early 20s, was interrogated about an alleged offense for about an hour before he said, “No, that’s all I got to say. That’s it.” But the interrogation continued. He told the police he was done speaking two more times. The police officers tried to coax a confession, telling him, “I know there’s something you need to get out.”

And S.S. did what many people do after being questioned repeatedly, even though he had told police he didn’t want to talk: he started answering.

Invoking Your Right to Silence in New Jersey

New Jersey courts have recognized that the right to silence is a fundamental protection the Constitution affords criminal defendants. Unlike federal law, New Jersey law doesn’t require suspects to invoke their right to silence clearly and unequivocally.

If a suspect expresses a wish to remain silent during an interrogation, even if the person seems to equivocate, police in our state must either stop questioning or ask clarifying questions to determine whether a suspect has invoked the right to silence.

But that didn’t happen in the case of S.S. Though S.S. used language nearly identical to what the New Jersey Supreme Court has previously found sufficient to invoke the right to silence, the New Jersey Appellate Division found that S.S.’s calm tone meant he wasn’t actually invoking his right to silence.

Racial Bias Destroys Equal Protection

The words that prompt police to ask if silence is invoked don’t change based on tone.

The ACLU of New Jersey’s Rebecca Livengood argued at the New Jersey Supreme Court on February 27 that relying on tone to find that a suspect has not invoked his rights raises serious concerns under the equal protection guarantees of the New Jersey and federal constitutions.

There are sound, widely acknowledged reasons for S.S. answering questions with a calm and composed demeanor: from a young age, Black boys are told that once they’re perceived as Black men, they will need to be as non-threatening as possible to avoid police violence.

As scholars have observed, and President Barack Obama and former Attorney General Eric Holder have attested, centuries of coercive and violent interactions with police have led Black men to adopt a calm and deferential tone when dealing with law enforcement. S.S. was using a widely acknowledged tactic of self-protection.

If speaking calmly means a Black man cannot invoke his constitutional rights, the future looks grim. For law enforcement to claim S.S. didn’t mean what he said because of this tone in essence leaves Black men with an impossible choice when interacting with police: speak calmly and have people refuse to take you at your word, or speak firmly and risk being seen as an aggressor.

The Appellate Division pointed to these very qualities of S.S.’s tone to rule that S.S. wasn’t invoking his right to silence. This reasoning simply can’t be squared with constitutional equal protection guarantees. [ACLU](#)

The Constitution: A Sanctuary for Cities That Don't Want to Do ICE's Bidding

OP-ED BY JOHANNA CALLE AND DIANNA HOUENOU

Immigrants across America are living in fear. In New Jersey, the state with the third largest percentage of foreign-born residents, the anxiety is palpable.

The president and his administration want cities to think that they are required by law to participate in federal immigration operations. They argue that towns need to use local resources to round up and deport residents to keep the public safe. They are wrong.

What the administration fails to understand is that participation in immigration enforcement is voluntary. The Constitution is clear. Cities cannot and should not be punished for using their limited resources to enforce criminal laws instead of federal civil laws that Immigrations and Customs Enforcement (ICE) is tasked with carrying out.

The federal government's plan is to aggressively round up and deport residents. Anyone suspected of being undocumented is a target. Our cities now have a stark choice: they can either volunteer their limited resources to tear families and communities apart or they can protect all residents by building the community trust they need to prevent and investigate crime.

We urge our elected officials to choose the side that promotes families, communities, and public safety. We urge New Jersey localities to adopt fair and welcoming policies. And crucially, we need policies that are fair and welcoming in practice, not just in name. Feel-good resolutions that provide no actual protection may do more harm than good.

These key components are vital for a fair and welcoming policy to truly protect local communities:

- No local resources—including funding, staff time, facilities, or databases—are used to assist in carrying out federal immigration operations or information-gathering.
- Local police officers are not deputized to assist in immigration investigations, detentions, or arrests, including in jails.
- Local police do not enter into contracts to detain immigrants, and they cannot honor immigration

detainer requests without a criminal warrant signed by a judge.

- Anti-discrimination policies protect the rights of all residents—regardless of race, sexual orientation, criminal history, or suspected immigration status.

To protect all people, cities should adopt these policies as well:

- Municipal ID cards for residents to use to interact with the police and other agencies.
- Access to legal services, as people facing deportation are not guaranteed the right to a lawyer.



Ralliers stand up for immigrants' rights at a May Day celebration at Liberty State Park in Jersey City, which passed a measure making it a fair and welcoming city.

- Procedures to allow victims of crimes to participate in police investigations without worrying about deportation.

New Jersey's most diverse city, Jersey City, has put many of these policies in place. Smaller towns have passed similar resolutions, and dozens are considering them. Above all, these resolutions must include provisions to make policing fairer and to stop the outsourcing of local resources to enforce federal immigration.

Without strong policies like these, even ordinary police activity can be perceived as a round-up of residents. In February, a routine traffic checkpoint in Newark sent families and communities into a panic when they feared that Newark Police might be helping ICE.

Blurring the line between local police and ICE agents jeopardizes community safety. If people fear that family, neighbors, friends, or they themselves may be deported, they are less likely to report crimes, act as witnesses, or call 911.

Residents in cities with fair and welcoming policies know they can trust local police and cooperate fully.

Participating in ICE operations also exposes local cities to major liability concerns for violating people's rights.

Jurisdictions that do ICE's bidding invite racial profiling. The Major Cities Chiefs Association recognized the civil rights and public safety minefields of active participation in ICE operations more than 10 years ago when it discouraged local participation in immigration enforcement.

Here in New Jersey, we have seen children—U.S. citizens—come home from school every day terrified that their parents will be gone, swept up by ICE. We have heard of families contemplating sending their children away preemptively, fearing the entire family will be put at risk if ICE targets them.

This is not who we are as Americans or New Jerseyans. A national monument in our own backyard is called the mother of exiles.

We have our country's values on our side, and we also have pragmatism. The time to put fair and welcoming policies in place is now.

Johanna Calle is program coordinator for the New Jersey Alliance for Immigrant Justice, a statewide coalition that comprises 30 member organizations dedicated to making New Jersey a welcoming place for all. Dianna Houenou is policy counsel for the ACLU of New Jersey. [ACLU](#)

Suit Filed Over Inadequate Education of Young Prisoners with Disabilities

Some students in New Jersey's prisons receive no education whatsoever, in violation of the New Jersey Constitution. For others, like Brian Y., education consists of receiving worksheets while sitting in a cage in the center of a solitary confinement unit.

The ACLU-NJ filed a class-action lawsuit in January to guarantee that all students, including those in adult prisons, receive the free, appropriate education mandated by law. The suit, filed with attorneys from Disability Rights Advocates and Proskauer Rose LLP, challenges the systemic failure of the New Jersey Department of Corrections and the New Jersey Department of Education to fulfill educational obligations.

Brian Y., who entered NJDOC custody before he turned 18, has been diagnosed with oppositional defiant disorder, impulse control disorder, and ADHD, but NJDOC has never tested him for special education, despite being legally obligated to do so. Now at the age of 19, he has missed out on years of special education services while locked in adult correctional facilities.

"There is no system in place at New Jersey's adult correctional facilities to provide students with

disabilities the services they need," said Rebecca Livengood, ACLU-NJ Skadden Fellow.

The lawsuit followed more than a year of investigation and development by the ACLU-NJ, in conjunction with suits the ACLU-NJ has filed on behalf of individual incarcerated young people.

In the federal class action, the ACLU-NJ represents three incarcerated students who have been denied special education services by NJDOC, referred to as Adam X., Brian Y., and Casey Z., along with ACLU-NJ members and the Arc of New Jersey. The lawsuit also charges that the NJDOE has failed to monitor and ensure that the NJDOC was providing special education and related services in compliance with federal and state law.

A broad patchwork of state and federal laws—among them the Individuals with Disabilities Education Act, the Americans with Disabilities Act, and New Jersey Law Against Discrimination—makes it clear: students with disabilities incarcerated in adult prisons are entitled to special education and equal educational access through age 21.

Experts estimate that as many as 70 percent of young people in adult prisons require special education services, and about 800 people in NJDOC custody are currently 21 and under. [ACLU](#)

Calle

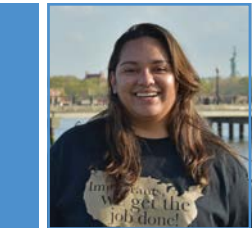
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"We were outside the Maricopa County Jail—Joe Arpaio's jail," she said. "All of these high schoolers were on a ledge, chanting, 'I'm undocumented and unafraid.' That's when I started opening up about my story. I went for so long not talking about it," she said. She still cries recounting her journey from an undocumented fifth grader to naturalized U.S. citizen.

In 2014, she began at the newly formed New Jersey Alliance for Immigrant Justice. Her work has helped make New Jersey a leader in immigrants' rights. New Jersey now has more towns with ID programs than any other state, enabling undocumented immigrants and other vulnerable people to more easily participate in civic life. Since Johanna started as the coalition's sole employee—now there are two—the Alliance has mushroomed from nine organizations to 30.

Since the presidential inauguration, Johanna has worked almost non-stop. She and NJAIJ partners are planning train-the-trainer curricula, pushing for local governments to adopt "fair and welcoming" policies, and connecting New Jerseyans to much-needed resources. She works closely with the ACLU-NJ.

"Having worked for the ACLU, and having worked with the ACLU of New Jersey, I think the organization propels movements forward," said Calle. "When it comes to fundamental rights, the Constitution doesn't mention anything about being born here, or green cards, or citizenship. The Constitution is our guide, and it's for everyone." [ACLU](#)



PROFILE IN LIBERTY

Johanna Calle

Program Coordinator, New Jersey Alliance for Immigrant Justice

Johanna Calle, the program coordinator of the New Jersey Alliance for Immigrant Justice coalition, didn't set out to be an activist. It happened out of necessity. Although she was among the top 5 percent of her class and the swim team captain, college wasn't a certainty. She was undocumented—a secret she kept into adulthood. One of the few people Calle told about her status, a high school Spanish teacher, told her to just give up and go work at a factory.

Even before Christie signed the DREAM Act in 2013, Calle convinced the College of New Jersey to let her pay in-state tuition.

"I told them, 'I'm not out-of-state, and I'm not a foreign student—I went to elementary, middle, and high school in New Jersey.' So, I faxed them about 10 years of taxes," she said, and they recognized her in-state status.

She founded her college's Students for Obama chapter in 2007 and participated in campus activism.

"I registered people to vote, and I wasn't able to vote—I wasn't even a green card holder," Calle said. "That was my way of getting involved."

After graduation, she worked in the development department of the national ACLU. She ultimately hoped to be in the trenches as an advocate.

"I helped raise funds around the advocacy, but I wasn't working with the grassroots," she said.

A bus pulled up and changed that, along with her life. The ACLU's three-week "Estamos Unidos" bus tour took activists, including Calle, to 13 cities in the run-up to Supreme Court arguments against SB 1070, Arizona's anti-immigrant racial profiling law.

The riders participated in a massive demonstration in Phoenix the day of the Supreme Court arguments. She remembers the tour's photographer, an Asian American, being asked for her papers. The vicarious anxiety and pride she felt for the DREAMers stayed with her.



Johanna Calle, program coordinator of the New Jersey Alliance for Immigrant Justice, became an advocate out of necessity to secure in-state tuition. She organizes the Alliance's 30 member organizations throughout the state to advance immigrants' rights.

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TRIBUTES

In honor of ACLU staff & volunteers Stephen R. Kelleher	In honor of Jim Gallagher Kathy Ahearn-O'Brien	In memory of Keith O. Mersereau Pat Gers
In honor of Samantha Ahearn Greg Bing	In honor of Paula Galowitz Irwin Dunsky	In honor of Romona Nunez Leo Nunez
In honor of Farrin Anello Caroline and Sean Bettinger-Lopez	In honor of Eleanor Hargis' 95th birthday Patsy Saylor	In honor of Princeton Bus #1 to Women's March on Washington Nicole Bergman
In honor of Kalman Barson Maxine & Les Dattner	In honor of immigrants & refugees Carrie Odgers Lax & Jon Lax	In memory of Monte Rael Janice Rael
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	In honor of Margaret C. McHugh Margaret & Doug Crouse	In honor of Rabbi Mary Zamore & Terje Lande Catherine Colinvaux

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.

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On July 12, 1967, a taxi driver named John Smith was beaten by police. It was the spark that ignited the Newark Rebellion.

Where were you when it happened? What things do you remember?
Email RebellionStories@aclu-nj.org and share.

Future generations need your memories now.
On July 12, 2017, it will be 50 years since a city erupted in response to systemic racial discrimination. The ACLU-NJ represented victims of police violence and put out a call for federal intervention that would only get an answer nearly a half-century later.

Tell us what you remember, how your families were affected, what injustices from the time have stayed with you.

Email RebellionStories@aclu-nj.org or reach out to us on social media. We're @ACLUNJ on Twitter and www.facebook.org/ACLUNJ on Facebook.



July 12, 2017, marks the 50th anniversary of the Newark Rebellion, sparked by police violence. Email RebellionStories@aclu-nj.org to share your recollections of those five days in 1967, and their aftermath.

PHOTO BY AL LOWE



Thank you for bearing witness.
Thank you for keeping this history alive.
Thank you for supporting the ACLU.



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