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# CIVIL LIBERTIES

REPORTER

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**ACLU**

AMERICAN CIVIL LIBERTIES UNION

New Jersey

[aclu-nj.org](http://aclu-nj.org)

## DECARCERATION

### Releasing People from Prison is About Humanity

BY ALEXANDER SHALOM,  
SENIOR SUPERVISING ATTORNEY AND  
DIRECTOR OF SUPREME COURT ADVOCACY

When the pandemic began two years ago, New Jersey had the nation's highest COVID-19 death rate in prisons. Incarcerated people, fearing for their lives, joined with their families, activists, and advocates to get the Public Health Emergency Credits Law (PHEC) passed and signed. It allowed people nearing their release dates to leave prison up to 8 months early, and it has saved lives.

The latest New Jersey Department of Corrections (NJDOC) numbers shared with the ACLU-NJ — which include 852 people released on March 13, 2022 and another 870 over the next several months — show just how significant the impact has been for public health, for reforming our criminal legal system, and for making lives better.

Since the Public Health Emergency Credits Law went into effect less than a year and a half ago, more than 6,600 people have been released early under it, according to the New Jersey Department of Corrections. Once the last wave of people come home, 8,251 people will have been released since March 2020 as the result of both the



PHOTO BY JAMES MATTHEW DANIEL/ACLU

emergency credits and legal advocacy that preceded the law.

PHEC was passed for a specific reason — to address the crisis of a highly contagious pandemic. But it has taken important steps to confront a much

longer crisis: over-incarceration and the criminalization of people of color.

New Jersey's prison population has dropped 42 percent since March 2020, totaling 12,947 as of January 2022

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### How Algorithmic Systems and Their Biased Decision-Making Can Affect the Lives of All New Jerseyans

As technology continues to advance, algorithms and automated decision-making systems have grown widespread in use and in impact. From law enforcement, to healthcare, to public benefits and beyond, automated decision-making systems are already relied upon to augment or entirely replace human decision making — but at what cost?

Automated systems are prone to arbitrary and biased decision making. Where they are deployed, they can threaten people's right to due process and subject them to insidious discrimination. The ripple effects of algorithmic injustice can be felt across the state and in nearly every domain — for example, when the amount of healthcare people receive is determined by a computer, when the police choose who to investigate based on facial recognition, or when a person's eligibility for



**Automated systems are prone to arbitrary and biased decision making. Where they are deployed, they can threaten people's right to due process and subject them to insidious discrimination.**

public benefits is determined by an assessment tool, the people who are subjected to those decisions will bear the brunt of the systems' errors.

On March 10, the ACLU-NJ and 25 partner organizations provided comments to the New Jersey Office of the Attorney General on law enforcement's use of facial recognition. Together, the organizations called for a total ban on the use of facial recognition technology by law enforcement. Facial recognition tools jeopardize New Jerseyans' ability to live safe, private lives free of constant government intrusion and scrutiny, and discourage them from comfortably exercising

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### In Response to the Leaked U.S. Supreme Court Draft Opinion that would Overturn *Roe v. Wade*

BY AMOL SINHA,  
EXECUTIVE DIRECTOR

The decision of when and whether to have a child is a fundamental human right, and the U.S. Supreme Court's potential actions on *Roe v. Wade* threaten to upend core autonomy and privacy rights in many parts of our country. The ACLU of New Jersey is prepared to fight back against attacks on essential rights and advance reproductive freedom through every means available, including our legal system, the political system, and grassroots people power.

In New Jersey, we take up a solemn duty to not only fiercely defend our current protections, but to do everything in our power to guarantee that the right to abortion care is truly accessible for everyone in our state. Even though New Jersey has meaningfully codified the right to an abortion, half of the country is poised to be stripped of the fundamental right to abortion if *Roe v. Wade* falls. New Jersey has an even greater obligation to meet this moment by prioritizing equity and access, especially for the communities most impacted by systemic



ACLU-NJ staff gathered at a rally for reproductive freedom outside the Statehouse in Trenton, NJ.

barriers for whom this right remains out of reach.

At this moment, we must build our collective power and remain undeterred in protecting our fundamental rights and freedoms. We will face these threats, which are deeply rooted in systemic racism, and remain undaunted in our fight to strengthen our most essential freedoms and preserve the autonomy we're all entitled to exercise over our bodies and our lives. ■

# A Student's Journey: Fighting for Education Rights while in Prison

Young people with disabilities have a legal right to a free and appropriate public education, even when they are incarcerated. But for years, the educational needs of high school students in New Jersey's state prisons were not being met.

That's changing now, and Brian Y. is a big reason why.

Brian Y. entered state prison before he turned 18. He knew he had a right to an education inside, and he knew that as a student with disabilities, he was entitled to special education and related services.

He also knew his rights were being violated. So he took action.

The lawsuit, *Adam X. et al. v. New Jersey Department of Corrections and Department of Education et al.*, was initiated five years ago by three students — Adam X., Brian Y., and Casey Z. (pseudonyms) — who alleged they were denied special education in prison. Thanks to their calls for change, the students' legal team, including the ACLU of New Jersey Foundation, Disability Rights Advocates, and Proskauer Rose LLP, spent years investigating and litigating the case, which was certified by the federal District Court for the District of New Jersey as a class action in July 2021.

Their work was rewarded: On March 3, 2022, the District Court granted final approval of a settlement agreement that will usher in new policies to guarantee that students with disabilities in New Jersey prisons receive the special education and related services they are entitled to. The settlement also provides opportunities for make-up services and funds for those who were deprived of special education in prison in the past, and ensures meaningful implementation of the new policies through a five-year monitoring plan.

Estimates suggest over 400 people may be impacted by the settlement — Brian Y. himself will receive \$32,000 in compensatory education funds as part of the agreement.

We spoke with Brian Y., now 24 years old, about his education in prison and how his action resulted in a landmark settlement that will change the lives of young people denied services in prison. He talked about the experience in his own words.

This interview has been edited for clarity.

## ACLU-NJ: What made you decide to take action to get an equal education?

**Brian Y:** I knew from my time in regular school that what was happening wasn't normal. But all of this was my first time in jail or prison, so I thought that it was the norm: A tenth grader and a seventh grader all in the same class. I was getting frustrated. I'd think to myself: "How is it

that we have a teacher who doesn't know the answer to certain questions?" I brought this up with [an advocate]. They were shocked. So, they introduced me to the ACLU-NJ. And from there, the doors opened.

## What were the school materials you had like?

We didn't even have textbooks. They had been recycled for years and were so outdated. The majority of the whole prison was working on the same lessons because it was the only thing they had available. The teachers are supposed to be there for us, to teach us, but it was a jail mindset, just babysitting — they'd slide worksheets under the door.

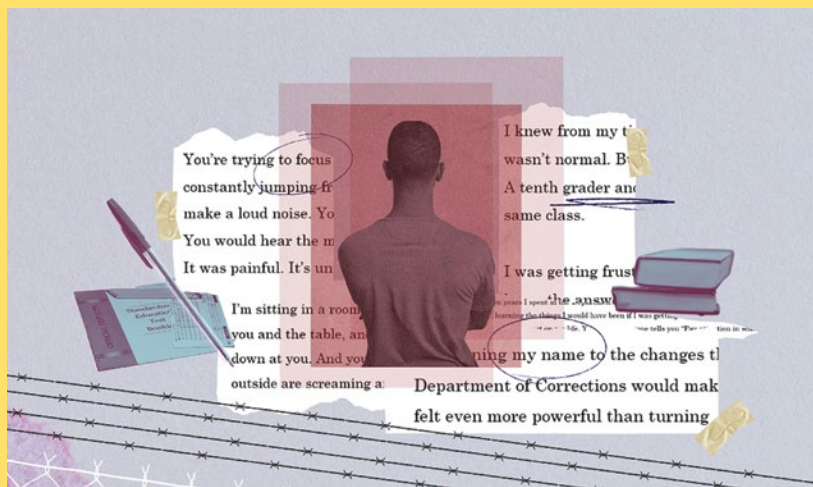
## When you were in administrative segregation, you received instruction in a literal cage. What was it like to be educated in an environment like that?

I was so young. I don't even know how to describe it. I felt like an animal. I'm sitting in a room

more powerful than turning the key to my shop for the first time. There are so many people inside who have been there for years but didn't have a way to change anything. Being so young and managing to make the change that we did is amazing.

## What does it mean to know that you made it possible for people to get an education closer to the one they deserve?

To me this means my voice was heard. And for the other students in the class action, our voices were heard. Luckily, I was able to initiate positive change. I know this is going to break barriers, and it's going to continue moving in the right direction, and this is just the start. And I know there are teachers in there who want to do real lesson plans, want to really teach. I feel like I made a difference not just for students who want to learn but also for teachers who didn't have a voice and wanted to teach.



## The settlement gives you and others in your circumstances opportunities to pursue education and training to compensate for what you were denied. What does that mean to you personally?

The compensatory education funds mean a lot. I had never had that help, but I'm being helped now. It's kind of late, in terms of the Department of Corrections trying to make up for an education that we missed at such an important age, but I feel incredibly proud to finally have these opportunities and to know I was part of that. The people who care about me encourage me to stick with my passion, so I never gave up. I

was even contacting technical colleges. But when we first talked about the settlement, more than the comp ed, it was about the DOC changes for me — so other people didn't have to go through what I did, so they can get proper education.

## Already more than 90 people have submitted compensatory education forms as part of the program created for class members. Are you proud of that?

Like I said — I like to challenge myself now because of the ACLU and everyone else. Ninety — that's still short for us, because I know there's a lot more than that who are eligible. This is just the beginning but we're going to get there. ■

*Class Members may continue to submit Compensatory Education Forms for up to two years. Although the notice period is complete, Class Members and their loved ones may still reach out to Class Counsel at [prisoneducation@aclu-nj.org](mailto:prisoneducation@aclu-nj.org) or [prisoneducation@drlegal.org](mailto:prisoneducation@drlegal.org) or by calling 973-854-1700.*

right now looking at a square table. Now, imagine us in a room. It's you and the table, and everything around you is three stories high. Everyone is looking down at you. And you're in the middle, with lights on you, and a cage all around you. People outside are screaming and yelling. You're trying to focus — but how can you? You can't focus. I remember being in the cage constantly jumping from the sounds. You could put your hand down and unintentionally make a loud noise. You'd hear people folding and stepping on the milk and juice cartons to make popping sounds. You would hear the metal keys. Everything was a loud noise. It was painful. It's unreal, still thinking about it now. It was sad.

## What did it feel like when you signed the settlement agreement, with your signature on the same document as the Department of Corrections commissioner?

Since getting out, I became a business owner. But signing my name to the changes the Department of Corrections would make felt even

## ACLU-NJ Launches New Website as the Organization's Team and Influence Continues to Grow

In March, we launched a new website complete with a more streamlined design and a host of additional features. Along with a mobile-friendly design, the new website comes with more tools the team can leverage to highlight our integrated advocacy work. In the coming months, we plan to build out an expanded infrastructure for creating and self-publishing more content that will provide new ways to see the impact of our work.



To view our new website, visit [aclu-nj.org](http://aclu-nj.org)

## Algorithmic Bias

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their constitutional rights to speak freely, associate freely, or enjoy their neighborhoods freely. Facial recognition also poses an exceptionally high burden on over-policed communities of color, particularly in light of its higher rates of inaccuracy for people with darker skin.

As these technologies are affecting New Jerseyans more and more, the ACLU-NJ is beginning a new project, Automated Injustice, to investigate the use of artificial intelligence, automated decision-making systems, and other sorts of algorithms by the New Jersey government. We invite you to share your story of how government use of automated systems has affected your life.

We're investigating how the state's use of "automated decision systems" affects people in New

Jersey when they apply for public benefits or experience other government decisions. You may have heard a government employee say, "we use an algorithm to decide your eligibility for benefits," "we use a formula to decide how much funding you will receive," or "we use an assessment to decide how to score your risk level." Those kinds of statements suggest that an automated decision-making system affected your life in some way. You can see automated decision-making in policing (e.g. facial recognition), in education (e.g. automated teacher evaluation, school budgeting), in public benefits, and more. ■

## HAVE YOU BEEN IMPACTED BY A GOVERNMENT ALGORITHM?

To share your story or to learn how you may have been impacted by automated decision-making, visit [aclu-nj.org/AI](http://aclu-nj.org/AI)

# Q&A with Deputy Director and Chief Operating Officer Carla Chávez

Expanding the ACLU of New Jersey team is an essential step in working toward the organization’s vision of building a just and fair New Jersey. In March 2022, the ACLU-NJ expanded its leadership team with the appointment of four newly created positions, welcoming Carla Chávez as Deputy Director and Chief Operating Officer, Harold Weaver as the Director of Finance, Rhea Beck as the Director of People and Culture, and Jim Sullivan as the Deputy Policy Director. The staff of the ACLU-NJ has grown significantly, with the majority of the team identifying as people of color, signaling the organization’s growing influence defending and advancing liberty and justice for all New Jerseyans.



These recent hires bring the ACLU-NJ’s full-time staff to 30 strong.

To mark this expansion of leadership, we spoke with Carla about her new role and her vision for the future of the ACLU-NJ.

**ACLU-NJ: As you begin your new role as Deputy Director and Chief Operating Officer, what is your vision for the future of the ACLU-NJ and its leadership in advocacy spaces across the state?**

**Carla:** The ACLU-NJ is a strong, values focused organization — ensuring that laws exist to protect civil rights and civil liberties of every New Jerseyan, and ensuring those laws are consistently and equitably enforced. My role is to lead the administration team to make sure all 30 staffers can focus on defending liberty and justice for all. The organization has grown rapidly over the last few years, and I’m sure our impact in the courts, in the legislature, and in communities across the state will keep growing stronger, too.

**What brought you to the ACLU-NJ? Do you remember the first time you heard of our work?**

I grew up in Puerto Rico and the first time I heard of the ACLU was in the movie *The American President*. I was fascinated by the idea that you make a country stronger by protecting even the right to dissent. I’ve been an ACLU member in

every state I’ve lived in since college. The opportunity to join the ACLU-NJ, an organization at the forefront of so many critical issues our country faces, was a perfect moment to use my skills and experience to support a mission I believe in.

**What projects are you working on? How will they strengthen the ACLU-NJ’s integrated advocacy work?**

I’m working on a multitude of projects, mostly focused on organizational efficiency, to ensure that our team can dedicate most of their time to advocacy spaces. We’re continuing to prioritize equity in our office culture so we can keep building a team with experiences as diverse as New Jersey itself. Leading with intention, with a clear understanding of systemic racism, is key to dismantling barriers. ■

## IMMIGRANTS’ RIGHTS

# How to Build a Fair and Welcoming New Jersey: Introducing the Values Act



PHOTO BY MICHELLE FRANKFURTER/ACLU

**“The Values Act gets us closer to a reality where people can live their lives freely and contribute all they have to offer, with the rights and dignity they deserve.”**

—ACLU-NJ CAMPAIGN STRATEGIST AMI KACHALIA

In February, New Jersey advocates for immigrants’ rights came together in a virtual panel to urge lawmakers to pass the Values Act (S512/A1986), legislation that aims to end New Jersey’s participation in the federal detention and deportation machine.

The ACLU-NJ and advocates from New Jersey Alliance for Immigrant Justice, Make the Road New Jersey, Wind of the Spirit, and Faith in New Jersey shared expertise and told personal stories from people whose lives have been destroyed when local law enforcement and other public agencies collaborate with the harsh federal immigration enforcement system.

“No one deserves to live with the constant fear that normal interactions with government agencies or help from local government could lead to the personal tragedies of family separation and deportation. The Values Act gets us closer to a reality where people can live their lives freely and contribute all they have to offer, with the rights and dignity they deserve,” said ACLU-NJ Campaign Strategist Ami Kachalia.

The Values Act provides critical protections to New Jersey’s immigrant community. It builds confidence in state and local agencies, including law enforcement, and aims to ensure access to essential support and services for all people, regardless of immigration status by:

- Prohibiting state and local law enforcement from voluntarily collaborating with federal immigration authorities to enforce immigration law
- Preventing local resources intended to support community priorities from being used in federal immigration enforcement
- Eliminating carve-outs in the Immigrant Trust Directive that exclude immigrants entangled in the criminal legal system, and that disproportionately harm Black and brown New Jerseyans due to racial disparities in policing and prosecution
- Protecting personal information by limiting the data public agencies can collect
- Requiring model policies for public schools, health care facilities, libraries, and shelters to ensure that people feel safer seeking public services

Across the country, state and local law enforcement collaboration with federal immigration authorities has led to family separation, detention, and deportation — passing the Values Act would more strictly divide the role of local and state government agencies from the work of Immigration and Customs Enforcement and begin to build a fairer and more welcoming New Jersey. ■

## Decarceration

Continued from page 1

according to New Jersey Department of Corrections data. Recidivism numbers have been impressively low, with people released early getting rearrested at lower rates than others who have served their entire sentence. That's on top of the fact that New Jersey's recidivism rates are already below the national average.

Even including our state's federal prisons, New Jersey's prison population dropped by one-third from end of 2019 through 2021, second only to West Virginia, according to a WNYC's reporting on a new Vera Institute report.

The Marshall Project's data concerning COVID-19 in prison has shown that New Jersey's numbers are now among the lowest, a reversal from the early days in which our numbers were among the gravest.

At its heart, the public health emergency credits law is not a pandemic policy. It's a policy about humanity. It's a policy recognizing that no one, including incarcerated people and their families, deserves gratuitous suffering. But that was true long before the first case of COVID-19, and it's true for the daily injustices of over-incarceration that will exist long after the last public health emergency of the pandemic is over.

As we come out of the pandemic, we have a responsibility to see the humanity in incarcerated people in all circumstances, not just unprecedented circumstances. The credits under PHEC were introduced to account for the hardship of serving time during a

public health emergency and to slow the speed of infection by allowing greater social distance, but it's just one part of a constellation of policies that are necessary to address the injustices of incarceration and over-criminalization.

Before the latest wave of releases, ACLU-NJ Executive Director Amol Sinha put the impact of the emergency credits into stunning perspective: "New Jerseyans got back 2,759 years — more than 1 million days — of freedom and opportunity."

Our state, which is the only one to have implemented a policy of public health credits so fully, has a special responsibility to lead the way, as the state with the nation's worst disparity in the incarceration of Black and white people in state prisons. But all states have a responsibility to end the needless brutality of overincarceration.

The image of more than 8,000 people averting the danger of the pandemic in New Jersey prisons casts a shadow of the hundreds of thousands of people across the country who instead added to the exponential toll of COVID-19's spread.

The 8,000 people in New Jersey had a smaller chance of enduring the fate that befell Rory Price, who died on May 1, 2020, just weeks before his scheduled release date. In turn, exponentially more people inside had a better shot at survival.

It may have taken a pandemic to shed light on the vulnerabilities we all share — susceptibility to suffering and pain, worrying for loved ones, grief in the face of death — but our humanity exists independent of a pandemic. PHEC has shown the urgency of decarceration, and it shows a model for how we can begin to do it on a larger scale. ■

## TRIBUTES

**In honor of Caitlin Adriance**  
Katelyn Diekhaus

**In honor of Lee Higgs**  
Alexander Higgs

**In memory of Frank Askin**  
Kal & Janet Barson

**In honor of Joe Johnson and Ami Kachalia**  
Hilary Brown & Charles Read

**In memory of Puneet Bhandari**  
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**In memory of Allen Kassof**  
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**In honor of Barbara Crowley**  
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**In honor of Maureen Miller**  
Emily Huddell

**In honor of Chris Gavin**  
Pamela DeLuca

**In memory of T. Moskowitz**  
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**In honor of Herb & Sheila Guston**  
Deb Guston

**In memory of Tahlia Hein**  
Caitlin Latko

**In honor of William Carlos Williams**  
William Creeley

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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# Raising the Bar



**RETIRED NJ SUPREME COURT JUSTICE JAYNEE LAVECCHIA**  
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**CJ GRIFFIN PASHMAN STEIN WALDER HAYDEN**



**LAWRENCE S. LUSTBERG GIBBONS P.C.**

Civil Rights, the New Jersey Supreme Court, and the ACLU

A live virtual event on **zoom**

Tuesday, June 28  
12:30 - 2 PM ET



**ALEXANDER SHALOM**  
ACLU-NJ



**KAREN THOMPSON**  
ACLU-NJ



**CATHERINE WEISS LOWENSTEIN SANDLER LLP**

Register:  
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