



RHODE ISLAND MOTHER OF TWO RELEASED FROM ICE DETENTION FOLLOWING ACLU LAWSUIT

Following legal action by the ACLU, Lilian Calderon, a Rhode Island mother who was detained in January by Immigration and Customs Enforcement (ICE), has been temporarily released from detention while her immigration case is pending. The judge in the case is now also demanding answers from ICE as to why Calderon was detained in the first place.

A Guatemalan immigrant who has lived in the U.S. since she was three-years-old, Calderon, 30, is the mother of two young children, ages 1 and 4. In 2016, Calderon and her husband, Luis Gordillo, began a process created by the government that allows individuals in her situation to apply for lawful permanent residency. On January 17, she appeared at the Johnston office of U.S. Citizenship and Immigration Services (USCIS) with her husband for an interview designed to confirm their marital relationship – the first step in the process of seeking to become a lawful permanent resident. At the end of the interview, USCIS recognized their marital relationship as legitimate, but immediately afterward, she was abruptly detained by ICE officers and taken to a detention facility in Boston.

“I am so happy to see my husband and children again and to be out of immigration detention, which was a terrible ordeal for our family,” said Calderon upon her release. “What the government is doing to my family, and to so many others, is simply wrong.”

In early February, the ACLU filed a petition in federal court to seek the immediate release of Calderon. The petition argued that without the court’s intervention, “the government will continue to detain Ms. Calderon, and may undertake efforts to remove her, in violation of federal law, federal regulations, and due process—and at great risk to her already-traumatized children.” The petition noted that in going to the interview in Johnston to seek to change her legal status, Calderon was following procedures that the government itself had prescribed. The court immediately issued an order barring her deportation, and a week later ICE released her. Further court proceedings are pending.

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FROM THE DESK OF THE EXECUTIVE DIRECTOR

Lilian Calderon's story of immigration detention, featured on the cover of this issue, is sadly indicative of the times we live in. The federal administration is targeting innocent people, and it's directly affecting Rhode Island.

At a recent press conference highlighting her release, the overarching question was "how is this possible?" (A federal judge is also wondering this, and has formally demanded that ICE explain.)

Sadly, it is possible, but so is the resistance we put forth every day in our communities, our schools, our courtrooms, and our State legislature. Being on the front lines of this attack on our civil liberties – and winning victories both big and small – is only possible because of the support of members like you.

To that end, we recently sent a letter announcing our Annual Meeting Pledge Campaign, and we've been heartened by the response. Of course, we need all the support we can get right now, and our monthly donors really help sustain our work. So if you haven't given already, I want to take this opportunity to ask you to join the campaign. This support helps us help people like Lilian Calderon who have no place else to turn. Thank you.

-- Steven Brown

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ACLU SUES OVER LAW THAT WOULD KICK SOME HOMELESS PEOPLE OUT INTO THE COLD

The ACLU of RI filed an emergency lawsuit in late December to halt enforcement of a new state law that would have evicted some people from Harrington Hall, the state's homeless shelter in Cranston. The lawsuit, filed in federal court by ACLU of RI volunteer attorneys Lynette Labinger and John MacDonald, is on behalf of a group of homeless registered sex offenders (RSOs) who, under the law, would have been barred from the shelter and instead forced back into the streets during below zero temperatures.



Following a conference with U.S. District Judge William Smith, the State agreed the law would not be enforced until the court reaches a final decision in the ACLU's challenge to the statute.

The statute – which was specifically aimed at Harrington Hall – caps the number of RSOs that can stay there at 10% of the shelter's population, which amounts to 11 people, even though 40 or so were there many nights. The lawsuit argues that the law lacks a rational basis in violation of the Fourteenth Amendment, and violates anti-discrimination laws. Harrington Hall is the shelter of last resort for male homeless registered sex offenders in Rhode Island. RSOs are generally barred from living in public housing, and other state laws place even further limits on where they can reside.

The facility has routinely provided overnight shelter to many more than 11 registered sex offenders without any evidence of re-offenses. As the lawsuit pointed out, increasing homelessness and transience among registered sex offenders will only make it more difficult for law enforcement officials to monitor them. Furthermore, by forcing them into transience, the 10% restriction increases their lack of stability and access to community and services, heightening the risk to public safety.

ACLU FILES NEW UHIP-RELATED LAWSUIT OVER MEDICAID TERMINATION NOTICES

The ACLU of Rhode Island filed a class-action lawsuit claiming that participants in a Medicaid program run by the state are not being given proper notice before being kicked off the program, leading to a loss of income that the suit says puts low-income residents “at risk of losing their homes and their utilities and deprives them of funds needed for their daily

living expenses, including food.” The suit ties the improper notice to the state’s infamous UHIP computer system, the subject of another pending ACLU suit regarding food stamp benefit delays.

The lawsuit, filed in U.S. District Court by ACLU of RI volunteer attorney Ellen Saideman, involves the Medicaid Payment Program (MPP). Under the MPP program, Medicaid pays qualified individuals’ costs for participating in Medicare, including their monthly premium for Medicare Part B. This program thus provides significant financial assistance to those who qualify. The parties to the lawsuit have begun meeting in an effort to resolve the lawsuit.



THE PROBLEMS FACED BY TWO NAMED PLAINTIFFS:

Christopher Scherwitz receives Social Security Disability because of his disabilities. Last June, his MPP benefits stopped, and the Social Security Administration began taking \$134 out of his benefit check every month. The suit claims he never received any advance written notice from the State that his MPP benefits would stop, and the reduction in benefits has required him to borrow money from his mother, who as a result, has fallen behind in her own utility payments and fears a utility shutoff.

John Figured is 82 years old, and he receives Social Security benefits because of his age, and has received MPP benefits for many years. In October, he received a notice from the State that his MPP benefits would be ending as of October 31, but the space on the notice for the reasons why his benefits were ending was blank.

LEGAL BRIEFS

Court Rules Against Rights of College Students in Housing Ordinance Case

Despite expressing strong reservations about its effectiveness, a Superior Court judge upheld the constitutionality of a Providence ordinance that prohibits more than three college students from living together in certain areas of the city. The lawsuit, filed nearly two years ago by ACLU of RI cooperating attorneys Jeffrey Levy and Charles Blackman, was on behalf of four college students and the owner of the property they rented in the Elmwood section of Providence. The lawsuit claimed that the ordinance was both discriminatory and ineffective at its stated purpose of improving neighborhoods, and violated the plaintiffs’ rights to due process and equal protection of the law. The judge agreed that some of the ordinance’s implications were “nonsensical,” but nonetheless held that the law passed “minimal scrutiny.” The decision conflicts with one the ACLU obtained a number of years ago against a similar Narragansett ordinance. The ACLU plans to appeal the ruling to the R.I. Supreme Court.

Appeals Court Denies Journalist Access To Court Documents In Major Drug Trial

In a blow to judicial transparency, the U.S. Court of Appeals for the First Circuit held, by a 2-1 ruling, that the U.S. Drug Enforcement Administration (DEA) can keep secret thousands of pages of documents it had submitted in a major prescription drug-dealing criminal trial. The suit was filed by ACLU volunteer attorneys Neal McNamara and Jessica Jewell on behalf of Phil Eil, a RI-based journalist who had been stymied for years in obtaining DEA documents for research on a book he is writing. Despite expressing disappointment with the ruling, Eil said the suit had a positive impact on his research efforts because it prompted the DEA to release thousands of other documents it would not have otherwise disclosed.

2018 LEGISLATIVE PREVIEW: PROACTIVE CIVIL LIBERTIES LEGISLATION

The 2017 legislative session 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 many of them in the next issue. In the meantime, below are a few 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/legislation.



CIVIL RIGHTS

Shackling of Pregnant Prisoners (S 2268, H 7182)

Legislation sponsored by Senator Erin Lynch Prata and Rep. Edith Ajello would 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 restricts shackling pregnant women during transport to a medical facility and during labor, this legislation will also prohibit shackling to or from a court proceeding during an inmate's third trimester. The bill passed the Senate last year, but died in the House.



Gender Rating in Insurance (H 7363)

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 the law allow the practice to continue. The uncertain status of the ACA in Congress further solidifies the need for protections at the state level. This legislation, sponsored by Rep. Katherine S. Kazarian, will ban gender rating in Rhode Island, regardless of any changes to federal law.

CRIMINAL JUSTICE

Juvenile Sentencing (S 2272, H 7596)

Senator Harold M. Metts and Rep. Marcia Ranglin-Vassell have sponsored legislation this year to address the issuance of lengthy prison 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 access consequences." Yet many who commit their crimes as children are viewed as incapable of rehabilitation, and incarcerated long into 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. Last year, the bill passed the Senate but died in the House.

Justice Reinvestment (H 7534)

Following the passage of a number of bills improving the criminal justice system in 2017, this legislation, sponsored by Rep. Carol Hagan McEntee, seeks to promote two provisions that were left on the table. This bill would reclassify certain felonies into misdemeanors, reducing the collateral consequences for individuals convicted of those crimes. A second provision requires the preparation of prison impact statements, setting forth the estimated fiscal effect of the bill if enacted, for any bill creating new crimes or increasing prison sentences. These two reforms were approved by the Senate last year, but stripped from the enacted justice reinvestment package by the House at the last minute.

Traffic Fines (H 7594)

This bill, sponsored by Rep. Jason Knight, will allow drivers to receive a hearing to prove their inability to pay traffic fines, and authorize payment plans or reductions in the fines, before their license is suspended. Under current law, fined drivers must pay the entirety of the fine or their license to drive is suspended. This strict statute can trap people in poverty as they struggle not only to pay fines, but also to get to work once their licenses are suspended for failing to pay.



VOTING RIGHTS

Voter Identification Repeal (H 7342)

This bill will repeal the existing statute that requires proof of identity be presented when voting. This barrier to voting serves to disenfranchise the poor, the elderly, racial minorities and other vulnerable groups that are least likely to have identification or the documents necessary to obtain ID. The repeal bill is sponsored by Rep. Christopher Blazejewski.

FIRST AMENDMENT

Net Neutrality (S 2008, H 7422)

It is nearly impossible to get through life without using the Internet, which is why it's essential that our free speech rights be protected both on- and offline. Sponsored by Sen. Louis DiPalma and Rep. Aaron Regunberg, this legislation would prohibit state-purchased or funded Internet service providers (ISPs) from halting, slowing, or otherwise tampering with the transfer of data, thus ensuring fair and equal access to all Internet content. Its enactment has become critical because last year the FCC repealed federal provisions requiring ISPs to abide by "net neutrality" principles that required Internet access to be open and non-discriminatory in operation.

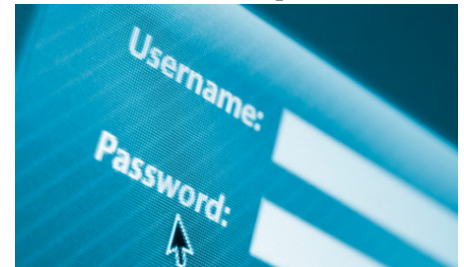
STUDENTS' RIGHTS

Over the Counter Medication in Schools (H 7570)

Current Department of Health regulations, opposed by the ACLU, require parental permission for students to carry and self-administer any OTC medication in school. While this absurd zero-tolerance rule should never have been enacted in the first place, legislation was introduced last year to create a statutory exception for one medication – sunscreen. This new bill takes things a step further, highlighting the ridiculousness of the current policy, by also allowing students to bring to school over-the-counter products to treat menstrual cramps or vaginal yeast infections without a doctor's or parent's note. The legislation is sponsored by Rep. Susan Donovan.

School Computer Privacy

For the past few years, school districts statewide have begun handing out school-owned computers for at-home use by students. These devices carry virtually no privacy protections, allowing schools to spy on students at home. The ACLU is a strong supporter of legislation that will be reintroduced this year, allowing school officials to search the devices only when there is reasonable suspicion to believe the child has engaged in misconduct and prohibit remote access except in limited circumstances. In 2017, the ACLU published a report, entitled "High School Non-Confidential," which highlighted the need for this legislation.



PRIVACY

Abortion (H 7340, S 2163)

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 and ensure that women in Rhode Island continue to have access to safe reproductive health care. The bill also repeals a number of state laws on the books that have been declared unconstitutional over the years. A major push is underway by a coalition of pro-choice organizations, including the ACLU, to enact the bill.

2017 VOTING RECORD ONLINE

If you would like to see how your state Representative and Senator voted on key civil liberties bills in 2017, a voting chart is available at <http://www.riaclu.org/legislation/2017>. You are encouraged to contact your legislators if you are concerned about their vote on any particular issue. A revised two-year voting chart will be prepared once the session ends in the summer.

NEWS BRIEFS



Grand Jury Finds Providence Police and State Troopers Acted Lawfully in Fatal Shooting of Joseph Santos

A grand jury has found that police were justified in their fatal November 9th shooting of Joseph Santos. After a high speed chase that ended with Santos' truck immobilized on a busy highway, Providence police and Rhode Island State troopers opened fire, killing Santos. A passenger in Santos' truck was also seriously injured. Responding to information provided by law enforcement immediately following the tragic incident, an ACLU analysis raised a number of concerns, including whether the high-speed chase was warranted under departmental policies. Despite the grand jury's findings, many questions remain, and the ACLU is calling for a continued examination of practices and protocols on the part of the agencies involved.



New East Greenwich Social Media Policy Violates Town Employees' First Amendment Rights

The ACLU of RI has sent a strongly worded letter to the East Greenwich Town Council to raise concerns about a newly adopted "Employee Social Media Policy" that implicates Town employees' First Amendment rights. Among the types of speech that employees, even in their personal capacity, cannot post are comments that "ridicule," "disparage," or "otherwise bias [sic] against ... any protected class of individuals." In calling the policy

unconstitutionally vague and open-ended, the letter noted that the Town had no authority to regulate employees' private speech in the same manner as their speech in an official capacity. For more than a year, the Town Council has embroiled East Greenwich in various other controversies over employment matters and open meetings violations. The ACLU is considering a legal challenge to the policy.



Groups Ask U.S. Attorney to Investigate Police Policies Governing Communication with the Deaf

The ACLU of RI and the R.I. Disability Law Center (RIDLC) have asked the U.S. Attorney's Office for Rhode Island to address local law enforcement agencies' lack of compliance with federal laws requiring them to provide effective communication with people who are deaf and hard of hearing. In 2016, the two groups sued the Woonsocket Police on behalf of a profoundly deaf person, David Alves, who was arrested and detained overnight in jail on a minor offense, and in violation of state and federal law was not provided the means to communicate during his detention. Upon the successful settlement of that case, the ACLU and RIDLC urged all RI police departments to review their policies and ensure they comported with the law. Responses to a formal open records request for police departments' policies addressing communication with people who are deaf or hard of hearing revealed that many RI police departments' policies are inadequate and that departments

lack technical information and/or technology to properly implement said policies. The troubling results of that request led to the groups' filing of the investigation request with the U.S. Attorney's Office.

ACLU OF RI WELCOMES NEW POLICY ASSOCIATE

Just in time for the start of the 2018 Legislative Session, we're pleased to welcome Catherine Tonsberg as our new Policy Associate. Catherine joins us from Seattle, WA, where she worked in the State Senate. Catherine is looking forward to lobbying for civil liberties at the ACLU of Rhode Island.

NEWS BRIEFS

Numerous First Amendment Issues Favorably Resolved

Through informal means, the ACLU of RI was able to avert litigation on a number of free speech issues across the state this past month. Among the successful results prompted by ACLU intervention:

- *Pawtucket*: After initially barring a Senate candidate from going door to door in public housing to talk to residents about his candidacy, the Pawtucket Housing Authority agreed to allow him to do so.
- *Warwick*: After citing a Warwick mayoral candidate for violating a zoning ordinance banning posted political signs more than 60 days before an election, the city withdrew the notice of violation.
- *Westerly*: After cutting off a public speaker for making derogatory remarks about Town employees, a newly constituted Town Council agreed such censorship was improper.
- *Chariho*: The School Committee agreed to revise a proposed policy that would have barred student publications from “promoting or opposing a political, party, candidate or political view.”
- *CCRI*: CCRI favorably revised a “no solicitation” policy that had banned, among other things, any on-campus distribution of materials by hand.



NEW REPORT EXAMINES FALLOUT FROM OVERZEALOUS ‘TOUGH-ON-CRIME’ LAWMAKING

In Rhode Island, being a serial graffiti artist can get you a longer prison sentence than being a serial drunk driver; stealing fruit from a farm can get you a prison sentence five times longer than if you steal the same fruit from a supermarket; a felony drug conviction from your teenage past could prevent you from volunteering at your child’s school 20 years later; and you can face

Between 2000 and 2017, RI created more than **170 NEW CRIMES** and increased the criminal sentences for dozens of existing offenses.

#StatehouseToPrisonPipeline

years in jail for advertising your drug store without having a pharmacist available during business hours.

These are some of the troubling realities highlighted in a recent ACLU of Rhode Island report that examines state criminal laws and sentences. The report, entitled “Rhode Island’s Statehouse-to-Prison Pipeline,” takes an in-depth look at how overzealous lawmaking has resulted in an unfair, costly, and sometimes absurd, criminal justice system, and offers a series of recommendations to address the issue.

To read the full report, visit www.riaclu.org/know-your-rights.

FINDINGS

- Between 2000 and 2017, the General Assembly created more than 170 new crimes.
- Many of these “new” crimes make criminal offenses out of conduct that was already prohibited by existing laws, but add harsher penalties and lead to more serious consequences.
- Laws like these vastly expand the power of police and prosecutors to coerce defendants to waive their right to a jury trial and prod innocent defendants to plead guilty.
- The length of prison sentences imposed by new criminal laws is largely arbitrary.
- Increasing penalties that turn a crime from a misdemeanor into a felony, or establishing new felony crimes for many non-violent offenses, lead to serious collateral consequences that are rarely considered.

RECOMMENDATIONS

- Create a commission to recodify the criminal laws with the goal of reducing arbitrary penalties, eliminating duplicative crimes, and decriminalizing some offenses.
- Require prison impact statements with the introduction of sentencing bills so that the fiscal impact of such legislation cannot be ignored.
- Require racial impact statements to help reduce the significant racial disparities in the criminal justice system.
- Reclassify some crimes from felonies to misdemeanors, and reduce the passage of duplicative criminal laws and enhanced penalties for already-existing crimes.
- Re-examine and revise statutes that disqualify, automatically or presumptively, people with felony records from employment or professional licensing.

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Thank you to everyone who came out to the Women's March on January 22 – and to our steadfast volunteers! Thanks also to ACLU/RI Board Chair Cherie Cruz, who gave the most rousing speech of the event!

**TUNE IN TO OUR CABLE SHOW:
“RIGHTS OF A FREE PEOPLE”**

PLAYING IN MARCH 2018:
Open Government and Civil Liberties

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

PROVIDENCE/NORTH PROVIDENCE:
Channel 18 (Channel 38 on Verizon FIOS)
Wednesdays 9:00 pm

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