

# CIVIL LIBERTIES NEWS

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## ACLU CHALLENGES IMMIGRANT DETENTIONS

Recently, the American Civil Liberties Union of Minnesota filed a class action lawsuit, along with the University of Minnesota Law School and Dorsey & Whitney challenging the U.S. Immigration and Customs Enforcement (ICE) practice of continuing to detain immigrants for months, even after an immigration judge has ruled they cannot be deported to their home countries.

The case was filed on behalf of Rushinga Muzaliwa and others like him who are currently being held by ICE in a detention facility. The arbitrary detention of our clients violates their fundamental constitutional right to liberty.

ICE detains and seeks to deport many non-citizens each year. Those who fear persecution if deported to

their home country can ask an immigration judge to block deportation by applying for Withholding of Removal or protection under the United Nations' Convention Against

Torture (CAT). An immigration judge can only grant these forms of relief where the immigrant proves he or she most likely will be persecuted or tortured at home. If granted deportation protection, ICE's own written policies say the immigrant should be released immediately, except in rare instances where deportation is possible to a third country, such as where the immigrant has dual citizenship in two foreign countries. However, the ICE office in

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## 2016 LEGISLATIVE SESSION: GRIDLOCK, POSTURING, AND THE ACLU ON DEFENSE

It was a short, 10-week session marked by partisan gridlock and election year posturing. Few bills actually became law, but the ACLU-MN remained vigilant, weighing in on a number of contentious civil liberty issues. Here is an overview of civil liberties-related activity at the Minnesota Capitol in 2016:

**Police-Worn Body Cameras:** In the final days of the session, legislators pushed through a bill that classifies nearly all body camera footage as private data that will not be accessible to the public. Even though the person who was filmed will have access, we believe that this classification undermines the value of body cameras to be used as a tool to reestablish the public's trust in the police.

This session, we fought for both expanded transparency and provisions regulating officer use of body cameras. In response to our accountability concerns, the new law provides several exceptions where footage will be classified as public data,

including footage where: (1) there is a use of force by an officer that results in at least substantial bodily harm; (2) an officer discharges a firearm; (3) the individual in the video requests that it be made public, or (4) an individual brings an action in district court to request release.

Unfortunately, the new law is silent on other important issues relating to police use of body cameras. For example, the new law does not address: (1) whether officers have discretion to activate and deactivate the cameras as they please; (2) whether individuals can request that officers turn off the cameras in certain circumstances; (3) whether officers need to provide notice of recording; (4) whether officers are allowed to film First Amendment activities; and (5) whether officers should be allowed to review the footage before making an initial report or statement. These issues will now be resolved by each police department deploying body cameras rather than through a statewide policy.

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# KEEPING THE MOMENTUM MOVING



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The first thing I do each morning is to retrieve the “Star Tribune” from my front doorstep. Given what is going on in the world, and particularly in the current U.S. presidential election, I lately have been finding myself less eager to open up the paper to see what is happening in the world. Among the many things I find distressing is the extent to which certain members of Congress, certain candidates for office and our fellow citizens seem ready to cast aside the civil liberties we all hold so dear in order to achieve some ill-defined end which does not seem calculated to achieve any sort of results positive to society.

Although drastic curtailment of civil liberties has yet to occur, the potential for that to happen is very real, very apparent and very, very frightening. The ACLU and the ACLU-MN stand ready to combat any efforts to curtail our civil liberties. We stand ready to litigate, lobby and educate to avert deprivations of civil liberties whether they be small or large.

I am halfway through my tenure as the president of ACLU-MN, and there are many accomplishments, small and large, for which this organization can justly be proud. Our small but dedicated and energetic staff has been working diligently with local communities and local law enforcement authorities to try to break down policies and practices of law enforcement, which contribute to troubled police-community relations and lead to racial disparities. Just one example of these efforts is the action that the

ACLU-MN brought in Hennepin County District Court on behalf of the NAACP to publicly release the video of the police-involved killing of Jamar Clark in Minneapolis last November. While it is true that once the video was released it didn’t resolve the many questions about what happened, the public had a right to see the video.

The ACLU-MN has also been exceptionally active in recent months in the ongoing and seemingly never-ending battle to achieve equality for the LGBT members of our communities. In the past four months alone, the ACLU-MN has commenced a major lawsuit to vindicate transgender individuals’ rights to access the health care they need to live a healthy life; we opposed the odious legislation proposed at the Capitol regarding the use of public rest rooms by transgender individuals; and sent a strong letter to the City of Morris regarding its ban on LGBT/Day of Silence T-shirts.

I have no doubt that the need for the services of the ACLU-MN will continue to grow in the coming months. We can never be assured that civil liberties are not at risk, especially in these unsettled and somewhat turbulent times. Of course, it takes money to continue to do this good work, and money does not grow on trees; it comes from our members and our friends. As you think about your charitable giving in the weeks and months to come, please think of ACLU-MN. ■



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## A NEW ERA OF SURVEILLANCE

We are living in an unprecedented time of video. City, county, state and federal governmental agencies, most commonly police, have installed cameras or purchased videos from building owners in order to spy on all of us. At least in urban areas, most of us live under constant surveillance.

Even today, most of these cameras are unregulated. Camera locations are frequently secret, and their data (pictures) are also secret. Now new technologies are coming on-line. Police are now using drones and many departments are deploying body cameras. At the same time, citizens are using their cell phones to document their interactions with police in ways that have begun to change the relationship between the government and its citizens. The ACLU of Minnesota has been involved in all of these issues for at least the last decade.

The ACLU-MN pushed hard to limit the amount of time the government can keep license plate reader information. Almost all of the data collected is data on innocent people. Now data cannot be kept longer than 60 days. We pushed for no data retention and the police wanted six months.

The Hennepin County Sheriff currently operates a drone for “search and rescue only”. We are watching this issue closely and will continue lobbying for warrants in the upcoming session.

Two body camera bills were introduced this session. The police backed one and

the ACLU backed the other. Despite a large number of Democratic and Republican sponsors, Rep. Cornish blocked our bill in the House of Representatives. The police-backed bill passed the House and the Senate. The ACLU of Minnesota lobbied Dayton to veto the bill because nearly all the data collected would be private, turning a device we had hoped would restore trust in the police departments into another government data collection system. Unfortunately, Dayton did not veto the bill.

Finally, the prevalence of cell phone videos has changed the discussion about police treatment of people of color. From Charleston to Chicago to San Francisco, the videos of people of color being shot to death by police officers have changed the narrative for everyone in the country. One result is that police seize the cell phones of witnesses and arrest them for interfering with police. Three years ago, the ACLU-MN successfully defended a man who videotaped an EMT on the other side of a parking lot. His phone was seized and when he got it back, his phone had been “scrubbed”.

We joined with other affiliates and created a Mobile Justice App, which you can download from your app store. Once you download the app, you will be able to upload any video you have taken to us and the government cannot erase nor copy it. This is a great way for ordinary citizens to document police issues.

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# RETHINKING THE BATHROOM BINARY

by Mansuda Arora, ACLU-MN intern

I am a millennial who identifies as cisgender. By this point I am almost certain that someone of an older generation have rolled their eyes at that statement, and to be honest I sometimes find myself looking at my peers and finding our generation a bit out there as well. We have an almost pervasive sense of identity and individuality that seems unprecedented. I can for instance tell you that I am a cisgender, able-bodied, multiracial, queer, woman of color with the same assurance that one might rattle off their home address. I go to a small liberal arts college where along with our name and year we state our PGPs or “preferred gender pronouns” as a matter of routine. I am hyper aware of the categories that I fall under that leave me vulnerable to oppression, as well as the ones where I hold privilege. Although our willingness to make you aware of our vast knowledge of social issues may drive some of our parents and teachers up a wall, this is one area where we may be ahead of the older folks in our lives.

Now don't get me wrong, I believe that my parents and grandparents were members of brilliant generations of activists who tackled the issues of their time with tremendous strategy and understanding that I admire. Today, we are facing an entirely new set of issues that require a new way of thinking about allyship.

As anti-transgender rhetoric increases around the so called “bathroom debate” and HB2 bill in North Carolina, I am becoming more aware of our country's limited understanding of gender identity and politics. On a legal level, barring transgender people from bathrooms or other single-sex spaces is illegal due to statutory and constitutional bans on sex discrimination. On an even more basic level, trans people live their lives consistent with their gender identity just as any cisgender person would. I identify as a woman so I use the women's restroom. My friend who happens to be transgender is also a woman and uses the women's restroom. It's not that complicated.

Much of the opposition I have come across stems from fear-based bias and discrimination, just as it has for many other restroom centered debates in our country's history for African-Americans and gay people during the peak of the AIDS crisis. Sound familiar?



As a millennial, I was not alive for any of these civil rights battles but am still able to see the connection. We've been here before, but as I scroll through the comments section under recent articles highlighting the issue, it seems that the main concern for those unwilling to share a restroom with a trans person comes from a need to assure their own privacy and protection.

I grew up during a time where LGBTQ people had more visibility than ever before and perhaps for that reason, I feel that my generation possesses an incredible amount of empathy towards this issue. This is especially important when we know that even in our supposedly more progressive time, according to analysis of FBI data by the Southern Poverty Law Center, the trans community has experienced disproportionate rates of violence. In the first five months of this year, 10 trans people were killed, the majority of them trans women of color. In 2015, at least 21 trans women were killed.

According to a survey conducted in Washington, D.C., and published in the Journal of Public Management and Social Policy, in 2013 70% of transgender people have been attacked, harassed or denied access to a bathroom.

Most of us have the empathy to understand that trans people are at far greater risk of harm than those who fear sharing a bathroom with them. To say that sharing a bathroom with trans people makes you feel unsafe is to ignore the very real risk they face with each decision to use the bathroom of their choice and their identity.

The issue is bigger than bathrooms. Bigotry has effectively become public policy, which is where I as a millennial and ally draw the line. We must legislate on the basis of empathy rather than ignorance and only then can we say our country upholds equal rights for all.



# 2016 LEGISLATIVE SESSION

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**Drug Sentencing Reform:** The Legislature overwhelmingly passed Minnesota's first major drug sentencing reform in 27 years. While the ACLU supports reducing drug sentences, the final bill was far from perfect. It was a compromise between a group of stakeholders that included prosecutors, the defense bar and law enforcement associations.

Among other things, the new law reduces drug sentences for a number of low-level offenses, eliminates certain mandatory minimums, and increases the drug threshold amounts for certain drug crimes. At the same time, the law creates *new* mandatory minimums for some high-level offenses and decreases the amount threshold for certain marijuana crimes. The stated goal of the compromise was to differentiate between addicts and dealers. The law is estimated to save a substantial number of prison beds over the next several years.

**REAL ID:** Governor Dayton signed a bill repealing Minnesota's ban on planning for state compliance with the Federal REAL ID Act. The 2005 Act established minimum security standards for state-issued driver's licenses and prohibits Federal agencies from accepting licenses that do not meet these standards. A second bill for implementation by 2018 stalled in conference committee. As a compromise over privacy concerns, lawmakers tentatively agreed to issue both REAL-ID compliant licenses and licenses that could be used for driving, but not for federal purposes (such as boarding domestic flights or entering secured federal facilities). The bill ultimately died because the House and Senate could not agree on whether Minnesota should explicitly ban undocumented immigrants from ever receiving a driver's license or leave this issue open for non-compliant licenses in the future.

**Revenge Porn:** The Legislature passed a law that creates criminal penalties for the "non-consensual dissemination of private sexual images," commonly referred to as revenge porn. While we do not oppose efforts to combat this type of reprehensible conduct, we did express concerns that the bill may be vulnerable to constitutional challenges under the First Amendment because it is a content-based restriction on speech that could be overturned as unconstitutionally overbroad. While a few changes were made to address our concerns, it is unclear whether the new law will withstand constitutional scrutiny.



*Rep. Lesch speaking at our #TakeCTRL Press conference*

**Student Data Privacy:** We supported several bills relating to student data privacy as part of our #TakeCTRL campaign. These bills received a hearing in the House, but did not move forward this session. We opposed a separate student data bill that was supported by the tech industry because it created loopholes in student privacy for the financial benefit of technology providers. That language was eventually included in an omnibus bill, but stripped out in conference committee.

**Transgender Bathroom Restrictions:** Several legislators introduced a bill that would require schools and businesses to force individuals to use bathrooms that correspond to their gender assigned at birth. We opposed this anti-LGBT measure because it was far reaching and would make it impossible for transgender men and women to go about their daily lives in our state. While the bill was given an informational hearing in the House, no action was taken in the Senate.

**Abortion Restrictions:** Once again, several anti-abortion bills moved through House committees, but did not become law. These included efforts to create onerous licensure and inspection requirements for certain clinics that perform abortions, a funding ban that would have prohibited the use of public funds for abortion services in Minnesota and created a significant barrier to low-income women, and new requirements for clinics to report to the state on abortion procedures using telemedicine.

Other ACLU-MN priority bills relating to [drone privacy](#), [voting rights restoration](#) and [civil asset forfeiture reform](#) moved through Senate committees, but were not given hearings in the House. We will continue to advocate for these and other civil liberties issues in the 2017 legislative session. ■

# FREE SPEECH AND LGBT RIGHTS AT MORRIS HIGH SCHOOL

As part of their celebration of a Day of Silence (a student-led national event that brings attention to anti-LGBT name calling, bullying and harassment in schools), students at Morris Area High school donned T-shirts with the slogan “Look Beyond”. The same day a group of anti-LGBT students wore shirts that said “Loud and Proud”. The dark blue shirts had an image of an American flag and a pickup truck on the front. Students who were a part of the Gay Straight Alliance efforts said they were shouted at and harassed by the students wearing the Loud and Proud T-shirts, but school officials did nothing to stop the harassment.

A few days after the initial incident the school announced that both t-shirts would be banned and students could no longer wear those slogans to either school or a school related event. The school said they needed to do this to protect the students.

This is not the solution. The T-shirts themselves are not the problem, the harassing of students who were a part of the Day of Silence is the problem.

Schools should be a safe space for all students to attend. Morris Area High School has a responsibility to address any bullying that occurred regardless of the clothing worn by the perpetrators. Instead they just chose to limit the free expression of both sides by outright banning the shirts. This won't get rid of bullying.

Instead of banning the slogans and T-shirts the school should be focused on making the school a safe and welcoming environment for its LGBT students. This is not the first time the ACLU has heard that Morris

High School is an unwelcoming climate for LGBT youth. The school should use this opportunity to talk to its students about bullying and harassment and figure out steps it can take to make it safer.

The ACLU of Minnesota sent a letter to the school district telling the school that they should lift the ban on the T-shirts and instead focus on the heart of the problem.

It's ironic that in light of students trying to raise awareness about the silencing effect of anti-LGBT harassment and intimidation, the Morris school district is instead using incidents of anti-LGBT harassment to silence their voices and

ban them from using the positive and inclusive slogan of “Look Beyond.”

LGBT youth are twice as likely to be bullied or harassed as their straight peers. Schools should be tackling this problem head on to change the tides and make schools more welcoming and safe.

There are ways to protect students free speech rights and their right to attend school without fear of bullying and harassment. The ACLU will keep fighting for both those rights. ■



Chris Kluwe, former MN Vikings player wearing a Morris GSA T-shirt

*Image to the right:  
ACLU's contingent  
in the 2016 Pride  
parade*





## FROM NETHERLANDS TO AUSTRALIA TO MINNESOTA -- A DONOR PROFILE



Dr. Erik Ritman

Dr. Erik Ritman was born in the Netherlands during World War II. His family moved to Australia in 1950, but growing up under the German occupation had a tremendous impact on him. It shaped who he is today, which is why he so fervently believes that ordinary people must speak up for the injustices in their country.

He moved to Minnesota in the late 1960s and first learned of the ACLU in the 1970s when a fellow doctor invited him to an ACLU gathering. He decided it was time to become a member when President Reagan complained about the ACLU.

Dr. Ritman is passionate about equality for people of color, equal access to education, equal access to voting, and supporting a diverse free press, that all points of view can be featured.

For Dr. Ritman calls the act of voting the emotional “meat” in what you say: Once you vote, you have some weight in what you say. If we want to call ourselves a democracy then everyone should have an equal vote, and that is not always the case here.

He likened the work of the ACLU to pushing a heavy rock up a hill. The ACLU needs all the help it can get, which is why he continues to give. There is a tremendous amount of work to be done and a lot of resistance, so everyone needs to join the ACLU. ■

*Download the Mobile Justice App in the app store today - available for free for Androids and iPhones.*

## CLASS ACTION LAWSUIT

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Minnesota continues to jail these immigrants for months after an immigration judge blocks their deportation, and routinely does so when there is no expectation of deportation to any country.

The government is spending millions of dollars locking up people whose detentions serve no purpose. This practice is unnecessary and violates the constitutional rights of the immigrants being held.

The ACLU-MN, the Center for New Americans and Dorsey are asking that all immigrants currently in this situation be immediately released and that in the future no immigrant be held for an additional 90 days when there is no likelihood that the immigrant can be deported.

## EXECUTIVE DIRECTOR COLUMN

CONT'D FROM PAGE 2

With the Mobile Justice App, you can hold the government accountable.

The ACLU-MN has been working in the legislature, in the courts, and on the streets to help limit our “surveillance society”. You can follow us on twitter or on Facebook. Thank you for supporting the ACLU-MN! ■

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**Questions?** Contact Molly Miller Mons at 651.529.1696 or [mmiller@aclu-mn.org](mailto:mmiller@aclu-mn.org)

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