

ACLU Minnesota CIVIL LIBERTIES NEWS

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U.S. GOVERNMENT VIOLATES ITS OWN RULES IN DENYING PASSPORT TO MINNESOTA VETERAN

Mark Esqueda served our country not once, but twice: First as a Marine in Iraq and Afghanistan, and then in the Army National Guard.

Being in the military was his dream since he was a kid growing up in southern Minnesota. He enlisted and started serving right after graduating from high school.

“I don’t like to tell people I’m a veteran,” Mark said. “I didn’t do it for the recognition. I don’t like to be called a hero. I love this country. I did it for my country. I would have done it even if I hadn’t been paid.”

“I truly believe that there is no better country than the U.S.,” he added. “That’s why I felt it was my duty – I just had to give back.”

But now our government is questioning the citizenship of this proud and modest veteran. The State Department has twice denied his passport application, claiming it has reason to believe the midwife who delivered Mark in the border town of Hidalgo, Texas, is not reliable.

“To have them question my citizenship is an insult,” Mark said.

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Elizer Darris, Organizer
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BOARD CHAIR'S CORNER

INTRODUCING OUR NEW BOARD CHAIR



Nicole Moen
ACLU-MN Board Chair

As I begin my tenure as Board Chair, I would like to pause for a moment and remember where we have been, as we chart our path going forward.

Nearly three years ago, we learned that Donald Trump would be our next president. Three days later, the ACLU announced in a public letter that if he didn't reverse course on his campaign promises to deprive people of their constitutional rights and liberties, he would have to contend with the full firepower of the ACLU's lawyers, activists, members, and volunteers.

President Trump did not reverse course, and he continued to pursue his unconstitutional agenda. We were faced with the Muslim ban, child separation, and attacks on women's rights and the right to vote. At every step of the way, the ACLU was there – from filing lawsuits challenging his policies in court, to organizing nationwide campaigns to challenge his policies in the public square. The ACLU's members and supporters rose to the challenge, providing new financial resources and an outpouring of volunteers.

The present threats to the Constitution may be unprecedented, but the energy and determination of the ACLU in responding to those threats through its staff, volunteers, and supporters is extraordinary. Your efforts have allowed the ACLU to hire more lawyers, organizers, policy analysts, and communications specialists. They are litigating against illegal and unconstitutional acts, developing innovative solutions to policy challenges, and gathering support among impacted communities. I have met many of these staff members, both in Minnesota and elsewhere, and I am awestruck at their talent and dedication. We have literally hired the best and the brightest.

Excellence matters. Although President Trump's unconstitutional agenda has suffered setbacks, including judicial decisions, new legislative initiatives, and a groundswell of public support for our Constitutional rights, his office continues to promote and pursue violations of the Constitution. As recently as June 5, the ACLU was in federal court again because new evidence showed the Trump administration added the Census citizenship question to restrict the political power of Democrats and Latino communities.

Our democracy and our Constitution need our protection now more than ever. If the last few years have shown us anything, it is that – together – we are a force to be reckoned with.

If we continue to work together, with diligence and courage, we will overcome any challenge, and we will preserve our democracy and uphold our Constitution. Our country will be better, stronger, and fairer for it.

It is an honor and a privilege to serve as Board Chair. I look forward to working with all of you on our important mission in the weeks and months to come.

HUNDREDS FLOCK TO WARRANT RESOLUTION DAY

By Isabel Rowader, Communications Intern

Imagine being scared to leave your house, feeling unable to go to work or drive your child to school. For those with an outstanding warrant, this is a daily experience. That's why about 750 people waited outside Washington Technology Magnet School June 1 to resolve their warrants – without fear of arrest.

They came out for Misdemeanor Warrant Resolution Day, sponsored by the ACLU-MN, NAACP Minneapolis, Pueblos de Lucha y Esperanza, Hennepin, Ramsey, Dakota and Washington Counties, the Saint Paul City Attorney's Office, and the Minnesota Judicial Branch. It was ACLU-MN's biggest Warrant Day ever. This was the first time that four counties participated at the same time, allowing judges to clear warrants issued in any county in Minnesota.

People went in looking stressed and left with their faces shining, as if a weight had been lifted. That visible fear is a high price to pay for a misdemeanor warrant, which can arise from something as simple as an unpaid speeding ticket. People often don't know that an unpaid ticket can lead to a court date. Or they miss court because they don't have transportation or child care. Others can't afford to pay. This contributes to a two-tiered system of justice based on wealth in which people face more serious consequences because they lack resources.

Instead of helping these individuals rectify these small legal issues, our criminal justice system

penalizes them with a warrant. That can deepen the distrust many already feel.

The numbers illustrate the event's impact. Initial results show about 1,500 warrants were cleared, three times the number resolved in our last three warrant days combined. ACLU-MN Community Engagement Director Jana Kooren said attendees were "in awe something could be so positive in the criminal justice system."

When a volunteer asked why the event wasn't held in a courthouse with more room and technology, a participant yelled, "We wouldn't come!"

Organizers planned a community-based, family-friendly event. Hmong and Spanish translators were provided. Participants were met by friendly volunteers, free food, a children's table and a DJ. By partnering with community organizations such as the ACLU and the NAACP and hosting the event in a local school, the courts became an accessible tool for community members.

Warrants weren't the only thing resolved. Additional community services included help in paying overdue taxes, finding a job, gaining legal services, and accessing social services and healthcare. The event helped level the playing field in our communities and the criminal justice system.

"I had a lot of weight lifted off my shoulders," a participant said. "So happy now. I'm very appreciative to be able to solve situations. I didn't want to go to jail. I'm really happy I don't have to."

NEWS UPDATES

WHAT YOU NEED TO KNOW

Just because it doesn't get a headline doesn't mean it's not important.

ATTORNEY GENERAL WEIGHS IN ON IMMIGRATION LAWSUIT // The State of Minnesota backed ACLU-MN's argument in a lawsuit filed to stop Nobles County and its Sheriff from detaining immigrants for ICE without proper authority. Specifically, the state, through the Attorney General and Solicitor General, filed an amicus brief supporting our temporary restraining order to stop the detentions. "The continued hold by Nobles County of an otherwise free individual is an arrest in violation of Minnesota law," Attorney General Keith Ellison's brief states.

STATE JOINS ACLU-MN LAWSUIT IN SUPPORT OF TRANS STUDENT // The Minnesota Department of Human Rights, represented by AG Ellison, joined our lawsuit with Gender Justice that accuses Anoka-Hennepin School District of discriminating against a transgender teen boy by creating a separate locker room for him, leading to threats and bullying. "School districts should have policies and procedures that enable all students to thrive, free from discrimination," said DHR Deputy Commissioner Irina Vaynerman.

visit aclu-mn.org for more information

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DELIVERY DATE: SEPT 11 1961

ATENCION DE PARTOS

BABY'S NAME: MARK GILBERT

124 N. BRIDGE • HIDALGO, TEXAS

PHONE (957) 43-9611

ESQUEDA

HOUR: 12:30 PM

WEIGHT: 7 lbs. 7oz.

APGAR RATE: 8-10

OTHER: EUTOCICO.

HIDALGO Police Department

POLICE OFFICER: Roberto Dominguez

* # 430

Mark Esqueda's birth certificate was even witnessed by police.

"I was born here, raised here and served my country here. It's being told I did not belong here." The ACLU of Minnesota and the Greene Espel law firm are representing Mark. We are suing the federal government to have Mark declared a U.S. citizen.

"Mark was born here and bravely served our country in the military," said Greene Espel attorney Jenny Gassman-Pines. "What the government has demanded from Mark goes well beyond its own requirements to prove his citizenship. We look forward to holding the government accountable and getting Mark the recognition he deserves as a citizen and patriot."

The government's standard for proof in these passport cases is a preponderance of the evidence, which means something is more likely than not. Mark already has provided his birth certificate, proof of his military security clearance that's only given to citizens, affidavits from witnesses who saw his pregnant mother in Texas near the time of his birth, and the signature of a police officer who witnessed his birth. The government is demanding even more proof, violating its own standards and rules.

The national ACLU sued the government in 2008 for similar behavior and won. The lawsuit charged that the State Department violated the due process and equal protection rights of U.S. citizens delivered by midwives along the southern border by forcing them to provide an excessive number of documents normally not required to prove citizenship. Even after these citizens provided further proof, the State Department closed applications without explanation. In a 2009 settlement, the State Department agreed to new procedures to ensure the fair and prompt review of these U.S. passport applications; it also agreed it wouldn't deny passports to eligible citizens.

Unfortunately, the government is up to its old tricks. Immigration lawyers say they're seeing an increasing number of people denied passports who

were delivered by midwives near the border, even though that's a common birthing practice there.

KSTP took to a trip to Mark's birth town of Hidalgo, Texas. They found his midwife, Roberto Nuñez, still delivering

babies at Hidalgo Maternity Center.

The news team's video shows Nuñez entering a room filled with cabinets of meticulously kept medical records that document every birth he's attended, filed by month and year. Nuñez went right to the folder with Mark's records, baby 430.

CASE 0:19-cv-01236 Document 1 Filed 05/09/19 Page 1 of 9

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Mark Gilbert Esqueda, Plaintiff,

Case No.

v. Michael R. Pompeo, in his official capacity as United States Secretary of State, Defendant.

COMPLAINT FOR DECLARATORY RELIEF

FILED

1. Plaintiff Mark Gilbert Esqueda, a U.S. citizen and a veteran, brings this lawsuit against Secretary of State Michael R. Pompeo seeking a declaration that he is a U.S. citizen. Mark put his life at risk to protect and defend this country as a U.S. Marine. The U.S. Navy, Marines, and Army have all recognized Mark's citizenship, granting him a security clearance available only to U.S. citizens. But despite that, when Mark applied for a U.S. passport and provided the required information to show that he was born here, the State Department twice denied his application. And the State Department has demanded additional and burdensome documentation that is impossible—and legally unnecessary—for Mark to provide.

2. Mark was born in the United States and is entitled to the rights and privileges afforded to U.S. citizens, including the right to travel freely across U.S. borders using a passport. Through this lawsuit, Mark seeks a declaration that he is

"Proof," Nuñez told KSTP. "I got it."

The day of Mark's birth is an oft-told family story. His father was away, so his mother dropped his older sister off with a neighbor, then took a taxi by herself to the midwife. Mark was the first boy born in that generation. His dad called to tell everyone in Mexico, where they had a big celebration.

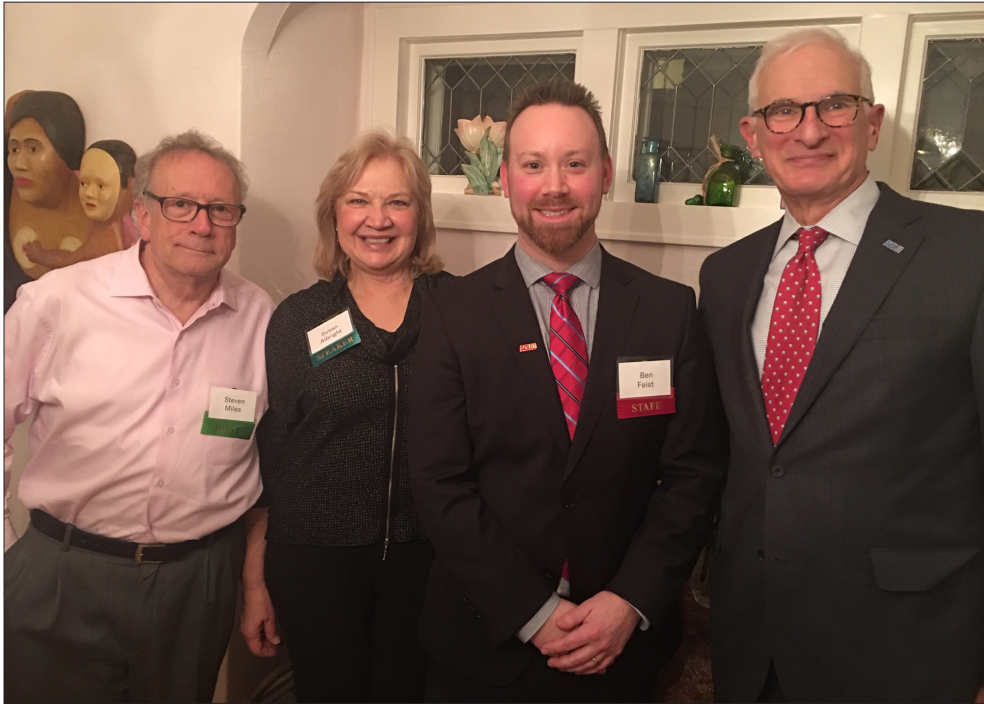
Today Mark lives in southwestern Minnesota, where he spent much of his youth. He works as a millwright building grain elevators and is studying to become a nurse.

He initially applied for his passport just to have it. But his need grew more pressing the second time: He wanted to visit his sister, who's married to a military member serving in Europe, and to meet his new niece.

While Mark still wants to travel, the denial of his passport has grown beyond this basic need and right. What happens someday when he applies for the Social Security he has earned? What happens to others like him who were born near the border and now find themselves in government limbo?

"As an American, I deserve the same rights as anyone else," Mark said. "I want to make the government feel ashamed for having put me or anyone else through this."

SUPPORTER IS NOTED HUMAN RIGHTS CHAMPION



Dr. Steven Miles (left) hosts a legislative update with MinnPost Managing Editor Susan Albright, and ACLU-MN Chief Program Officer Benjamin Feist and Executive Director John Gordon.

When Dr. Steven Miles saw the notorious photos of torture victims in Abu Ghraib, a few questions kept bothering him: Where was the medical staff in all of this? And why didn't they report the abuse?

The noted University of Minnesota professor of medicine and bioethics went looking for answers.

"I wanted to understand how the government shut down the medical staff," he said. "What I found instead was they didn't. The government built the doctors and the psychologists into the system of interrogational torture throughout the entire War on Terror detention system."

The ACLU was critical to reaching that understanding. The ACLU filed a series of Freedom of Information Act requests against the government that led to reams and reams of documents, including medical records. Those documents were redacted and released through a photocopying process that made it impossible to search the PDFs using text recognition.

Dr. Miles spent two years hand-indexing nearly 70,000 documents, including medical records and death certificates, painstakingly matching detainee deaths with dates and locations. He discovered

suspicious things like a young man dying of a heart attack at age 26, unreported deaths, and backdated certificates that violated international law conventions for reporting deaths in war prisons.

"Lawyers know how to read legal documents. It takes a doctor to read a death certificate. It's a subtle document. Sometimes it's what's there, and sometimes, it's what's not there," he said.

Dr. Miles turned his findings into numerous articles, the book "Oath Betrayed: Torture, Medical Complicity, and the War on Terror," and a public database at the university's Human Rights Library.

He hopes that showing how doctors are built into the world's torture machines will create

pressure and increased accountability, and prevent doctors from participating.

This same commitment to human rights and civil liberties, which he's carried through a career spent helping the marginalized, undergirds his support for ACLU-MN. He serves on the Foundation Board, and he and his partner Jolene Gitis have offered a generous matching gift that they hope will encourage a new generation of major donors.

They'll match 15 gifts of \$5,000 or more that are given by new donors or those who are new to giving above the \$1,000 level. The total matching opportunity is \$75,000. Please call Judy at (651) 529-1695 for information.

"Civil rights – including the freedom of the press or teaching or religion, the freedom to move, to choose the country you go to, or to have control over one's reproductive life – must be defended," Dr. Miles said. "Attacking civil rights is precisely how disparities of wealth, power, and life opportunities are created and sustained. Since property can be taken away and concentrated among the very few, it's extremely important we keep civil rights available to all."

SESSION ENDS WITH DISAPPOINTMENT, FRESH HOPE



A record number of people turned out for ACLU-MN Lobby Day.

ACLU-MN members showed up in record numbers for Lobby Day, then kept writing, calling and talking to their legislators.

ACLU-MN will enter the next legislative session full of fire and do our best – along with you – to make sure that our precious civil liberties get their day, and a vote, in our Legislature.

Positive bills ACLU-MN supported:

- Reestablishing an Ombudsperson for the Department of Corrections to investigate

The state legislative session that started with such promise for civil liberties ended with a whimper.

ACLU-MN priorities sailed through the House with strong support all session, including criminal justice reforms such as capping probation terms, limiting cash bail, ending civil forfeitures, and stopping driver's license suspensions for failure to pay fines and fees that disproportionately hurt people of color and people with lower incomes. Immigrant driver's licenses, restoring the vote, net neutrality, and a ban on LGBTQ "conversion therapy" for children also advanced in the House, but stalled in the Senate.

In both chambers, ACLU-MN found support to increase social media privacy, require warrants for drone surveillance, enhance email privacy and create transparency around cell phone tracking.

But these reforms disappeared in the last hours of the legislative session when top legislative leaders and the governor met behind closed doors in a striking lack of transparency that once again marked the end of session.

Hope remains

Issues that civil liberties and social justice groups have long championed finally got a hearing, gaining public attention and strong support from key lawmakers. Coalitions are stronger and more engaged than ever.

complaints, which promotes more transparency and accountability.

- Solitary confinement reform that requires monitoring, reporting, and limiting the use of isolation in Minnesota prisons.
- The ability for people who are wrongfully convicted to seek compensation.

Anti-civil rights bills we helped defeat:

- A ban on abortions after 20 weeks unless necessary to prevent a woman's death or "substantial and irreversible physical impairment," excluding the risk of psychological or emotional harm. It was in a Senate omnibus bill.
- A related bill requiring physicians to invite the viewing of ultrasounds prior to an abortion.
- A pipeline-protest bill aimed at increasing criminal penalties for pipeline protesters and lowering the bar to charge them. It would have had a chilling effect on free speech, and targeted indigenous and environmental activists.
- A provisional-ballot bill requiring people whose voting eligibility was challenged to use a provisional ballot, potentially not having their vote counted.
- A measure establishing scholarship tax credits (school vouchers in disguise) that would have effectively allowed public money to go to private and religious schools.

NEW TECH THREATENS PRIVACY

Technology has become so powerful that if police want a daily report with a video of everyone who was kissing in public, appeared drunk or just looked “suspicious,” they can make it happen.

“You can imagine this becoming a powerful tool for racial profiling,” said Jay Stanley, senior policy analyst with the ACLU Speech, Privacy, and Technology Project. “It’s as if we had an enormous number of AI (artificial intelligence) security guards monitoring every camera and making judgments about what they are seeing.”

This is just one example of the technology coming our way, churning up privacy concerns that our society has barely begun to consider, much less address. That’s why the ACLU and ACLU-MN are fighting in Congress and the Minnesota Legislature to make sure our civil liberties – including our privacy – are protected as technology advances, and to ensure that our data remains our own.

At the state Capitol this legislative session, we pushed warrant requirements for drone surveillance, social media privacy protections for employees, and transparency in cell phone location tracking. The ACLU is urging a congressional moratorium on the use of facial recognition by police and immigration until laws can catch up.

The FAA currently limits where and when drones can fly. But those rules are about to be relaxed. Companies are launching satellites into space that can take pictures of the Earth as it rotates, much like a scanner. A new company plans to blanket our planet with 500 small but mighty satellites, promising live video of any spot on Earth delivered to your cell phone, Stanley said.

“We are really unprepared for this tsunami of technology that has the potential to change what it’s like to live in modern life, to allow companies to track us and everything we do,” he said.



(Top) Carolyn Papke listens intently as privacy expert Jay Stanley speaks at an event for ACLU-MN supporters. (Below) Rhoda Redleaf, Howard Bass, Kimberly Boynton and Paul Redleaf visit.

In 2016, Baltimore secretly did aerial surveillance with technology adapted from the Iraq surge, without telling the public or even the mayor. In 2017, San Francisco Bay area sheriffs flew drones over protests.

That’s not to say this technology is without benefits. In Mexico, police used footage of a murder to track down the suspects within a four-hour period.

“But if you know everybody’s location, what they did in their lives, you know the medical doctors they visit, how often they go to bars, the details of their sex lives,” Stanley said. “That is more power than any government should have over a free citizen.”

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Civil Liberties News
Newsletter of the American Civil Liberties Union of MN Foundation

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Sept. 24, 8 a.m.

FULFILL LIBERTY'S PROMISE

Hyatt Regency Minneapolis

This fundraising breakfast benefits the American Civil Liberties Union of Minnesota and showcases the critical work the ACLU-MN does to protect and advance the rights of everyone living in our state.

Learn how you can help the ACLU-MN by sponsoring or attending the fundraiser at:
<https://www.aclu-mn.org/en/events>.

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