

# THE DEFENDER

# ACLU

Vermont

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FEBRUARY 2019

## Winning the Battles in Trump's War on Immigrants



Staff attorney Lia Ernst speaks at rally outside federal courthouse in Burlington, announcing filing of lawsuit

**W**hen Donald Trump was elected, the ACLU pledged to “see him in court.” Two years later, we’ve kept that promise many times over, initiating more than 200 lawsuits nationwide in the past two years and succeeding in blocking some of the Trump administration’s cruelest policies. Nearly half of those 200 cases were filed to defend the rights of immigrants and refugees from constant attack.

In November, the ACLU of Vermont and partner organizations [filed a federal lawsuit](#) on behalf of Vermont-based Migrant Justice and several of its members who are being targeted by ICE and Vermont DMV in a systematic campaign of surveillance, infiltration, harassment, arrest, and detention—and in direct retaliation for constitutionally protected activities.

Migrant Justice advances the rights and dignity of Vermont’s undocumented farmworkers, including through its successful Milk With Dignity campaign. As a result of this advoca-

cy, the group’s leaders have been targeted—part of ICE’s campaign of politically motivated arrests of immigrants’ rights activists around the country.

Worse, they’ve had help from our local officials. Documents obtained through public records requests show that Vermont DMV officials sent activists’ personal information and so-called “South of the Border” names directly to ICE, which compiled dossiers on Migrant Justice leaders, including their social media pages and media appearances. DMV officials repeatedly referred to immigrants in racist terms and scheduled appointments to facilitate arrests, in spite of multiple Vermont statutes designed to provide licenses for undocumented Vermonters and to prevent exactly these kinds of abuses.

Plaintiffs in the lawsuit are seeking a court order protecting Migrant Justice and its members from unconstitutional harassment and attacks by our government.

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FEBRUARY 2019

### TRIBUTE

The ACLU of Vermont family was deeply saddened to learn of Scott Skinner’s passing in December. Scott was ACLU-VT’s seventh Executive Director from 1982–1988, served on the Board of Directors, and remained a close friend and supporter of the organization for the rest of his life.

Scott was a lifelong champion for social justice, fiercely committed to the principle that all people deserve equal protection under the law. While we mourn his passing, we celebrate all the passion, wisdom, warmth, and humor that Scott brought to this world and to this work.

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Meanwhile, we continue calling on the Attorney General and other state leaders to do more to protect immigrants' rights in Vermont.

This is one of more than 80 immigrants' rights lawsuits the ACLU has filed in the past two years alone. That includes our successful challenge to stop the cruel forced separation of thousands of refugee parents and children, the vast majority of whom have now been reunified with family or sponsors. It includes our lawsuit securing the immediate release and reunification of a 10-year-old girl with cerebral palsy who was arrested in the hospital after emergency gallbladder surgery and separated from her parents.

It includes a successful lawsuit to stop the removals of more than 1,400 Iraqi nationals—many of whom have been in the U.S. for decades—without their having an opportunity to prove their lives would be in danger if deported. We filed similar challenges on behalf of groups of Somali, Sri Lankan, and Cambodian nationals, and another to block termination of “temporary protected status” (TPS) for more than 300,000 people from El Salvador, Haiti, Nicaragua, and Sudan, which President Trump reportedly called “shithole countries.”

## Campaign Update

It's been one year since we launched Smart Justice Vermont, with the goal of reducing Vermont's oversized prison system by at least 50%, ending our dependence on out-of-state prisons, and eliminating racial disparities that are among the worst in the country.

Over the past year, we've met with community members, organizations, and officials statewide, sharing information on the state of Vermont's criminal justice system and establishing a strong foundation of support for the campaign's goals. That experience has confirmed for us that Vermonters overwhelmingly and unequivocally want a smarter, fairer criminal justice system.

Heading into this legislative session, we have an opportunity to continue the progress of past years. The ACLU is working on legislation to improve the transparency of Vermont's criminal justice system through improved data collection and reporting, a critical first step for pursuing smarter, fairer policies. We're closely monitoring the work of Vermont's sentencing commission and will be pushing

And it includes two separate lawsuits challenging Jeff Sessions' attempts to gut long-established asylum protections for people fleeing persecution, including victims of domestic and gang violence.

The list goes on, and we still have many battles left to fight—battles we have been fighting since long before Donald Trump took office and that will continue long after he is gone.

But there is no question that two years in, this administration's blatantly xenophobic, anti-immigrant agenda has been thwarted in the courts at nearly every turn, and the promise of this nation of immigrants, for the time being, remains. That is in large part because the ACLU is helping to lead the way forward, just like we said we would.



ACLU client Enrique Balcazar speaking at November rally

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 Vermont

for broad sentence reductions—and no increased sentences—among other reforms.

We'll also be talking to legislators about the Scott administration's short-sighted proposal to build—with the help of a private prison corporation—a massive prison “campus” in Vermont.

We have a very different vision for Vermont, one that doesn't involve private prison companies or out-of-state prisons. All of this requires a fundamentally different approach to criminal justice—one that emphasizes rehabilitation, treatment, and restorative justice to achieve safer, healthier communities. That's Smart Justice.

# VICTORY! Historic Ruling a Milestone for Racial Justice, Police Accountability

In January, the Vermont Supreme Court issued a [landmark decision](#) in favor of ACLU client Gregory Zullo, producing what is arguably the most sweeping and significant ruling on police accountability and racial justice in Vermont's history.

Mr. Zullo, an African-American, was pulled over in Wallingford in March 2014 by then-Vermont State Trooper Lewis Hatch. The justification for the stop was that snow allegedly covered the registration sticker on Mr. Zullo's license plate, which was not a traffic violation at the time.

The officer, citing a faint scent of burnt marijuana, ordered Mr. Zullo out of the vehicle and demanded to search the car. When Mr. Zullo refused, the officer had the car towed to the police barracks to have it searched there. Mr. Zullo was forced to walk several miles in the snow and pay a \$150 fee to retrieve his vehicle from the towing company. The search of the car revealed nothing to indicate Mr. Zullo had committed any crime.

We argued that the stop violated Article 11 of the Vermont Constitution and was not excused by Trooper Hatch's misunderstanding of the law, and further that the seizure of Mr. Zullo's vehicle was impermissible because the faint odor of burnt marijuana, standing alone, cannot establish probable cause. We also argued that the state was not immune from liability. In a unanimous decision, the Court agreed with us on all counts.

The case was remanded to the lower court for further proceedings, but the precedent it created will endure. By establishing conclusively that police can be liable for constitutional violations, the Court sent a clear message: under Vermont's constitution, no one is above the law. If police make unlawful stops and searches—including those motivated by racial bias—they can and will be held accountable.



ACLU client Gregory Zullo is interviewed outside the Vermont Supreme Court, accompanied by staff attorneys Jay Diaz and Lia Ernst

## At the Vermont Supreme Court (Again), Defending the Public's Right to Know

We have another [lawsuit now on appeal](#) to the Vermont Supreme Court, this one also involving questions of police accountability as well as access to public records. That case, [Doyle v. City of Burlington Police Department](#) was filed on behalf of Reed Doyle, a local resident who witnessed police using force against youth of color in a Burlington park and is now challenging BPD's demand that he pay hundreds of dollars simply to view police bodycam footage of the incident.

Charging Mr. Doyle an inspection fee undermines the purported justification for using

bodycams—as a tool for police accountability. Moreover, no public records should be hidden behind a paywall. Vermont's Public Records Act does not authorize charging fees to inspect public records, and yet this is a common practice among some state agencies and municipalities.

Vermont's Secretary of State and other groups submitted amicus briefs in support of our position, and we now await oral arguments. We are asking the Court to end a practice that effectively denies Vermonters access to records to which they are entitled, weakening their ability to hold their government accountable.

### Welcome new staff and board



We are excited to welcome Shabnam Beth Nolan as our new communications director. Beth is returning to Vermont, where she was a project coordinator and policy associate at Voices for Vermont's Children from 2009 to 2015. Beth comes to the ACLU after serving as director of the KIDS COUNT campaign at Voices for Virginia's Children. Beth has a BA in political science from James Madison University and a master's in public administration from UVM.

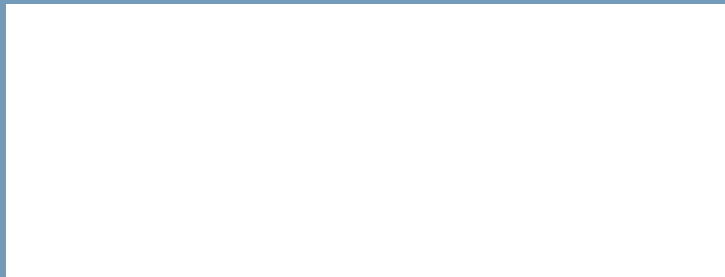
We are also pleased to welcome new board members Catarina Campbell and Gabrielle Lucke, who joined the ACLU-VT board of directors in September.

We want to thank outgoing board members Traci Griffith and Denise Bailey for their many years of service. We also want to thank our friend Kate Connizzo, who left the ACLU in November after more than three years on staff and many tremendous accomplishments.

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#### WE ARE JUST GETTING STARTED

For those of us who care deeply about civil rights in this country, we know the road ahead is long.

That is why we need your continued support to turn back the relentless attacks on our rights, our values, and our democratic institutions.

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**THANK YOU FOR  
STANDING WITH THE  
ACLU!**

## Legislative Preview

**T**he 2019-2020 legislative biennium began on January 9. There are many new faces at the State House this year, and many opportunities for the ACLU to advance our legislative agenda.

Smart Justice reforms [remain a priority](#) for this session. We are supporting legislation to increase transparency in our criminal justice system by requiring consistent data collection and reporting by the Department of Corrections, the courts, and the police. Currently even basic information about our criminal justice system is inconsistently reported and inadequate for addressing persistent racial disparities and developing smarter, fairer policies.



*Policy Director Chloé White (left), speaks on the opening day of the biennium*

Other reforms we support include expansion of expungement eligibility for people with past criminal histories to reduce barriers to reentry; expansion of compassionate release for aging prisoners; decriminalization of drug possession; the raising of felony thresholds; and protecting and building upon the historic juvenile justice reforms Vermont has adopted in recent years.

We will continue defending and advancing a wide range of civil liberties for all Vermonters. That includes supporting efforts to strengthen and defend women's reproductive freedom; advocating for greater privacy protections for Vermonters' personal data; opposing intrusive and unreliable roadside saliva testing; and advancing racial equity through the adoption of ethnic studies standards in public schools. And, we will continue to advocate for a Vermont that works for everyone by supporting a higher minimum wage, paid family leave, universal primary care, and investment in mental health care and addiction treatment.

In short, we will again be very busy at the State House this year, and look forward to advancing a strong civil liberties agenda.