

# 2011 Legislative Update

By Anjali Abraham, Public Policy Director



At nearly 5:30 a.m. on April 20, 2011, Arizona's 50th Legislature adjourned its regular session and went home. The session lasted a rather brief 100 days, but

many legislators still managed to score substantial legislative victories. The results for civil liberties were decidedly mixed.

Early flourishes of bipartisanship following the tragic shootings in Tucson were fleeting, to say the least. On the issue of immigration, however, bipartisanship endured, which was essential to the first major civil liberties victory of the session. Republican and Democratic state senators joined together to kill five of the most nakedly anti-immigrant bills the Legislature has ever seen. These bills would have prevented undocumented children from receiving any kind of education, criminalized nearly every aspect of daily living for undocumented residents, gutted the 14th Amendment's precious and hard-won guarantee of birthright citizenship, and frightened people away from medical centers by turning hospital

workers into de facto immigration agents. Recognizing the toll that SB 1070 took on our state, a majority of senators realized the need to turn away from this kind of legislation and bravely cast votes against these bills, in spite of intimidation, insults, and threats of political reprisal. Similarly, SB 1222, which would have severely penalized undocumented residents for even visiting a public housing unit, stalled in the House of Representatives.

Unfortunately, civil liberties took a beating in other areas. Reproductive freedom was under attack almost from the beginning. Legislators passed one bill that broadens the definition of the term "abortion" - thereby making it easier to regulate - pressures women to view fetal ultrasound images and listen to fetal heartbeat recordings before getting an abortion, and eliminates abortion options for women in rural locations. Another bill prevents charitable organizations from receiving donations if they provide, pay for, or promote abortions or if they financially support any entities that do so. The same bill would also prevent any public monies, including student tuition, from being used to train people how to perform abortions, possibly jeopardizing the accreditation of the University of Arizona College of Medicine's obstetrics

and gynecology program. The Legislature also decided to prohibit abortions performed on the basis of the race or sex of the fetus, despite the absolute lack of evidence that such abortions occur in Arizona. Governor Brewer signed all three bills.

The state also invited itself into traditionally private family matters. The Legislature passed a bill that would give married couples a "tiebreaker preference" over single adults and same-sex couples in adoptions. And married couples will now have to wait even longer before completing divorce proceedings, thanks to another just-passed bill. As for other privacy matters, the Legislature empowered laboratories to access private medical information from patient files and expanded the circumstances under which juveniles accused of committing a crime can be compelled to provide a DNA sample.

Many of the battles we won this year will be fought again next year. The battles we lost will be re-waged with even higher stakes. The ardent voices of our membership will be needed to ensure that our officials think twice before playing fast and loose with our civil liberties.



## Summer 2011 Brown Bag Lecture Series

You bring your lunch. We'll bring the experts! Brown bag lectures are from noon to 1 p.m.:

**Wednesday, July 13th**  
Protecting What Works:  
Juvenile Diversion in  
Maricopa County

**Wednesday, August 17th**  
A Force to Be Reckoned  
With: Taser Use in Arizona  
Police Departments

Location: 3707 N. 7th  
Street, Suite 100, Phoenix,  
AZ 85014. Free and open  
to the public. Drinks and  
desserts served.

Seating is limited, so  
please make reservations  
by calling Mary Hope Lee at  
602-650-1854 ext.100 or  
emailing [info@acluaz.org](mailto:info@acluaz.org).

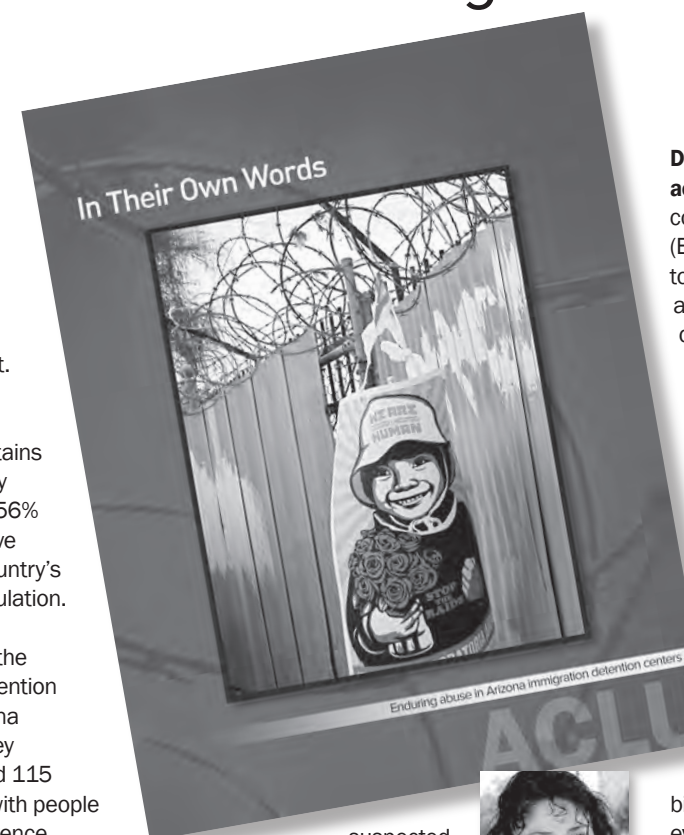
# Civil Liberties in Arizona



★ Standing Up for Freedom ★

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## New ACLU Report Documents Systemic Abuses in Arizona Immigration Detention Centers



As the federal government continues its heavy reliance on immigration detention, more and more people are subjected to dangerous conditions and inhumane treatment. Through contracts with private corporations and local county jails, ICE detains 3,000 immigrants on any given day in Arizona - a 56% increase over the past five years and 10% of the country's detained immigrant population.

To put a human face on the issue of immigration detention in Arizona, ACLU of Arizona Immigrant Rights Attorney Victoria Lopez conducted 115 face-to-face interviews with people detained in Eloy and Florence, Arizona. She spent countless hours corresponding with detainees, interviewing their family members, and reviewing hundreds of government records, including more than 500 grievances.

The two year effort culminated with the release this month of a new ACLU of Arizona report called *In Their Own Words: Enduring Abuse in Arizona Immigration Detention Centers*. It shares the stories of real people who have suffered from systemic civil and human rights abuses in five areas:

**Increased detentions resulting from local immigration enforcement** > The federal government's reliance on local law enforcement to identify and detain

suspected non-citizens has led to an increase in the number of non-violent, non-criminals funneled through Arizona's immigration detention system.

**Inhumane conditions at Pinal County Jail** > PCJ received "deficient" audit ratings in 2007, 2008 and 2009, yet the federal government continues to contract with the county for detention bed space. Detention officers frequently place ICE detainees on lockdown for minor infractions like not making a bed, not moving quickly enough, or saving a piece of fruit to eat later in the day.

**Denial of grievances and lack of accountability** > As a privately-owned contract facility, the Eloy Detention Center (EDC) is not legally required to adhere to ICE's own standards, which means accountability is a constant problem for detainees at EDC.

**Abusive treatment of vulnerable populations** > Vulnerable populations in immigration detention have unique needs and are at higher risk for sexual assault and physical abuse. The ACLU of Arizona documented five cases involving transgender or gay detainees who were sexually assaulted or otherwise abused.

**Deficient medical and mental health care** > Medical care is governed by ICE Detention Standards, which are not legally binding and vary from facility to facility, even within the 22-mile area of the Arizona ICE facilities.

In response to a report on detention issued by the Inter-American Commission on Human Rights, the United States affirmed its obligation to "ensure the human rights of all immigrants, documented and undocumented alike." With over 400,000 people expected to be detained by federal immigration authorities this year, it is imperative that our government remedy major deficiencies immediately by:

- Terminating contracts with facilities that pose a risk to the safety and well-being of immigrants in ICE custody;
- Reducing the number of people subjected to detention in Arizona by utilizing more cost-effective community based alternatives to detention; and
- Ensuring conditions in Arizona detention facilities comport with basic human rights and needs.

To read this new report, please visit: [www.acluaz.org/detention-report-2011](http://www.acluaz.org/detention-report-2011).

### Save the Date

Please join us for a forum entitled **Enduring Abuses in Arizona Immigration Detention Centers**

Tuesday, July 12, 2011  
6:30 PM to 8:00 PM  
Pima College  
Downtown Campus  
Amethyst Room, Building CC  
1255 N. Stone Avenue  
Tucson, Arizona 85709-3045

Please RSVP  
to [addy@acluaz.org](mailto:addy@acluaz.org),  
or 602-650-1854 ext. 115.

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## Medical Marijuana

The ACLU recently agreed to represent the Arizona Medical Marijuana Association (AzMMA) in order to defend the constitutionality of Arizona's medical marijuana law. The move comes on the heels of Gov. Jan Brewer's lawsuit against the Department of Justice, U.S. Attorney General Eric Holder, U.S. Attorney Dennis Burke, a number of potential dispensary applicants under the law and others, seeking a ruling from a federal court that the Arizona law is preempted by federal law and should be struck down. AzMMA, a non-profit, membership-based professional association that seeks to advance the interests of Arizona's medical marijuana profession and the patients it serves, is a named defendant in Brewer's lawsuit.

"By taking the highly unusual step of halting the implementation of a state law approved by a majority of Arizona voters, Gov. Brewer is unconscionably seeking to prevent thousands of sick Arizonans from being able to access important medicine," said Alessandra Soler Meetze, executive director of the ACLU-AZ. "People should have the freedom to choose the medicine their doctors believe is most effective for them."

Proposition 203, passed in 2010, allows terminally and seriously ill patients who find relief from marijuana to use it with a doctor's recommendation.

Brewer's lawsuit charges that the law is in conflict with the federal Controlled Substances Act. It claims that Arizona officials fear federal prosecution for implementing the law, even though U.S. Attorney Burke has stated publicly that the federal government has "no intention of targeting or going after people who are implementing or who are in compliance with state law."

Attendees discuss the rules regarding obtaining a patient card at a medical marijuana forum sponsored by the ACLU of Arizona Southern Chapter.



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## A message from Executive Director Alessandra Soler Meetze



### ACLU Ramps Up Efforts to Fend Off Reactionary Threats in 2011

Summer is here and the good news is the Arizona Legislature is finally adjourned. No more quarreling about who should be excluded from the 14th Amendment, or who is eligible to run for president or how many millions in tax dollars should be re-directed to sectarian schools. In fact, Arizona lawmakers were able

to get their act together in just enough time to reach consensus around a state budget that slashes education funding for the third year in a row, kicks indigent patients off the state's health insurance plan and increases funding for prisons across the state.

Without a doubt, we're facing a challenging environment when it comes to protecting civil liberties in Arizona. But what's important is that the ACLU is moving forward like never before.

Just in the past few months, for example, a federal appeals court affirmed the Arizona district court decision to block the most troubling provisions of the state's racial profiling law, SB 1070. We continue to challenge hatred and intolerance across ethnic and religious lines through targeted litigation against the Maricopa County Sheriff's Office for discriminatory policing and employment practices. We're involved in litigation to protect the rights of mentally ill persons in their immigration hearings and are continuing to advocate for access to mental health care in the Maricopa County jails.

In this month's newsletter, you'll learn about our public education work in the area of juvenile justice and immigration detention. We released a new report (on page 1) that documents systemic civil and human rights abuses related to inhumane conditions in federal immigration detention centers. And on page 3, you can read about our juvenile diversion research project and efforts to keep kids out of the criminal justice system and in school.

ACLU-AZ Public Policy Director, Anjali Abraham, was instrumental this past session in helping to defeat six bills that would have had broad implications for civil liberties (read her legislative recap on page 4). She also worked through targeted face-to-face meetings to obtain bipartisan support for a bill prohibiting the shackling of pregnant inmates, a common practice in many county jails.

Clearly, the state is moving in the wrong direction. But, the ACLU is prepared to fend off these reactionary attacks on civil liberties. Our ambitious work plan this year will involve efforts to protect a woman's right to choose, improve prison conditions and raise awareness about educational equity.

Thank you for standing with us and providing us with the necessary resources to make a real impact in 2011!

Alessandra Soler Meetze  
Executive Director

## Update From the Desk of Legal Director Dan Pochoda



### Challenging Arizona's Racial Profiling Law

In a major victory for civil rights, a panel of the Ninth Circuit Court of Appeals recently affirmed Judge Susan Bolton's decision to block key provisions of Arizona's racial profiling law, SB 1070. Judge Bolton's decision was rendered in the case brought by the U. S. Department of Justice (DOJ) challenging the Arizona legislation

on grounds of "preemption" and in violation of the Supremacy Clause of the U.S. Constitution. In an earlier case, the ACLU of Arizona joined with other civil rights organizations to challenge SB 1070 on behalf of 24 plaintiffs, including victims of domestic violence and racial profiling.

The Ninth Circuit Court of Appeals ruling sets the agenda for the continuing litigation in both Friendly House and the DOJ cases. Both of these cases are effectively on hold as the heart of this discriminatory racial profiling legislation has never been implemented and may never become law.

### Safeguarding Privacy Rights

In response to concerns raised by the ACLU, medical providers and pharmacists, the City of Peoria decided to abandon its effort to require fingerprinting at pharmacies when picking up certain prescriptions. At a hearing earlier this year before the Arizona State Pharmacy Board, ACLU of Arizona Legal Director Dan Pochoda raised concerns about the privacy implications of forcing everyone, even those with no criminal convictions, to submit fingerprints, saying the proposed ordinance would lead to costly legal challenges, "ignores the rights and well-being of patients and the responsibilities of medical providers and pharmacists."

### Defending the Rights of Mentally Ill Detainees

The ACLU of Arizona is involved in litigation to protect the rights of detained, mentally ill persons in their immigration hearings. The case, *Franco-Gonzales v. Holder*, seeks relief for mentally ill immigrants detained in Arizona, California and Washington by requiring the federal government to provide independent competency evaluations for individuals who may be suffering from a mental illness, and to appoint counsel in cases where individuals cannot represent themselves on account of their disability. Protecting the rights of this vulnerable population is critical to ensuring fair treatment for immigrants in their removal hearings, which carry great consequences, including family separation, deprivation of liberty and threats to safety and well-being.

### Fighting Unlawful MCSO Raids

The ACLU-AZ and the ACLU Immigrants' Rights Project filed a federal lawsuit in August 2009 on behalf of Julian Mora, a legal permanent resident, and his son Julio Mora, a U.S. citizen. The Moras charge that Maricopa County Sheriff's Office deputies singled them out as they drove their pickup truck down a busy public road based on the color of their skin and illegally stopped them, in violation of the U.S. Constitution's prohibition on unreasonable seizures and guarantee of equal protection of the law.

On April 25, the U.S. District Court addressed the fact that deputies had no basis for stopping the Moras, ruling that "The Fourth Amendment requires some minimal level of objective justification for making a traffic stop," and concluded "the warrantless arrest of plaintiffs was made without probable cause and, therefore, in violation of the Fourth Amendment."

## ACLU Advocacy Efforts Focus on Protecting Juvenile Diversion

By Samantha Blons, Juvenile Justice Project Coordinator



In the criminal justice system, juveniles are especially vulnerable to abuses of government power. Inexperienced with law enforcement and sometimes ignorant of their basic civil rights, they too often forgo their rights without realizing that they have done so. ASU research shows that a first-time arrest increases the likelihood that a child will drop out of high school two-fold, while a single court appearance increases that likelihood four-fold. In response to the trend of referring juveniles to the court for minor offenses, the ACLU of Arizona is working to keep juveniles in school and out of the criminal justice system.

The best solution for many youth accused of minor offenses, such as shoplifting and truancy, is juvenile diversion. Diversion is a process by which juveniles can avoid formal court processing, and therefore, a delinquency record, by successfully completing diversion "consequences" ranging from an apology letter to community service, counseling or teen court. After receiving reports in the fall of 2009 that juvenile diversion programs in Maricopa County were being threatened, the ACLU of Arizona began conducting extensive research on the effectiveness of current programs. We looked at community justice committees, teen court, drug diversion, and private diversion programs.

In 2010, four percent of Arizona's youth, more than 41,000 kids, received a delinquency referral to the juvenile justice system. About half did not have any prior contact with the justice system, and two-thirds were referred for misdemeanors or status offenses, offenses that would not be considered crimes if committed by adults, such as truancy or violating curfew.

Fortunately, our research has shown that the rate of juveniles being diverted is on the rise. In 2010, 46 percent of Arizona youth referred to the juvenile justice system were diverted. In addition, we found that participants in diversion programs re-offend at a lower rate than those who go through a formal court process. Although any juvenile who participates in diversion must acknowledge responsibility for the offense and complete any consequences imposed, including victim restitution payments, he or she will avoid a delinquency record because the county attorney will not file any charges in court if diversion is successfully completed. Diversion also averages half the time of a formal court process, so it can offer swifter and more effective intervention without the stigma and cost of a lengthy court process. It can also provide quicker satisfaction for victims.

In April, we presented a briefing paper summarizing our research to the Children's Action Alliance Juvenile Justice Advisory Committee in an effort to solicit feedback from juvenile justice stakeholders, including public defenders, prosecutors, administrative court staff, and probation officials. The briefing paper also makes recommendations to increase diversion opportunities for minority youth and to ensure that diversion remains financially accessible for low-income families.

Although there have been significant improvements in the number of juvenile offenders being diverted in Arizona, too many kids are referred to the justice system for minor offenses in the first place. Misdemeanors and status offenses still make up 66 percent of referrals; this is too high. Through targeted public education events in the coming year, the ACLU of Arizona will be working with members of the juvenile court system and other key players in the juvenile justice community to increase awareness about diversion. We also plan to continue participating in the Juvenile Justice Advisory Committee to help influence policy changes on juvenile justice matters in Maricopa County, including reducing the number of referrals for minor offenses.

"Many young people who successfully complete diversion programs never return to the juvenile justice system," says ACLU of Arizona Public Policy Director Anjali Abraham. "That's why it's imperative that we continue to invest in cost-saving juvenile diversion programs that help keep kids out of the court system and in school so they can help shape the future of our state."

## Don't Filter Me Campaign Sheds Light On School Censorship

The ACLU of Arizona is teaming up with GLSEN Phoenix (Gay, Lesbian and Straight Education Network) to raise awareness about a National ACLU campaign to combat illegal censorship of pro-LGBT information on public school computer systems. Since launching the "Don't Filter Me" initiative, the ACLU has identified several web filter companies whose products include special categories designed to filter out LGBT websites.

When used by a public school, programs that block all LGBT content violate First Amendment rights to free speech, as well as the Equal Access Act, which requires equal access to school resources for all extracurricular clubs. This means that gay-straight alliances and LGBT support groups must have the same access to national organizational websites that help them to function, just as other groups such as the Key Club and the chess club are able to access their national websites. By blocking access to LGBT websites, schools deny helpful information to gay-straight alliances and other support groups that could be vital for troubled LGBT youth who either don't have access to the Internet at home or do not feel safe accessing such information on their home computers.

The campaign asks students to check to see if web content geared toward LGBT communities – a frequent target of censorship in schools – is blocked by their school's web browsers, and then report instances of censorship to the ACLU LGBT Project. Schools frequently block students' access to GLSEN's own web sites.

Several students reported to the ACLU that they had persuaded their schools to override the filters and grant access to websites on an individualized basis, but they felt it was burdensome and insulting to have to request special permission every time they sought to access a new website that had been blocked by the anti-LGBT filter.

A video showing students how to test whether or not their schools are illegally filtering content, and providing instructions for reporting censorship, can be seen at [www.aclu.org/lgbt-rights/dont-filter-me](http://www.aclu.org/lgbt-rights/dont-filter-me). More information about this partnership can be found at [www.acluaz.org/issues/lgbt-rights/dont-filter-me](http://www.acluaz.org/issues/lgbt-rights/dont-filter-me).

