

IDAHO LIBERTY

AFFIRMING OUR COLLECTIVE RIGHTS TO FREEDOM & LIBERTY

LEO MORALES, EXECUTIVE DIRECTOR

The Deferred Action for Childhood Arrivals (DACA) program was by far the most significant progress the nation has made, in almost 20 years, in advancing immigration reform that actually centered on the lives of immigrants. Yet, the Trump Administration terminated the program in September of 2017. While it was a temporary fix, the Obama era Executive Order program, shielded certain young immigrants from deportation who entered the country without the proper immigration papers when they were children.

For DACA recipients, the program was life changing. Take for example the life of Jorge, from east Idaho. Jorge came to the United States with his family when he was two-years old, as a child he grew up in Jefferson County during the 1990s picking rocks and dirt clods off conveyor belts carrying potatoes from the spud harvest to get them ready for winter. It was in December of 2012 when he received his DACA card. He recalls:

“It was the best Christmas present ever. I held the card in my hands and I cried. I didn’t have to look over my shoulder anymore. I always felt like I was in a little cage, and it was finally opened and I could explore.”

Living in the United States with undocumented status is challenging. A good friend once shared with me her experience of being stopped by police for the first time. It was terrifying. She was so nervous that her ability to keep composed was difficult to say the least. Her body began to tremble, her voice began to change and



life was suspended in that moment. The police asked her why she was shaking so much. All she could say was that it was her first time being stopped, but deep in her heart and soul, she knew what the police did not: that at any moment her life could change forever. A simple arrest could lead to deportation and everything she had worked for since childhood—all of the relationships she had built and all her dreams and aspirations—would be slashed away with a stroke of a pen.

DACA served as the lifeline for thousands of young men and women who have learned to call the United States home, at least 3,100 of them in Idaho.

Now it rests upon Congress to bring about a permanent solution to the lives of these young men and women who call this country home. Not just DACA recipients, but also the remaining 11 million undocumented community members who call this country home. However, the responsibility is not just on members of Congress. It rests on all of our shoulders as well. To achieve true liberty and freedom and to protect the rights of all persons, we must actively engage to shape not only policy and law, but the moral character of our nation.

Congress will engage in immigration reform discussions, whether limited to a DACA solution or as part of a larger package to fund the border wall or interior enforcement. The ACLU membership must be part of the conversation. Our collective rights as

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citizens or residents of this country are often shaped by nuanced battles that involve usually unpopular causes or people. In this case the struggle for full equality for immigrants, which ultimately impacts our collective rights will be waged. Think voter rights, due process rights, rights against discrimination based on someone's immigration status and the list goes on. Historically, some of these rights have been denied to individuals deemed "unpopular" at that time. This denial of rights continues today, to a certain extent. Think of the rights that have historically been affirmed for African-Americans, women, and LGBTQ community members. Our work is not done.

With an Administration, Congress, and possibly a judicial system tilted in a certain direction, the ACLU once again must rise to the challenge of protecting the rights of all. Solutions to DACA and the upcoming immigration reform fights must be viewed through a long-term lens, supported by our eternal beliefs in freedom, liberty, and the dignity and value of every immigrant who wishes to call this country home.

The ACLU remains as committed as ever to protecting the rights of immigrants and invite you to join us in this struggle. ■

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OUTREACH/EDUCATION UPDATE WHAT'S COMING UP!

Want to be in the know? Here are a few ways to ensure you always know what is going on at the ACLU of Idaho. First, sign up for our e-mail alerts on our website at www.acluidaho.org. Our emails will let you know of actions you can take, events you can attend and what's going on in the ACLU community. You can also follow or like us on Facebook, Instagram, and Twitter. Check us out online as often as you want!

Here's what we have going on:

- There are several Know Your Rights presentations happening around town. Want to know what to do when you're stopped by law enforcement or ICE? Curious about your rights as a student? Wondering what your rights are when protesting? We present on that! Check our website and social media for more details on Know Your Rights presentations near you! Request a Know Your Rights Training by emailing jwoodson@acluidaho.org.
- We have our annual Membership Meeting coming up on January 31, 2018. Be sure to check our website for details and vote online for our board elections.
- Attend our Activist Academy on January 13th, 2018. The ACLU of Idaho is hosting a day-long training to provide you the skills to be a successful activist at the Capitol this legislative session. Apply online at www.acluidaho.org under our "events" tab. Travel scholarships are available.
- The Primary Elections are coming up in May! Make sure your voice is heard. Check the calendar at <https://sos.idaho.gov/elect/2018Calendar.html> for more information.
- A lot of our work is rapid response, so to best stay in the loop, make sure to sign up for our e-mail alerts, follow us on Facebook and Twitter and visit the ACLU of Idaho website!

SMOKE & MIRRORS

KATHY GRIESMYER, POLICY DIRECTOR

WHY MARSY'S LAW MAKES NO SENSE FOR IDAHO

Criminal defendant's rights. Victim's rights. Courtroom chaos. Funding needs. Constitutional amendment. "Marsy's Law." All buzzwords floating around in the press and on social media in recent weeks. What do they all have in common? A legislative fight for 2018 aimed at jeopardizing the due process protections enshrined in our U.S. and Idaho Constitutions.

During the 2017 Legislative Session, "Marsy's Law" was introduced as an attempt to protect victim's rights as a part of a disingenuous campaign to insert a "victim's bill of rights" into states' constitutions across the country. After a unanimous vote in the Senate, "Marsy's Law" was ultimately defeated in the House – a tremendous victory for those who recognize just how detrimental "Marsy's Law" would be to Idaho's already overburdened and under-resourced criminal justice system.

In anticipation of "Marsy's Law" reintroduction in the 2018 Legislative Session, we're here to share the facts and untold story of this controversial and unnecessary proposed constitutional amendment.

1. "MARSY'S LAW" WILL THROW IDAHO'S CRIMINAL JUSTICE SYSTEM INTO CHAOS.

"Marsy's Law" would require that all victims, including corporate entities and family members, have the right to reasonable and timely prior notification of all criminal justice proceedings, including parole hearings, post-conviction relief and appeals proceedings. Not only will the expanded definition of "victim" and right to be heard result in a significant increase of administrative work for county officials and programs, but it would also substantially diminish the right to a fair trial and due process rights of the accused. In all, "Marsy's Law" could slow down the trial process, delay timely and appropriate release of the accused, and further clog our Idaho judicial system.

2. "MARSY'S LAW" IS A CALIFORNIA CAMPAIGN THAT DOESN'T INTEGRATE THE SPECIFIC NEEDS OF IDAHO VICTIMS.

"Marsy's Law" is a campaign being funded by a millionaire out of California. His 50-state campaign attempts to insert expanded constitutional amendments regardless of the local needs of victims in each state. In 2015, the Boise State University Department of Criminal Justice released a report

titled "Crime Victims in Idaho: An Assessment of Needs and Services." The report identified over 25 recommendations to address victim needs and current gaps in services, such as increased data collection and analysis of victim experiences, expanded outreach to underserved victim populations (adolescents, people of color, LGBTQ individuals, etc.), equitable access to services for victims in rural parts of the state and increased funding for victim services. "Marsy's Law" contains none of the Idaho-specific recommendations released in the 2015 report and will continue to exacerbate many of the same problems already identified across the state.

3. "MARSY'S LAW" EXPANDED DEFINITION OF VICTIM ALLOWS CORPORATIONS SUCH AS WALMART TO HAVE CONSTITUTIONAL RIGHTS EQUAL TO THE RIGHTS OF IDAHO VICTIMS.

The proposed language in "Marsy's Law" defines victim to include any person or entity directly and proximately harmed by the commission of a crime. This expanded definition gives new rights to family, friends, corporations and other non-human entities, endangering limited resources that would be diverted away from victims who may not have access to the same legal resources as corporations and other business entities with robust legal departments. The expanded definition to include anyone "proximately harmed" also engages family members who now have a right to be fully informed and involved in every decision of the criminal justice proceeding. This significantly impedes the privacy rights of a traditional victim if, for example, a rape victim is deciding whether to obtain an abortion, or when family members pressure an abused spouse to drop charges and return home. "Marsy's Law" robs victims of the decision whether and when to involve their families and instead gives that power to the state. The new definition leaves victims less empowered and less protected.

4. "MARSY'S LAW" IS FISCALLY IRRESPONSIBLE AND FINANCIALLY UNPREDICTABLE.

"Marsy's Law" is a classic unfunded mandate. It will impact every community, courtroom, jail and prison across the state. Last year's proposal had no significant fiscal note beyond placing the initiative on the ballot. Without an appropriate look at the costs inherently

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tied to serving more victims in our criminal justice system, “Marsy’s Law” will continue to be an unfunded initiative with no funding mechanism to finance its implementation, such as increased staffing needs at the county level as well as compliance and procedural requirements. In North Dakota, the Office of Management and Budget estimated the cost to implement their new victim’s rights constitutional amendment would be \$5.2 million through 2019. Montana also estimated their costs for implementation would include hiring new staff (victim witness advocates and administrative assistance to help with the notifications) at \$100,000 annually and an additional \$75,000 annually for technology updates in the jails and staff training for all counties in Montana.

We can all agree that victims of crime should be involved and heard in the criminal justice system and Idaho’s state constitution already does just that: it states that victims have the right to be heard, to attend proceedings and access information about their case, to contribute information for sentencing of the defendant and can consult with the prosecution. However, a deeper look at the on-the-ground impact of “Marsy’s Law” reveals that this proposed constitutional amendment does nothing to meaningfully improve the services victims receive in Idaho’s criminal justice system. Instead, we should identify improvements based on the specific experiences of Idaho victims and craft a solution that makes sense for Idaho. ■

JOINING THE TEAM



MOLLY joined the ACLU of Idaho in September of 2017 as a two-year Community Legal Fellow. Her two-year fellowship will include investigating and developing major advocacy projects, as well as working one-on-one with prospective clients from

indigenous, immigrant, refugee, trans, queer, and other impacted and oppressed communities to provide meaningful support and information as part of our intake program. She will work extensively to advance the organization's intake program, incorporating anti-oppressive and culturally competent organizing strategies to increase its responsiveness for impacted communities in Idaho. Molly will provide technical support and strategic leadership to community groups, advocates, and other organizers across the state of Idaho; organize and lead community and stakeholder education events; run trainings for local activists and organizers; and conduct outreach and advocacy to public officials.

Molly was born in southeastern South Dakota outside of a small town of 500 people. The second daughter of a pig farmer and a cosmetologist, Molly was always encouraged to excel at school and be curious and in high school, was the first exchange student from her town. She spent a year in Denmark, where she learned that the sense of community which exists in her rural American town is the same in small towns around the world. Returning to South Dakota, Molly graduated from high school and attended Grinnell College in Iowa.

Molly returned home in South Dakota after college and worked as a campaign field organizer for the South Dakota Campaign for Healthy Families. Their dedicated work in communities throughout South Dakota resulted in voters overturning a total ban on abortion on the 2006 ballot. Being a part of effective voter education and organizing instilled in Molly the power of communities to stand up to government intrusion.

Molly’s next move took her to Portland, Oregon where she attended the Oregon College of Art and Craft to hone her skills at papermaking and bookmaking that she learned at Grinnell. Molly became a print shop manager for Oblation Papers and Press, where she made paper and letterpress printed custom-designed paper goods.

Molly’s sense of fairness and justice was never far from her heart, and while pursuing the arts Molly interned with Basic Rights Oregon where she phone-banked, door-knocked, and canvassed for the organization’s voter education campaign on domestic partnership and anti-discrimination legislation.

Inspired by her experiences at Basic Rights Oregon, Molly decided to become a social justice attorney. She packed up and moved across the country to earn her law degree at City University of New York School of Law.

Her time at a law school—dedicated to social justice—changed her life. Molly’s first legal internship was at the Urban Justice Center in New York City in the organization’s Homelessness Outreach and Prevention Project (since renamed the Safety Net Project). She learned the importance of sitting, listening, and asking questions to learn about the needs of clients who were

surviving on public assistance. She would take that information to craft a defense for her clients in administrative hearings where she would challenge the city's discontinuation of her clients' public assistance. Molly also interned at the nonprofit Common Law where she supported people learning to represent themselves in New York City courts who were fighting to prevent foreclosures on their homes resulting from the subprime loans crisis. Besides legal advice, the clinic enlisted homeowners to help each other by attending court together, and fighting collectively for their rights. The power of community impacted the court's accountability in siding with big-bank attorneys against pro-se homeowners.

In her second year of law school, Molly traveled to Ronan, Montana to intern at the Tribal Defenders Office of the Confederated Salish and Kootenai Tribes of the Flathead Reservation. There she continued to expand upon her commitment to holistic, client-centered public defense by addressing the issues that bring clients into the criminal legal system and the collateral consequences to criminal charges. To that end, the Tribal Defenders seek alternatives to the criminal legal system that contribute to positive change in the community.

Through the relationships she made in New York City and the internships where she served and defended poor New Yorkers, Molly's professional focus shifted to public defense.

Hoping to incorporate all she learned in her internships, and to ultimately end the caging of poor people and the

prison industrial complex in this country, Molly moved with her partner to Florida and became a public defender for Palm Beach County. For three years she advocated on behalf of clients who could not afford private counsel. Molly relentlessly fought on behalf of fairness and justice for the accused. Moreover, learning about the lives of her clients, often the victims of violent crimes themselves, encouraged Molly to advocate for solutions that do not rely on imprisoning people. Seeing the vindictiveness of our criminal legal system—especially as it manifests against poor and disenfranchised people, as well as the erosion of our civil liberties that degrade all human beings, drove Molly to fight for change.

Molly will always believe that public defense is one of the most important components of our legal system. However, realizing that working within the system required constraints that actually hindered change, Molly began exploring options to pursue her dreams of a more equitable and just society.

When Molly read the job description searching for an anti-conventional attorney to fill the position of a Community Lawyer-Organizer Fellow with the ACLU, she jumped at the opportunity. She recognized a unique setting to combine her experience, her skills, and her burning desire to be a part of community-run social movements to bring about change. Molly hopes to develop a deeper sense of purpose organizing alongside impacted communities throughout Idaho, supporting the ACLU's mission to defend and preserve the individual rights and liberties guaranteed to every person in this country by the Constitution and laws of the United States.



JEREMY WOODSON is the newest member of the ACLU Idaho team, having joined in October of 2017 as our Community Engagement Manager. Originally from Minneapolis, Minnesota, Jeremy recently moved to Idaho after living abroad in

Spain where he worked as an English language instructor and freelance writer. With a background in digital communications and education, Jeremy will oversee our internal and external communications and will be helping us expand our community outreach efforts, working to forge and strengthen our relationships with individuals and organizations in all communities across the state. As Community Engagement Manager, Jeremy will also be helping to provide various Know Your Rights trainings and other community education events while working with community leaders to monitor the issues that matter the most to Idahoans. In doing so, Jeremy will be directly supporting our organization's efforts to

provide community based solutions to preserving and advancing civil rights and civil liberties across the state.

Jeremy grew up in a Minneapolis, Minnesota with his younger brother, older sister and mother. His mother worked as a public school teacher and Jeremy would regularly tutor students from his mom's school afterschool and during the summer. Being that his mom was an educator, Jeremy was instilled with a sense of community involvement from a young age—often accompanying his mom to numerous school district meetings and events. This sense of community involvement would later lead Jeremy to join several youth groups in the Twin Cities area and volunteer with organizations like Minneapolis Parks and Recreation, the Boys and Girls Club of Minneapolis, and the Youth Connection Council, which helped organize student lead events across the district.

Jeremy attended college at the University of Minnesota, Twin Cities where he earned a B.A. in professional journalism. During his time in college he participated in

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JOINING... CONTINUED FROM PAGE 5

two study abroad programs in Florence Italy and Cuernavaca, Mexico where he studied art history, Mexican art and culture, Italian, and Spanish.

His experiences abroad would later be the driving force behind his decision to move to South Korea to teach English for a year after graduating from college in 2010. When not in the classroom, Jeremy chronicled his experiences as an expat in Korea, often writing about cultural comparisons and international travel experiences of people of color from the United States. Before returning to Minneapolis in late 2011, Jeremy spent several months crisscrossing Southeast Asia, backpacking and volunteering in Indonesia, Laos, Thailand and Vietnam, among other countries.

Jeremy remained in Minneapolis for about a year working as a communications and marketing freelancer before once again deciding to move abroad—this time to Taiwan—to teach, write and volunteer. During his nearly three years in Taiwan, Jeremy would continue writing about and promoting international travel for underprivileged communities and began working with Teachers Against Discrimination in Taiwan (TADIT) to combat discriminatory hiring practices amongst ESL institutions on the island. Jeremy helped organize events in several of the islands major cities to educate schools and their respective communities about the benefits of a diverse teaching force.

Not yet wanting to return home, Jeremy joined his then fiancée in Barcelona, Spain while she completed her Master's program in public health. While in Barcelona, Jeremy began working as a freelancer within the city's

vibrant international start-up community and was once again drawn towards ESL education, this time as an administrator and instructor helping to craft curriculum for Spanish, Latin American, Pakistani and East Indian students of all ages. Jeremy sought to identify and diminish pedagogical and cultural barriers to success in the classroom.

It was in Spain during the run-up to the 2016 presidential elections that Jeremy was driven to return to the U.S. and shift his career focus to advocacy. Not knowing exactly where to start, Jeremy reached to community leaders in Minneapolis to gain insights as to the type of work his education and experience would be most impactful in.

Jeremy returned to the US in June of 2017, was married in Garden Valley, Idaho and decided to settle down in Boise--his wife's hometown. When he stumbled upon the ACLU of Idaho's job posting for a Community Engagement Manager and read the description he was shocked by how much the position involved exactly the type of community advocacy he hoped to find. He is thrilled to have been selected to join an already exceptional team.

He is looking forward to getting to know all of Idaho and is grateful for the opportunity to collaborate and work for impactful change as a part of the ever growing movement to motivate and mobilize communities throughout Idaho to become civil liberties action-takers. Jeremy truly believes that we can't take on every fight alone and communal efforts beget communal victories because We the people—beyond one person, party or side—dare to create a better union. We. ■

WE'RE NOT DONE: LEGAL VICTORIES AND THE WORK THAT FOLLOWS

RITCHIE EPPINK, LEGAL DIRECTOR

VICTORIES AT THE IDAHO SUPREME COURT AND FOR RELIGIOUS FREEDOM

This year opened with chaos and panic. As Trump and his administration were sworn into office, they went to work at once to injure the most vulnerable among us. We replied with humanity, building resiliency within communities—behind the scenes and out of the spotlight— through legal support and empowerment. But we did not forget, in this hurricane of vitriol, how to play and win on the big stage of high profile litigation.

UNANIMOUS WIN FOR PUBLIC DEFENDERS AND THEIR CLIENTS

As the new President took office this January, the ACLU of Idaho marked our seventh persistent year trying to bring real justice to Idaho's criminal courts. After half a decade of investigation and legislative the state was only passing the buck from one committee to another to another. So in 2015 we filed a class action lawsuit on behalf of the thousands of struggling Idahoans haled before Idaho courts but without means to defend themselves. A year later, we stood

before the Idaho Supreme Court arguing, ironically, over whether Idaho courts even have the power to fix ongoing, systemic constitutional violations taking place in Idaho courtrooms.

This April, we received the answer: they do. In a unanimous decision written by Idaho's Chief Justice himself, the Idaho Supreme Court ruled that our case should move forward. State officials had claimed they could not be held accountable for Idaho's broken public defense system. They pointed the finger at the individual counties, instead. They even argued that the State could not be held liable for violating the Idaho Constitution. The Supreme Court rejected the State's arguments. The counties (obviously) have no practical ability to effect statewide change the Court said. It's the State that will have to fix the broken system. And for the first time in Idaho's legal history, the Supreme Court made it clear that yes, the State of Idaho can itself be held liable for violating the Idaho Constitution.

Our victory means we have more work to do. The case goes forward, with hearings and proceedings to continue into 2018, and a trial is currently scheduled to begin next fall.

ADVANCING RELIGIOUS FREEDOM FOR JEWISH PRISONERS

For years, Jewish prisoners in Idaho were forced by hunger to defile themselves with every meal. Keeping kosher is sacred in nature for observant Jews, sanctifying the human body. Conversely, consuming forbidden food defiles the spirit and damages the heart's ability to comprehend. To the dedicated Jew there is a religious force so deeply embedded in the soul that even the most delectable serving of milk and meat, or pork, becomes abominable and physically revolting. The Idaho Department of Correction's dietary policy, offering no kosher option, was an outlier among American correctional institutions. Most states, including the Federal Bureau of Prisons, offered fully kosher meals in all of their prisons. Except Idaho. Until we sued.

Two years ago, in response to a stack of similar complaints, we launched an investigation into discrimination against Jews in Idaho prisons. We found that Jewish prisoners struggled as third-class religious prisoners. With the ACLU working alongside them to build their own self-advocacy skills, they



were able to get some of the religious accommodations they needed. But on one issue, prison officials would barely budge: kosher food.

We filed a class action lawsuit this year in May. Although we asked the federal court for a rapid ruling to put an end to the daily defilement our clients endured, the Department of Correction was eager to settle the case even faster. By August we had a court-ordered settlement requiring kosher meals throughout the entire Idaho prison system. Soon after, we had a money judgment awarding four of our clients \$93,000 to compensate for the years of discrimination and desecration they suffered.

As our clients put it in the joint statement they prepared once they had achieved a statewide kosher diet, "The spirit demands that we eat Kosher. It's been an uphill battle, but we're glad that we will finally be able to follow our religious tenets without having to go hungry anymore. An injury to one Jew is an injury to the whole Jewish community."

There is still some more work to do in this case as well. Though four of our clients have been compensated for the State's constitutional violations, there are still more Jews in Idaho's prisons who have suffered as well. This litigation will continue this winter as we ensure that government faces the full cost of its past noncompliance.

With these projects and more, your Legal Department is busier today than it has ever been in the ACLU of Idaho's history. Read more about the cases highlighted in this issue, *Tucker v. State of Idaho* and *Bartlett v. Atencio*, and stay up to date on our legal program throughout the winter under the "Our Work" tab at www.acluidaho.org. ■

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BOARD OF DIRECTORS ELECTIONS

Each year our Board Development Committee carefully considers the applications of potential board members to join the group of people who govern and direct the Idaho affiliate of the ACLU. If you would like to be considered for nomination by the Board Development Committee, you must be a member in good standing and submit a brief statement of interest.



Nominations may also be submitted by petition. Nomination petitions must include a statement of interest with a short statement of petitioner's background and qualifications and be signed by ten (10) current ACLU of Idaho members that includes the name and address of the nominee. The submissions must be received in the ACLU of Idaho office at PO Box 1897, Boise, ID 83701 by December 5, 2017. This information will be summarized and included on the ballot to the same extent as is such information of persons nominated by the nominating committee.

Members of the ACLU of Idaho Board of Directors serve three-year terms and are voted in by the membership. This year the election will be conducted online. In December, all members will receive a postcard in the mail with voting instructions and a unique code to enable secure voting. You will also have the option to request a paper ballot from the ACLU of Idaho office. The election results will be announced at the Annual Membership Meeting on January 31, 2018.

For more information on how to become a member, or if you do not receive your postcard by the end of December, please contact our office at (208) 344-9750 ext. 1200 or at admin@acluidaho.org.

**KEEP FIGHTING
AND STANDING WITH US
KEEP PROTESTING
KEEP SHOWING UP AT EVENTS
AND PLEASE CONTINUE TO
PROTECT CIVIL RIGHTS
AND LIBERTIES IN IDAHO.**

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Thank you for your support and membership, you make Idaho a more free, equal and just state.



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