

**ACLU** Maryland



# LEGAL DOCKET

2023 – 2024

# TABLE OF CONTENTS

<b>Introduction</b> .....	<b>3</b>
<b>Education &amp; Children's Rights</b> .....	<b>4</b>
<b>Government Accountability</b> .....	<b>8</b>
<b>Immigrants' Rights</b> .....	<b>11</b>
<b>Individual Autonomy</b> .....	<b>13</b>
<b>Legal Justice System</b> .....	<b>15</b>
<b>Voting Rights</b> .....	<b>17</b>
<b>Legacy Fair Housing Work</b> .....	<b>19</b>

*Author:*  
**Deborah Jeon,**  
**Legal Director**

*Designer:*  
**Nicole McCann,**  
**Senior**  
**Communications**  
**Strategist**

*Publication Date:*  
**September 2024**

*We publish this Legal Docket annually. The content we publish on the legal case pages on our website may reflect updates that occurred since we published this docket.*

Cover image: A view of the front of the Maryland Supreme Court on a sunny day. Photo by Nicole McCann.

# INTRODUCTION

*As 2024 moves forward, the ACLU of Maryland legal department continues its ongoing work toward justice with clients, colleagues and partners – through new projects as well as developments in long-running litigation.*

While this report focuses primarily on our work in the court system, litigation is just a part of what we do in the legal department: Our lawyers and advocates work on a myriad of legal projects beyond litigation. Our legal advocacy program integrates aspects of outreach, public education, and legal information to reinforce the value and agency of people our society unjustly pushes to the margins, providing the ACLU an important opportunity to equitably advance our mission outside litigation. This includes reviewing requests for assistance, conducting in-depth research and investigations, offering resources and referrals.

We also address civil rights violations and confront systems of white supremacy by conducting legal analyses to support our colleagues on public policy matters, and through drafting of legal policy reports, self-advocacy resources, and demand letters. Additionally, our team leads the ACLU's Election Protection campaign and collaborates with Engagement staff on our Know Your Rights program. Through all this work, we strive to offer our communities belonging, tools, and strategies to develop pipelines to partnership with their government, other advocates, and each other.

From fighting for voting rights, to pushing for transparency, accountability and systemic reforms in the tragic police killing of Anton Black, to the Maryland Parole Project's celebration of homecomings for people too long imprisoned, the legal team is energized by the progress our clients and partners are making in Maryland's fight for justice.

Below we walk you through our recent and ongoing work in the courts, categorized by strategic priority, highlighting some of our memorable legal efforts.





**OUR STRATEGIC GOAL:** We have an educational system where all students can learn, thrive, and are prepared to effectively engage in the social, political and economic life of their community.

## DEMANDING EQUITY FOR CHILDREN IN BALTIMORE SCHOOLS

The ACLU of Maryland continues its longstanding advocacy alongside families fighting for adequate educational opportunities for Baltimore City schoolchildren. This includes litigation with partners NAACP Legal Defense Fund and Baker Hostetler in *Bradford v. Maryland State Board of Education*, a case dating back nearly three decades, in which Baltimore parents seek to enforce the Maryland constitutional guarantee of a “thorough and efficient” education.

Over the course of this litigation – in 1996, 2000, 2002, and 2004 – Maryland courts repeatedly found funding for Baltimore City schools to be constitutionally inadequate. Yet, a permanent plan has never been put in place to address the violations, meaning one is still needed to realize structural equity for students in Baltimore City, where generations of Black and Brown children have been denied adequate and equitable resources unlike the wealthier school systems that surround them.

As a result of the gross inequities experienced by Baltimore schoolchildren, we reopened the *Bradford* litigation in 2019, arguing that the State has not funded constitutionally adequate school operations and instructional functions, nor provided the amounts needed to fix all the deteriorated school facilities in Baltimore City. Decades of underfunding has meant that Baltimore City children attend schools that are subject to large class sizes, inadequate staff, including teachers, guidance counselors, school psychologists, librarians, library aides, and teachers’ aides, and grossly inadequate facilities.

After initially rebuffing the State’s efforts to dismiss the case, in February of 2023 Baltimore City Circuit Judge Audrey Carrion issued a devastating

Following oral arguments at the Maryland Supreme Court, litigators, advocates, and Baltimore City students gathered in front of the building for a press conference to highlight the critical importance of this case for the future of Baltimore City schoolchildren. Photo by Nicole McCann.

ruling granting judgment to the State and dismissing the Plaintiffs' claims in their entirety. In this ruling, the Court reversed course from earlier rulings in the case over decades, and reinterpreted Maryland's Constitution to protect educational rights in only the most constrained and stingy way. The Plaintiffs appealed to the Maryland Appellate Court, which heard oral arguments in early June before a courtroom filled with young people who attend Baltimore City schools. **Decision pending.**

## **PROTECTING RIGHTS OF STUDENTS TO SPEAK OUT AGAINST VIOLENCE IN GAZA**

At a time of rampant Islamophobia, anti-Palestinian rhetoric, and anti-Semitism, the ACLU of Maryland has been monitoring and taking action to support individuals and organizations who experience First Amendment violations for speaking out against the violence in Gaza, advocating for peace, or criticizing the actions and policies of Israel and the U.S. government's involvement in the crisis. School censorship of political speech and viewpoint discrimination are unconstitutional under the First Amendment.

### ***Challenging censorship of Arab and Muslim students in Howard County public schools:***

This spring we sent a letter to the Howard County Public School System (HCPSS) on behalf of students from River Hill High School, and their parents, to demand that the school system protect the First Amendment rights of Arab and Muslim students and work to repair the harm caused by their school administration. The letter made clear that HCPSS must cease censoring student speech in support of Palestine in accordance with the First Amendment, and remedy the past harms done to these Arab and Muslim students and their families. The ACLU recommends that the schools take measures to protect AMEMSA students from Islamophobia, including taking suggestions from the students themselves.

Response from the school system was swift and conciliatory, and we are now working with school officials to resolve the students' claims and

prevent recurrence of such violations in the next school year. Toward this end, in early September, we accompanied the impacted students and families to a meeting with the County School Superintendent, who acknowledged the harms the school system had caused, apologized, and committed to healing measures.

### ***Protecting the right to protest at Towson University:***

In August we sent a letter on behalf of five Towson University (TU) students challenging the University's unwarranted and unconstitutional disciplinary action punishing the students' small "die-in" demonstration in support of Palestinians killed by Israel in Gaza. Last November, a small group of Towson students laid in the grass on a central plaza surrounded by baby dolls wrapped in white shrouds symbolizing the rising death toll of children in Gaza.

The protest was organized by an informal collective of TU students, with one of the student protesters holding a megaphone, reciting a poem, and reading the names of people killed in Gaza. The five students disciplined were charged and found guilty in the months following the die-in protest for violations of TU policy and the student code of conduct. All these students received deferred suspensions that will remain on their academic records for seven years.

Our letter calls on TU officials to expunge the students' disciplinary records, and refrain from future violations of the First Amendment going forward. We explain that public university students have a constitutional right under the First Amendment to protest on their campuses, and informal student groups may also hold protests, even if they are not recognized as a formal university club. As the Supreme Court said nearly 60 years ago: "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us... [and] is therefore a special concern of the First Amendment. ... To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation."

## ***Supporting student activists at the University of Maryland:***

In September we filed a friend-of-the-court brief supporting University of Maryland Students for Justice in Palestine, who are suing the University for censorship in connection with a planned candlelight vigil scheduled for October 7, 2024. The student vigil was originally approved by the UMD administration but then the school revoked its approval, with President Darryll Pines explaining that the revocation resulted from an “overwhelming” number of complaints he received from people calling on the university to cancel or limit events on October 7. Instead, the school plans to permit only university-sponsored events that promote reflection on that day.

The Plaintiffs, represented by Palestine Legal and CAIR, successfully argued that Dr. Pines has essentially created a First Amendment blackout day, and in so doing violated the students First Amendment rights through a viewpoint, content, and speaker-based restriction. National ACLU took the lead in drafting amicus brief which the ACLU of Maryland joined, supporting the students’ rights to protest as originally approved by the university.

## **PUSHING BACK AGAINST BOOK BANNING**

As calls for restrictive school book bans continue to ripple across the country, the Maryland ACLU is hearing more and more from students and community members around our state about restrictions proposed and promoted by so-called “parents’ rights” groups like Moms for Liberty that infringe on students’ access to information in their schools, particularly where books touch upon issues concerning racism or sexuality.

We know that when schools and libraries give in to undemocratic calls for book bans, any action they take to restrict access to a particular title – whether on a shelf or in a curriculum – can spread quickly from county to county, magnifying the harmful chilling effect that censorship can have and its potential to silence and exclude those from already-marginalized groups.

As Pen America reports:

Books are under profound attack in the United States. They are disappearing from library shelves, being challenged in droves, being decreed off limits by school boards, legislators, and prison authorities. And everywhere, it is the books that have long fought for a place on the shelf that are being targeted. Books by authors of color, by LGBTQ+ authors, by women. Books about racism, sexuality, gender, history.

Newspaper headlines around Maryland demonstrate clearly that Maryland is not immune to this worrisome trend. In Carroll County, for example, Moms for Liberty pushed through a new book policy that resulted in 58 books being removed immediately from school library shelves for reassessment as to whether they violate the policy’s prohibition on sexually explicit content. Months passed as the school system reconsidered each book to decide about permanent restriction, with most of the books remaining off-limits until a decision is made.

Across the state in Calvert County, our field organizer has been working with students and parents to push back against the School Superintendent’s interference with the Calvert County Public Schools’ (CCPS) library book reconsideration committee by overriding the committee’s decisions to restrict access to books or require explicit parental consent for book access – while making consent forms unavailable. Although the state legislature recently enacted the *Freedom to Read Act* to protect against this growing censorship threat, that legislation is limited, and we are concerned its good intentions will be easily circumvented.

As the ACLU is faced with increasing numbers of complaints of different kinds from across Maryland, we have partnered with the Crowell & Moring law firm to analyze developments in the law in this area, including the impact of Maryland’s new state law; assessing factual allegations brought to us by students in various parts of the state, and formulating effective strategies to respond to problematic initiatives.

Separately, in *Mahmoud v. McKnight*, we joined with the national ACLU in filing an amicus brief in the U.S. Court of Appeals for the Fourth Circuit supporting the Montgomery County Public Schools (MCPS) in its successful effort to ensure that its English curriculum is inclusive for LGBTQ+ students. In 2022, MCPS added storybooks featuring LGBTQ+ characters to its elementary-school English curriculum. Soon thereafter, some parents requested that their children be excused from class when the books were used. Although schools initially accommodated these objections, the growing number of opt-out requests became unmanageable and undermined the schools' educational obligations toward inclusion, equity, and respect. MCPS informed parents that opt-outs would no longer be permitted in the new school year.

In response, some parents filed a lawsuit against MCPS, claiming the elimination of opt-outs violated their free-speech, free-exercise, and substantive-due-process rights under the U.S. Constitution and Maryland law. They sought a preliminary injunction based on their free-exercise and substantive-due-process claims. The district court denied their motion, holding that the parents could not establish a burden on their religious exercise. The Fourth Circuit affirmed on appeal, sending the case back to the trial court for resumption of the litigation. However, the parents are now seeking review in the U.S. Supreme Court.

### ***Defending Affirmative Action in Military Academies***

Last year, the U.S. Supreme Court overturned its prior holdings protecting affirmative action in college admissions, effectively ending race-conscious admissions practices in most colleges and universities and, consequently, restricting the ability of schools to address systemic racial inequalities that persist in higher education. But the court's decision left one exception: military service academies. Now, the same group that brought to the Supreme Court the case that overturned affirmative action, Students for Fair Admissions (SFFA), is suing the U.S. Naval

Academy (as well as West Point) alleging that the military academies' use of race in their admissions processes is unconstitutional.

Affirmative action at service academies is essential for confronting our military's discriminatory history, which continues to impact service members of color. The ACLU, the ACLU of Maryland, along with our partners NAACP Legal Defense Fund and the National Association of Black Military Women, filed an amicus brief in support of affirmative action at the Naval Academy, highlighting the experiences of people of color, specifically the unique experience of Black women in the military.

Last year, Judge Richard Bennett strongly rebuffed the SFFA request for a preliminary injunction, making clear that the complex issues involved could only be addressed through a full trial, which was conducted in September of 2024. **Decision pending.**

August 12, 2024

Mark Ginsberg, President  
Towson University  
8000 York Road  
Towson, MD 21252

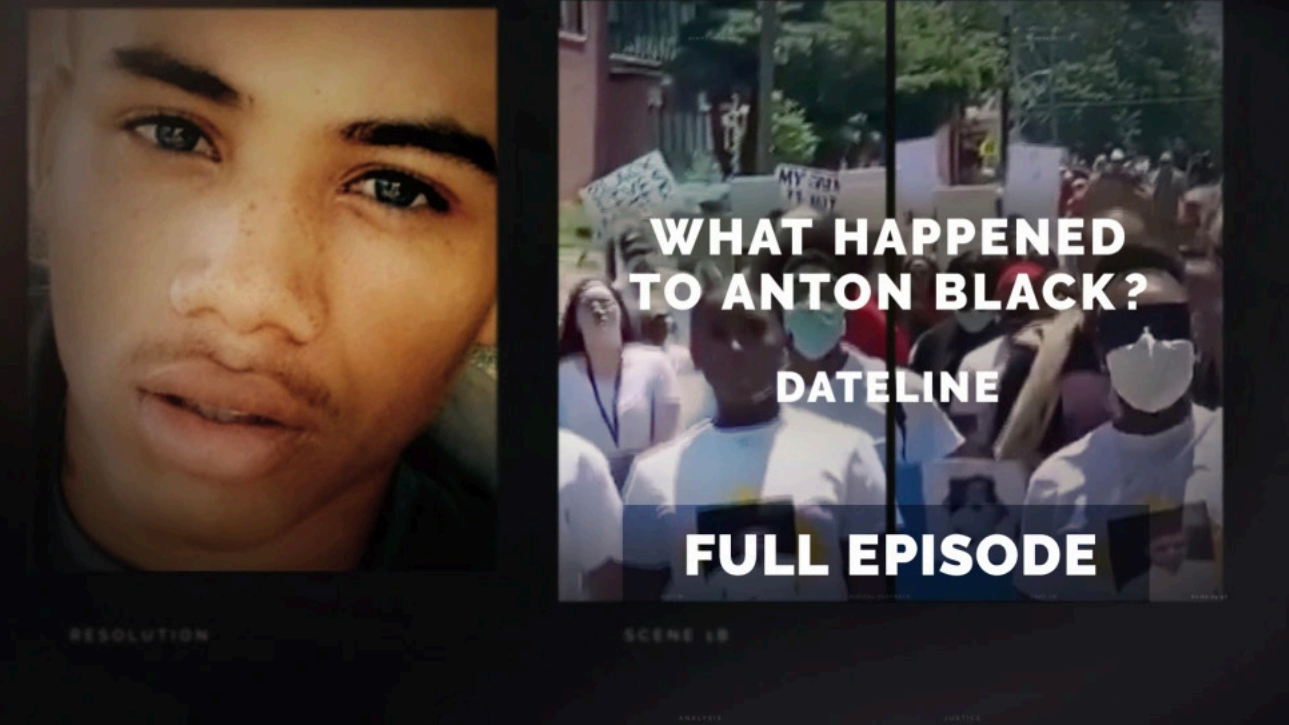
Dear President Ginsberg,

We write on behalf of five students who received unwarranted punishments for violations of the Towson University ("TU") expressive activity provision and the TU Code of Student Conduct. Their alleged roles in a small "demonstration" protest that occurred on campus in November 2023 were minimal. The discipline imposed on these students violated TU's commitment to the First Amendment. TU should expunge their disciplinary records and commit to refrain from future violations of the First Amendment. We request that you approach the beginning of a new school year.

The November 15 demonstration sought to protest the violence and destruction in Gaza. At the time, around noon, less than ten Towson University students gathered



Sent stamped image of the top of the letter sent to Towson University President Mark Ginsberg.



**OUR STRATEGIC GOAL:** We have made government accountable by maximizing transparency, establishing limits on governmental power, and strengthening enforcement mechanisms, particularly where there is the greatest opportunity for abuse of power.

### STEPPING TOWARD ACCOUNTABILITY IN THE POLICE KILLING OF ANTON BLACK

At the end of 2023, Family members and the Coalition for Justice for Anton Black put in place the final element of a landmark settlement in their federal court litigation charging police and government officials with the unconstitutional killing of their beloved son Anton, and its unlawful cover up aimed at thwarting accountability. The agreement with the Maryland Medical Examiner – the first of its kind ever in Maryland – is designed to bring concrete changes to help ensure that deaths in law enforcement custody are not given special treatment that too often favors the narratives and interests of police over those of decedents and their families.

This tragic case began on September 15, 2018, when white police officers from three different municipalities on Maryland’s Eastern Shore chased, tased, pinned, and ultimately, killed Anton Black on his mother’s front steps. Anton cried out to his mother as officers pressed down on his face, chest, and stomach for six minutes, causing him to die by positional asphyxiation, while his mother was held back, looking on in horror. The encounter was so gruesome it would later receive national attention from NBC’s News Anchor Lester Holt on Dateline in an episode titled “What Happened to Anton Black.”

Cover image for video on the NBC Dateline special, “What Happened to Anton Black?”



In December 2020, Anton’s family and the Coalition for Justice for Anton Black, with help from the ACLU and Arnold & Porter, filed a lawsuit in federal district court in Baltimore, challenging Anton’s killing as discriminatory and unconstitutional, and charging an array of police, municipal and state officials both in taking part and in conspiring to cover up wrongful actions by police. In the summer of 2022, the Plaintiffs settled with the police and municipal officials responsible for Anton’s killing, securing significant monetary relief and reforms to police practices.

The final aspect of the case resolved innovative claims alleging unlawful conspiracy and cover up by the Office of the Maryland Medical Examiner, making necessary changes to the process for autopsies conducted on people killed in law enforcement custody and requiring notification to families about the results and their rights to challenge the results. **Reforms under the agreement include, among others:**

1. A new policy explicitly addressing how medical examiners are to handle deaths in custody, including deaths involving law enforcement restraint, and deaths occurring in facilities like jails, prisons and juvenile facilities;
2. Documentation of all sources of initial investigative information and disclosure of any law enforcement or other personnel present for an autopsy; and
3. Notice to families who receive autopsy reports about their rights to seek correction and review of the findings.

Meanwhile, the Maryland Attorney General has launched a review of Medical Examiner findings statewide with respect to deaths in custody, after longtime Maryland Medical Examiner David Fowler made national headlines as the so-called “expert” witness seeking to deflect police responsibility to excuse Derek Chauvin’s murder of George Floyd in Minneapolis. Public outrage about Fowler’s testimony culminated in over 500 medical and public health professionals from around the country calling for review of Fowler’s

findings related to any in-custody or police-involved deaths that occurred during his tenure from 2002 to 2019. The Attorney General agreed such a review is justified. It is now ongoing, and we will be closely monitoring its results.

### ***Defending Anton’s Law and Police Transparency from FOP Attacks***

Acting to defend the police accountability and transparency obligations created by Anton’s Law – a police accountability measure named in honor of police violence victim Anton Black – we and Wiley Rein are representing intervening party, the Maryland Coalition for Justice and Police Accountability (MCJPA), in a sealed lawsuit brought by the Fraternal Order of Police (FOP) in Montgomery County. The FOP lawsuit seeks not only to block the County’s release of police disciplinary records but also to have Anton’s Law declared unconstitutional, while also blocking public access to court proceedings in the case.

We seek to unseal materials in the case and to defend Anton’s Law, urging the court to reject the FOP’s lawsuit. Further, we challenge the FOP’s collusive “side deal” with the county that enabled the FOP lawsuit by giving the union notice of all requests for police disciplinary records, delaying release of responsive records so that the FOP can review them and file a legal challenge to block release. If the FOP’s claims in this case succeed, they will eviscerate the hard-won legislative mandate for transparency – achieved through a five-year advocacy effort, led by the MCJPA and the ACLU – meant to build trust between police and community members.

In early 2023, the trial court permitted the intervention and granted our request to unseal documents. Since then, however, the case has been bogged down in bickering and court delays; after a hearing in early 2024 and months of inaction, in mid-August 2024, the Circuit Court resolved disputes among the parties as to what parts of court papers must be unredacted and made available to the public as the case moves forward through litigation. This permits the litigation to move forward.

## *Seeking Justice for Korryn and Kodi Gaines*

In 2016, Baltimore County Police Officer Royce Ruby shot and killed 23-year-old Korryn Gaines, a Black woman, and in the process also critically wounded her son, five-year old Kodi Gaines. Young Kodi was left without a mother and with searing memories of that deadly day. What led up to this unacceptable tragedy was a minor traffic violation.

The jury determined that Officer Ruby acted unreasonably when he killed Korryn and injured her son, awarding Kodi \$34 million in damages to try to compensate for his irreparable loss. However, Judge Mickey Norman, himself a former police officer, has repeatedly attempted to swap the jury's decision with his own, pro-police view, disregarding the constitutional rights of Korryn and Kodi.

In defense of their rights and the broader constitutional issue, the ACLU of Maryland has filed two amicus briefs in appeals from adverse rulings in the case. Most recently, after a divided Maryland Supreme Court wiped out the verdict for Kodi based on a misguided assessment of qualified immunity under federal law, we recruited Supreme Court specialists and Wiley Rein to directly represent Kodi in seeking review of this ruling in the United States Supreme Court.

### ***Challenging Excessive Fees for Public Information***

After the ACLU received a series of disturbing complaints from Black Calvert County residents about invasive police searches by the Calvert Sheriff, we requested documents related to these searches under the Maryland Public Information Act (MPIA). The Sheriff delayed responding to our request for months, and ultimately agreed to respond only if we would pay more than \$12,000 to see the documents.

After our efforts to resolve the matter amicably were rejected, the ACLU and Zuckerman Spaeder sued under the MPIA to access this vital information. We contended the Sheriff's use of burdensome fees to withhold public

information that might reveal police misconduct is part of a troubling new statewide pattern, in response to Anton's Law – the 2021 law named for Eastern Shore teenager Anton Black who was killed in 2018 by an officer with a long record of past misconduct concealed by local officials. Anton's Law amended the Maryland Public Information Act to make records of policing complaints and discipline more transparent and available, to help guard against police abuse.

Once that law took effect, however, police departments around the state started looking for other means to avoid disclosure of damaging information, and many settled on the use of high monetary fees to make the requests financially untenable for organizations like ours. After the Baltimore City Circuit Court ruled in 2023 that the Calvert County Sheriff's Office wrongfully withheld public records through imposition of thousands of dollars in fees, the Sheriff appealed. The case was argued before the Appellate Court of Maryland in May, where a spirited panel of judges peppered the Sheriff's attorney with questions about his apparent failure to consider how access to these records would serve the public interest in rejecting our request for a fee waiver.

In late August, the Appellate Court forcefully affirmed the lower court's ruling that the Sheriff's denial of the fee waiver was arbitrary and capricious. The case will now be remanded for the Sheriff to reconsider the fee waiver request using clear criteria mandated by the court.



ACLU of Maryland Senior Staff Attorney David Rocah speaks along with leaders from the Maryland Coalition for Justice Police Accountability, the Silver Spring Justice Coalition, and Vanderbilt Law School at a press conference outside of the Montgomery County Circuit Court before a court hearing related to the Fraternal Order of Police's challenge to Anton's Law. Photo by Nehemiah Bester.



**OUR STRATEGIC GOAL:** All Marylanders are empowered to fully participate in society regardless of citizenship or legal status.

### **CELEBRATING A FINAL JUDGMENT AGAINST THE CRUEL AND ILLEGAL “ICE BAIT AND SWITCH”**

After years of waiting, in 2024 we secured a nearly complete win in one of the ACLU of Maryland’s most dramatic legal victories ever. The 2018 case, which we call the “ICE Bait and Switch” case, challenged an inhumane Trump-era practice in which ICE agents lured immigrants in to “marriage interviews” dangling the possibility of legal residency, then used their presence to capture them, place them into immigration detention, and deport them.

The litigation arose initially in the case of Wanrong Lin, a noncitizen originally from China, who had been married for 14 years to a naturalized U.S. citizen and living in Southern Maryland with the couple’s three U.S. citizen children.

Mr. Lin had been trying for years to find a path to legal residency but had been unable to do so until 2016, when President Obama put in place a procedure through which Mr. Lin could gain legal status by showing his bona fide marriage to a citizen spouse. The first step in this process was for the couple to undergo an interview with US Citizenship and Immigration Services (USCIS) to establish the validity of their marriage. The couple, accompanied by their counsel and three children, attended such a meeting in late 2018 where USCIS confirmed the validity of the marriage.

After the couple got USCIS confirmation, officials said they had additional questions for Mr. Lin and asked him to stay behind for a few minutes. After his wife had left the room, Mr. Lin was seized by ICE agents, placed in handcuffs and taken away to jail, without any opportunity to even say goodbye to his family. His lawyer was informed that he would briefly be held in ICE custody in Anne Arundel County until his imminent deportation to China.

Mr. Wanrong Lin and Ms. Hui Fang Dong pose arm in arm inside of their restaurant. Photo by Amber Taylor.

Already aware of this problematic ICE practice, our legal team sprang into action, working frantically over a weekend to put together and file federal court papers before ICE could execute its deportation plan, while navigating language barriers and gaining the trust of the Lin family despite the chaotic situation. Likely tipped off by a weekend ACLU visit with Mr. Lin in immigration detention, ICE appeared to expedite its plan in what seemed to be an effort to evade any legal challenge.

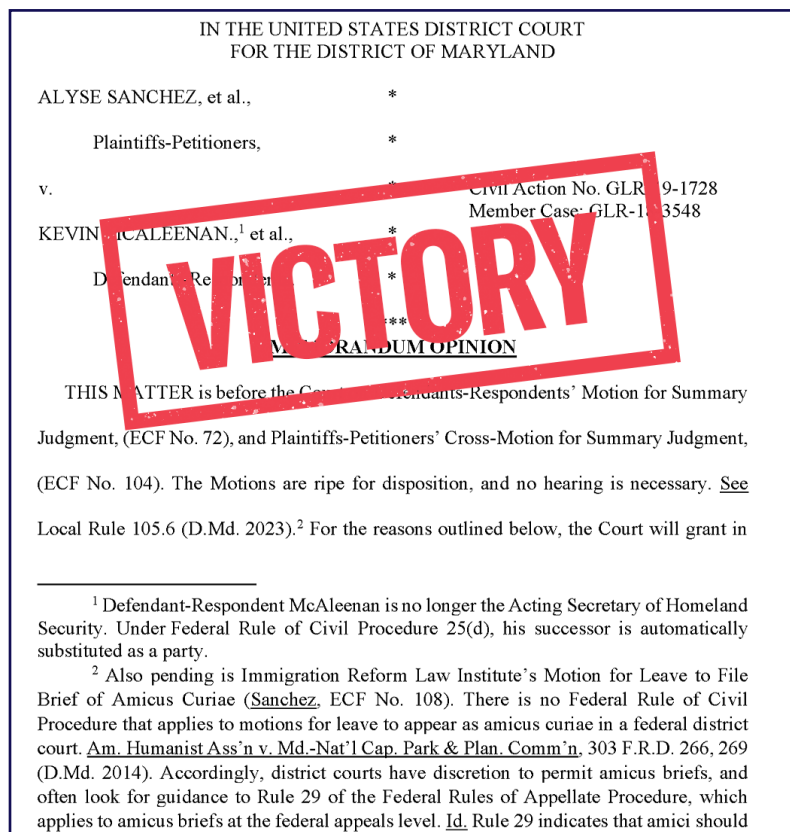
As we readied to file suit first thing Monday morning, we got word that overnight Mr. Lin had been whisked away to New Jersey, where he was scheduled to be placed on a flight to Shanghai just before 10 a.m. At 9 a.m., we found out Mr. Lin was already on board the plane as we rushed to file all the necessary papers, and to alert the court clerk’s office of the urgent filing and Mr. Lin’s imminent departure. At 9:35 a.m., the case was filed, and the clerk’s office immediately called the assigned judge, George Hazel. But before Judge Hazel could respond, the plane took off, with Mr. Lin on it. The plane winged its way to Shanghai as the court held emergency hearings – promising to rule before the court lost jurisdiction over the case when Mr. Lin’s plane landed in Shanghai, near midnight.

Shortly before 10 p.m., Judge Hazel issued his ruling calling the ICE tactics arbitrary, capricious, abusive, and unlawful, and granted an emergency injunction requiring the government to return Mr. Lin home to the United States. Pursuant to this order, Mr. Lin was returned home, and the court issued an injunction releasing him from detention while he worked through his path to legal residency.

As other immigrants faced the same bait and switch practices, we filed a related but separate class action on behalf of six more people challenging the practice. The court certified the new case as a class action, and in early 2020 issued a preliminary injunction prohibiting federal immigration officials from arresting or deporting non-citizens in Maryland who had started the process to obtain legal immigration

status based on their marriage to a U.S. citizen spouse. The order also required ICE to release anyone currently in detention who was detained before they could complete even the first step of that process. This order prevented thousands of Marylanders from being arrested at their marriage interviews at USCIS.

**Fast forward to 2024**, after a change in administrations and in judges, we at last secured final judgment outlawing the ICE bait and switch policy that initially snagged Mr. Lin in 2018. In March of 2024, Judge George Russell – newly assigned to the case after retirement of Judge Hazel from the bench – granted plaintiffs summary judgment, finding that the government’s conduct violated the *Due Process Clause*, the *Immigration and Nationality Act*, and the *Administrative Procedure Act*. **The government has noticed an appeal to the U.S. Court of Appeals for the Fourth Circuit, which is currently pending.**



Victory stamped image of the first page of the Memorandum Opinion ruling in the *Sanchez, et al. v. McAleenan, et al.* bait and switch case.



**OUR STRATEGIC GOAL:** Marylanders can live, think, and speak freely without discrimination based on identity, unwarranted surveillance, with bodily integrity protected, and with equitable access to the public square.

## **AKERS V. STATE – REPRODUCTIVE FREEDOM**

This case, now before Maryland’s highest court, concerns whether prosecutors can admit evidence that a woman exercised her right to decide whether to terminate her pregnancy as proof of intent to murder. Moira Akers conducted internet research for information about terminating her pregnancy in its early stages and consulted with her doctor about her termination options. Ultimately, she continued her pregnancy and later gave birth to a stillborn baby in her home.

Despite Ms. Akers’ reporting that the infant was stillborn, she was prosecuted, convicted of second-degree murder and sentenced to a 30-year term of imprisonment. At trial, Howard County prosecutors introduced her search history and evidence that Ms. Akers was advised about termination options by her healthcare provider as proof that she intended to commit homicide.

The ACLU’s Abortion Criminal Defense Initiative, alongside the ACLU of Maryland, filed an amicus brief arguing that allowing admission of this evidence not only violated Ms. Akers’ rights but chills the right of all Marylanders to freely decide whether to continue or end their pregnancies. Ms. Akers’ case was granted certiorari and is now before the Maryland Supreme Court. Oral argument was held in early September. **Decision pending.**

## **LIMITING POLICE USE OF FACIAL RECOGNITION TECHNOLOGY**

In the 2024 legislative session, the General Assembly passed a law limiting law enforcement use of facial recognition technology, such as 1) by providing that “facial recognition technology may not serve as the sole basis to establish probable cause or the positive identification of an individual in a criminal investigation or proceeding,” and 2) requiring additional, independently obtained evidence to establish probable or a positive ID.

Facial recognition image from Shutterstock.

The law delegates to the Maryland State Police the task of writing model policies governing FRT use, and then requires all other law enforcement agencies to follow those model policies. Led by the ACLU National Privacy and Technology Project, we are advocating with MSP by outlining ACLU views on what the model policies should say, making three main points:

1. A photo lineup or similar procedure using an FRT match cannot serve as a sufficient independent basis for an ID, because the FRT potential match will always, by definition, look so much like the actual suspect as to taint the reliability of the photo array.
2. The policy should prohibit the use of FRT to track individuals using live or recorded video. Thank to our earlier work in 2015 and 2016, existing state law already prohibits use of FRT on live or stored body cam video, and we are seeking to broaden that prohibition to all contexts, not just bodycam footage.
3. The policy should prohibit the use of private, 3rd party FRT matching databases where the photos in the database were collected illegally or without consent. This seeks to primarily ban law enforcement use of Clearview AI's FRT database, because the photos in it were largely scraped from public social media sites.

## PROTECTING RIGHTS OF DISABLED CHILDREN IN FOSTER CARE

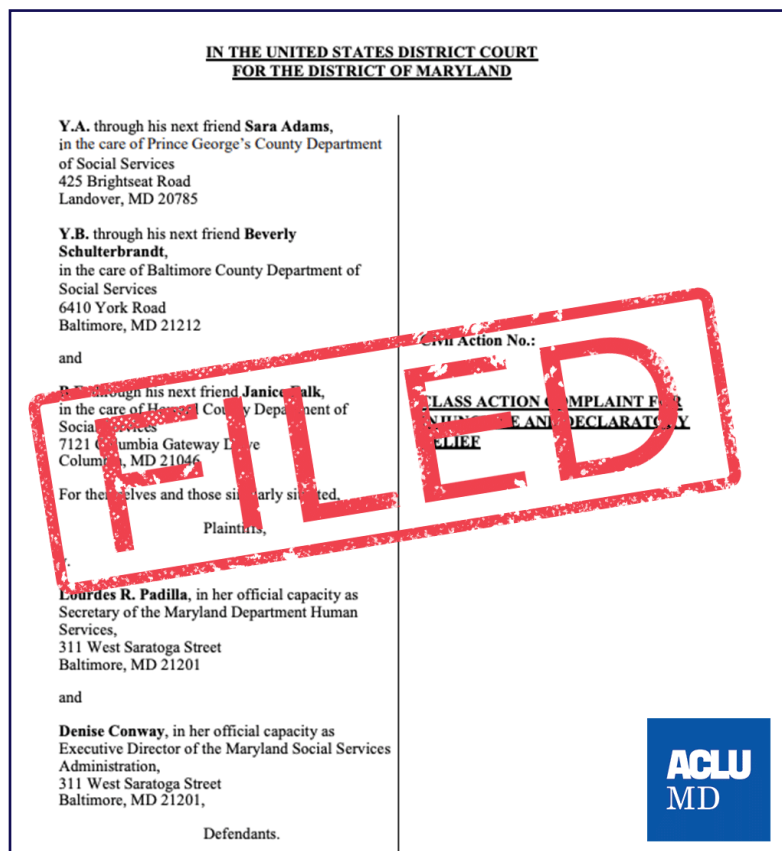
We are collaborating with Children's Rights, Inc., Disability Rights Maryland, and Morgan, Lewis & Bockius LLP in a federal lawsuit against the Maryland Department of Human Services and Social Services Administration on behalf of minor children in the State's foster care system, alleging that for over a decade, Maryland officials have failed to exercise adequate oversight of children in foster care who are given potentially dangerous psychotropic drugs.

As many as 34 percent of children in Maryland's family regulation system are given psychotropic

drugs, and more than half of those children are prescribed multiple drugs at the same time. Nearly 75 percent of the children who are taking psychotropic drugs do not have a psychiatric diagnosis. Black children, disproportionately represented in Maryland's foster care system, are at greater risk of being subjected to these dangerous drug practices in many counties.

The lawsuit outlines the State's reckless failures as an effective custodian for the children in their care, including failing to compile and maintain adequate medical and mental health records, failing to implement an adequate informed consent process, and failing to operate an adequate secondary review system to conduct second opinion evaluations when necessary.

The case has been in extended mediation since its filing, with the parties seeking to work collaboratively with the court and experts to create a comprehensive system to protect children in the foster care system from overmedication in the future.



Filed stamped image of the first page of the Complaint in the Y.A. v. Padilla foster care case.



**OUR STRATEGIC GOAL:** We have an equitable system that prioritizes community-centered approaches to public safety and ends our primary reliance on incarceration.

### STRIKING BACK AGAINST MODERN DAY ENSLAVEMENT OF INCARCERATED WORKERS

Collage of Marylanders who helped lead efforts to restore second chances from behind the walls who have finally returned home from long sentences, along with their loved ones. Pictured clockwise from the top left are Stanley Mitchell, members of the Lifer Family Support Network, Calvin McNeill, Anthony Muhammad, Martina and Eric Hazelton, Bobby Stewart, Kenneth Tucker, Nathaniel Foster and Sonia Kumar, and Andrew Stewart.

Working with local civil rights and racial justice groups, and leading ACLU affiliates from throughout the Fourth Circuit, we supported incarcerated workers as amicus curiae in winning a precedent-setting ruling from the Fourth Circuit that opens the door to federal labor law protections in a Baltimore County jail work program. Our brief highlighted the way modern-day prison labor practices in Baltimore County and elsewhere descend from the enslavement of Black people and urged the United States Court of Appeals for the Fourth Circuit to reject dehumanizing assumptions about incarcerated workers, who are disproportionately Black.

Baltimore County took the highly unusual step of opposing our friend-of-the-court filing, contending that the racist history of the jail’s prison labor practices is “inflammatory” and “irrelevant.” However, the Court promptly rejected the County’s contentions, and accepted the brief for consideration as part of the appeal.

In a major ruling earlier this year, the Court held the federal *Fair Labor Standards Act* likely applies when incarcerated workers are working alongside other workers in the community, so that prisons and jails do not have a blank check to exploit people who are incarcerated for the government’s financial benefit. The County sought review by the full Fourth Circuit, but the request was summarily denied. Next, the County sought to freeze the case while it appeals to the U.S. Supreme Court, but again, the Court rejected the request. Although the County still intends to appeal to the Supreme Court, the case has now been remanded to the trial court for further proceedings, with a mediation scheduled for late fall.

## PAVING THE PATH TO FREEDOM

Maryland leads the nation in the racial disparities in our prisons; 70 percent of state prisoners are Black. The racial disparities are worse for those with extreme sentences; 77 percent of people serving life sentences are Black and that number rockets to 84 percent for those sent to prison as children. More than 2,200 people are serving life-with-parole sentences in Maryland. For nearly a decade, the legal team has partnered with people serving parole-eligible life sentences and their loved ones to end Maryland's *de facto* abolition of parole for lifers. This work has involved several key dimensions, including organizing, litigation, legislative advocacy, and representation before administrative bodies.

One of our core vehicles for change following the resolution of the *MRJI v. Hogan* litigation has been directly representing lifers in parole and related court proceedings and developing the Maryland Parole Partnership to organize pro bono legal assistance for lifers. Currently, there is no right to counsel in parole, and no clear path for assistance through the "sentencing review" units created in recent years by State's Attorneys in the two jurisdictions comprising nearly 75 percent of all lifer cases. Scores of people serving life sentences could be within a year or two of release if they had legal help.

The overarching vision of the Maryland Parole Partnership is to foster authentic partnerships between parole candidates and the legal professionals who volunteer to work with us. In our experience, these relationships are transformative for the person seeking their second chance, the legal professionals who sign

Filed stamped image of the *Scott et al. v. Baltimore County* fair labor standards case for workers who are incarcerated.

up to do a case, and, over time, the system itself. Throughout, we work towards a legal support model that moves away from white savior lawyering and better recognizes the actual leadership of people serving extreme sentences and their loved ones in their efforts to obtain freedom.

From our perspective, 2023 and 2024 were times of homecoming, as we saw more and more people reuniting with their families after spending many decades in Maryland prisons. In 2024, we have been highlighting successes of those coming home and showcasing the ways those returning contribute toward making our communities stronger and safer.

No. 23-1731

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

---

MICHAEL A. SCOTT, *et al.*,  
PLAINTIFFS-APPELLANTS,  
v.  
BALTIMORE COUNTY, MARYLAND  
DEFENDANT-APPELEE.

---

On Appeal from the United States District Court for the District of Maryland  
CV SAG-21-0034  
Judge Stephanie A. Gallagher


---

**MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION OF MARYLAND, AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, AMERICAN CIVIL LIBERTIES UNION OF WEST VIRGINIA, AMERICAN CIVIL LIBERTIES UNION OF SOUTH CAROLINA, AMERICAN CIVIL LIBERTIES UNION OF VIRGINIA, CAUCUS OF AFRICAN AMERICAN LEADERS, MARYLAND CURE AND FAMILY SUPPORT NETWORK  
IN SUPPORT OF APPELLANTS AND REVERSAL**

---

Kristi Graunke  
Samuel J. Davis  
AMERICAN CIVIL LIBERTIES  
UNION OF NORTH CAROLINA

Sonia Kumar  
Deborah A. Jeon  
AMERICAN CIVIL LIBERTIES  
UNION OF MARYLAND







## OUR STRATEGIC GOAL: We have an election infrastructure that guarantees universal suffrage and robust access to the ballot.

The phrase “democracy is on the ballot” has become a refrain amid spiraling threats to voting rights posed by voter suppression efforts, former President Trump’s false claims of election rigging, and a renegade Supreme Court chipping away at legal protections for Black and Brown voters. Maryland is immune to none of this, but for decades the ACLU of Maryland has been vigilant about protecting voting rights, and our current legal docket shows that.

### HISTORIC CHANGE COMES TO FEDERALSBURG

In 2022, when the ACLU first heard concerns from residents of Federalsburg about race relations in their Town, it seemed like a throwback to an earlier era – a time when, across the Eastern Shore, white people controlled all local governments. The Town was getting ready to celebrate its bicentennial year, yet never in all history had any Black person *ever* been elected to Town government, even though, over the last few decades the Town’s population had steadily diversified so that it is now half Black and half white. Over the course of the next two years, Federalsburg’s Black voters, the Caroline County NAACP, and the Caucus of African American Leaders, supported by the ACLU and Crowell & Moring, changed that forever.

Through their litigation to reform the Town’s election system and to put a new, equitable system in place, Federalsburg voters made history last September by electing two trailblazing Black women, including Plaintiff Darlene Pitt Hammond, to the Town Council as Federalsburg’s first-ever Black elected officials. It was a glorious achievement, generations in the making, in which Black voters overcame 200 years of race

At the Federalsburg Unity Festival, a group gathers by the "From Protest to Progress" sign that was part of the landmark settlement in the historic voting rights case. In the photo are six people named on the sign (Rev. Jeffrey Butler, Elaine Hubbard, Roberta Butler, Dr. Willie G. Woods, Sherone Lewis, and Wanda Molock) and three other NAACP branch members (Elizabeth Pinkett, Janet Fountain, and Rev. Pearl Geter). Photo by Wanda Molock.

discrimination and oppression perpetrated against them by the Town of Federalsburg.

*But the story didn't end there* – the Plaintiffs demanded more. Early in 2024, the Plaintiffs secured a remarkable settlement, including an unprecedented array of restorative measures – a written apology for past racism, street renaming, and community markers commemorating and celebrating the history and contributions of Black residents, among other measures. **This is an unprecedented achievement that serves as an extraordinary tribute to the inspiring Black leaders of Federalsburg who rose up to challenge white supremacy deeply embedded in their community.**

Through the determination of its Black residents, Federalsburg became something altogether new – not a throwback any longer; but rather, a community in the vanguard, showing the way forward for all Marylanders working for racial justice and reconciliation.

## CHALLENGING VOTE DILUTION IN WICOMICO COUNTY

In December of 2023, Black voters and local organizations filed a lawsuit in federal district court in Baltimore under the landmark *Voting Rights Act of 1965* challenging the at-large component of the election system for the Wicomico County Council and Board of Education. The Wicomico County Branch of the NAACP, the Caucus of African American Leaders, and the Watchmen with One Voice Ministerial Alliance, join with individual voters Dr. Eddie Boyd, Luc Angelot, Amber Green, and Monica Brooks, the ACLU, and Arnold & Porter in charging that the hybrid at-large, single member district system is racially discriminatory and unlawful, diluting the votes of Black residents and limiting fair representation.

Together, they ask the court to invalidate the current election system and require the County and School Board to create a fair system that complies with the *Voting Rights Act*. The action comes against the backdrop of a long history and legacy of racial discrimination and oppression in Wicomico County and across Maryland's Eastern Shore.

Since filing of the case, the Defendants have expressed interest in collaborative reform to resolve the lawsuit, and a mediation is now set for late fall.

## CONTINUING THE FIGHT FOR ELECTION FAIRNESS IN BALTIMORE COUNTY

Following our successful *Voting Rights Act* challenge to Baltimore County's 2021 redistricting plan, community groups and government officials promoted legislation to expand the size of the County Council to enhance election opportunities for BIPOC voters and to provide fairer representation for the County's increasingly diverse population. The citizen-led movement to expand the Council to 11 members fell short of passage, but the Council did move forward with a ballot measure to be put to voters in November to expand the Council from seven to nine. While this was a positive move in theory, the Council sabotaged the measure by linking it to a racially discriminatory redistricting plan and map for the expanded council, and by directing that the school board also change its structure and use this unlawful map, in violation of the *Voting Rights Act* and state law.

In August, we contacted the County on behalf of several voting rights groups, Black voters and State legislators from Baltimore County urging amendments to the Ballot Measure to rectify these problems before it is submitted to voters. The County's failure to undertake these amendments is likely to expose it to legal action should the measure pass in its current form.



Several activists from the Baltimore County Coalition for Fair Maps, Morgan Drayton of Common Cause Maryland, Ericka McDonald of League of Women Voters of Baltimore County, and two individual voters from Baltimore County, ACLU of Maryland Executive Director Dana Vickers Shelley and Anthony Fugett, former president of the Baltimore County NAACP, gather at a press conference. Photo by Meredith Curtis Goode.



# LEGACY FAIR HOUSING WORK

In addition to our five strategic priorities, we continue legal work on decades-long fair housing litigation the ACLU undertook starting in the 1990s. One remaining project is our work with the federal Department of Housing and Urban Development (HUD), the Baltimore County Branch of the NAACP, and a team of lawyers from partner organizations, through which we continue to push Baltimore County to adhere to its “Voluntary Compliance Agreement” (VCA) stemming from a 2011 administrative fair housing complaint.

That complaint detailed the long history of residential segregation caused by official County policies that excluded affordable housing, sought to minimize Black migration from Baltimore City to the County, and steered Black people moving into the County exclusively into Woodlawn/Randallstown/Owings Mills corridor. This discrimination included the active use of federal and state affordable housing programs to build senior-only housing for the white elderly, while denying local support for general occupancy housing that tends to serve Families of Color and people with disabilities.

To resolve the complaint, the County agreed to provide \$30 million toward the development of affordable housing for families and disabled people, to create 1,000 such units in high opportunity areas of the County, and to create a housing mobility program to assist at least 2,000 families with housing vouchers in moving from lower opportunity areas to higher opportunity areas. The County also agreed that it would no longer allow County Council members to veto affordable housing in their districts.

Making good on a key part of the agreement, in 2019 County Executive Johnny Olszewski introduced a bill banning Source of Income discrimination and the County Council passed it after several prior failures. On other portions of the agreement the County has failed to meet its obligations, requiring significant support and monitoring from HUD and our legal team. Now, given how far behind the County has fallen in meeting the agreement’s requirements that it has become clear extension of the agreement, or an enforcement action will be required.

**ACLU** Maryland