A PUBLICATION OF THE NEW JERSEY STATE BAR FOUNDATION

SPRING 2017 • VOL. 16, NO. 3

respect

A NEWSLETTER ABOUT LAW AND DIVERSITY

When Policing and Race Collide

by Cheryl Baisden

The primary objective of any police force is to serve and protect the community. Across the country, however, that is not always perceived to be the case.

Riots erupted in August 2014, after a white police officer fatally shot an unarmed 18-year-old black man in Ferguson, Missouri, in connection with an altercation surrounding a reported theft from a convenience store. A total of 12 shots were fired by the 28-year-old officer who, following investigations by the local and federal authorities, was not charged in the incident. The death of Michael Brown, however, did spark an investigation into policing practices in Ferguson by the Civil Rights Division of the U.S. Department of Justice (DOJ).

The DOJ concluded the police used excessive force almost exclusively against blacks, and often made arrests citing vague violations like jaywalking. The investigation also revealed the local police and court operated as a team to collect fines to bolster the municipal bank account. An independent Harvard University study found that while blacks make up 67 percent of Ferguson's population, they accounted for 93 percent of the arrests and 85 percent of the traffic stops. In addition, the study found that officers were 24 percent more likely to point their pistols and 18 percent more likely to use physical force if the person was black.

City officials and the DOJ spent months negotiating a court-approved agreement (known as a consent decree), which would, among other things, prohibit police officers from making arrests without probable cause, require better pay and training for officers, and appoint a federal monitor. Then, in February 2016, rather than formally approve the agreement, the Ferguson City Council voted unanimously to change its *>continued on page 6*

Immigration: A Hot Button Issue

by Phyllis Raybin Emert

As a presidential candidate, Donald Trump had tough talk on the issue of immigration, including building a wall on the Mexican border and calling "for a total and complete shutdown of Muslims entering the United States." A week after taking office President Trump signed several executive orders aimed at controlling the flow of immigrants into the U.S.

The American melting pot

Unless you're a Native American, everyone in the U.S. is related to immigrants. Problems with immigration policy actually date back as far as 1798 when President John Adams signed the Alien and Sedition Acts, which, among other things, gave the President authority to deport any foreigner he deemed "dangerous to the country."

"Anxiety about refugees and immigrants and the related desire of Presidents to quell that unease are nearly as old as the Republic," Jon Meacham, a presidential historian, wrote in an opinion piece for *Time* magazine. "Americans have often limited immigration in moments of fear, only to have their fears dissipate amid cooling emotions and a reinvigorated opposition."

There were 43.3 million immigrants living in the U.S. as of 2015, according to the Migration Policy Institute (MPI). This represents about 13.5 percent of the total U.S. population (321.4 million). That amount includes the estimated 11 million illegal or undocumented immigrants. *>continued on page 5*

respect

This publication was made possible through funding from the IOLTA Fund of the Bar of New Jersey.

Jodi L. Miller
Editor

Navigating School Can be Difficult for Transgender Students

by Jodi L. Miller

School can be tough for anyone to navigate—the hours of homework, the pressure of preparing for college. Add being transgender to that and it becomes even tougher.

According to a study by the Williams Institute at UCLA School of Law, a think tank concerned with sexual orientation and gender identity law, as many as 150,000 U.S. students, ages 13 to 17, identify as transgender. This is in addition to the estimated 1.4 million adults who identify as transgender.

The study also revealed that of individuals who identify as transgender, 10 percent are considered youth (13 to 17), 13 percent are young adults (18 to 24) and 63 percent are ages 25 to 64, with the remaining 14 percent over the age of 65. In addition, the study found that the largest transgender youth population is found in California, Texas, New York and Florida. The smallest populations are in North Dakota, Vermont and Wyoming.

Research has shown a high rate of suicide attempts among the transgender community. A survey conducted by the National Center for Transgender Equality revealed that 82 percent of respondents considered suicide at some point in their lives. The correlation with thoughts of suicide and experiences of discrimination, harassment or violence are related, according to research. A 2010 study revealed that 82 percent of transgender students reported hearing negative comments from their peers, while 31 percent reported hearing negative comments from school personnel.

Guidelines rescinded

In February 2017, the Trump Administration left transgender youth with no protection when it rescinded guidelines set out jointly by the Obama administration, and the Departments of Education and Justice. The Obama guidelines, issued in May 2016, confirmed that discrimination against transgender students violated Title IX. Addressing those that did not favor transgender students using the bathroom of their choice, the 25-page instructional pamphlet distributed by the Obama administration noted, "The desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students" and also noted that principle is "consistently recognized in civil rights cases."

In rescinding the Obama guidelines, the Trump White House contended that the issue is not a federal one, but should be decided by individual states. In other words, it's a state's rights issue. History has shown that delegating issues of discrimination to the states does not work. During the civil rights era, opponents of desegregation and interracial marriage thought these issues were best left up to the states as well. It took federal legislation to right those wrongs.

"Civil rights are never state's rights issues," says Robyn B. Gigl, a Trenton attorney who serves on the board of Garden State Equality and is a past chair of the New Jersey State Bar Association's LGBT Rights Section. "We don't leave it up to the public to vote on them. It should be uniform across the country."

According to Gigl, 22 states have laws against discrimination for those who are lesbian, gay or bisexual, but only 20 of them include gender identity. She contends that a state should have the ability to grant more rights than a federal law.

"You can have enhancements, but any civil right, whether gender-related, racial, etc. is not a state's rights issue."

Going to the Supreme Court—not so fast

The U.S. Supreme Court was set to hear oral arguments in the Virginia case of *Gloucester County School Board v. G.G.* on March 28. A decision in this case could have decided once and for all whether sex discrimination protections include transgender people. The case involved Gavin Grimm, a transgender boy who wants to use the boys' bathroom in accordance with his gender identity.

Using a 2015 opinion letter from the Department of Education as the basis of its decision, the Fourth Circuit Court ruled in Grimm's favor. The U.S. Supreme Court agreed to hear the case in October 2016, *>continued on page 3*

Transgender Students *continued from page 2<*

however, when the Trump administration rescinded the Obama guidelines it also withdrew the opinion letter. As a result, the Court elected not to hear the case and vacated the lower court ruling in Grimm's case.

So, where does that leave the now 17-year-old Grimm? Gigl says he and his lawyers will have to start over.

In a *New York Times* op-ed piece published the day after the decision was vacated, Grimm wrote about his journey. "I sat while people called me a freak. I sat while my community got together to banish a child from public life for the crime of harming no one. I sat while my school board voted to banish me to retrofitted broom closets or the nurse's restroom," Grimm wrote. "But two years later…I stand stronger and prouder than ever. I stand not only with my family and friends, but with millions of supporters who stand with me….I know now what I did not know then; I will be fine….I think of how I've grown from that 15-year-old child, sitting in fear as he waits to hear what his future will be, into the young man who stands hand in hand with a huge community as we all prepare to take the next step in this fight."

To be clear, in New Jersey, transgender students are protected because of the state's Law Against Discrimination (LAD), which allows transgender students in any public school to use the bathroom that corresponds with their gender identity.

Taking it to the mat

Being a transgender student is tough enough, add being an athlete to that and it becomes even more difficult depending on where you live. What happens, for instance, when you're a transgender boy, forced to play on a girls' team?

That's what happened to Mack Beggs, a 17-year-old wrestler in Texas. In February 2017, Beggs, a transgender boy, won the Texas State Championship in the girls division. Beggs, who wanted to wrestle on the boys' team, wasn't allowed to because the guidelines for transgender students in Texas is determined by the gender assigned on the student's birth certificate.

Many parents felt it was unfair to him, but also to their daughters. Since Beggs is transitioning, he is taking testosterone and the parents felt it gave him an unfair advantage. One parent filed a lawsuit against the University Interscholastic League (UIL), asking that Beggs be allowed to wrestle boys or be removed from the tournament. The UIL refused citing that Begg's testosterone level was "below the allowed level." Still, in a statement the UIL said the rule regarding birth certificates may change in the future when its Legislative Council meets in June.

"What was weird about the case is the gender identity policy in Texas refused to recognize his gender. You can take testosterone but you can't wrestle boys?" Gigl asks.

The good news for Beggs is that he will get a chance to wrestle boys this spring in the USA Wrestling League. The transgender policy for USA Wrestling requires that female students who are transitioning to male must compete in the boys' division.

New Jersey athletes

Gigl says that New Jersey's policies protecting transgender athletes are good but imperfect. The New Jersey policy requires that a student provide proof of his/her gender identity with one of the following: an official record, such as a revised birth certificate, a driver's license or a passport, demonstrating legal recognition of the student's reassigned sex; a physician certification stating that the student has had appropriate clinical treatment for transition to the reassigned sex; or a physician certification stating that the student is in the process of transitioning to the reassigned sex.

"The policy is good because it allows a student athlete to participate on the team in accordance with their gender identity, however, in New Jersey you can't revise your birth certificate without surgery, which someone under 18 is not supposed to undergo pursuant to medical protocols," she says. "If you are under 16 ½ you can't get a driver's license and many people don't have, and can't afford to get, a passport. Finally, many trans minors can't afford medical treatment or have a doctor who can provide a certification."

In addition, Gigl says with the policy an athlete's determination of sex-assignment remains in effect for the duration of their eligibility. "What happens if they don't transition until after their freshman year," she asks. "So they play on the boy's soccer team as a freshman and then transition–are they barred?"

A case in Secaucus

In a sign that attitudes may be changing toward transgender students, the Boy Scouts of America recently changed its transgender policy. The 100-year-old organization, which also lifted bans on gay members, now accepts transgender boys as well. This was in response to the case in Secaucus where an eight-year-old transgender boy was kicked out of his Cub Scouts pack.

Michael Surbarugh, chief executive for BSA, said in a statement, "After weeks of significant conversations at all levels of our organization, we realized that referring to birth certificates as the reference point is no longer sufficient." ■

Throw Out Illegally-Obtained Evidence? Not Necessarily

by Robin Foster

The Fourth Amendment to the U.S. Constitution guarantees people freedom from unreasonable searches and seizures by the government. Probable cause and reasonable suspicion are two of the most important components when determining whether law enforcement can constitutionally engage in a search.

A law enforcement officer must have probable cause to make an arrest, as it is a seizure under the Fourth Amendment. The U.S. Supreme Court has ruled that probable cause exists if an officer has such facts or knowledge which would lead he or she to reasonably believe that an individual has committed, is committing, or is about to commit a crime. Where probable cause for an arrest exists, an officer may lawfully conduct a search of the suspect. However, even without probable cause, a law enforcement officer may conduct an investigatory stop, which is the brief detention of a person where the officer has reasonable suspicion of criminal activity.

In conducting an investigatory stop, the officer may determine the person's identity and obtain information confirming or dispelling the officer's suspicions. The U.S. Supreme Court has ruled that mere police questioning does not constitute a seizure for purposes of the Fourth Amendment. However, in order to conduct a search of that person, reasonable suspicion is insufficient and the officer must have probable cause for an arrest.

Incriminating evidence discovered during a search where probable cause does not exist must be rendered inadmissible in any subsequent legal proceedings. Referred to as the exclusionary rule, the standard is grounded in the U.S. Constitution's Fourth Amendment and dates back to 18th century English law.

In June 2016, however, the U.S. Supreme Court ruled that courts do not necessarily need to throw out evidence obtained by police during an illegal stop. The case, *Utah v. Strieff*, brought questions of how probable cause and reasonable suspicion impact social justice.

Utah v. Strieff

In 2006, Douglas Fackrell, a police officer in Salt Lake City, was monitoring a house that was allegedly being used for drug sales. During his watch, Officer Fackrell decided that he would randomly question the next person to come out of the house, which turned out to be Edward Strieff. Explaining the purpose of his investigation, the officer asked Strieff for his identification and he complied. Officer Fackrell radioed in an ID check and discovered an outstanding warrant on Strieff for a minor traffic violation. The officer arrested Strieff for the outstanding warrant, searched him, and found drugs in his possession.

In the initial court case, a Utah judge ruled the drug evidence found at the scene must be suppressed, since Officer Fackrell had no reasonable suspicion to stop Strieff in the first place. The judge ruled that the only way the search would be legal was if Strieff had consented to the search, or had admitted to a crime. With its ruling, the U.S. Supreme Court overturned the lower court's decision and reinstated Strieff's conviction.

"His conduct thereafter was lawful"

In the Court's 5-3 decision, the majority determined that although Officer Fackrell did not have reasonable suspicion to stop Strieff as he exited a suspected drug house, his subsequent discovery of drugs in Strieff's possession was legitimate, since the officer called in an ID check and discovered an outstanding warrant for a traffic violation. Therefore, the Court said, the officer's search of Strieff was legitimate, and the drugs found on his person are admissible in court.

Writing for the majority, Justice Clarence Thomas stated, "While Officer Fackrell's decision to initiate the stop was mistaken, his conduct thereafter was lawful," since the discovery of the outstanding warrant "attenuated the connection between the unlawful stop and the evidence seized from Strieff." Justice Thomas argued that while Officer Fackrell's initial impulse to stop Strieff was unlawful, it was not part of any systematic misconduct. In his decision to stop Strieff, the officer was simply momentarily negligent during an otherwise bona fide police investigation.

Potential impact on civil liberties

In an impassioned, 12-page dissenting opinion, Justice Sonia Sotomayor spoke to larger issues of social justice and freedom from harassment. Arguing that law enforcement officers now have an incentive to stop anyone for any reason, since evidence found on that individual may be used in a court of law, Justice Sotomayor wrote, "This case allows the police to stop you on the street, demand your identification, and check it for outstanding traffic warrants—even if you are doing nothing wrong." She argued the decision amounts to a loss of protections against the police force and against basic freedoms.

Justice Sotomayor pointed out that the consequences of the decision will be worse for minorities. "The white defendant in this case shows that anyone's dignity can be violated in this manner. But, it is no secret that people of color are disproportionate victims of this scrutiny," she wrote.

"By legitimizing the conduct that produces this double consciousness, this case tells everyone,

>continued on page 7

Immigration *continued from page 1<*

According to a CNN poll, 60 percent of Americans believe the top immigration priority should be to develop a plan to "allow those in the U.S. illegally, who have jobs, to become legal residents." Only 13 percent of respondents felt deportation should be the first priority.

Travel ban

Soon after his inauguration, President Trump signed an executive order, which, among other things, reduced the number of refugees coming into the country from 110,000 to 50,000 per year, stopped entry of all immigrants to America for 120 days and banned Syrian refugees indefinitely. The order also blocked immigration from seven Muslim countries—Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen—for 90 days until the government could strengthen its already strict vetting process. The President also stated he would give Christian immigrants priority in entering the country. The travel ban immediately affected American visa and green card holders, many of whom were stranded outside of the country or in airports.

Around the world, the actions of the Trump administration were denounced and protests erupted in the U.S. from coast to coast. Within days, several states challenged the order and a federal judge in Seattle issued a stay halting the ban on constitutional grounds. In February 2017, the 9th U.S. Circuit Court of Appeals in San Francisco upheld the stay.

The Trump administration declared that the ban was necessary to protect Americans from terrorist attacks, despite the fact, according to the CATO Institute, a conservative think tank, no Americans have been killed on U.S. soil by a citizen from any of the seven banned countries. However, CATO points out that Americans killed by nationals from three countries not on the list—Saudi Arabia, United Arab Emirates and Egypt—where 18 of the 19 September 11th terrorists were from, total more than 2,800.

The revised order

In March 2017, the administration wrote a revised executive order aimed at passing constitutional muster. The new order eliminated any hint of preference for Christian immigrants, took Iraq, an American ally, off the list of banned countries, allowed visa and green card holders to enter the U.S. and removed the indefinite ban on Syrian refugees.

A federal judge in Hawaii blocked the revised ban. Judge Derrick Watson of Hawaii stated the order was "issued with a purpose to disfavor a particular religion, in spite of its stated, religiously neutral purpose." Soon after, Maryland federal judge Theodore Chuang also blocked the order on the grounds of religious bias.

In a legal filing, Hawaii Attorney General Doug Chin cited the stigma of the Japanese-American internment camps during World War II. "This order brings back memories for a lot of people here," Chin wrote. "Any time you have an executive order or some government decision that's calling out people by their nation of origin or by religion, we've got to be a check against that."

Both decisions to block the travel ban cited President Trump's words while on the campaign trail. In a brief submitted to the Maryland court, the Department of Justice stated, "Candidates are not government actors, and statements of what they might attempt to achieve if elected, which are often simplified and imprecise, are not official acts. They generally are made without benefit of advice from an as-yet-unformed administration, and cannot bind elected officials who later conclude that a different course is warranted."

Judge Chuang wrote, "Simply because a decision maker made the statements during a campaign does not wipe them from judicial memory."

Judge Watson, in his decision, wrote, "A review of the historical background here makes plain why the government wishes to focus on the executive order's text, rather than its context. The record before this court is unique. It includes significant and unrebutted evidence of religious animus driving the promulgation of the executive order."

The Hawaiian lawsuit is on hold pending an appeal by the Trump administration, which the 9th Circuit Court of Appeals is scheduled to hear on May 15, 2017. The U.S. Court of Appeals for the Fourth Circuit heard the appeal in the Maryland case on May 8th. At press time, no decision had been rendered.

Professor Farrin Anello, with the Immigrants' Rights/International Human Rights Clinic at Seton Hall University School of Law, believes the ban will be struck down.

"The ban violates the First Amendment, which prohibits the establishment of religion and requires the separation of church and state, because it applies only to six Muslim-majority countries and therefore disfavors people of the Muslim faith."

Putting up walls

President Trump also promised his supporters that he would erect a wall along the Mexican border, specifically the 2,000-mile stretch from San Diego to Brownsville, Texas. Estimates of how much the wall would cost vary. President Trump insists the wall could be built for $10 billion. Department of Homeland Security estimates put the cost at more than $21 billion, while other estimates reach as high as $40 to $60 billion.

Professor Anello opposes the wall, claiming it would "not be an effective way to implement our immigration policy." Many people coming to the U.S. from countries such

>continued on page 8

Policing and Race *continued from page 1<*

terms, saying implementing it as originally negotiated would cost too much.

The DOJ responded by filing a lawsuit against the city, alleging "a pattern or practice of law enforcement conduct that violates the First, Fourth and 14th Amendments of the Constitution and federal civil rights laws," then-Attorney General Loretta Lynch said at a press conference announcing the lawsuit. "We intend to aggressively prosecute this case and I have no doubt that we will prevail."

A year later

Now, more than a year after Lynch's statement, under the present leadership of Attorney General Jeff Sessions, that stance may be about to change. Sessions has ordered a review of all 14 Obama administration consent decrees between police departments and the DOJ related to civil rights abuses, which stem from more than two dozen investigations into local departments. According to the new attorney general, investigations and penalties should be handled on the local or state level, not on a federal level.

"I think there is concern that good police officers and good departments can be sued by the Department of Justice when you just have individuals within a department that have done wrong," Sessions said during his Senate confirmation hearing. "These lawsuits undermine the respect for police officers and create an impression that the entire department is not doing their work consistent with fidelity to law and fairness, and we need to be careful before we do that."

He told *The Washington Post* in February that he had not reviewed the complete files, but had looked at summaries of two of the decisions and didn't think they were necessarily reliable. "Some of it was pretty anecdotal and not so scientifically based," he said.

Critics of Sessions' stance note the findings are understandably anecdotal since they are based on specific incidents, but that in all 14 consent decree cases investigations turned up data indicating there are systemic civil rights violations that need to be addressed in the police departments. In some cases the community involved in the incident itself has welcomed federal involvement.

Baton Rouge Police Chief Carl Dabadie Jr., for instance, told *The New York Times*, "We feel it is in the best interest of the Baton Rouge Police Department, the city of Baton Rouge and this community for this (federal investigation) to happen."

In July 2016, two white Baton Rouge police officers fatally shot a black man four times at close range while pinning him on the ground. In May 2017, after a 10-month investigation, the DOJ called the officers' conduct "reckless," but stated there was not enough evidence to meet the federal standard proving the officers violated the victim's civil rights. The DOJ turned the case over to the Louisiana Attorney General's office. At press time, that office stated it would be launching an investigation and looking into bringing state charges against the officers.

A 60-year history

The DOJ's Civil Rights Division was established in 1957, under the guidance of the Civil Rights Act, to enforce federal civil rights laws that protect individuals against discrimination.

"One of the more important functions of the division has been to monitor, and sometimes bring litigation against, municipal and state police departments and their members when they are perceived to be engaged in a 'pattern and practice' of discrimination or other violations of citizens' constitutional rights," says Bernard K. Freamon, a Seton Hall Law School professor, whose focus includes civil rights. "Over the years, there have been a number of important criminal prosecutions brought by the division against Ku Klux Klan members, other racist groups, and police and sheriff's departments that aligned themselves with such groups, especially in the south."

Local U.S. attorneys also have jurisdiction in these matters, but, according to Professor Freamon, "it has been much more efficient and effective to coordinate such actions out of the Civil Rights Division in Washington, as this leads to uniform standards across the nation and the development of a coherent body of expertise in civil rights matters….The actions of the division in this regard are extremely important, as state authorities are often too close to events or do not have the resources or political will to conduct pattern and practice investigations."

Terrence M. Cunningham, president of the International Association of Chiefs of Police, addressed his organization's membership at its 2016 convention, noting that an independent moderator is particularly important since racial tensions between police and the black community are on the rise. "Events over the past several years have caused many to question the actions of our officers and has tragically undermined the trust that the public must and should have in their police departments," he said.

In fact, a June 2016, survey by the Pew Research Center found that only 46 percent of whites surveyed thought race relations were generally good, down from 66 percent in June 2009. For blacks, that number had dropped to 34 percent from 59 percent.

An uncertain future

The long-term future of the 14 DOJ consent decrees remains uncertain at the present time, including one close to home, involving the Newark Police Department. The agreement, reached in March 2016, resolves findings that the city's police department engaged in a pattern of unconstitutional stops, searches, arrests, and use of

Policing and Race *continued from page 6<*

excessive force against blacks. Under the consent decree, the city agreed to implement reforms in a dozen areas, including improved training, revised search and seizure and use of force policies, and employing in-car and body cameras.

Presently, according to Newark Public Safety Director Anthony Ambrose, the department is moving ahead with implementing some of the agreed-upon reforms, and views the DOJ's involvement as invaluable to the process. In an interview with NPR, Ambrose said, "Where complaints of this magnitude are found, without a doubt an independent law enforcement watchdog is definitely needed, especially if there are systemic problems." He added, however, that he also believes the first phases of an investigation should be handled on a local or state level before involving federal authorities.

A handful of other departments have also publicly voiced their plans to continue moving forward at the present time.

According to Professor Freamon, scaling back on discrimination investigations within police departments is bad policy and sends a terrible message to minority citizens.

"Use of cell phone technology and increased vigilance by the Division of Civil Rights over pattern and practice police discrimination and misconduct situations have shown, beyond a shadow of a doubt, that police discrimination against minorities in this country is still a very real and ongoing problem," he says. "Although there are many well-meaning officials in state and local law enforcement agencies who can, and probably will, conduct such investigations, the results are bound to be uneven and dependent on local politics and the pull and tug of scarce resources." ■

Illegally-Obtained Evidence *continued from page 4<*

white and black, guilty and innocent, that an officer can verify your legal status at any time. It says that your body is subject to invasion while courts excuse the violation of your rights. It implies that you are not a citizen of a democracy but the subject of a carceral state, just waiting to be cataloged. We must not pretend that the countless people who are routinely targeted by police are 'isolated.' They are the canaries in the coal mine whose deaths, civil and literal, warn us that no one can breathe in this atmosphere. They are the ones who recognize that unlawful police stops corrode all our civil liberties and threaten all our lives."

Affecting the most vulnerable

Jenny-Brooke Condon, an associate professor at Seton Hall Law School's Center for Social Justice and Director of the Equal Justice Clinic, agrees. Professor Condon explains, "Justice Sotomayor is exactly right that the decision will disproportionately affect persons of color, irrespective of the fact that the case itself involved a white defendant. As Justice Elena Kagan noted in her separate dissent, the decision virtually invites police officers to engage in illegal stops under the Fourth Amendment. They will do so knowing that if they run a search for a warrant and get a hit—a likely result given the sheer number of outstanding warrants in many parts of the country—their misconduct will be excused. This is a terrible result for all Americans, but particularly for those most vulnerable to being stopped, harassed, and even killed, by the police."

Justice Sotomayor's dissent referenced the existence of a government database containing nearly eight million outstanding warrants, mostly for minor offenses. In addition, the dissents written by Justices Kagan and Sotomayor cited a Justice Department report that revealed there were 16,000 outstanding warrants in Ferguson, MO after the riots. The city contains only 21,000 residents.

Professor Condon contends the Supreme Court decision will encourage police officers to engage in illegal stops. "As Justice Sotomayor noted, anyone can be a victim of unconstitutional searches by the police. But vulnerable groups will bear the greatest burden of a decision that legitimizes unconstitutional stops."

Advocates for social justice are also concerned that this decision will decrease the prospects of an individual seeking redress after an illegal stop.

"For those let go after such illegal stops, the prospect of seeking redress for the violation of their constitutional rights is slim and unrealistic," Professor Condon explains. "Even if illegal stops yield information about outstanding warrants, the decision has broad public costs as well. It sanctions illegal stops and opens up the possibility of entire communities being targeted without suspicion at a time when we need to be building better relationships between the police and community and promoting accountability." ■

as Honduras, El Salvador and Guatemala are refugees fleeing persecution, she points out.

"We need to have a fair way to identify people who are in need of protection and make sure we are not sending them back to situations that put their lives at risk," Professor Anello says. She suggests creating laws that "allow people who have been living and working in the U.S., paying their taxes, and contributing to their communities for many years to regularize their status and work towards becoming citizens."

At press time, funding for the border wall was being put on hold until fall 2017 or perhaps until fiscal year 2018.

Giving sanctuary

In January 2017, President Trump also issued an executive order that stated "sanctuary cities" would no longer receive federal grants. "Sanctuary jurisdictions across the United States willfully violate federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic," the order read.

There is no agreed upon definition of what a sanctuary city is, however, the Brookings Institution defines the term as "a local jurisdiction that in some way limits their cooperation with federal immigration authorities, typically by refusing to honor requests from the Immigration and Customs Enforcement Service (ICE)." According to the Immigrant Legal Resource Center, there are about 40 sanctuary cities (and more than 360 sanctuary counties) in the U.S, including big cities like Chicago, New York, Los Angeles, Boston, Austin and San Francisco. The Center for Immigration Studies lists several sanctuary cities in New Jersey, including Asbury Park, Camden, East Orange, Jersey City, Linden, New Brunswick, Newark and Trenton.

Law enforcement in sanctuary cities and counties will not ask about immigration status when a person is arrested, and may refuse to keep undocumented immigrants in custody so they can be deported. The President's order read: "Many aliens who illegally enter the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety."

According to Politifact, a fact-checking website affiliated with the *Tampa Bay Times*, the opposite is true. "The notion that sanctuary policies are safer is supported by research," Politifact stated. "According to a Center for American Progress (CAP) report (published in March 2017), sanctuary counties have lower crime rates."

San Francisco and Santa Clara County sued the Trump administration over the executive order, claiming it is unconstitutional because it turned city and state employees into federal immigration officers. In April 2017, a U.S. district court judge in San Francisco temporarily blocked the order, claiming the president had overstepped his authority and could not tie federal funding to immigration enforcement because only Congress could place such restrictions on spending. At press time, the Trump administration vowed to appeal the judge's decision.

Immigration is a complicated hot button issue—one the country has struggled with for decades. While immigration legislation is pending at the state and federal levels, it remains to be seen how our elected officials will ultimately solve the problem. ■

Glossary

animus—hostility or ill feeling. attenuate—reduce the force, effect, or value of. carceral—of, relating to, or suggesting a jail or prison. exclusionary rule—a law that prohibits the use of illegally obtained evidence in a criminal trial. negligent—failure of a person or an entity, such as a company, to take reasonable care in a situation. overturned—in the law, to void a prior legal precedent. redress—satisfaction, in the form of compensation or punishment, for an injury or wrong doing. suppress—to exclude evidence from a criminal proceeding. stay— an order to stop a judicial proceeding or put a hold on it. upheld—supported; kept the same. vacate—to void a previous legal judgment