

2019 ANNUAL REPORT

Institute for Constitutional Advocacy and Protection

GEORGETOWN LAW



OUR TEAM

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EXECUTIVE DIRECTOR'S LETTER

I am honored to present the 2019 Annual Report of the Institute for Constitutional Advocacy and Protection at Georgetown University Law Center. When we launched the Institute in August 2017, we pledged to use the unique power of America's courts to protect a Constitution increasingly under siege. This report shows a second year of having done exactly that. From freedom of speech to voting rights, from federal court to state court, from direct representation to amicus work, from California to Georgia, we have worked tirelessly in the courts fighting for constitutional rights—and we have, overwhelmingly, prevailed. We are gratified by our victories over the past year. And we are energized for the work ahead to protect and defend cherished constitutional values.

Sincerely,

Joshua A. Geltzer

*Executive Director and Visiting Professor of Law
Institute for Constitutional Advocacy and
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OUR MISSION

The mission of the Institute for Constitutional Advocacy and Protection is to use the power of the courts to defend American constitutional rights and values.

The Institute, based at Georgetown University Law Center, draws on expert litigators, savvy litigation strategy, and the constitutional scholarship of Georgetown Law faculty to vindicate individuals' rights and protect America's constitutional way of life.

At the heart of the Institute is its litigation work. The courts remain a critical venue in which constitutional claims can be vindicated, and the Institute uses that venue by representing adversely impacted parties in litigation and supporting, through amicus curiae ("friend of the court") briefs, op-eds, and other means, the efforts of others to litigate in furtherance of constitutional rights and values. In an era when constitutional discourse, including in the context of litigation, tends to be politically polarized, the Institute offers vital understandings of the Constitution and its protections that draw on scholarship and a wide range of practical experience, including extensive service in the Federal Government.

Critical constitutional dialogue also occurs outside the courts and in the public square. The Institute uses public education to inform and elevate that dialogue so that more Americans can understand what the Constitution says, why it matters, and how today's political developments fit in. Through direct engagement with the public in sponsored events as well as through writing and speaking about the Constitution, the Institute heightens and grounds today's constitutional conversation.

The Institute also plays a key role within Georgetown University Law Center by involving law students in the Institute's work. Through a practicum seminar and additional research opportunities, law students offer key legal research, factual development, and drafting to the Institute's litigation efforts. Additionally, the Institute provides litigation support to other centers and institutes within Georgetown University Law Center.

"There are lines that we worry about being crossed, that we think we see being crossed. And the fact that we have worked on these issues and, at times, tried to articulate where the line is from the other side gives us a real perspective and hopefully a credibility." ICAP Executive Director Joshua Geltzer, NPR, 8/9/17



OUR WORK: LITIGATION

In its first two years, ICAP has concentrated its litigation efforts on seven core issues:

1. Addressing the threat of violence posed by unlawful private paramilitary activity at rallies and protests;
2. Encouraging trust between law enforcement and immigrant communities;
3. Defending freedom of speech and religion;
4. Opening America's courts;
5. Protecting voting rights;
6. Pursuing criminal justice reform; and
7. Sticking up for whistleblowers, transparency, and the Special Counsel.

During the past year alone, we:

- represented the U.S. House of Representatives in successfully challenging the addition of a citizenship question to the 2020 Census;
- protected a historic chapel located near the U.S.-Mexico border from being separated by President Trump's border wall from the community that the chapel serves;
- elicited an admission from the Justice Department that the government had misleadingly used terrorism statistics to support anti-immigrant policies;
- helped to garner landmark decisions from multiple federal courts barring government officials from silencing unwanted voices on social media;
- advised local officials from cities around the country about how they can use state anti-private militia laws to protect public safety while preserving First Amendment rights at protests and rallies where violence is expected;
- obtained a federal court ruling prohibiting the jailing of people arrested in the city of St. Louis before trial solely because they cannot afford to pay money bail; and
- secured citizenship for an immigrant eligible for it through U.S. military service but for whom approval of citizenship had been abruptly withdrawn by the government without explanation.

"McCord said after the hearing that the church could not, in good conscience, grant access to the surveyors without a court order. The real battle for La Lomita, she said, will come if and when the government moves to take the property." *Washington Post*, 2/6/19

OUR WORK: LITIGATION (CONT.)

ICAP currently serves as counsel or co-counsel in a wide range of lawsuits fighting to defend key constitutional rights and values. For example, we are:

- defending two cities in Indiana against challenges claiming that their welcoming city ordinances violate state law;
- challenging a predatory scheme for collecting fines and fees from the indigent in Oklahoma;
- helping a military veteran in Kansas seeking to keep his lawfully adopted daughter in the United States;
- fighting restrictions on public access to audio recordings of court proceedings imposed by Maryland courts;
- representing the U.S. House of Representatives in an effort to defend the constitutionality of the federal law criminalizing female genital mutilation; and
- challenging as a First Amendment violation an Arkansas city police department's censorship on its Facebook page.

ICAP also has submitted 39 amicus briefs to federal and state courts on issues ranging from freedom of the press to fundamental criminal procedural rights to limiting local entanglement with federal immigration enforcement to free expression on social media: six in the U.S. Supreme Court; eighteen in federal courts of appeals; twelve in federal district courts; and three in state courts.

"In stepped the Institute for Constitutional Advocacy and Protection at Georgetown University Law Center, which is working with Congress to mount a defense of the statute. The lawyers argued Congress has an interest in the enforcement and defense of the laws it has passed." NPR, 6/7/19





OUR WORK: PUBLIC ENGAGEMENT

ICAP has participated in a wide array of conferences, symposia, podcasts, and panels on a variety of topics, including:

- a symposium on [SCOTUSblog](#) before oral argument in *Department of Commerce v. New York*;
- a panel on judicial deference in national security cases at the [American Constitution Society's](#) annual convention;
- a discussion about [Supreme Court cases](#) at the [American Bar Association's National Security Conference](#);
- *Lawfare* podcast episodes on the [Mueller Report](#), [counterterrorism](#), and [domestic terrorism](#);
- We the People podcast episodes, hosted by the American Constitution Center, on [special counsel legislation](#), the [Mueller Report](#), and [Julian Assange](#);
- a panel on Oklahoma's exploitation of the indigent through fines and fees hosted by the [Lawyers' Committee for Civil Rights Under Law](#);
- a conversation with former Congressman John Delaney on "Defending the Constitution in Uncertain Times," as part of Georgetown's annual [John Carroll Weekend](#);
- a presentation before the [NorCal Hoyas alumni association](#) on preventing paramilitary violence; and
- [Leadership Summits](#) for Communities Overcoming Extremism: The After Charlottesville Project.

OUR WORK: PUBLIC EDUCATION

On March 8, ICAP co-hosted with Checks & Balances an event analyzing the current state of the [rule of law in America](#). ICAP's Joshua Geltzer and Mary McCord were joined by Checks & Balances members Stuart Gerson and Alan Charles Raul in a discussion moderated by *Washington Post* reporter Carol Leonnig, with George T. Conway III and Anthony Clark Arend providing welcoming and keynote remarks.

And, throughout the past year, ICAP has added its voice to public debates on the Constitution, with op-eds appearing in the *New York Times*, the *Washington Post*, *Politico*, and elsewhere, including:

- an [op-ed](#) in the *New York Times* pointing to new evidence indicating that the rationale for adding a citizenship question to the 2020 Census was pretextual;
- an [op-ed](#) in the *Washington Post* criticizing the Attorney General's handling of the Mueller Report's release;
- an [op-ed](#) in *Politico* explaining why President Trump's use of Twitter to block his critics violates constitutional free speech protections;
- an [op-ed](#) in *Slate* warning about the national security harms associated with giving the Attorney General declassification authority over the intelligence community;
- an [op-ed](#) in the *Washington Post* outlining how local jurisdictions can protect public safety at protests and rallies while preserving constitutional rights; and
- an [op-ed](#) on CNN.com calling on border state governors to use state laws to stop private militias from deploying to the border.

ICAP also has sent a number of letters to government officials raising legal and factual concerns on behalf of expert communities. For example, ICAP sent a [letter](#) to the Departments of Justice and Homeland Security requesting reconsideration of their misleading report implying a link between terrorism and immigration, eliciting an admission that the report had misled readers.

"Now, rather than respectful deference to the women and men who had to make those decisions in the moment, Barr has demanded—and been handed—the power to rummage through classified materials, second-guessing the judgment calls of those who have spent decades combating foreign intelligence threats. It's clear he intends to use that power for the benefit of his political patron, Donald Trump." Mary McCord and Joshua Geltzer, *Slate*, 5/28/19



OUR WORK: TEACHING

ICAP now offers at Georgetown University Law Center a practicum seminar in both the fall and spring semesters. Through the ICAP practicum, students explore the dynamics of impact litigation and receive credit for contributing to ICAP's litigation.

COURSES

CONSTITUTIONAL IMPACT LITIGATION PRACTICUM, LAW 1601

This project-based practicum course will give students the unique opportunity to be part of the constitutional litigation work of Georgetown Law's Institute for Constitutional Advocacy and Protection (ICAP). Led by attorneys with deep experience in trial and appellate advocacy, national security law, and federal prosecution, ICAP pursues strategic litigation in federal and state courts at all levels to ensure clear recognition of constitutional rights in areas such as immigration, religious discrimination, free expression and privacy protection, national security, public safety, criminal justice reform, and whistleblower protection, among others. ICAP often works in close partnership with non-profit organizations, pro bono teams of law firms, and law school clinics. Students will participate in a two-hour weekly seminar and carry out an average of 15 hours per week of work with ICAP and its partners on strategic litigation.

SEMINAR: Drawing on experience from ICAP's cases as well as prominent historical and current examples of impact litigation, the seminar will focus on the history of public and social justice litigation and its uses, criticisms, and obstacles. Seminar participants will discuss with the practicum's Professors and other lawyers on the ICAP team strategies for bringing impact litigation, including identifying and selecting plaintiffs, test cases, venues, and legal theories, as well as engaging the public. Students will receive specific instruction on how to prepare research memoranda useful to litigators exploring which cases to take and which arguments to make; on what makes for successful, persuasive briefing of constitutional arguments; and on how to explain to the public, in forms such as short op-eds, the crux of key legal challenges and the stakes associated with them.

PROJECTWORK: Students' roles may include providing litigators with memoranda conveying research on relevant legal issues; drafting portions of briefing materials for use in litigation; mooted oral advocates preparing to argue these matters in court; drafting press releases and/or op-eds relevant to ICAP's litigation; and assisting with spin-off projects that may arise from the litigation. Students also may be involved in fact gathering related to ICAP's litigation, including reviewing and analyzing publicly available data.



OUR WORK: TEACHING (CONT.)

Additionally, ICAP makes use of its extensive executive branch experience to offer at Georgetown University Law Center an exhaustive introductory course on National Security Law.

NATIONAL SECURITY LAW, LAW 972

This introductory, survey course will explore national security law as developed from the U.S. Constitution, relevant federal statutes, case law, and historical experience, as well as from principles and influences of international law and foreign relations. It will cover key components of, and debates over, the Federal Government's exercise of national security authorities, including: decisions to use force and how to employ it; detention and interrogation of combatants; collection, protection, and sharing of intelligence; military and civilian prosecutions for national security-related criminal charges, including terrorism, espionage, export control, and state-sponsored cybercrimes; civil litigation involving national security interests and concerns; protection of homeland security; and economic aspects of national security policy. Themes of the course will include: (1) the separation of powers among the three branches of the Federal Government, and appropriate roles for these branches in the conduct of national security activities; (2) the interplay between international law and domestic law; (3) textual, historical, and functional modes of legal argument as applied to national security issues; and (4) the evolution of modern warfare and its implications for relevant legal regimes.

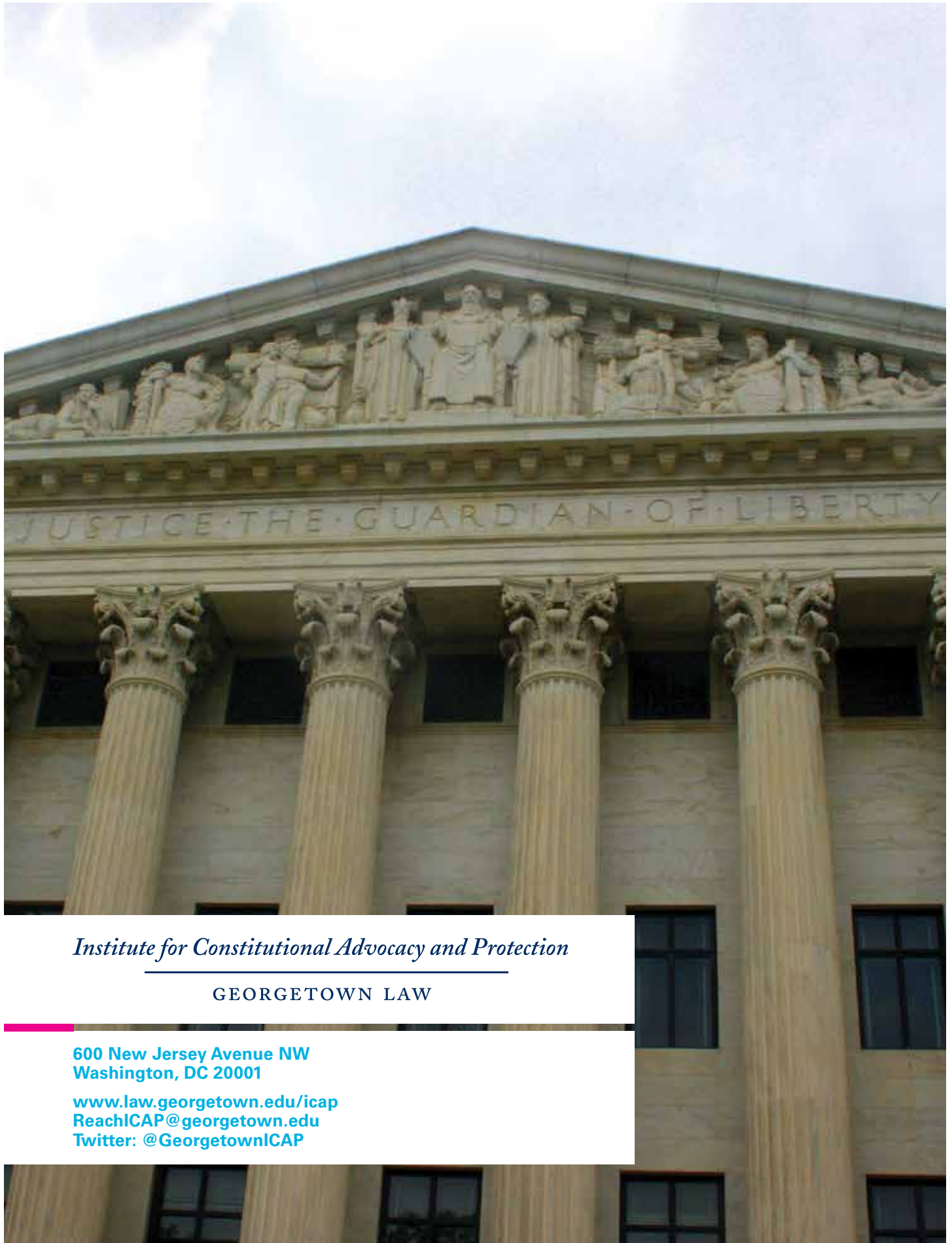
“There’s a good reason a lot of information is becoming digitized. It’s efficient and useful,” says Josh Geltzer. “But it also creates vulnerabilities, and we’re reminded of that virtually every week in the form of a hack or data being used in ways it’s not supposed to be.” Last year, Geltzer and a group of cybersecurity experts sent a letter to the Census Bureau expressing their concerns and asking for answers about how the whole operation will work.”
WIRED, 2/6/19



OUR COVERAGE

- June 13, 2019 – The *St. Louis American* covers ICAP's suit challenging cash bail in St. Louis, Missouri.
- June 7, 2019 – *NPR* covers ICAP's representation of the U.S. House of Representatives in defending the constitutionality of a federal law criminalizing female genital mutilation.
- June 6, 2019 – The *Columbia Journalism Review* covers ICAP's challenge to Maryland's ban on broadcasting criminal court proceedings.
- April 21, 2019 – *The Hill* quotes Joshua Geltzer ahead of Supreme Court oral arguments on adding a citizenship question to the 2020 census.
- March 25, 2019 – *Newsweek* quotes ICAP's Joshua Geltzer in coverage of oral argument before the Second Circuit in a case against President Trump's blocking of critics on Twitter.
- February 2019 – *Vice News*, *NPR*, and the *Washington Post* cover ICAP's representation of a Texas Catholic Church challenging construction of the border wall on its land.
- January 23, 2019 – *Law360* covers ICAP's representation of a military veteran seeking to keep his lawfully adopted daughter in the United States.
- November 13, 2018 – *The Atlantic* covers ICAP's brief challenging the White House's retaliation against a member of the press.

"The broadcasting prohibition affects not just journalists, but activists and community organizers who focus on criminal justice as well." *Columbia Journalism Review*, 6/6/19



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