



# Advisory

Volume 37, No. 2

Spring 2019

## SUPREME COURT UPHOLDS DETENTION OF CRIMINAL ALIENS

### *Ninth Circuit Ruling Overturned in Nielsen v. Preap*

In a 5-4 decision announced on March 19, the U. S. Supreme Court overturned a 2016 Ninth Circuit ruling that restricted the Department of Homeland Security’s ability to detain criminal aliens for deportation after they have been released from local police custody or state prison.

At issue in **Nielsen v. Preap** was the time it takes federal law enforcement to locate the aliens after their release. The Ninth Circuit had held that if, following their release, the criminal aliens are not promptly arrested by federal agents, the government loses its authority to arrest and detain them later under the provision of the law in question.

The Criminal Justice Legal Foundation had joined the case to encourage a decision overturning the Ninth Circuit’s ruling, noting that the federal law authorizing the arrest of alien criminals for deportation did not include a time limit.

Writing for the majority, Associate Justice Samuel Alito stated, “it is hard to believe that Congress made the Secretary’s mandatory detention authority vanish at the stroke of midnight after an alien’s release.”

The aliens in this case filed a lawsuit challenging their arrests and detention. Momy Preap came to the U. S. as a refugee from Cambodia and had been convicted for drug possession. Eduardo Vega Padilla had convictions for drug possession and for being a felon in possession of a firearm. Juan Lozano Magdaleno had a conviction for illegal possession of a firearm and possession of drugs. All three were eventually released from federal detention.

In “sanctuary cities,” local police are forbidden from notifying federal immigration authorities that a criminal alien

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## HIGH COURT TO HEAR DC SNIPER SENTENCING CHALLENGE

The U. S. Supreme Court will review a 2018 Fourth Circuit Court of Appeals ruling that overturned the four life sentences given to Lee Boyd Malvo, one of the notorious DC snipers.

The lower court held that U. S. Supreme Court decisions announced in the years following Malvo’s conviction and sentencing prohibit a sentence of life in prison without the possibility of parole (LWOP) for defendants under the age of 18, with narrow exceptions. The court determined that because the exceptions had not been proven in Malvo’s case his sentence was invalid.

CJLF has joined **Mathena v. Malvo** in support of the state of Virginia to encourage a decision overturning the lower court and reinstating Malvo’s sentence.

In the Fall of 2002, the then 17-year-old Malvo and his adult accomplice,



*John Allen Muhammad was executed in 2009; Lee Boyd Malvo was sentenced to two separate double terms of life without parole.*

John Allen Muhammad, terrorized the Washington metropolitan area, indiscriminately murdering 12 people and critically injuring 6 others. The killing began on September 5, 2002, when Malvo ran up to a man’s car in Clinton,

Maryland, shot him six times, then stole his laptop and \$3,500 cash. Ten days later Malvo shot a man closing a liquor store in Clinton. On September 21, Muhammad used a long-range rifle to shoot two women closing a liquor store in Montgomery, Alabama. Malvo was seen going through the victims’ purses after they were shot. Two days later, Muhammad used the same rifle to shoot and kill a woman in Baton Rouge, Louisiana, just before Malvo was seen fleeing with her purse. Beginning on October 2, Muhammad and Malvo began a 20-day shooting spree in the DC area, indiscriminately selecting 13 victims in parking lots, gas stations, or walking down the street, killing 10. On October 3, the pair killed 5 people in one day. On October 7, they shot and critically injured a 13-year-old

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**VIEWPOINT**

**CAN BILL BARR SAVE THE RULE OF LAW?**

On February 14, 2019, William Barr was confirmed by the United States Senate to become the 85th Attorney General, by a 54-45 vote. Three red state Democrats broke with their party and voted for confirmation, and Kentucky Republican Rand Paul voted against. North Carolina Republican Richard Burr chose not to vote.

Barr, only the second person to serve two terms as Attorney General in U. S. history, brings more experience to that office than almost any of his predecessors. In the days following his confirmation, he was derided in the press and by Democrat leaders as the President’s “hand picked” Attorney General. The Economist went further, labeling Barr as the “President’s executive assistant.” Three months into his current term, leaders in the House are seeking to hold him in contempt of Congress for refusing to violate longstanding federal law and turn over the full and unredacted Mueller report on Russian collusion. The dominant narrative is that the Attorney General’s primary objective is to protect an obviously guilty President from evidence of criminal wrongdoing which could result in impeachment.

It should be noted that on April 4, 2013, after being held in contempt of Congress, President Obama’s Attorney General Eric Holder answered a reporter’s question about his possible resignation saying, “I’m still the President’s wing-man, so I’m there with my boy. So we’ll see.” Of course there was no media backlash regarding this open admission that Holder was there to serve the President’s interests.

The rule of law and the federal agencies charged with enforcing it have been damaged over the eight years of the Obama Presidency and the two-year Special Counsel investigation on alleged Russian collusion. Over those years, Attorney General Holder implemented a poorly conceived scheme (Fast and Furious) that provided guns to Mexican drug cartels that were used to kill a U. S. border agent and several others, then kept the evidence from Congress. After over 400 days of refusing to turn over records on Fast and Furious, the House held Holder in contempt. During the Obama Administration, there is clear evidence that the IRS was utilized to target conservative organizations and individuals with audits and denial of tax-exempt status. It should be noted that other administrations, both Republican and Democrat have used the IRS in this way, but the fact remains that those IRS officials who initiated or allowed this should have been identified and punished severely.

It is clear that top officials at the FBI and the Justice Department worked together to illegally surveil people involved with the Trump campaign, while leaking damaging yet unconfirmed information about the candidate, and later the President, to the press. Months earlier, the leaders of these same agencies violated their own procedures to protect presidential candidate Hillary Clinton from accountability for clear violations of federal law regarding the dissemination of classified information, destruction of evidence under subpoena, and lying to investigators. There is little doubt that the White House, the Department of Defense, and the Secretary of State orchestrated a cover up of the 2012 terrorist attack on the U. S. Embassy in Benghazi, which resulted in the deaths of the U. S. Ambassador and three other American personnel. It is public record that President Obama’s Ambassador to the U. N. used her national security clearance to

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William Barr  
 U. S. Attorney General

# B O X S C O R E

An accounting of the state and federal court decisions handed down over the past year on cases in which CJLF was a participant. Rulings favoring CJLF positions are listed as WINS, unfavorable rulings are LOSSES, and rulings which have left the issue unsettled are DRAWS.

**Nielsen v. Preap:** 3/19/19. A 5-4 U. S. Supreme Court decision overturning a 2016 Ninth Circuit ruling that restricted the Department of Homeland Security’s ability to detain criminal aliens for deportation after they have been released from local police custody or state prison. The lower court held that following their release, if the criminal aliens are not promptly arrested by federal agents, the government loses its authority to arrest and detain them later. CJLF argued that Congress did not place a time limit on the arrest of criminal aliens and the Supreme Court agreed, noting that the government’s detention authority does not “vanish at the stroke of midnight after an alien’s release.”

WIN

**Hernandez v. Chappell:** 1/14/19. Ninth Circuit Court of Appeals decision reinstating the conviction and life without parole sentence of double-murderer rapist Francis Hernandez. The decision overturned a 2017 ruling by a divided panel of the same court that found the conviction unconstitutional. In 1981, Francis Hernandez kidnapped, brutally raped, and murdered two young women in Long Beach. In 2017, a divided panel of the Ninth Circuit announced that the Supreme Court’s 1984 **Strickland v. Washington** decision required that the conviction was invalid because minor errors during the trial *might have* convinced one juror not to convict Hernandez. Last year, CJLF filed argument to encourage reconsideration of that ruling, arguing that the court had misinterpreted **Strickland** in order to invent the new one-juror rule. The rehearing was granted in July, and a new panel unanimously overturned the earlier ruling.

WIN

**City and County of San Francisco v. Trump:** 8/1/18. Divided Ninth Circuit Court of Appeals ruling to uphold a district court injunction blocking the Trump Administration’s Executive Order to deny *federal law enforcement grants* to “sanctuary cities.” The CJLF brief cited precedent supporting the President’s authority to direct his cabinet to enforce laws enacted by Congress, which condition receiving federal law enforcement grants to jurisdictions that cooperate with federal law enforcement. The panel’s ruling expanded the scope of the Executive Order to include *all federal grants*, then announced it as unlawful.

LOSS

**United States v. California:** 7/5/18. Federal District Court decision to block enforcement of one of three California “sanctuary state” laws. Two of the laws forbid state law enforcement and government officials from cooperating with federal immigration authorities in identifying illegal aliens. The third law (AB 450) allows the state to fine private businesses up to \$10,000 for allowing federal immigration authorities to assist in determining if some of its employees are in the country illegally. The Foundation had joined the case to argue that every U. S. citizen, including business owners, have a duty and a right to obey federal immigration law and cooperate with federal law enforcement if they suspect a crime has been committed. This makes AB 450 unconstitutional. While the judge upheld the other two “sanctuary state” laws, he ruled to enjoin enforcement of AB 450.

WIN

**People v. Farwell:** 6/21/18. California Supreme Court decision rejecting a habitual criminal’s claim that his decision to admit to (stipulate) a lesser included offense at trial, even without a warning by the judge, does not automatically void his conviction. The defendant was driving recklessly on a suspended license when he caused an accident that killed a female passenger. He and his attorney agreed to admit to the suspended license charge and fight the manslaughter charge, which they lost. On appeal, the criminal claimed that his conviction was void because the judge did not warn him that by admitting to the license charge he was giving up his right to oppose it at trial. CJLF joined the case to argue that the full circumstances of the case, not just the judge’s instruction, should be considered to determine if the conviction was improper. The court unanimously agreed, citing the CJLF brief in its decision.

WIN

**City of Hays v. Vogt:** 5/29/18. U. S. Supreme Court dismissal of a case reviewing a federal appeals court ruling which prevents valid evidence from introduction in criminal trials. The case involved a police officer’s voluntary admission to the police chief that he took a knife from a crime scene. After an investigation, the officer was charged with two felony counts. His admission and corroborating evidence were introduced at a pretrial hearing to support the charges. The judge dismissed the charges for lack of probable cause. In a lawsuit, the officer claimed that when he admitted taking the knife, he became a witness against himself and that the statement and the related evidence should have been excluded. After a district court rejected the claim, finding that the protection against self-incrimination only applies to a trial, the Tenth Circuit reversed because the evidence was used in a criminal case. CJLF had joined the case to overturn the Tenth Circuit’s ruling for expanding the exclusion of evidence. The high court announced that review had been improvidently granted, meaning that the lower court decision stands, but no Supreme Court precedent is set.

DRAW

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**Johnson v. City of Ferguson:** Federal Eighth Circuit Court of Appeals case to review lower court decisions that would allow Dorian Johnson, the 22-year-old companion of Michael Brown, to sue the city and Officer Darren Wilson for violating his rights. In August 2014, Officer Wilson shot and killed 6'4", 290 lbs. Michael Brown. Brown had just robbed a convenience store when Officer Wilson saw the pair walking down the middle of a street in Ferguson, Missouri. Johnson claims that when Officer Wilson ordered them to the sidewalk, he had unlawfully seized him in violation of the Fourth Amendment. Although both federal and grand jury investigations of the incident found that Johnson had lied about the events leading up to the shooting and the shooting itself, motions to dismiss the lawsuit have been rejected by the Federal District Court and a divided Eighth Circuit panel. When the circuit agreed to reconsider the panel's ruling en banc, CJLF joined the case on behalf of the National Police Association, arguing that by Johnson's own admission he was not ordered to stop or prevented from leaving, which he did when he eventually ran. Citing its 1991 U. S. Supreme Court victory in **California v. Hodari D.**, CJLF argues that the facts Johnson describes of his encounter with Officer Wilson do not constitute a seizure, and because of this, the lawsuit should be dismissed.

**In re Alexander:** Federal Ninth Circuit review of a CJLF petition on behalf of families of 5 murder victims asking the court to vacate 24 invalid stays of execution, prohibit the district court from granting any additional stays, and lift restrictions on California's preparations for executions. For 13 years, a federal District Court in San Francisco has blocked the executions of every death-sentenced murderer in California who has exhausted his appeals and become eligible for execution. The original 2006 order stayed the execution of Michael Morales—sentenced to death for the 1981 kidnap, rape, and brutal murder of a high school cheerleader on the claim that the state's three-drug protocol amounted to cruel and unusual punishment in violation of the Eighth Amendment. Since 2006, two precedent-setting U. S. Supreme Court decisions provided the state with opportunities to challenge the stays, but the state has failed to take action. CJLF filed its petition in the Ninth Circuit in January 2019 after the District Court rejected a similar petition filed by District Attorneys and refused to consider the Foundation's *amicus curiae* (friend of the court) brief.

**In re Humphrey:** California Supreme Court review of an appeals court ruling announcing that the decision to set bail for a habitual felon must be based on his ability to pay it, not public safety. The case involves a repeat felon charged with robbery after he followed an elderly man into his San Francisco apartment and robbed him. At the bail hearing, Humphrey asked to be released without bail because of his ties to the community. The judge refused, setting bail at \$350,000. On appeal, Humphrey won a ruling ordering the trial judge to base the decision regarding bail on his ability to pay. When the Supreme Court agreed to review that ruling, CJLF joined the case. After Governor Brown signed SB 10, a bill eliminating cash bail in California, the court asked if that new law impacts Humphrey's case. CJLF argues that SB 10 won't go into effect until October 2019 and does not apply. CJLF also argues that SB 10 is invalid because it amends the Public Safety Bail provisions of at least two previously adopted ballot measures. In this case, neither Proposition 4 (1982) or Proposition 9 (2008) allowed amendments by the Legislature. Public safety remains the first priority of any bail decision, not ability to pay.

**People v. Arredondo:** California Supreme Court case involving a challenge to the conviction of a Los Angeles sex offender found guilty of molesting his girlfriend's three young daughters for eight years. When Jason Arredondo began the assaults, the girls were eight, six, and five. He told the girls that he would hurt them if they told anyone. He was arrested in 2013 after he molested one of the girls' friends during a sleep over who then reported it to a school counselor. At trial, the three sisters were afraid to testify with Arredondo staring at them so the judge had a computer monitor, which was already attached to the witness stand, elevated a few inches so that the girls could not see his face. He was convicted of all charges and sentenced to life in prison. After the state court of appeal upheld his conviction, the state Supreme Court agreed to hear his claim that the trial judge had violated his right to confront his accusers because of the raised computer monitor. CJLF joined this case to argue that this was not a violation of the criminal's rights. He could still see and hear the victims testify and subject them to cross-examination. Our goal is not only to uphold this sex offender's conviction, but also encourage a decision acknowledging that trial courts have the flexibility to make minor accommodations to allow traumatized victims to testify.

**Ellis v. Harrison:** Ninth Circuit Court of Appeals case involving a murderer's claim that racial prejudice rendered his attorney incompetent. The court invited CJLF to file argument in the case because California's Attorney General Xavier Becerra chose not to defend the conviction. In 1989, habitual felon Ezzard Ellis shot two young men waiting in a crowded McDonald's drive-thru in order to steal their car. One of the victims died. Years after his conviction, Ellis claims that the racial prejudice of his defense attorney, *which he did not know about during his trial or sentencing*, tainted his case requiring that his conviction be overturned. We argue that in order for a defendant to sustain such a claim he must show that some defect in the performance of his trial attorney injured his defense. The murderer in this case presented no evidence that his attorney did a poor job representing him. Defense attorneys often represent defendants that they do not like or believe to be guilty. A decision favoring the defendant would create a new right for defendants to attack the competence of their lawyers, unrelated to how they performed in court.

**Deck v. Jennings:** Eighth Circuit Court of Appeals case to review a District Judge's ruling overturning the death sentence of a double murderer. Undisputed evidence proved that Carman Deck robbed and executed an elderly couple in their Missouri home in 1996. On appeal, Deck's attorneys raised claims twice successfully challenging his sentencing hearings until, in 2008, a third jury resentenced him to death for the third time. Deck then petitioned the Federal District Court on habeas corpus, winning a ruling announcing that the length of time spent on his three resentencing trials violated his rights and that his attorney for the third sentencing trial was incompetent because he failed to raise that claim. When the Eighth Circuit agreed to review that ruling, CJLF submitted argument on behalf of the family of the victims, noting that the District Court invented a new constitutional right for Deck with no legal precedent to support it. The Supreme Court's 1989 decision in **Teague v. Lane** (won by CJLF), prohibits the lower federal courts from announcing new rules of law on habeas corpus. We also argue that a lawyer who does not present a claim never raised before and unsupported by precedent is not incompetent.

**Sims v. CDCR:** 3/28/18. Marin County Superior Court ruling lifting a six-year-old injunction that was blocking executions in California. The injunction had been issued after condemned murderer Mitchell Sims claimed that the California Department of Corrections and Rehabilitation (CDCR) had failed to comply with the state's cumbersome Administrative Procedure Act (APA) in developing a new lethal injection protocol. In 2016, when California voters adopted Proposition 66, the APA requirement was removed from the law, mooted the injunction. In January, CJLF moved to vacate the injunction on behalf of Kermit Alexander, whose family was murdered by a criminal currently on death row. CDCR later joined in support of the motion.

WIN

TOTAL

5 Wins

1 Loss

1 Draw

## “CAN BILL BARR SAVE THE RULE OF LAW?”

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unveil the identities of over 260 private individuals whose names surfaced in foreign intelligence documents, most in the final days of the Obama presidency, including the names of Trump associates just before his inauguration.

With regard to crime and punishment, the Justice Departments under President Bill Clinton and President George W. Bush did little to advance the cause of law enforcement. In most cases, President Clinton's ultra-liberal judicial appointments actually benefitted criminals. He did sign the Antiterrorism and Effective Death Penalty Act, but his judges blocked its enforcement. While his judicial appointments were more favorable toward law enforcement, President Bush's DOJ was mostly indifferent on crime, focusing primarily on terrorism. In contrast, the Obama Justice Department was far more engaged, aggressively working to reduce sentences for drug dealers and discouraging data-based policing and public order enforcement that disproportionately focused on high minority districts where most crimes are committed. Many big city police departments were put under federal consent decrees based primarily on the allegation that their policing methods reflected systemic racial bias. After nationally publicized statements by the President and the Attorney General reinforcing the “police are racist” narrative, the most destructive rioting since 1992 played out in Ferguson, Missouri, and Baltimore, Maryland, following false claims that police in those cities murdered two black offenders because of their race.

While it is early in Attorney General Barr's tenure, it is clear that under his leadership the focus will be on less politics and more law enforcement. During his confirmation, Barr made it clear that he was concerned about the possible Justice Department's misconduct in pursuit of political objectives beginning in 2016. In mid-May, he announced the appointment of career prosecutor and U. S. Attorney for Connecticut John Durham to investigate possible illegal government surveillance during the presidential campaign. Durham, who has served as a federal prosecutor under seven presidents, was picked to lead separate investigations on government corruption by Clinton AG Janet Reno and Obama AG Eric Holder. Characterized by his colleagues as a “bull-

dog,” it is doubtful that there is a less politically motivated member of the Justice Department to carry out this assignment.

Attorney General Barr's past record on criminal justice matters is different than most of his recent predecessors.

During his first term under President George H. W. Bush, he implemented the largest single manpower shift in FBI history, assigning 300 agents to crack down on gang violence. He later authored a report on the importance of increased prison time for repeat felons in order to reduce crime. Over the next few years, several states enacted three-strikes sentencing laws as America embarked on the longest sustained drop in reported in U. S. crime history.

In May, apparently acting on the new Attorney General's request, the Justice Department's Office of Legal Counsel announced that the Food and Drug Administration (FDA) does not have the authority to regulate drugs used for lethal injection. This finding runs counter to a 2012 federal district judge's injunction forcing that task on the FDA. The DOJ opinion provides support for a pending lawsuit by the state of Texas arguing the FDA regulations are preventing the state from enforcing the law. If the injunction is lifted, it would become far easier for states to import the most effective lethal injection drugs.

These are indications that the weaponizing of executive branch agencies for political purposes has come to an end and that those found to have recently engaged in that activity will be held to account. It also seems clear that under Attorney General Barr's leadership, the Justice Department will not be practicing politically correct law enforcement.

There is a new sheriff in town.

*Michael Rushford  
President & CEO*



# SCANNING THE NEWS

- **Orange County Sheriff's Work-Around to Sanctuary State Law**

One of California's "sanctuary state" laws (SB 54) prohibits law enforcement agencies from notifying federal Immigration and Customs Enforcement (ICE) when illegal alien criminals are released from prison or local jails. Like many other elected sheriffs across the state, newly-elected Orange County Sheriff Don Barnes understands that this law is putting the law-abiding public at risk. Last year over 1,823 inmates wanted by ICE were released from Orange County jails, but it was illegal for the Sheriff to notify ICE directly. To address this, beginning last March, the Orange County Sheriff's Department began to publicly announce all inmate release dates, thus allowing ICE to be aware of the dates when illegal alien criminals would be released from custody. As Sheriff Barnes put it, "We have an obligation to protect all members of the communities we serve, and that includes preventing those who have committed crimes from returning to the neighborhoods they prey upon."

- **Should Algorithms Decide Who's Low Risk?**

Prisons and courts across the country have been using artificial intelligence to evaluate criminal offenders for nearly two decades. In California 49 of 58 counties and the state's corrections department use algorithmic risk assessment tools to make decisions on bail, sentencing, probation, and eligibility for early release. Rachael Myrow of KQED reported on a recent study by the Partnership on AI, a group of Silicon Valley heavyweights and civil liberties groups, which found that algorithmic tools are "extremely approximate, extremely inaccurate," according to the group's research director. While these tools are promoted as providing a means for assessing offenders without human bias, the data used by the algorithms is entered by humans, and may be incomplete or inaccurate, and the code itself may hold the biases of the programmer. Some tools, such as COMPAS (Correctional Offender Management Profiling for Alternative Sanctions), used by the California Department of Corrections and Rehabilitation (CDCR) to assess prison inmates for early release, are proprietary, meaning the owners do not share the source code to allow an assessment of a tool's accuracy. In 2005, a commonly used static risk assessment tool was utilized by CDCR to determine that child-rapist John Gardner was eligible for parole as a low-risk offender. In 2010, Gardner pled guilty to the attempted rape of 23-year-old Candice Moncayo, the rape and murder of 14-year-old Amber Dubois, and the rape and murder of 17-year-old Chelsea King, all in San Diego. While the Partnership on AI is concerned that these algorithms may have possible racial bias, the far more important concern is their obvious failure to accurately predict which criminals can be safely released back into society.

- **Politically Correct Policing**

After a January 24 article in the Los Angeles Times, reporting that while blacks make up roughly 9% of the city's population nearly half of the police vehicle stops involved black drivers, and a later directive by Mayor Garcetti ordering police to reduce the number of vehicle stops, LAPD officials warn that crime and violence will increase. Cindy Chang of the LA Times reports that while the earlier article on vehicle stops showed that a disproportionate number of black drivers were stopped, there was "no proof of racial profiling." "But with a progressive mayor and the city's most progressive police chief ever, the LAPD is under unprecedented pressure to pull back from tactics like vehicle stops and data policing that carry implications of racial bias." The problem is that in South Los Angeles, home to the highest crime districts in the city, most of the residents are black or Latino. For several years the department's elite Metro squad had used data-based deployment and stop and frisk policing to keep crime rates down in these districts. But with a coalition of community groups demanding that Metro officers pull out of South LA and the Mayor's directive to back off, the risk of increased crime is very real. As one police captain noted, "We're trying to stop drive-by shootings.... If we're not here to keep the peace, we're going to have bloodshed."



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## CRIME & CONSEQUENCES



# “DETENTION OF CRIMINAL ALIENS”

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will soon be released, and they are not allowed to hold an alien for federal agents. Because of this, many criminal aliens have been able to avoid arrest and blend into the community or move elsewhere. If they commit additional crimes in a “sanctuary city” they may still avoid arrest and deportation due to the local government’s noncooperation with immigration authorities.

Had the Ninth Circuit’s ruling been upheld, it would have permitted immigration judges to release detained aliens even if they have been convicted of the most serious crimes. Because released aliens facing deportation usually do not show up for their hearings, this typically means that they escape deportation altogether. The Foundation filed a scholarly *amicus curiae* (friend of the court) brief, arguing that the Ninth Circuit has misinterpreted federal law to create a time limit on the arrest of criminal aliens for deportation. Noting that Congress never intended that the arrest of a criminal alien be subject to a time limitation, the CJLF brief states, “The notion that a released criminal is no longer a danger simply because he is not rearrested soon after release is contrary to both common sense and established facts.”

“The Ninth Circuit’s ruling had misinterpreted the law in order to allow alien criminals in sanctuary cities to avoid detention and deportation under federal law,” said CJLF Legal Director Kent Scheidegger. “Congress required mandatory detention for those convicted



## DEPORTING CRIMINALS

of aggravated felonies for good reason. It was important to public safety for the Supreme Court to uphold this law,” he added.

An example of the threat that sanctuary policies have on public safety is the April 7, 2019, arrest of Ismael Huazo-Jardinez by Immigration and Customs Enforcement agents. Huazo-Jardinez, a previously deported Mexican national, was charged on April 5 with vehicular manslaughter and felony DUI. On Saturday night, April 4, while driving drunk, Huazo-Jardinez lost control of his pickup truck and slammed into a mobile home in Knights Landing, CA, killing a married couple and their 10-year-old son, and critically injuring their 11-year-old daughter. The crash also destroyed

the neighboring home of the children’s grandparents, who escaped uninjured. The defendant had been deported after a 2011 arrest in Arizona, but had reentered the U. S. illegally and was living in Yuba City. The day after his arrest Huazo-Jardinez was released on \$300,000 bail by a Sutter County Judge although the CHP had asked that bail be set at \$1 million or denied. Due to California’s sanctuary state law, ICE was not notified at the time of his release. Fortunately, two days later, agents located Huazo-Jardinez at his residence and took him into custody. Had the Ninth Circuit’s **Preap** ruling been upheld, he could have challenged the arrest as unlawful and petitioned the court to release him.

The conditions in Los Angeles, Seattle, New York, San Francisco, and America’s southern border demonstrate what happens when our laws are no longer enforced. There is more crime and more drugs in U. S. cities and neighborhoods than we have seen in decades. CJLF is one of the only non-governmental organizations in the country winning decisions supporting policies to restore the rule of law and hold criminals fully accountable for their crimes. Help us stay in the fight for your rights and safety by making your annual tax-deductible contribution today. Please return the card on the right with your check or go to [www.cjlf.org](http://www.cjlf.org) or call us at (916) 446-0345 to contribute with your credit card. **Thank you so much.**

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Spring 2019

# “DC SNIPER SENTENCING”

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boy walking to school. Following his arrest, Malvo admitted to shooting the boy and also shooting and killing a bus driver on October 22, who was their last victim.

On October 24, Malvo and Muhammad were found sleeping in their car at a Maryland rest area, along with the long-range rifle used in the murders and the laptop stolen by Malvo on September 5. Both were initially tried in Virginia and both were convicted on overwhelming evidence of aggravated murder in 2003. Malvo’s defense was that he was young and impressionable and that Muhammad had taken control of him. Muhammad received a death sentence, and Malvo received two terms of LWOP. Malvo also pled guilty to murders committed

in another Virginia county and was sentenced to two additional LWOP terms. On November 10, 2009, Muhammad was executed in Virginia by lethal injection.

Following Malvo’s convictions and sentencing, the U. S. Supreme Court issued two rulings regarding the sentencing of juvenile murderers. In **Miller v. Alabama**, the Court held that the Eighth Amendment prohibits juvenile homicide offenders from receiving “mandatory life-without-parole sentences” and that, before sentencing such an offender to life without parole, the sentencing court must first consider the “offender’s youth and attendant characteristics.” Malvo challenged his sentence, arguing that this change should apply retroactively to his case. A district judge denied that claim,

but while Malvo was awaiting a decision on appeal, the Supreme Court announced its ruling in **Montgomery v. Louisiana**, which held that **Miller** *did* apply retroactively. Writing for the Court, Justice Kennedy went further, emphasizing, “Because **Miller** determined that sentencing a child to life without parole is excessive for all but ‘the rare juvenile offender whose crime reflects irreparable corruption,’ it rendered life without parole an unconstitutional penalty for ‘a class of defendants because of their status’—that is, juvenile offenders whose crimes reflect the transient immaturity of youth.”

Based upon the **Montgomery** ruling, on June 21, 2018, the Fourth Circuit held that because the sentencing courts in Malvo’s case failed to consider whether his crimes reflect “permanent incorrigibility” or instead “reflect the transient immaturity of youth,” his sentence must be overturned.

In a scholarly *amicus curiae* (friend of the court) brief to be submitted in June, CJLF will argue that the **Miller** and **Montgomery** cases should be limited to their core holdings that life-without-parole sentencing cannot be mandatory for murderers under the age of 18. Where a state gave the sentencing judge discretion to order a lesser sentence, as in Malvo’s case, these judgments should not be reopened. The Supreme Court will hold oral argument on this important case this fall.



*John Allen Muhammad and Lee Boyd Malvo terrorized Virginia and Maryland in 2002. They modified a Caprice to allow entry into the trunk from the rear seat, drilled a hole on the trunk lid to provide a large field of vision, and sawed over the trunk license plate, giving them the ability to shoot from within the vehicle. This car enabled them to elude police for almost an entire month.*

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