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Center for

# CIVIL & HUMAN RIGHTS

at Gonzaga Law

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## WELCOME

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MAY + JUNE 2020

Dear Readers,

Welcome to our end-of-the-semester Newsletter for the Center for Civil and Human Rights. The past few months have been challenging for all of us, as we continue to adapt our learning environment to COVID-19, as well as provide the support and care for members of our families and our communities.

We want to congratulate all of our graduating students, and we are especially proud to announce our first group of Civil and Human Rights Certificate recipients. They are a part of new and exciting developments taking place at the Center. Although celebrations were muted this year, we would also like to recognize the Asian and Pacific American Heritage Month in May and PRIDE month in June.

This fall, our next cohort of Thomas More Social Justice Scholars will be joining us, along with our new Visiting Assistant Professor Danielle Wingfield-Smith. We will also be launching our new Lincoln LGBTQ+ Rights Clinic. You can read about Professor Wingfield-Smith in our previous Newsletter, and about the Scholars and the Clinic in our next Newsletter at the end of the summer.

We also acknowledge that we are releasing this Newsletter in a time of exploding tensions across the country due to the recent deaths of African Americans during law enforcement actions and through violent acts by private citizens. Collectively, we must speak out against the structural and institutional racism that imperils the lives and well-being of people of color, and nationwide, we must change personnel and policies which support disproportionality in the criminal justice system. In Washington state, data from our court system shows that people of color, specifically African American and Native American community members, are sentenced for felonies at rates of more than 3x and 2x (respectively) their racial groups' proportion of the total Washington population. Disproportionality and the mass incarceration of people of color must be acknowledged and condemned. Racial equity must be a goal in the criminal justice system.

Stay well and take care.

--Center for Civil and Human Rights

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## Ramos v. Louisiana Departs from Precedent and Strikes Down Split Jury Verdicts By Jessica Trujillo (JD '20)

In *Ramos v. Louisiana*, the U.S. Supreme Court held the Sixth Amendment right to a jury trial, as fully incorporated and made applicable to the states through the Fourteenth Amendment, requires a unanimous jury verdict to convict a defendant of a serious offense. Justice Gorsuch wrote the opinion for the majority, joined by Justices Ginsburg and Breyer. Justices Sotomayor, Kavanaugh, and Thomas concurred in parts and wrote separate opinions. Justice Alito filed a dissenting opinion, joined by Chief Justice Roberts and Justice Kagan in part. This fractured decision with unconventional alliances is significant not only for its analysis of the legacy of racism in jury trials, but also for the differing viewpoints on the role of *stare decisis*. The decision has potentially set the stage for a conservative-led Court to hear polarizing issues, such as abortion, in the coming terms.



(Court sketch used with permission from artist Art Lien)

### Racist Origins of Non-Unanimous Jury Verdicts

In 2016, Mr. Evangelisto Ramos was convicted of second-degree murder by 10 out of 12 jurors in Louisiana. At the time, a split jury verdict was permitted, although Louisiana later amended its law, requiring unanimous jury verdicts for crimes committed on or after January 1, 2019. With the exception of Louisiana and Oregon, in the remaining 48 States and federal court, a unanimous jury verdict is required to convict. As Justice Gorsuch clarified, "instead of the mistrial [Ramos] would have received almost anywhere else, Mr. Ramos was sentenced to life in prison without the possibility of parole."

In holding that a non-unanimous jury verdict was unconstitutional, Justice Gorsuch, writing for the majority, highlighted the racist origins of Louisiana's and Oregon's laws. Non-unanimous jury verdicts were adopted in Louisiana for serious crimes at an 1898 constitutional convention as a means to avoid a U.S. Senate investigation into systematically excluding African Americans from juries. In Oregon, the adoption of non-unanimous jury verdicts in the 1930s is traceable to the rise of the Ku Klux Klan to dilute the influence of "racial, ethnic, and religious minorities" on juries. Finding this history concerning, Justice Gorsuch noted Louisiana and Oregon "frankly acknowledged that race was a motivating factor in the adoption of their States' respective nonunanimity rules."

In their separate concurrences, Justices Sotomayor and Kavanaugh also emphasized the racist historical significance of these laws. Specifically, Justice Sotomayor noted that Oregon has never meaningfully acknowledged this past, and Louisiana did so only when it amended its law just two years ago. In his concurrence, Justice Kavanaugh echoed this sentiment, noting that Louisiana's non-unanimous jury rule is the last of Louisiana's existing Jim Crow laws. As he put it, presently "non-unanimous juries can silence the voices and negate the votes of black jurors."

### Stare Decisis

The majority of the Court found that the underlying racist origins of Louisiana's and Oregon's laws was persuasive enough to overrule *Apodaca v. Oregon* (1972), which held that the Sixth Amendment right to unanimous jury verdicts, although required in federal court, does not apply to the states. In overturning *Apodaca*, the justices also articulated their approaches to *stare decisis*, potentially setting the stage for future cases.

*Stare decisis* is the legal doctrine which obligates courts to follow established decisions or precedent set by past cases. In general, courts follow precedent on *stare decisis* grounds, unless there are compelling reasons to overturn a decision.

*Apodaca* was decided with four justices holding that unanimity is not required in jury decisions in either state or federal court, with four justices dissenting. Justice Powell, the remaining justice, wrote his own opinion arguing that unanimous jury verdicts were required in federal court, but not state court. The problem, as Justice Gorsuch noted in *Ramos*, was that at the time of Justice Powell's concurrence, this so-called "dual-track approach" had already been foreclosed by precedent for a decade. Hence, the majority did not feel bound to follow it, and subsequently overruled it.

Justice Kavanaugh concurred in the result but wrote separately to set forth a more detailed, threeprong approach to overruling prior constitutional decisions: (1) "is the prior decision grievously or egregiously wrong"; (2) "has the prior decision caused significant negative jurisprudential or real-world consequences"; and (3) "would overruling the prior decision unduly upset reliance interests." Justice Kavanaugh acknowledged that this approach maintains a high bar for overruling precedent, adding that "the Court typically does not overrule a precedent unless a party requests overruling, or at least unless the Court receives briefing and argument on the *stare decisis* question."

Justice Thomas concurred separately, emphasizing his belief the Court acts outside its Article III judicial duty when formulating a *stare decisis* standard. He nonetheless concurred as the jury trial right has been permissibly interpreted by the Court to require unanimous jury verdicts. Justice Thomas once again departed from the majority, however, rejecting the Incorporation Doctrine under the Due Process Clause of the 14th Amendment. Instead, Justice Thomas concluded this matter should have been resolved under the Privileges and Immunities Clause, and that the "Sixth Amendment right to a trial by jury is certainly a constitutionally enumerated right," which applies only to "citizens," not "persons."

### Justice Alito's Dissent

In his dissent, Justice Alito, joined by the Chief Justice and Justice Kagan, was not persuaded by the racist history of the Oregon and Louisiana laws. As he put it, "what does that have to do with the broad constitutional question before us?"

Instead, Justice Alito took issue with what he saw as the majority's disregard for precedent. Justice Alito further critiqued the majority's opinion by emphasizing the reliance interests of Louisiana and Oregon. He noted that a reversal would cause a "tsunami of litigation" should they be required to have unanimous jury verdicts.

However, the majority did not find the potential "tsunami" persuasive enough to avoid correcting errors based on "unconstitutional procedures," as new criminal procedure laws only affect cases on direct appeal. The majority noted Alito's "tsunami" only affects two States. The concurring justices – sans Justice Thomas – agreed, stating there are always great costs when implementing new criminal procedure rules. Justice Sotomayor specifically noted, "[t]he Constitution demands more than the continued use of flawed criminal procedures – all because the Court fears the consequences of changing course."

### Implications

So, what do these many opinions in *Ramos* mean for the future? *Ramos* will likely be a basis for the Court to revisit polarizing decisions in the coming terms, using the included discussions on when and how to overrule precedent. Both Justice Kavanaugh and Justice Thomas cited to decisions overruling precedent when divisive issues were before the Court, including *Obergefell v. Hodges* (2015),

*Lawrence v. Texas* (2003), *Planned Parenthood of Southeastern Pa v. Casey* (1992), and even *Gideon v. Wainwright* (1963).

As noted, Justice Kavanaugh outlined a three-prong approach to decide when precedent should be overruled. One prong involves whether a prior decision was “egregiously wrong.” It will be interesting to see if *Roe v. Wade* is revisited under this prong, given the current tension between a women’s right to choose and the conservative-led opposition to this right.

Perhaps unexpectedly, Justice Kagan, in part, joined Justice Alito’s dissent. However, Justice Kagan explicitly did not join the dissent’s acknowledgment that the majority created a new *stare decisis* precedent. Justice Kagan may have sacrificed ideological beliefs when voting not to overturn a conviction based on a non-unanimous verdict stemming from a law with racist foundations in order to lay her marker down as a defender of precedent. The coming terms will likely illuminate the Court’s future regarding precedent, ideological leanings, and what exactly *stare decisis* means.

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### Visiting Assistant Professor Jeffrey Omari Bids Farewell to Gonzaga Law

The Gonzaga Law School community is wishing Professor Jeffrey Omari good luck and safe journeys as he begins a new position as a faculty member at Northern Illinois University (NIU) College of Law. Professor Omari held the Center for Civil and Human Rights’ inaugural Visiting Assistant Professor (VAP) position from 2018 to 2020. “Professor Omari has been an excellent teacher and mentor, and as an engaged scholar he has contributed significantly to our academic and scholarly mission,” said Professor Jason Gillmer, the Center’s Director. “We wish him the best in his next career step at NIU—but we fully expect that he will stay connected to GU and that we will remain fast friends in the years to come.”



During his two years at Gonzaga Law, Professor Omari taught Constitutional Law and Privacy Law, which he will also teach at NIU, in addition to Torts and Business Associations. Nichole Anderson, a 2020 law school graduate and recipient of the Dean’s Pro Bono Award, reflected on Professor Omari’s impact at the law school: “Constitutional law and privacy law can be courses in which debate can often be the most heated. It takes a patient and collected mind to navigate teaching the black letter law in those areas while at the same time encouraging beneficial debate on some of our most fundamental principles. Professor Omari did with this both a calm temperament and sincere interest in the many positions of his students. His new students will be lucky to have him.”

Professor Omari, whose current research centers around internet governance through the lens of Brazil’s cyber law, the Marco Civil da Internet, contemplates his journey through academia: “For many academics, the path to a tenure-track job is often isolated and itinerant. My journey has been no different. In recent years, my research has allowed me to live in two countries and five different cities, which has enhanced my perspective on culture, life, and the meaning of law. Now, however, I’m looking forward to a more sedentary lifestyle as I settle into my new tenure track home.”

Professor Omari also provided leadership and guidance to groups outside the classroom. He was part of the planning committee which brought nationally known speakers such as Kimberlé Crenshaw and Patrisse Cullors to Gonzaga, and he mentored Gonzaga law students on the Minority and Justice Commission. When asked about his time at Gonzaga, Professor Omari reflected upon the GU community. *"The students, faculty, staff, and even the broader GU campus at large have all been very welcoming and supportive," said Professor Omari. "Although my time at Gonzaga has come to an end, the friends and colleagues that I've established in this community will last a lifetime."*

## EDUCATION

### Graduates Receive Civil and Human Rights Certificates



The Center for Civil and Human Rights is proud to recognize four 2020 law graduates who received the Center's inaugural Civil and Human Rights Certificate. The Certificate in Civil and Human Rights is a program that provides an opportunity for students to focus their legal education on the study and analysis of civil and human rights and the legal, theoretical, and policy perspectives associated with these rights. It also offers the opportunity for direct action in civil and human rights advocacy work, and development of professional experience in this field.

From left to right: Sara Duross, Alejandra Lopez, Rebecca Smith, Jessica Trujillo.

## COMMUNITY ENGAGEMENT

### Pro Bono and Public Service Spotlight: Kayleigh TenBarge

The Center for Civil and Human Rights will be highlighting students who have made an impact on Gonzaga Law School and the wider community because of their dedication to pro bono and public service.

Our first featured student is 2020 graduate Kayleigh TenBarge. TenBarge is originally from Castle Rock, Colorado. Before coming to law school, she attended Colorado State University in Fort Collins, Colorado, where she earned her BA in Music.

During her law school career, TenBarge volunteered with the Moderate Means Program (MMP) for all three years of law school, as well as the Student Bar Association's Alliance for Social Justice. Maggie Schott, the attorney overseeing Gonzaga's MMP, said that TenBarge *"has been a solid volunteer with MMP all three years of law school. For the past two*



years, she has consistently helped me train students with an ease of style and relaxed attitude and she always accepts more MMP work when asked to fill in or cover for others. She is a team player with a strong work ethic and sets a very positive example for her peers."

For her pro bono work, TenBarge earned the Gold Pro Bono Distinction, which is awarded to law students who earned the Pro Bono Distinction at least twice and performed between 200-299 pro bono service hours. During her 3L year, she also interned at the Public Defender's Office, and is looking forward to pursuing a career in criminal defense.

### **I came to GU School of Law because...**

"It was very dedicated to public interest, and that is the type of law that has always appealed to me most. It also provides lots of opportunities to get involved and serves to the community, so I really wanted to be a part of that."

### **The best advice I have for new law students is...**

"If you have to choose between studying and going to a networking event, go network. The very first internship I ever got was offered to me by someone who recognized me from all the pro bono work I had done in the community. She offered me an internship before she even saw my resume because she already knew me as a hard worker. So, I think it's better to take the time to get to know attorneys in the area."

### **I create school/life balance by...**

"Having a couple things on my schedule that are not law school related. For example, I play bar trivia with my friends once a week."

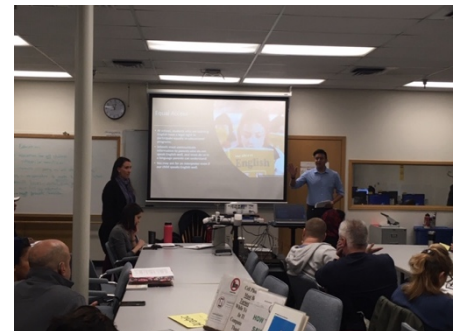
### **If I have learned on thing in life, it is...**

"Sometimes, you gotta cut yourself some slack. When you're having a bad day, the worst thing you can do is beat yourself up for feeling that way. So, take a day, feel sorry for yourself, maybe buy yourself a milkshake too. Just take the time to go easy on yourself. You can always pick yourself up by the bootstraps tomorrow."

## THOMAS MORE CORNER

### **Class of 2020 3L Thomas More Project By Mary Calderon (JD '20)**

This academic year, I, along with my fellow Thomas More scholars, met with and presented to English as a Second Language (ESL) students and refugees in the Spokane community for our 3L project. Hoping to build off the 2019 scholars' project where they drafted a community needs assessment regarding immigrant populations, we aimed to put the 2019 scholars' findings into effect by educating refugee populations in the Spokane area, providing them with useful tools to access necessary services and support within the community. By collaborating with the Spokane Community College and its dedicated ESL instructors, we were able to directly work with refugees and provide them with the assistance they desperately needed.



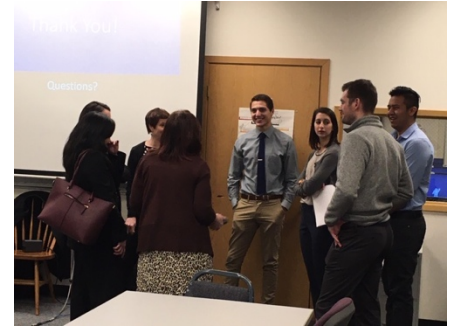
In February and March, we presented to diverse groups of refugees, providing them with guidance on education, housing, domestic relations, and criminal justice. We found these topics to be relevant and vital because refugees navigate everyday life in their new communities through these topics and are

constantly trying to overcome cultural differences through these topics' lenses. To further support them, and to ensure our project was sustainable beyond this academic year, we translated a summary of our presentation information into four languages— Arabic, French, Spanish, and Chinese.

Between our project and the legislature's passing of the Courts Open to All Act in March 2020, we are proud of the progress we and the State have made for all immigrants in our community this year. Our project would not have been possible without the hard work and support of the interpreters who helped translate our information to the refugees, Professor Genevieve Mann, Michele Fukawa, Professor Megan Ballard, Spokane Community College, and the community college's ESL instructors.

As we study for the bar exam and prepare for an ever-changing legal community in these trying times, we look forward to beginning our public service careers in Alaska, California, Colorado, Washington, and abroad.

Pursuing a public service career immediately after graduating law school is a privilege and an honor we all cherish as Thomas More scholars, and we truly look forward to beginning our respective journeys.




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### Alumni Spotlight: Cara Cares



*"I became a lawyer because I wanted to be a part of something bigger than myself,"* said Cara (Verhaeghe) Cares, a 2017 GU Law alumna and Thomas More (Social Justice) Scholar. "When I went to law school, I didn't know what that would look like, but I found it in non-profit healthcare."

Cares is currently on the front lines of the COVID-19 pandemic as the Corporate Compliance Officer for NEW Health, a 501(c)(3) Federally Qualified Health Center. With health and dental clinics in Ferry, Stevens, and Pend Oreille counties, NEW Health serves rural communities in northeastern Washington, and Cares provides her legal expertise to support their services and growth. Regarding her position, Cares says, *"The best part about working in-house at an organization is that your day never looks the same. Each day you are required to be flexible and adaptable in order to provide advice to your organization. COVID-19 changed every piece of the organization, from risk management, to clinical operations, to human resource management. It is amazing how many legal interactions there are in healthcare, and regardless of those interactions, it is my job to ensure compliance, even during COVID-19."*

Cares grew up in the Inland Northwest and attended Whitworth University, where she majored in Sociology. She joined the class of 2017 at Gonzaga Law School, where she was a Thomas More Scholar. As a TM Scholar, Cares said she *"felt an automatic sense of community and was surrounded by like-minded people with the same goal – to serve, even if the goal would be accomplished through different mechanisms."* Cares also credits Professor Genevieve Mann and former assistant director Catherine Brown of CLiPS (now the Center for Civil and Human Rights) for their guidance during law school: *"They were key players in shaping my journey through law school and continued passion for*

*...serving others, and I am grateful for the mentorship both of them provided me. I don't think I would be where I am today without them."*

After graduating from law school, Cares initially joined a law firm, but soon found a different path. Cares reflected upon this period and has advice for future attorneys: *"It is okay to not have a direction when you graduate. You have time to figure it out along the way, even if it means changing jobs once or twice. I took a risk in applying for my current position after only five months in the firm, but it was worth the risk. Don't be afraid to chase after the dream job, even if you don't feel qualified or it's not the right time. If it is the right job, it will be worth it."*

When asked how COVID-19 has changed her position at NEW Health, Cares said, "NEW Health is the safety net provider for northeastern Washington. Drive thru clinics were implemented at its larger locations and curbside care at its smaller locations to screen and test for COVID-19. Our dental clinics closed to urgent and emergent dental care only in March, and soon after, we radically shifted our primary care model from almost no telehealth to almost exclusively telehealth. Because we provide such an essential service to our patients, as a management team, we knew closing our doors was not an option.

*"From a legal and compliance perspective, my work shifted to implementing COVID-19 policies and procedures while remaining compliant with all the changing mandates. Information was changing daily, whether it was from the federal or state policy making, or CDC guidelines. As an organization, we had to comply with new guidance and new orders in rapid succession.*

*"We are still in the process of returning to a new normal. We have implemented phased reopening plans for each of our lines of business. I was thankful for all of the legal research experience that I received at Gonzaga. It helped me be able to find the appropriate sources and digest the information in rapid succession. My supervisor joked that I had not done so much research since law school, and she was not wrong."*



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## EVENTS

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Center for  
**CIVIL & HUMAN RIGHTS**  
at Gonzaga Law

**SOCIAL  
JUSTICE  
LUNCH SERIES**

**RAMOS V. LOUISIANA:  
The Broad Civil Rights Implications  
of this Jury Trial Decision**

WITH  
PROFESSOR BROOKS HOLLAND

**Wednesday, June 3rd at 12 pm**  
**Look for the ZOOM LINK in MORNING MAIL**

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