



**FOR IMMEDIATE RELEASE**

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## **Case Background**

### **ACLU of Texas Class Action - *De Luna v. Hidalgo County et al.***

In April 2010, in response to media reports about the frequent jailing of teens for missing school, the ACLU of Texas began an investigation of truancy practices in Hidalgo County, Texas. On July 26, 2010, attorneys for the ACLU of Texas filed a civil rights class action lawsuit on behalf of two teens and individuals like them to challenge unconstitutional practices leading to the incarceration of low-income students who miss school.

**While the litigation is focused on truancy adjudications in Hidalgo County, jailing indigent Texans for failure to pay fines is a civil rights problem throughout the state.**

**Legal Framework:** Under Texas law, school districts in Texas may choose whether to charge students who miss school with *truancy* or with *failure to attend school*.

- *Truancy* is charged under the Family Code and applies only to students under 17 years of age. Truancy is adjudicated in Juvenile Court where support services may be provided, where it is not subject to fines, and where counsel are afforded for all indigent children.
- *Failure to attend school* is charged as a Class C Misdemeanor under the Code of Criminal Procedure. This charge can be applied to students of any age, can be adjudicated in county, municipal or justice of the peace courts, carries a fine of up to \$500 per offense but no jail sentence, and does not include a right to counsel.

**Legal Trigger – Age 17:** Once a teen reaches 17 years of age, he or she is considered a legal adult and can be required to appear in court to deal with any unresolved tickets for failure to attend school prior to age 17. Failure to appear can result in warrants being issued for the teen's arrest. Once picked up on an outstanding warrant, a teen can be required to either pay thousands of dollars of accumulated fines, or go to jail. The law also provides for alternatives, including community service or payment plans.

### **ACLU Investigation Results:**

- Schools in Hidalgo County ticket significantly more students with the more severe charge of Failure to Attend School.
- Since January 2009, about 150 teens served time in Hidalgo County jail that may be attributed to unpaid fines for failure to attend school or other school-related misdemeanor offenses that are not supposed to be punishable by jail time.

- Approximately 60 youth were jailed solely because of outstanding truancy and school-related fines, and half of these youth spent more than a week in the county jail.
- A single justice of the peace, Judge Mary Alice Palacios, handles most of the failure to attend school charges in Hidalgo County and is aggressive about issuing orders to appear to teens once they reached the age of 17 for violations that were issued years earlier.
- In many cases, teens and their parents had been under the impression that their outstanding fines had been resolved, but because of poor record-keeping and notice practices by Judge Palacios's court, their failure to attend school charges remained pending without their knowledge.
- Once in court, the teens were informed that they owed thousands of dollars in unpaid fines and costs and were ordered to immediately pay in full or else go to jail. At no point would the JP court or the county magistrate who committed the teens to jail attempt to make a determination of the teen's ability to pay the fines. Furthermore, the teens were given no other alternatives – as required by law – to jail time. Alternatives include community service or payment plans.

*This litigation is part of the ACLU of Texas' **Focus on Learning in Texas Classrooms** campaign and its efforts to challenge the "school to prison pipeline," a term used for laws and practices that over-criminalize school discipline. Such laws and practices disproportionately affect minorities and push students out of school classrooms and into the criminal justice system.*

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