



Pro Bono Innovators 2022 Honoree Latham & Watkins

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By Lisa Helem 2022-11-02T05:00:09000-04:00

Your firm worked on key matters such as challenging the Trump administration’s plan to end the US Census early and exclude undocumented people. You also supported the panel investigating the police-related death of Elijah McClain, an unarmed 23-year-old, in Aurora, Colorado. How did your firm strategize on how to approach these matters?

Latham’s pro bono practice has long focused on defending the civil rights of underrepresented groups. Our work challenging the Trump administration’s plan to end the US Census early and supporting the investigation into the death of Elijah McClain each provided a unique opportunity to apply the firm’s considerable strengths and resources to this mission.

The census matter allowed Latham to challenge the federal government’s efforts to truncate the decennial census count, which posed a grave threat to the fair distribution of political representation and billions in funds, including to historically undercounted populations: communities of color, low-income individuals, undocumented immigrants, and persons with mental and physical disabilities.

The Elijah McClain matter afforded us the opportunity to shine a light upon the facts surrounding the tragedy of Elijah McClain’s death and by extension the larger systemic issues too often faced by Black people during encounters with law enforcement and medical professionals.

What were the most innovative aspects of these matters in your view? And who took the lead on driving innovation with the work?

We were the federal case standing in the way of the Trump administration’s plan to truncate the 2020 US Census, both by undercounting tens of millions of Americans and entirely excluding from the census millions of immigrants—for the first time since the founding of the United States. Our team worked around-the-clock to obtain a string of victories few thought possible given the need for expedited relief, the standards at issue, and past cases involving census operations.

Working with co-counsel from the Lawyers’ Committee for Civil Rights Under Law and the Brennan Center for Justice, our lawyers spearheaded an effort to ensure a fair census that commenced with the filing of a federal lawsuit, *National Urban League v. Raimondo*, in August 2020. The suit alleged that the government’s actions violated the federal Administrative Procedure Act and the US Constitution.

In the Elijah McClain matter, the crux of the investigation was the review of the footage from several officers’ body-worn cameras. We reviewed the 911 call, bodycam footage, recorded interviews, and the autopsy report.

We also interviewed police and fire personnel to prepare a second-by-second analysis of Mr. McClain’s 18-minute encounter with police and assist the panel in making its recommendations for changes to policy and procedure. The investigation identified no constitutional basis for the police to stop Mr. McClain, or to apply a “carotid hold.”

The report could not reconcile the officers’ assertions that Mr. McClain forcefully resisted with Mr. McClain’s pleas for help and attempts to apologize and explain his movements. The report also identified no medical examination of Mr. McClain before paramedics injected him with ketamine at a dosage meant for a much larger person.

While our investigation did not have sufficient information to determine what, if any, role bias may have played in Elijah McClain’s death, our report highlighted research in this area to focus attention on an important issue that has only recently become part of the national discourse.

Tell us more about the impact of the matters on the local, national, and/or global level.

Our work and the support of our co-counsel on the census matter will be felt for a decade, as an accurate count ensures fair distribution of political representation and federal funding across states and communities—including more than \$1.5 trillion annually in federal funds for education, food, healthcare, and other needs. This matter also creates a vision that will hopefully carry forward for the future integrity of all census counts.

In the Elijah McClain matter, the release of the report and local agencies' responses garnered significant attention, and was followed by substantial changes in the police and fire departments' policies. For instance, the City of Aurora agreed to the appointment of an independent police monitor, and, in July 2021, Colorado passed a law to significantly restrict the use of ketamine in pre-hospital settings.

The report's impact was best summed up by Elijah McClain's mom, who told CNN: "It was overwhelming knowing my son was innocent the entire time and just waiting on the facts and proof... My son's name is cleared now. He's no longer labeled a suspect. He is actually a victim."

Why do you think your team ultimately achieved successful results?

In the census matter, through hearing after hearing, we kept the spotlight on the Census Bureau while it worked to collect and process the data needed for apportionment and redistricting. Repeated discovery victories further ensured that the collected data would be appropriately processed. It was the dedication of our team in their pursuit of righting what we saw as an unjust series of attempts to disrupt an accurate count as guaranteed by the US Constitution.

In Aurora, our team spent hundreds of hours recreating the timeline of exactly what happened to Elijah McClain, and analyzing how those facts fit into the current legal landscape governing police use of force. It took patience, careful attention to detail, and a team of lawyers working closely together towards a shared goal to ensure we succeeded in our mandate—determining the truth of what happened to Elijah McClain on the night of Aug. 24, 2019.

Take us back to the time the matters were resolved. What did you do to celebrate?

It felt incredibly gratifying to have an impact on a huge administrative agency and to have reached what was clearly a just conclusion, as undercounts in minority and hard-to-reach communities have historically worsened existing inequities. No one thought this strategy was possible, but we persevered and were successful in ensuring more time for data collection and processing.

Given the tragedy of Mr. McClain's death—and the systemic issues which still exist in many communities—there could be no celebration at the end of this engagement. Nonetheless, we were grateful that our work could honor Elijah McClain's life by providing the Aurora community and the McClain family with the facts about how and why he died, and that we were able to contribute to the ongoing dialogue regarding these important issues.

Responses by Anne Robinson, global chair of the pro bono committee; Sadik Huseny, who helped lead the team on the census matter; and Kevin Metz, who helped lead the team on the Elijah McClain matter.

—With assistance from Kibkabe Araya

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