



Prolonged Detention Fact Sheet

Around the country, Immigration and Customs Enforcement (“ICE”) detains immigrants for extremely long periods of time before, during, and after their removal proceedings. In recent years, analyses of government data—including data compiled for *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013), a class action challenging prolonged immigration detention in California—have documented the significant human and fiscal costs of the current detention regime.

The data reveals that many of those detained have strong legal arguments to remain in the United States and ultimately win their cases. This includes long-time lawful residents with relatively minor criminal convictions (such as drug possession offenses), asylum seekers with no criminal history who are imprisoned for years even after they have been found to have a credible claim, and others with extensive family ties to this country, including having U.S. citizen children. Indeed, a substantial majority of those with a criminal history present no danger or flight risk and can be safely released on bond, or under other conditions of supervision (including electronic monitoring), particularly given that they have all served their criminal sentences before coming into ICE custody.

Nonetheless, ICE continues to detain these immigrants, separating them from their U.S. citizen family members and the communities to which they have deep ties, all at great cost to taxpayers.

A Study of Data Concerning *Rodriguez* Class Members Reveals that a Significant Percentage Will Win Their Cases.¹

- A review of data concerning *Rodriguez* class members (who, by definition, have been detained for at least 180 days while their cases have remained pending) found that the average length of detention for individuals who applied for relief from deportation was **421 days**. The average detention length for all *Rodriguez* class members was **404 days**.
- Out of 595 individuals detained for 180 days or longer in the Central District of California *alone*, 176 of them—**30%**—had already won their immigration cases during the study period, and 207 or **35%** were projected to win their cases.
- The percentage of individuals who won their immigration cases was even higher for detainees subject to prolonged mandatory detention: **38%** won their cases during the study period.
- The win rate among asylum seekers subject to prolonged detention is even higher—**65%** of those detained more than 180 days won their cases.

¹ In *Rodriguez*, the ACLU represents a certified class of all noncitizens detained in the Central District for more than 180 days and who have a pending immigration case before the immigration courts or on appeal. As part of the lawsuit, the federal government provided data on 1,026 class members over the course of a two and a half-year period. This data examined detention lengths and the results of removal proceedings for those whose proceedings concluded during the time of the study.

Most of these Individuals Present no Danger and Flight Risk²

- As a result of the *Rodriguez* District Court's orders requiring bond hearings for certain individuals held for six months or longer, Immigration Judges have conducted approximately **1,262 individual bond hearings** from approximately November 2012 until January 2014.
- Of the bond hearings conducted under the Court's orders, **69%** of those individuals were ordered released (on bond and/or an alternative to detention) by Immigration Judges who considered their individual situation and determined they were not a flight risk or danger to the community.
- Of the individuals ordered released, **55%** have already paid their bond and been released, and more are projected to do so in the future.
- Through January 2014, **480 people** detained in the Central District of California have been released as a result of the Court's orders in *Rodriguez*. Numerous individuals across the Ninth Circuit (outside of the Central District) also have been released through bond hearings conducted pursuant to the Ninth Circuit's decision in *Rodriguez*.³

Data Compiled from EOIR Records Shows Extremely Long Average Detention Lengths For People Who Have Strong Arguments Against Deportation.⁴

- While the *Rodriguez* dataset does not contain information about people outside the Central District of California, data as well as anecdotal evidence suggests that the experience there is not unique.
- For example, at the Mira Loma facility in California, detainees who won their immigration cases spent an average of **164 days** in detention in 2012 and **228 days** in 2011. By comparison, at the Eloy Detention Facility in Arizona, detainees who won their cases spent on average **190 days** in detention in 2012 and **184 days** in 2011.

Prolonged detention occurs at great cost to taxpayers.

- According to ICE, the cost of detention per day is \$119.⁵ Just looking at the 207 studied *Rodriguez* class members who *won* their cases, the federal government spent approximately **\$10,370,493** to detain them before they ultimately won their cases and were released.⁶
- For class members in *Rodriguez* who apply for relief, the federal government saves approximately **\$28,679** in detention costs for each person who is released after six months of detention.⁷
- In contrast, secure alternatives to detention such as electronic monitoring devices typically cost no more than \$14 per day, and have proven effective at ensuring that immigrants appear for court in well over 90% of cases – as high as 99% according to some government statistics.

² The District Court in *Rodriguez* ordered the government to provide periodic status reports on bond hearings conducted pursuant to the Court's orders, including data concerning the outcome of bond hearings. The data presented here is an aggregate analysis of the data produced in the government's first and second status reports.

³ In April 2013, the Ninth Circuit issued a decision upholding the District Court's grant of a preliminary injunction requiring bond hearings for certain class members. *See Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013). Following that decision, immigration courts throughout the Ninth Circuit (even outside the Central District of California) began conducting bond hearings for qualified individuals. Because the status reports ordered by the *Rodriguez* District Court are limited to class members who are detained in the Central District, there is currently no publicly available information on the outcome of bond hearings conducted outside the Central District.

⁴ This analysis is available on the website of the Transactional Records Access Clearinghouse. TRAC Immigration "Immigration Court Processing Time by Outcome by Removals, Voluntary Departures, Terminations, Relief, Administrative Closures" available at: http://trac.syr.edu/phptools/immigration/court_backlog/court_proctime_outcome.php.

⁵ Tabassum Zakaria, "U.S. agency says average cost of immigrant detention \$119 per day," Reuters (Feb 28, 2013), available at: <http://www.reuters.com/article/2013/03/01/us-usa-fiscal-immigration-idUSBRE92001120130301>

⁶ Calculated as 207 individuals multiplied by \$119 a day multiplied by the average length of detention for *Rodriguez* class members who won their cases (421 days).

⁷ Calculated as \$119 multiplied by the average length of detention beyond six months for individuals who apply for relief (224 days).

Who Are The People In Prolonged Detention?

Many individuals detained for significant periods of time are long-term residents of the United States with significant family ties in the country. Data collected on *Rodriguez* class members reveals that, over time, approximately **63% of class members had a U.S. citizen child**; approximately 84% had been in the United States for at least five years; approximately 38% came to the United States when they were 18 years old or younger; and approximately 32% had been living in the United States for 20 years or longer before being detained.⁸

⁸ The data described above comes from an analysis of information contained in the A files of *Rodriguez* class members provided in discovery prior to the court issuing its injunction.

Individual Case Examples

The following cases provide just a few examples of individuals who spent years in detention without receiving a hearing in front of an immigration judge to determine whether they were a flight risk or danger to the community. All eventually won their cases and returned to their families—but after years of unnecessary, harrowing, and expensive detention.

- **Warren Joseph** is a lawful permanent resident from Trinidad who has lived in the United States for nearly 22 years along with his five U.S. citizen children and his U.S. citizen mother and sister. Mr. Joseph is also a decorated veteran of the Gulf War and was decorated for rescuing fellow soldiers after being injured in battle. In 2001 he unlawfully purchased a handgun to sell to individuals to whom he owed money; after assisting with the investigation, he was not given prison time. But after two years on probation and struggling with Post Traumatic Stress Disorder, he violated his probation by moving to his mother's house without first notifying the probation officer. After a six month prison sentence, Mr. Joseph was placed in removal proceedings and subjected to mandatory detention, where he remained for more than three and a half years before conclusively winning his case and release.
- **Ahilan Nadarajah** escaped repeated and brutal torture by soldiers in the Sri Lankan Army. Arriving in the United States in 2001, he was immediately arrested at the border, then detained by ICE for nearly five years while he fought his case. Although Mr. Nadarajah was initially granted parole with bond, ICE later rejected his attempt to tender money for the bond on the grounds that the bond order was “stale” and denied Mr. Nadarajah's further parole requests after he won relief from the Immigration Judge (twice) and then from the Board of Immigration Appeals. Ultimately, in March 2006, after filing a habeas petition, Mr. Nadarajah was ordered released from detention by the U.S. Court of Appeals for the Ninth Circuit. He now resides in Southern California, has learned English, and has become a lawful permanent resident.
- **Alejandro Rodriguez** is a Mexican national who has been in the United States since he was a baby. He has two U.S. citizen children, whom he supports. Mr. Rodriguez was detained for more than three years when ICE detained him and initiated removal proceedings based on two non-violent convictions—joyriding when he was 19, and a misdemeanor drug possession when he was 24. ICE rejected his requests for release based entirely on a written questionnaire, without even interviewing him. After Mr. Rodriguez filed a habeas petition in district court—but before the petition was adjudicated—ICE released him on his own recognizance, revealing that the agency had never considered him a flight risk or danger to the community. He remained released on conditions of supervision without incident until he won his immigration case. He now resides in Southern California as a lawful permanent resident.
- **Raymond Soeoth** is a Christian minister who came to the United States in 1999 with his wife, fleeing religious persecution in Indonesia. He has never been arrested for or convicted of a crime. Initially, Reverend Soeoth was allowed to work in the United States while applying for asylum and eventually became the assistant minister for a church. But when his asylum application was denied, Reverend Soeoth spent two and a half years in detention without a hearing on whether his detention was justified, until February 2007, when he finally received a bond hearing as a result of a successful habeas corpus petition filed by the ACLU. The government granted him “deferred action” status, a temporary form of relief that can be renewed annually on a discretionary basis. He and his wife subsequently won their motion to reopen their asylum case.
- **Melida Ruiz**, a 52-year-old grandmother, was detained for seven months at Monmouth County Jail in New Jersey before she was finally released after winning her case. A longtime lawful permanent resident of the United States, with three U.S. citizen children and two U.S. citizen grandchildren, she was arrested by ICE officers at her home in the spring of 2011. She was placed into mandatory detention based on her only crime: a misdemeanor drug possession offense from a decade ago for which she had not been required to serve any jail time. Although Ms. Ruiz was eligible for various forms of discretionary release from removal and posed no danger or flight risk,

and although she was the primary support for her U.S. citizen mother who suffers from Alzheimer's disease, her 17-year-old and 11-year-old daughters, and her 5-year-old granddaughter, she was nevertheless forced to endure seven months of immigration detention. Prior to her detention, Ms. Ruiz had worked full-time as a roofer with the United Union of Waterproofers and Allied Workers from 1996 until an accident in 2009, which left her with severe back and neck pain. This pain was aggravated while she was in detention to such an extent that at one point her doctor feared she would require surgery to avoid paralysis. In granting her application for cancellation of removal, the immigration judge emphasized the "substantial equities in [her] favor," including her "work history, tax history and property ownership," as well as the fact that her family "would suffer significant hardship if she were deported." The immigration judge also found that, despite her single conviction, which was "out of character," Ms. Ruiz has been "a law abiding resident of the United States and a stalwart positive force for her family and friends."

- **Dolores** (a pseudonym) is a domestic violence survivor and asylum applicant who was imprisoned at the Sherburne County Jail in Elk River, Minnesota for nearly two years. She had one conviction for criminal reentry—the result of her fleeing Honduras to escape an abusive boyfriend. Although she posed no danger and was an ideal candidate for release, she languished in immigration detention and suffered immense hardships, unable to maintain contact with her children or to get the psychiatric care she desperately needed to deal with the post-traumatic stress resulting from her abuse. During this period, Dolores was deprived of all sunlight (apart from the times she was transferred to and from immigration court) and lost one-third of her hair due to anxiety. Meanwhile, her asylum case, based on the domestic violence she suffered, has been pending at the Board of Immigration Appeals (BIA) for over a year. On February 26, 2013, she was released by ICE on conditions of supervision, including wearing an ankle monitor and regular reporting.
- **Errol Barrington Scarlett** is a longtime lawful permanent resident from Jamaica who has lived in the United States for over thirty years. He has four U.S. citizen children, two U.S. citizen grandchildren and numerous U.S. citizen siblings. After his release from incarceration for a drug possession offense, Mr. Scarlett returned to his family and found employment with his brother's real estate business. He did not commit any additional crimes, and was enrolled in a drug treatment program for over a year. A year and a half following his release from incarceration, Mr. Scarlett received a letter from the Department of Homeland Security summoning him to its New York office. At that appointment, he was charged with removability based on his drug possession conviction, and was summarily detained without a bond hearing. Mr. Scarlett remained in mandatory detention for the next five years. In 2009, Mr. Scarlett filed a pro se habeas petition, seeking a bond hearing. Concluding that his mandatory detention was contrary to congressional intent and that Mr. Scarlett's prolonged detention raised serious constitutional concerns, the district court granted his petition and ordered a bond hearing, where Mr. Scarlett ultimately won his release. Mr. Scarlett's case is still pending before the Immigration Judge after multiple rescheduled hearings.
- **Five Sri Lankan Tamil asylum seekers** were detained for over 3 years from December 2010 until early 2014 in ICE detention facilities in Florida (including Broward Transitional Center, Krome Service Processing Center, Monroe County Jail, Baker County Facility, Glades County Jail, and Wakulla County Jail). The government has never alleged that any of these men are a danger of any sort, and the men have no criminal history in the U.S. and Sri Lanka. Three of the men were driven to such desperation by their detention that they wrote letters to the immigration courts requesting that their asylum claims be withdrawn in late 2013. The men explained that their requests resulted from despair at being locked up—not by any lessening of their fears of persecution and torture by their home country. In effect, the misery of years of detention wore these men down to the point of giving up their strong asylum claims at great risk to their lives and safety. Of the five asylum seekers, only one remains here in the United States. He is currently being detained by ICE in Florida. His detention has now exceeded three years and three months.