

# NO END IN SIGHT

Why Migrants Give Up on Their U.S. Immigration Cases



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# EXECUTIVE SUMMARY

When the Trump administration began separating children from their families at the U.S.-Mexico border, it exposed the horrific conditions within the nation's immigrant detention centers: people locked in cages, sleeping on floors and denied their basic humanity.

But harsh detention conditions are nothing new.

Every day, thousands of people are locked away in these detention centers – essentially prisons – as they pursue their immigration cases and the hope of a new life in the United States. Many have fled violence and bodily harm in their home countries. But all too often, detained immigrants, particularly in the Deep South, give up on their cases because their conditions of confinement are too crushing to bear.

As this report demonstrates, these prisons and immigration courts are part of a system seemingly designed to make immigrants give up. They face courts – many without counsel – where relief is not only a long shot but may be a virtual impossibility as some judges deny asylum at rates nearing 100 percent. And, in the meantime, they may be held on civil immigration charges for months, even years, before their cases are resolved.

It's a situation that leaves them feeling as if there's no end in sight to their oppression.

"In jail, you get your sentence and you know when you are free, but detention is endless," said one man who was detained for more than 800 days.

Belief in the immigration courts also fades for the detained as their cases – and their confinement – drag on. "I have no trust that there

will be justice in my case," one detained immigrant said. The goal of the system seemed clear through his eyes: "[The judges'] work is to deny everything. ... This journey [to the United States] was about saving my life. Three or six months in detention, I can take, but one-and-a-half years in detention is too unjust."

At the Stewart Detention Center in Georgia, where many of the people sharing their stories for this report were held, 93.8 percent of detained immigrants were deported or gave up on their cases and left the country.<sup>1</sup> At the LaSalle ICE Processing Center in Louisiana, the rate was 93.5 percent.<sup>2</sup> Both rates far exceed the national average of 67.5 percent – evidence of how immigrants detained in the Deep South face especially long odds in a system already stacked against them.<sup>3</sup>

The stories and findings presented in this report reflect more than a year of work by the Southern Poverty Law Center's Southeast Immigrant Freedom Initiative (SIFI), a project launched in 2017 to ensure detained immigrants have access to pro bono counsel.

Though President Trump has greatly exacerbated the situation, the issues encountered by immigrants and the advocates who try to assist them are not solely the result of one president who has relentlessly demonized immigrants. They are the result of a detention and deportation machine built by decades of increasingly harsh immigration policy. This punitive approach to immigration policy effectively mirrors the failed "War on Drugs" that propelled the United States to become the world's leader in incarceration.





PHOTOGRAPHY BY  
*Jessica Vosburgh*

Immigrant detention, a tool to ensure court appearances by people denied bond or who cannot post bond, was never intended as punishment. Over time, however, the effect has been the same as detained immigrants endure prolonged detention, inhumane conditions and even solitary confinement – treatment that has been likened to torture.

And just as private prison companies have exploited the nation’s criminal justice system for profit, they have capitalized on the broken immigration system. Sixty-five percent of detained immigrants were held in facilities operated by for-profit companies as of September 2016.<sup>4</sup> Their prevalence in the system may help explain why two major private prison companies saw their stock prices virtually double less than four months after Trump’s election.<sup>5</sup>

In the immigration courts, detained men and women frequently navigate a confusing legal labyrinth without counsel. They have the right to a lawyer, but only *at their own expense*. And legal counsel is a luxury that few detained immigrants can afford – or even find – while locked away in remote facilities.

The outlook is only becoming bleaker as U.S. Attorney General Jeff Sessions and Trump carry out their anti-immigrant agenda. The first seven months of 2017 saw the average daily population in Immigration and Customs Enforcement (ICE) custody jump 14.4 percent over 2016 – from 34,376 people to 39,322, despite a decline in unlawful border crossings during the same period.<sup>6</sup>

Additionally, the attorney general has issued a directive to clear the nation’s backlog of 714,067 immigration court cases<sup>7</sup> by using case-closing quotas for judges, an approach that threatens to compromise the due process rights of immigrants as it generates more deportations than fair decisions.

Immigration authorities also have been ordered to stop granting asylum to most victims of domestic abuse and gang violence in their home countries – a mandate that strikes at the heart of longstanding protections guaranteed to asylum seekers. Ultimately, thousands of people will be blocked from obtaining desperately needed refuge in the United States and returned to dangerous situations where they could lose their lives.





The effects of our nation's deportation machine are documented in the stories of the immigrants presented in this report. They are people such as Yuusuf\*, a Somali targeted for death by al-Shabab because he was a teacher. Yuusuf fled his country for asylum in the United States, only to abandon his case after more than two years in immigrant detention. Because he gave up, the government was allowed to deport Yuusuf despite his pending appeal.

And they are people such as Guillermo, who fled Central America after he was beaten for resisting a gang's extortion attempt. He gave up on his asylum case after nine months in a U.S. immigration prison, where he endured hunger and insults from staff members who called the detained immigrants "dogs."

There's also Sylvia, who fled Central America with her spouse to escape her ex-husband, a gang member determined to kill the couple. Though they were both fleeing the same deadly situation, Sylvia was released from detention while her husband remained behind bars until giving up after more than a year in detention.

They're now hiding in Central America and fear for their lives.

These stories and others highlight a system that must be transformed. While not every detained immigrant will win his or her case, this nation has an obligation to fulfill the ideals it holds out to the world by ensuring that the rights and dignity of every immigrant are respected during the process.

What's more, it must recognize their humanity.

Recommendations for reform are offered at the end of this report.

\*All of the names of the immigrants featured in this report have been changed to protect their identities.

# THE DEPORTATION MACHINE: A PRIMER

When Donald Trump became president, he didn't have to remake our nation's immigration enforcement system to make good on his promise to deport massive numbers of immigrants he'd demonized during his campaign.

The United States had already spent decades building a deportation machine that has fractured families and returned thousands upon thousands of people to nations rife with violence and persecution that they had hoped to escape. The president has likely discovered that he only needs to rev up the existing system to make his goals a reality.

This report by the Southern Poverty Law Center's Southeast Immigrant Freedom Initiative (SIFI) is a product of its efforts to provide pro bono counsel to people held in immigration prisons across the region. The asylum seekers' stories documented in this report demonstrate that immigrants who've made the perilous journey to the United States for asylum are thrown into a network of immigration prisons and courts seemingly designed to make them give up on their cases.

They describe prolonged periods of being detained, navigating immigration courts without an attorney and then realizing that their chances of receiving relief have less to do with the merits of their case than with the luck of the draw. Many immigrants in detention end up facing judges who deny asylum at rates nearing 100 percent.<sup>8</sup>

## **Blurring the line: A brief history of the detention system**

Under the law, immigration detention is civil, not penal, in nature.<sup>9</sup> Laws limit the purpose of immigrant detention to ensuring a noncitizen's appearance in court and, ultimately, to carrying out his or her removal.<sup>10</sup> They prohibit conditions that punish the confined.<sup>11</sup>

In practice, however, the day-to-day experience of immigrants in detention and the immigration court system is virtually indistinguishable from that of pre-trial defendants in criminal cases or prisoners serving criminal sentences: The uniforms, the cell blocks, the barbed wire and sally ports, and the visitation policies forbidding human contact mimic penal institutions. And as immigration officials have noted, "[m]any ICE detention beds are located in jails designed for penal, not civil, detention."<sup>12</sup>

Many detained immigrants have suffered trauma or violence that led them to flee their home countries; others are longstanding U.S. residents with families to support and communities that await their return. Their detention, however, can carry on indefinitely with no end in sight – a crushing existence that leads many to give up on their cases regardless of their chances of winning. As one detained immigrant interviewed for this report noted: "This is more than jail. In jail, you get your sentence and you know when you are free, but detention is endless."

The blurring of civil and penal conditions of confinement is not an accident. The criminalization of immigrants expanded in lockstep with the development of the prison-industrial complex during the drug war of the 1980s and 1990s.<sup>13</sup> Two laws enacted in 1996 made all non-citizens potential targets for detention and deportation – the Antiterrorism and Effective Death Penalty Act and the Illegal Immigrant Reform and Immigrant Responsibility Act.

In 2004, the Intelligence Reform and Terrorism Prevention Act directed the U.S. Department of Homeland Security to increase the number of beds for immigrant detention by 8,000 each year from fiscal years FY 2006 to 2010.<sup>14</sup> By 2009, Sen. Robert Byrd of West



## IMMIGRATION VIOLATIONS PUT OVER 60,000 PEOPLE BEHIND BARS ON ANY GIVEN DAY

|   |        |
|---|--------|
| U.S. MARSHALS SERVICE DETAINED IMMIGRANTS | 13,000 |
| BUREAU OF PRISONS DETAINED IMMIGRANTS     | 13,000 |
| IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) | 34,000 |
| In ICE facilities                         | 3,400  |
| In private prisons contracting with ICE   | 22,300 |
| In local jails contracting with ICE       | 8,600  |

SOURCE: PRISON POLICY INITIATIVE

Virginia, the chair of the Senate Appropriations Committee, introduced language requiring that the Department of Homeland Security “maintain a level of not less than 33,400 detention beds.”<sup>15</sup> The detention bed minimum is expected to rise to 52,000 by the end of 2018, according to budget figures.<sup>16</sup>

The Trump administration, pushing for more detention beds, claims its “zero-tolerance” immigration policy is focused on violent criminals. Most people in the system, however, have no criminal record and many who do are convicted of illegal entry or re-entry for crossing the border outside an official port of entry, conduct that simply should not be criminalized.<sup>17</sup>

Though recently touted by Attorney General Jeff Sessions,<sup>18</sup> these laws date back decades and their roots in eugenics and white supremacy have been documented.<sup>19</sup> And, incredibly, convictions for these and other nonviolent immigration crimes make up *more than half* of all federal convictions.<sup>20</sup>

On the civil side, U.S. Immigration and Customs Enforcement (ICE) detained roughly 323,591 people in 2017 under civil immigration charges.<sup>21</sup> Only 6.3 percent of deportation cases

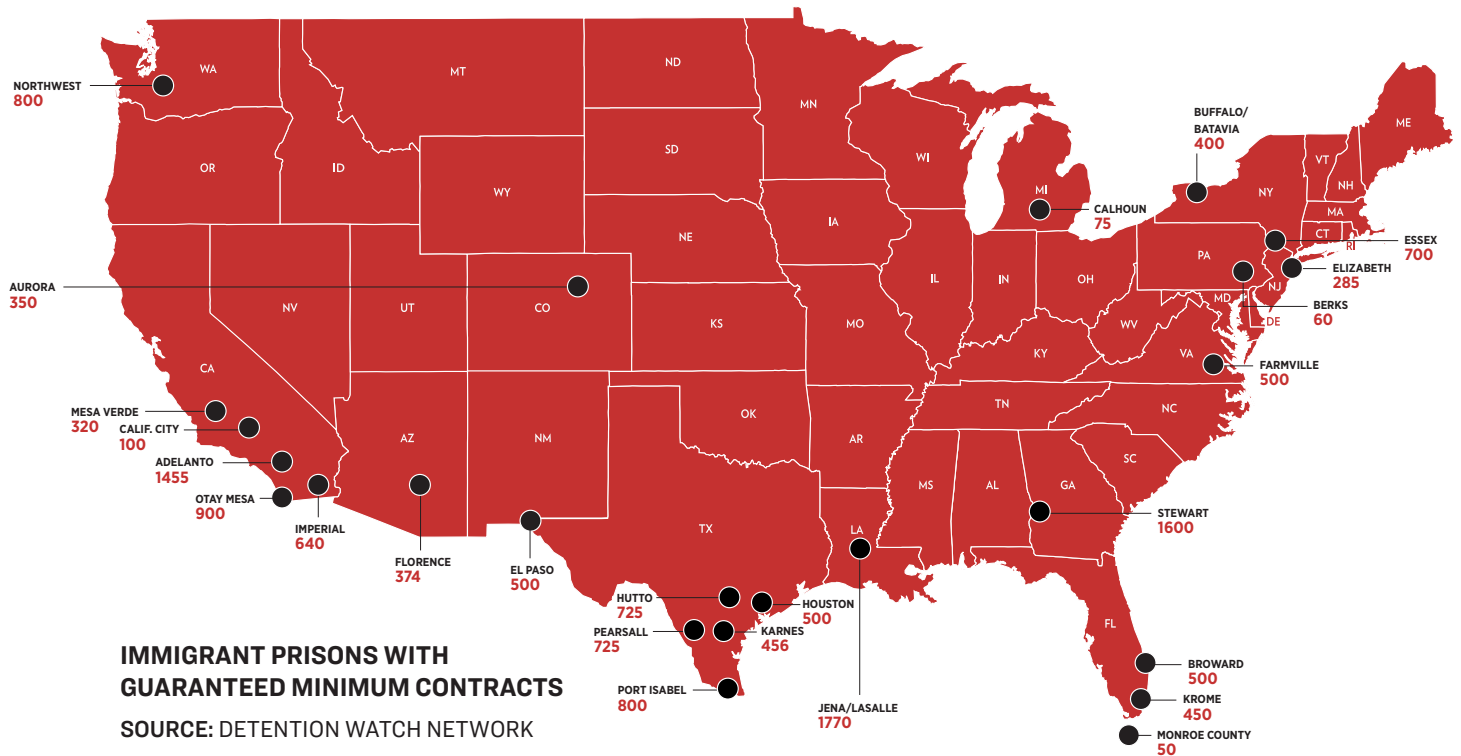
that year involved people charged with being removable for past crimes.<sup>22</sup>

Detained immigrants are held within a sprawling system of 205 jails and prisons across the country.<sup>23</sup> Remarkably, only five of these facilities are owned and operated by ICE.<sup>24</sup> Sixty-five percent of people in ICE custody were held in facilities operated by private, for-profit contractors as of September 2016.<sup>25</sup> The remaining 35 percent were held in a mix of jails run by state, local or municipal governments, and federally owned and operated facilities.<sup>26</sup> The percentage of detained people in ICE-owned and operated facilities is expected to decline in the future.<sup>27</sup>

### ICE arrests up, prisons filled

During fiscal year 2017, which covers most of the first year of the Trump administration, nearly half a million people were arrested in immigration enforcement actions.<sup>28</sup> In the first eight months of Trump’s presidency, ICE, which is only one agency at the federal government’s disposal for enforcing immigration policy, arrested 143,470 people – a 42 percent jump over the same period the previous year.<sup>29</sup>

Enforcement operations have been especially



Many private prisons are guaranteed payments for a percentage of the beds, even if empty. Numbers above show the bed minimum for each facility.

draconian in the Southeast. The ICE Atlanta Field Office, which oversees enforcement in Georgia, North Carolina and South Carolina, saw an 80 percent increase in arrests during the first half of 2017 compared to the same period in 2016. Out of the 23 regional offices, only the Dallas office saw a greater increase.<sup>30</sup>

ICE's enforcement regime has meant more people in immigrant detention. In the first seven months of 2017, the average daily population in ICE custody grew from 34,376 in FY 2016 to 39,322.<sup>31</sup>

In that time, ICE spent millions of dollars to open new facilities, such as the Folkston ICE Processing Center in Folkston, Georgia, which recently announced plans to expand its capacity from 780 people to 1,118.<sup>32</sup> Private prison company The GEO Group Inc. operates the facility. In the coming year, the Trump administration intends to lock up even more people with Congress' blessing, as it approved a \$1.2 billion increase in funding to confine a projected average of 51,379 people a day.<sup>33</sup>

A significant proportion of these funds pay private prison companies under contracts that guarantee them a payment for nearly 40 percent of the daily bed minimum – 12,821 beds out of 34,000, regardless of whether those beds are filled.<sup>34</sup>

What's more, ICE has asked private prison companies to submit plans for new jails across the country – including sites close to four sanctuary cities – to fulfill Trump's promise to expand immigrant detention.<sup>35</sup>

### Deplorable detention conditions

The proliferation of immigration prisons is especially concerning in light of research, such as the 2016 SPLC report *Shadow Prisons*, showing that the immigrant detention system's public and private facilities are already rife with civil rights violations and poor conditions that call into question the Department of Homeland Security's ability to safeguard the welfare of people in its custody.

The SPLC report, which examined several immigration prisons in the South, found numerous issues, including inadequate medical and mental health treatment resulting in needless death and suffering. Detained immigrants reported five deaths due to the failure to receive medical treatment at facilities examined by the SPLC in 2016.<sup>36</sup>

This and other reports have also documented incidents of physical abuse, retaliation and excessive use of segregation and lockdown by staff and ICE officers.<sup>37</sup> In addition, they describe

## DETAINDER REQUESTS

# Controversial and unconstitutional, according to some courts

Detainer requests are a controversial tool that U.S. Immigration and Customs Enforcement (ICE) has used to detain people and push them into the deportation machine.

It's also a tool that some courts have found unconstitutional.<sup>1</sup>

ICE issues detainers to other law enforcement agencies that have arrested a person on criminal charges. It's a request for the agency to keep the person in custody for potential civil immigration enforcement action by ICE.<sup>2</sup>

The use of detainers has surged by 80 percent since January 2017, according to the Department of Homeland Security (DHS).<sup>3</sup> Despite the increase, the number of average monthly detainers is nearly half of what it was in 2012, during the Obama administration.<sup>4</sup>

Detainers purportedly allow the continued detention of a person for suspected violations of civil immigration laws for up to 48 hours – even after a person posts bail for the charged criminal offense.<sup>5</sup> This is problematic because the U.S. Supreme Court has recognized that, “[a]s a general rule, it is not a crime for a removable alien to remain present in the United States.”<sup>6</sup> A detainer does not even guarantee ICE will arrest the person, nor does it prove a person's immigration status.<sup>7</sup> It does, however, erode trust in local law enforcement.

Furthermore, local law enforcement agencies are not authorized to enforce civil immigration laws without formal agreements with the federal government that include special training. In other words, local law enforcement agencies do not have the authority to make a unilateral decision to arrest a person without a warrant for an immigration offense that could result in the person's removal.<sup>8</sup>

### Constitutional issues

Though ICE has instructed agents to issue administrative warrants together with detainers, these documents are not judicial warrants and lack two key features of judicial warrants designed to comply with the U.S. Constitution.

ICE detainers and administrative warrants, for example, are not issued by magistrate judges, who as

members of the judicial branch are neutral and independent from the executive branch's law enforcement agents. Instead, detainers and ICE administrative warrants may be issued by lower-ranking ICE agents, the same officers charged with *enforcing* immigration laws.<sup>9</sup> What's more, ICE's administrative warrants are not supported by probable cause to believe that a person has committed a crime, which would justify detaining a person against his or her will.

As a result, numerous courts have found that cities and counties that comply with ICE detainer requests in the absence of a judicial warrant are violating a person's Fourth Amendment right against unreasonable searches and seizures, and have required those governments to pay damages to the people they held in jail as a result of detainers.

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1 See, e.g., *Ochoa v. Campbell*, 266 F. Supp. 3d 1237, 1243 (E.D. Wash. 2017), appeal dismissed as moot sub nom. *Sanchez Ochoa v. Campbell*, 716 F. App'x 741 (9th Cir. 2018); *Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1005 (N.D. Ill. 2016); *Morales v. Chadbourne*, 793 F.3d 208, 216 (1st Cir. 2015); *Lunn v. Commonwealth*, 78 N.E.3d 1143, 1160 (2017).

2 See ICE Policy No. 10074.2, *Issuance of Immigration Detainers by ICE Immigration Officers* (Mar. 24, 2017), available at: <https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf>. See also Form I-247-A, *Immigration Detainer – Notice of Action*, available at: <https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf>.

3 U.S. Department of Homeland Security, *U.S. Immigration and Customs Enforcement - Budget Overview at 48*, (2018) [hereinafter, “DHS Budget Overview”], available at: <https://www.dhs.gov/sites/default/files/publications/ICE%20FY18%20Budget.pdf>.

4 TRAC Syracuse, “ICE Now Issuing 14,000 Detainers Each Month – Number Honored Unclear,” (Apr. 20, 2018), available at: <http://trac.syr.edu/immigration/reports/511/>.

5 8 C.F.R. § 287.7(d) (“Upon a determination by [DHS] to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by [DHS].”).

6 *Arizona v. United States*, 567 U.S. 387, 407 (2012) (internal citations omitted).

7 See Lena Graber & Amy Schnitzer, *National Immigration Project of the National Lawyers Guild, The Bail Reform Act and Release from Criminal and Immigration Custody for Federal Criminal Defendants 4* (June 2013) (citing *United States v. Xulam*, 84 F.3d 441, 442 (D.C. Cir. 1996)), available at: [http://nationalimmigrationproject.org/PDFs/practitioners/practice\\_advisories/crim/2013\\_Jun\\_federal-bail.pdf](http://nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/crim/2013_Jun_federal-bail.pdf).

8 *Arizona v. United States*, 567 U.S. at 413 (“Detaining individuals solely to verify their immigration status would raise constitutional concerns.”).

9 8 C.F.R. § 287.7(a) (“Any authorized immigration officer may at any time issue a Form I-247, *Immigration Detainer – Notice of Action*, to any other Federal, State, or local law enforcement agency.”); 8 C.F.R. § 236.1(b) (“...the respondent may be arrested and taken into custody under the authority of Form I-200, *Warrant of Arrest*. A warrant of arrest may be issued only by those immigration officers listed in § 287.5(e)(2) of this chapter.”).



a general lack of protection from violence.<sup>38</sup>

Several facilities regularly failed to provide sufficient food and clean clothing to detained immigrants. They also failed to provide basic sanitation. Detained immigrants reported that facility staff failed to respond to grievances and, in some cases, retaliated against those who filed complaints. At one facility, a detained immigrant reported being placed into solitary confinement for three days after helping another person complete a grievance form.<sup>39</sup>

### **Prolonged Detention**

These findings are especially concerning given the number of migrants who spend the duration of their case in these facilities. At the Stewart Detention Center in Georgia, where many of the people sharing their stories for this report were held, 93.8 percent were deported or left the U.S. voluntarily in FY 2018.<sup>40</sup>

At the LaSalle ICE Processing Center in Louisiana, which was also examined by the SPLC, the rate was 93.5 percent. This is far higher than the national average of 67.5 percent of people in ICE custody who were deported or left the country voluntarily.<sup>41</sup>

What's more, the length of time immigrants spend in detention is much greater than Congress originally envisioned – and it keeps growing. It's also worth noting that the average length of detention is longer for immigrants who eventually win their cases (68 days) than for those who are removed (32 days). Average detention length is also much higher in privately operated facilities.<sup>42</sup>

The backlog in the immigration courts and the complexity of immigration cases means many migrants are now detained for far longer. For example, in the first seven months of FY 2018, the Atlanta Immigration Court took an average of 151 days to complete removal proceedings for detained noncitizens.<sup>43</sup> In the Stewart Detention Center, the average time to complete proceedings is 58 days, but the period is far longer depending on nationality, such as Sri Lankans (627 days), Jordanians (227 days), Somalis (248 days) and Bangladeshis (168 days).<sup>44</sup>

Appealing a case means even longer

detention times. When one considers a detained person may be facing the prospect of more than a year in an immigration prison where he or she may endure inadequate medical care, violence and deplorable conditions, it should be no surprise that many may choose to give up on their cases, even when they're likely to win.<sup>45</sup>

Further complicating matters for detained immigrants is the difficulty accessing counsel while confined to these prisons, particularly facilities in remote, rural areas far from law firms and pro bono legal service providers. Detained immigrants may face conditions of confinement similar to those encountered by a person charged with or convicted of crimes, but their right to counsel under the law is not the same. Detained immigrants are not guaranteed an attorney at government expense. They are facing charges that are civil in nature, which means they are allowed an attorney – but at their own expense.<sup>46</sup>

These obstacles, detailed later in this report, leave immigrants facing the prospect of navigating a highly complicated field of law on their own, greatly reducing their chances of success.

### **The Luck of the Draw**

Many detained asylum seekers endure prolonged detention only to discover the outcome of their case is dramatically tipped in one direction even before the judge hears it. Nationwide, the judge assigned to the asylum seeker changed the odds of receiving asylum by over 56 percentage points, according to the Transactional Records Access Clearinghouse (TRAC) at Syracuse University, which analyzed 48 courts from FY 2010 through FY 2016.<sup>47</sup> In other words, the chances of receiving asylum are often a matter of luck.

As TRAC data from FY 2012-17 demonstrates, an individual had little chance of receiving asylum at the Stewart Immigration Court in Georgia, where every judge had a denial rate greater than 95 percent.<sup>48</sup> If the same asylum seeker appeared before the Miami Immigration Court, however, his or her case may have been heard by a judge with a denial rate as low as 52.6 percent or as high as 85.7 percent.<sup>49</sup>

## Immigration Court Asylum Decisions by Judge, FY 2012-17 (Nov. 20, 2017)

Available at <http://trac.syr.edu/immigration/reports/490/include/table2.html>

| JUDGE                            | DECISIONS | % GRANTS | % DENIALS |
|----------------------------------|-----------|----------|-----------|
| <b>STEWART IMMIGRATION COURT</b> |           |          |           |
| Duncan, Randall                  | 129       | 2.3      | 97.7      |
| Arrington, Sandra                | 318       | 4.1      | 95.9      |
| Trimble, Dan                     | 381       | 4.2      | 95.8      |
| <b>ATLANTA IMMIGRATION COURT</b> |           |          |           |
| Wilson, Earle                    | 1114      | 2.2      | 97.8      |
| Cassidy, William                 | 220       | 4.1      | 95.9      |
| Pelletier, Jonathan              | 408       | 11.8     | 88.2      |
| Garcia, Madeline                 | 148       | 12.2     | 87.8      |
| Houser, Wayne                    | 139       | 20.9     | 79.1      |
| <b>MIAMI IMMIGRATION COURT*</b>  |           |          |           |
| Chapa, Teofilo                   | 287       | 14.3     | 85.7      |
| Videla, Gabriel C.               | 119       | 14.3     | 85.7      |
| Lopez-Enriquez, Maria M.         | 304       | 21.1     | 78.9      |
| Martinez-Esquivel, Lourdes       | 343       | 25.9     | 74.1      |
| Alexander, Scott G.              | 212       | 27.4     | 72.6      |
| Marks Lane, Denise A.            | 307       | 29.6     | 70.4      |
| Sanders, Charles J.              | 169       | 29.6     | 70.4      |
| Dowell, J. Daniel                | 225       | 32.4     | 67.6      |
| Balasquide, Javier E.            | 187       | 32.6     | 67.4      |
| Torreh-Bayouth, Lilliana         | 432       | 34.3     | 65.7      |
| Mart, Herbert Kevin              | 279       | 34.4     | 65.6      |
| Mander, Stephen E.               | 260       | 46.9     | 53.1      |
| Rodriguez de Jongh, Lourdes A.   | 133       | 47.4     | 52.6      |

\*Miami judges heard cases from LaSalle ICE Processing Center in Jena, Louisiana, where SIFI represents clients in removal proceedings.

What's more, a government study found that from May 2007 through fiscal year 2014, asylum grant rates in immigration court varied by 38 percentage points for a person with the same average characteristics.<sup>50</sup> And as one story in this report demonstrates, even brothers harmed by the same perpetrators in the same place can have starkly different case outcomes.

Such disparities have been on the rise in the recent past, according to a comparison of decisions in the 16 courts responsible for three of every four asylum decisions in the country. At the Atlanta Immigration Court, the disparity in denials for FY 2004-09 was 20.2 percentage points. It climbed to 26.9 percentage points from FY 2011 to FY 2016, suggesting that the

# Bad hombres?

On the campaign trail and in the White House, President Trump has promoted harsh immigration policies by rhetorically criminalizing whole communities of people.

He has smeared them as criminals, rapists and “bad hombres.”<sup>1</sup> During a 2017 rally, he warned of Latino gangs that target “young, beautiful” girls and “slice them and dice them with a knife.”<sup>2</sup>

In 2018, he referred to some undocumented immigrants as “animals,” a term he said was directed at members of the transnational gang MS-13.<sup>3</sup> The word would later be used 10 times in a White House press release.<sup>4</sup>

Despite the administration’s claim that the term was directed at gang members, it was another instance of the president demonizing immigrants by using dehumanizing language and telling racist, fear-mongering tales that don’t reflect reality.

ICE claims “the vast majority” of its arrests in FY 2017 were of “convicted criminals or aliens with criminal charges.”<sup>5</sup> Yet, according to ICE’s own figures, more than one-third (34 percent) of the people deported between February and October 2017 had no criminal convictions.<sup>6</sup> Another 10 percent had been convicted of driving while intoxicated or for simple traffic offenses.<sup>7</sup> And 15 percent were convicted of the immigration crimes of illegal entry or re-entry – not for any conduct after entering the country.<sup>8</sup>

Criminal grounds for deportation represent a small share of all charges leveled in immigration court. A look at the new deportation proceedings filed in the first eight months of FY 2018 shows more than 41 percent of charges were entering the United States without travel documents. Another 46 percent were some “other immigration charge,” not a crime-based charge.<sup>9</sup>

The “bad hombres” rhetoric is a Trump fallacy. In reality, the system deports many with no crimes and unfairly criminalizes others. Everyone deserves due process.

But it’s not just Trump’s smears that raise concerns. The administration’s penchant to fill key immigration posts with staffers from organizations designated as nativist hate groups by the SPLC only heightens concerns about the fair treatment of detained migrants.

As this report went to press, Trump had nominated Ronald Mortensen as assistant secretary of state for the Bureau of Population, Refugees and Migration. At that time, he was a fellow at the Center for Immigration Studies (CIS), an anti-immigrant hate group that is part of a network founded by white nationalist John Tanton. CIS produces shoddy research that demonizes immigrants with falsehoods. Mortensen, as the SPLC has noted, played a role in



exaggerating a link between immigration and crime.<sup>10</sup>

Other former hate group staffers include Julie Kirchner, the former executive director of the anti-immigrant hate group Federation for American Immigration Reform (FAIR).<sup>11</sup> Kirchner was named ombudsman for the Citizenship and Immigration Services branch of the Department of Homeland Security in May 2017.

Robert Law, a senior policy adviser to U.S. Citizenship and Immigration Services, previously worked as lobbying director for FAIR.<sup>12</sup> And, Jon Feere, a longtime staffer with CIS, joined the Department of Homeland Security’s Immigration and Customs Enforcement as senior adviser.<sup>13</sup>

**President Trump has smeared immigrants as criminals and rapists to justify draconian immigration policies.**

1 See, e.g., Z. Byron Wolf. CNN.com. “Trump basically called Mexicans rapists again.” (Apr. 6, 2018), available at: <https://www.cnn.com/2018/04/06/politics/trump-mexico-rapists/index.html>; Dara Lind. Vox. “MS-13 explained.” (Feb. 26, 2018), available at: <https://www.vox.com/policy-and-politics/2018/2/26/16955936/ms-13-trump-immigrants-crime>; Jelani Cobb. The New Yorker. “Donald Trump Is Serious When He ‘Jokes’ About Police Brutality.” (Aug. 1, 2017), available at: <https://www.newyorker.com/news/news-desk/donald-trump-is-serious-when-he-jokes-about-police-brutality>; Brian Bennett. Los Angeles Times. “Not just ‘bad hombres’: Trump is targeting up to 8 million people for deportation.” (Feb. 6, 2017), available at: <http://www.latimes.com/politics/la-na-pol-trump-deportations-20170204-story.html>.

2 Graham Lanktree. Newsweek. “Trump says immigrant gangs ‘slice and dice’ young, beautiful girls.” (June 26, 2017), available at: <http://www.newsweek.com/trump-says-immigrant-gang-members-slice-and-dice-young-beautiful-girls-642046>.

3 Jim Colvin. The Associated Press. “Trump defends ‘animals’ remark, says he’ll always use it.” (May 18, 2018), available at: <https://apnews.com/3c690381c5de49aea6103c9719568323>.

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11 *Id.*

12 *Id.*

13 *Id.*

likelihood of success or failure of a case became even more dependent on the particular judge. The court hears cases out of Georgia's Folkston ICE Processing Center and Irwin County Detention Center as well as some smaller jails.

It is worth noting, however, that statistics showing a decline in such disparities are not necessarily a sign of improvement. It could indicate that a judge who was previously more likely to grant asylum is closing the gap with his or her colleagues by denying more claims. In the Atlanta Immigration Court, for example, the latest data available (FY 2012-17) shows the disparity closing to 18.7 percentage points from 26.9 percent (FY 2011-16). The change is the result of a judge's denial rate increasing.<sup>51</sup>

A new directive from Attorney General Sessions may encourage denials for more migrants seeking relief. The directive, designed to clear a backlog of 714,067 cases in the immigration courts, proposes restricting the availability of asylum, and setting a case-closing quota for judges of at least 700 cases a year.<sup>52</sup>

Far from ensuring the rule of law, mandatory quotas will compromise the due process rights of migrants, generating more deportations than fair decisions.<sup>53</sup> And for the thousands of asylum seekers locked away in remote immigration prisons, it's further proof of a system



stacked against them.

Sessions also has ordered immigration authorities to stop granting asylum to most victims of domestic abuse and gang violence in their home countries – a decision that strikes at the heart of longstanding protections guaranteed to asylum seekers. Ultimately, thousands of people will be blocked from obtaining much-needed refuge in the U.S.

Irwin County  
Detention Center  
in Ocilla, Ga.







# DETAINED IMMIGRANTS: THEIR STORIES

## PROLONGED DETENTION

### Yuusuf and the ‘Flight to Nowhere’

Before fleeing Somalia, Yuusuf was a teacher.

He was dedicated to education and its ability to empower the next generation of Somalis. But Yuusuf’s passion for teaching also put him in the crosshairs of al-Shabab, the al-Qaida-linked extremist group that has terrorized his country.

The group opposes Western-style education and is willing to kill teachers and students alike to stop its spread in the region. In 2015, they attacked Yuusuf’s school, slaughtering his fellow teachers.

It was not the first time Yuusuf had found himself mourning in the wake of al-Shabab’s deadly violence. His relatives had dared to stand up to the group years earlier – defiance that resulted in the family seeking shelter at a safe house on a police compound. The safe house was bombed by the group, killing his sister and daughter. And in 2014, the group abducted and savagely tortured Yuusuf.

It was clear he could no longer stay in Somalia.

In January 2016, Yuusuf fled to the United States for asylum, arriving in a Latin American country before journeying to the U.S. border. It was a risky journey, but one he was willing to undertake because he saw the U.S. as a beacon of democracy and human rights.

He saw hope.

But after he entered the country, he was sent to an immigration prison where he endured more than two years in inhumane conditions and a long, grueling legal process that broke his will to keep fighting for asylum – even if it meant returning to a region where he may be targeted for death.

“I will never forget the [border] guard’s name, it was Brown,” Yuusuf said, recalling his crossing of the U.S. border. “He asked, ‘Let me guess, you want asylum?’ I was looking for protection. As soon as I crossed, I was put in handcuffs. ‘You belong to these walls now,’ Brown said.”

Yuusuf was sent to Stewart Detention Center, a former prison in Stewart County, Georgia, that holds about 1,906 people.<sup>54</sup> Since 2004, more than 55,000 people have been held for immigration court proceedings at Stewart.<sup>55</sup> Aside from California’s Los Angeles County, no other county in the nation holds as many people for immigration court proceedings.

Yuusuf defended himself in immigration court. He asked a judge for bond, only to learn that most people apprehended at the border don’t have the right to petition a judge for their release. Instead, they may only request release from their jailer – ICE – through a process called parole.

Yuusuf got to work meeting all the requirements for parole. He submitted evidence from a family friend with a green card who was willing to host him and ensure his court appearances. He submitted a copy of his birth certificate and a driver’s license from Somalia. ICE found that he did not pose a risk to public safety or flight. Yet the agency denied his release – twice.

There was no hearing, only a checklist with scant marks. The reason for the denial? Yuusuf did not have an original copy of his identification, which had been confiscated on his treacherous journey from Somalia.

“This is more than jail. In jail, you get your sentence and you know when you are free, but



Stewart  
Detention  
Center in  
Lumpkin, Ga.

**“I will never forget the [border] guard’s name, it was Brown,” Yuusuf said. “He asked, ‘Let me guess, you want asylum?’ I was looking for protection. As soon as I crossed, I was put in handcuffs. ‘You belong to these walls now,’ Brown said.”**

*Yuusuf*

detention is endless,” he said. “I believed that the U.S. had rights. But if the leader of the world acts like this, I do not believe there are human rights anywhere.”

After about a year at Stewart, Yuusuf, who had taught himself immigration law, was undeterred. He filed a habeas petition for his release with a federal court, hoping it – rather than the immigration court – could release him. In the meantime, Yuusuf faced one of the toughest immigration courts in the country without counsel. The immigration judge denied his asylum request, as this judge had done in more than 95 percent of cases before the court.<sup>56</sup> Yuusuf represented himself in an appeal to the Board of Immigration Appeals, which was denied.

He would be deported.

### **The ‘flight to nowhere’**

Yuusuf and 91 other Somalis were shackled and put on a flight bound for Mogadishu in December 2017.

They never made it to their destination.

During a refueling stop in Senegal, the plane’s relief crew reportedly was unable to get enough rest due to issues with their hotel.

PHOTOGRAPHY BY  
*Silky Shah*

The aircraft stayed on the tarmac for 23 hours to allow the crew to rest.<sup>57</sup> But rather than fly the remaining 4,100 miles, the plane returned to the United States.

The flight was a nightmare even before the plane touched down in Senegal.

“While we were on our way to Senegal, a lot of us were sick,” Yuusuf said. “I was not feeling good, and there were people who were diabetic who did not get medicine. I was having difficulty sitting and I asked if I could have a towel or something to sit on and I did not get that.”

After they were informed the plane would be sitting on the tarmac for hours to come, there was “a lot of commotion,” he said.

“[T]he people stood up and said, ‘This is not right. We want you to at least remove the shackles or loosen them and let us get up and walk around. It’s been eight hours and we cannot be in this situation,’” Yuusuf recalled. “I asked for a doctor because I felt sick. There were two doctors but they were no help. I cannot sit like this for eight hours. I was in pain.”

A federal lawsuit was filed in the Southern District of Florida over the botched deportation. It describes deplorable conditions, including “toilets overfilled with human waste,” which forced some detainees “to urinate into bottles or on themselves.”<sup>58</sup>

Detainee complaints were met with violence. “ICE agents wrapped some who protested, or just stood up to ask a question, in full-body restraints,” the lawsuit states. “ICE agents kicked, struck, or dragged detainees down the aisle of the plane, and subjected some to verbal abuse and threats.”<sup>59</sup>

A judge temporarily halted the deportation of the people who were on the flight, including Yuusuf. After more than 800 days in detention, however, Yuusuf decided he could no longer take being locked up. His mother passed away during his detention. He feared his father would die before he could see him again. By giving up on his habeas case in federal court, Yuusuf hoped to reunite with his family, even as he appeals the asylum case – a battle where the odds of winning are not on his side.



Yuusuf feared he would be killed by al-Shabab, the al-Qaida-linked group that claimed responsibility for this deadly 2018 blast in Mogadishu, Somalia.





## ACCESS TO COUNSEL

# The Difference Between Success and Failure

As this report shows, the difference between receiving asylum and being removed from the United States frequently hinges on whether the asylum seeker has an attorney. That's especially the case with Somalis seeking asylum, according to an analysis by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University in New York.

TRAC examined nearly 1,900 immigration court cases of Somali asylum seekers from fiscal years 2012 to 2017 and found the asylum seekers with lawyers lost less than half of the time (40.9 percent). By contrast, those without lawyers lost 80.1 percent of the time – *nearly twice the rate* of those with a lawyer.<sup>1</sup>

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<sup>1</sup> Table 2. Immigration Court Asylum Denial Rates by Nationality and Representation Status, FY 2012 – FY 2017 (Nov. 28, 2017), available at <http://trac.syr.edu/immigration/reports/491/include/table2.html>.

## A HISTORY

# Asylum in the United States

Modern international refugee protection efforts grew from the ashes of Europe in World War II, bringing together nation-states through the United Nations to offer asylum to refugees uprooted from the war.<sup>1</sup>

These efforts also arose after a considerable history of the United States excluding immigrant groups based on race and ethnicity – efforts exemplified by the Chinese Exclusion Act of 1882.<sup>2</sup> In wartime, the United States used national security concerns to justify its refusal to offer refuge to German Jews.<sup>3</sup>

The modern international legal framework for asylum and the U.S. Refugee Act of 1980 provide protection to persons who fear returning to their home country because of past persecution or a well-founded fear of future persecution based on their race, religion, nationality, membership in a particular social group or political opinion.<sup>4</sup>

In recent years, armed conflict and forced migration have fueled the world's most serious refugee crisis since World War II, pushing more people to seek asylum in the U.S.<sup>5</sup> From FY 2016 through FY 2017, asylum decisions jumped 35 percent, from 22,312 cases to 30,179.<sup>6</sup>

The United States has seen a sharp rise in asylum applications from Mexicans and Central Americans

devastated by structural violence committed by state and nonstate actors, such as transnational criminal organizations trafficking drugs, weapons and people.<sup>7</sup> In some instances, U.S. foreign policy focused on drug interdiction and suppressing opposition to U.S. economic interests, including funding for the militarization of police and paramilitary forces, has only increased conflict.<sup>8</sup>

### Growing denials

Against this backdrop, judges are denying a growing share of asylum claims. In the five-year period ending in FY 2017, asylum denials jumped to 61.8 percent from 44.5 percent.<sup>9</sup>

Claims by applicants from Mexico saw the highest denial rate among the 10 nationalities with the most asylum cases: 88 percent of claims were rejected.<sup>10</sup> The three Central American countries referred to as the Northern Triangle, which saw a five-fold increase of asylum seekers between 2012 and 2017, also had very high denial rates: El Salvador (79.2 percent), Honduras (78.1 percent) and Guatemala (74.7 percent).<sup>11</sup>

At first glance, one might dismiss these denial rates as evidence that the degree of political repression in the Northern Triangle doesn't warrant greater rates of

asylum. These three nations, however, have some of the highest murder rates in the world and face serious problems with drug trafficking, organized crime and government corruption.<sup>12</sup>

The Honduran military, for example, staged a successful coup of the democratically elected president in 2009. After the coup, then-Secretary of State Hillary Clinton backed new elections rather than the return of Manuel Zelaya as president.<sup>13</sup> The Honduran government has only expanded the military's police powers in the aftermath.<sup>14</sup> Security forces have been implicated in the killings of protesters and prominent human rights defenders, such as internationally recognized environmental leader Berta Cáceres.<sup>15</sup>

The United States' asylum practices mirror the

treatment of asylum seekers from the Northern Triangle in the 1980s – a period when U.S. foreign policy dictated the fate of immigrants from the region. During that time, the Reagan administration intervened on behalf of repressive state governments in El Salvador and Guatemala. U.S.-backed Contra rebels also used Honduras as a base for staging attacks against Nicaragua's leftist government.<sup>16</sup>

The 1980s saw almost 1 million people flee civil war and repression in El Salvador and Guatemala to seek refuge in the United States.<sup>17</sup> Yet the U.S. did not recognize their claims. In 1984, fewer than 3 percent of Salvadoran and Guatemalan asylum cases were approved, compared to 60 percent for Iranians and 40 percent from Afghans.<sup>18</sup>

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(a) Supporting facts (*Be brief. Do not cite cases or law.*):

I AM FILING THIS PETITION BECAUSE I HAVE BEEN DETAINED BY ICE SINCE JANUARY 07, 2016 AND MY CASE IS STILL PENDING IN FRONT OF AN IMMIGRATION COURT IN LUMBIA GA. SINCE MARCH 22, 2016. I AM FILING THIS PETITION TO THE COURT TO GRANT ME PAROLE SINCE I HAVE BEEN DETAINED INDEFINITELY FOR ABOUT A YEAR NOW AND STILL WITH NO ENDING IN SIGHT.

The habeas petition Yuusuf filed with a federal court after being detained for about a year.

## Parole and the lack of due process

Yuusuf's attempt to secure his release through parole is an example of how thousands of migrants, including many asylum seekers, are deprived of the right to seek their release before an immigration judge.

These individuals, who present themselves at ports of entry and are denied admission, find their only recourse is to ask ICE for release through parole.<sup>1</sup> The process is problematic because parole decisions are often made arbitrarily without regard to due process protections.

In the case *Jennings v. Rodriguez* the respondents highlighted the problem: "Department of Homeland Security (DHS) officers (i.e., the jailing authorities) informally conduct such reviews. Officers make parole decisions – that result in months or years of additional incarceration – by checking a box on a form that contains no specific explanation and reflects no deliberation. There is no hearing, no record, and no appeal."<sup>2</sup>

The availability of parole, though varied by region

of the U.S., has generally been on the decline. In 2012, ICE granted parole to 80 percent of arriving asylum seekers who passed their credible fear interview. In 2015, that number declined to 47 percent, even as the criteria remained the same.<sup>3</sup>

The Trump administration has promoted a policy shift to virtually eliminate parole in several regions across the country. This new policy flouts an existing directive favoring the release of asylum seekers who pass a credible fear interview and pose neither a flight risk nor a danger to the community.

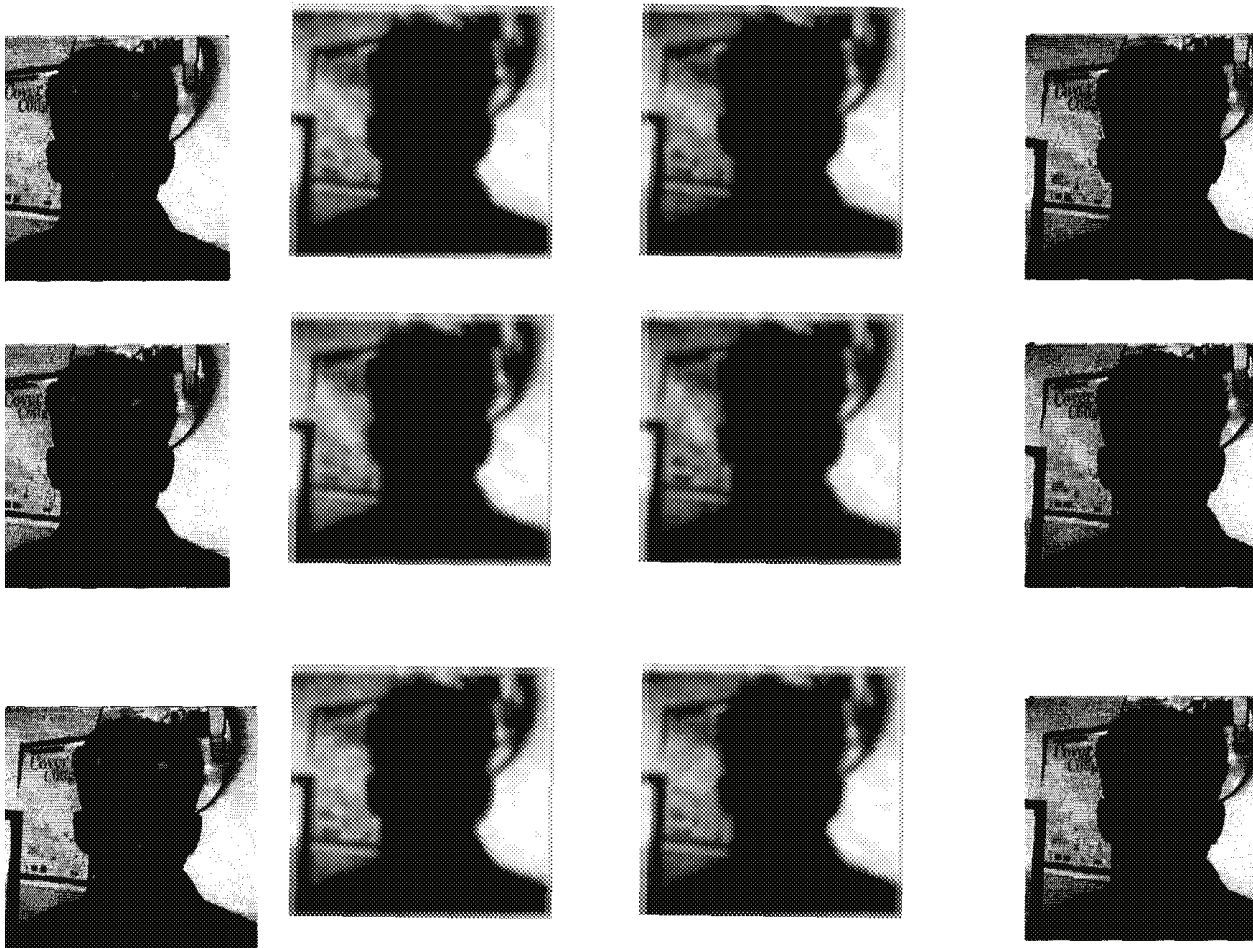
In March 2018, the ACLU filed suit against five ICE field offices it accused of implementing a blanket policy of denying parole to asylum seekers. In July of that year, a federal court sided with the ACLU, blocking such arbitrary detention. Asylum seekers participating in the class action lawsuit – *Damus v. Nielsen* – would also have their cases reviewed for possible humanitarian parole.<sup>4</sup>

<sup>1</sup> See 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 1003.19(h)(2)(i) (divesting Immigration Judges of jurisdiction to make custody redeterminations on behalf of "arriving aliens").

<sup>2</sup> Brief for Respondents at 4, *Jennings v. Rodriguez*, No. 15-1204.

<sup>3</sup> Brief of 43 Social Science Researchers and Professors as Amici Curiae Supporting Respondents at 9, *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), available at: [http://www.scotusblog.com/wp-content/uploads/2016/10/15-1204\\_amicus\\_resp\\_43\\_social\\_science\\_researchers.pdf](http://www.scotusblog.com/wp-content/uploads/2016/10/15-1204_amicus_resp_43_social_science_researchers.pdf).

<sup>4</sup> Miriam Jordan, The New York Times, "Court Blocks Trump Administration From Blanket Detention of Asylum Seekers," (July 2, 2018), available at <https://www.nytimes.com/2018/07/02/us/asylum-court-ruling-detention.html>.



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|---------------------|----------------|----------------|-----------------|
| <b>NAME:</b>        | [REDACTED]     | <b>FINS</b>    | [REDACTED]      |
| <b>A#:</b>          | [REDACTED]     | <b>ENFORCE</b> | [REDACTED]      |
| <b>DOB:</b>         | [REDACTED]     | <b>FBI#</b>    | <b>Redacted</b> |
| <b>CITIZENSHIP:</b> | <b>SOMALIA</b> | <b>SID#</b>    | [REDACTED]      |

Yuusuf's immigrant detention file, which contained multiple photos of the Somali, who'd hoped to find asylum in the U.S.



Santiago Simeón and his family sought asylum together but had markedly different experiences that ultimately fractured the family.

## DISPARITIES AMONG JUDGES

### Julio and Santiago Simeón

The six members of the Simeón family – the mother, three sons and two daughters – had always been close-knit.

When they fled violence in Central America for asylum in the United States, however, the nation they saw as a safe haven fractured the family and scattered them. Despite family members sharing the same plight, their experiences once detained – and the outcome of their cases – were remarkably different.

Their ordeal began around 2006 when drug traffickers forced the patriarch of the Simeón family to work for a cartel. After a few months, he fled from the traffickers, disappearing for years.

In December 2016, two traffickers confronted some of the Simeón siblings at a local store. Holding the young adults at gunpoint, they delivered an ultimatum – disclose their father’s whereabouts within 24 hours or die. Terrified, their mother reported the incident to police. That same day, the Simeóns – the mother and her five adult children – fled the country, fearing the police could not, or simply would not, stop the traffickers from making good on their threat. The siblings also had a niece and nephew in tow.

At the Mexican border city of Reynosa, they crossed the Rio Grande into McAllen, Texas. They were taken to an immigration prison and placed in holding cells so frigid that the Spanish-speaking immigrants called them

hieleras,<sup>60</sup> or iceboxes. They had no bedding, no jackets – no means to stay warm.

“We were kept there for four days, in those cold rooms,” Santiago, one of the brothers, said. “It’s what I remember most, the cold. We were always cold there.”

### Similar cases, different results

After claiming asylum together, the Simeón family was separated. The women were released as they awaited their asylum hearings, while the brothers were sent to Port Isabel, Texas, and jailed for 21 days. Eventually, brothers Julio and Santiago were moved to the Stewart Detention Center in Lumpkin, Georgia. Initially, they were held in the same housing area at Stewart, but after a few months, they were separated.

The family had been scattered to the four winds.


At first, Julio and Santiago represented themselves. Julio asked the judge for bond, but he never received notice that a hearing had been scheduled.

“One of the big problems is that since I didn’t have a lawyer at the first court date, they didn’t let me know that I could ask for a bond hearing,” Julio said. “Then 10 days later they just told me, ‘You have a bond hearing today. Get up because you have to leave.’ I wasn’t prepared. I didn’t even know if I was having a bond hearing. When you have a lawyer you know this stuff. They help you prepare.”

The judge denied Julio’s bond, finding him to be a flight risk despite extensive family ties in the U.S. In fact, Julio no longer had any family ties in Central America. His immediate family had

PHOTOGRAPHY BY  
*Jose Cendon*





**“My detention and deportation have really affected my family and me,” Santiago said. “We’ve always been together and lived together. Always. This is the first time we’ve been divided with me far from my family.”**

*Santiago Simeón*

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fled the region with him. His extended family already lived in the U.S. – some for many years.

The SPLC agreed to represent him pro bono in another bond request. Usually, for an immigration judge to reconsider a bond determination, the detainee must show a material change in circumstances. Julio’s lawyers argued two changed circumstances. The first argument noted that Julio’s brother, the sibling sent to Pennsylvania, had been released on bond under virtually identical circumstances.

The second argument noted that Julio now had an attorney. Obtaining counsel, according to research, meant he was *seven times* more likely to win his release on bond, and *10-and-a-half times* more likely to succeed in his case.<sup>61</sup>

The judge, however, found no change in circumstances.

Julio was jailed until the day of his asylum

hearing. On the day of his hearing, attorneys for the Department of Homeland Security failed to appear. He was granted asylum. He’s now living with relatives in the United States as the government appeals the case.

His brother Santiago had a different outcome for his nearly identical case.

During his bond hearing, Santiago represented himself. The judge, attempting to determine family ties in the United States, asked only whether he had a spouse, parents, children or siblings who were U.S. citizens. Santiago told the judge he had immediate family seeking asylum and extended family in the United States. The judge denied bond, saying that those people cannot petition for him to stay in the country.

The entire hearing lasted three-and-a-half minutes.







Santiago, who continued to represent himself, ultimately lost his case. He had the right to appeal the denial, but he would have remained locked up. After six months behind bars, he couldn't stomach the thought of being detained longer. He decided against an appeal.

Santiago was deported and fled to safety in a third country. He's no longer locked up, but he's far from his family. "My detention and deportation have really affected my family and me," he said. "We've always been together and lived together. Always. This is the first time we've been divided with me far from my family."

Santiago doesn't believe he got a chance to truly make his case in immigration court.

"They don't really believe you're saying the truth," he said. "When a whole family arrives together asking for asylum, this should be a priority – they should get more priority – because it's not for nothing that an entire family would make the journey to the U.S. They also separated my entire family, though we were arrested all together."

As for Julio, who was able to remain in the United States along with his other brother, the vastly different outcomes they experienced aren't lost on him. "We had the same problem, the same issues," he said. "But I was so sad to see one of my brothers have to go back. I know very well what can happen to him [in Central America]."

## LACK OF ACCESS TO COUNSEL

### Mateo and Sylvia

Mateo met the love of his life, Sylvia, at church in his home country in Central America.

They married in 2015 after dating for more than three years. They shared a strong bond, standing together even in the face of death threats from Sylvia's abusive ex-husband, a gang member.

Her ex-husband, however, wasn't deterred.

One day, Mateo found himself speeding away on a motorcycle as the ex-husband shot at him. Mateo crashed, suffering injuries that left him in a coma. When he awoke, he had a scar that roped around his head. A long road of recovery was ahead of him. He was learning how to

talk again when the ex-husband made another attempt on his life.

Mateo knew that he and Sylvia had to escape.

In late 2016, they set out for the United States. The monthlong journey was made even more difficult by Mateo's lingering injuries. Once they reached the border, they surrendered to U.S. border agents in the hope they would receive asylum.

What they found was a country that accomplished what the bullets and death threats from Sylvia's ex-husband could not do – it separated the couple for more than a year. Mateo was left in an immigration prison as his injuries and ailments were ignored along with his pleas for information about the status of his case, a case he would ultimately give up.

### Confinement and confusion

In January 2017, Mateo was sent to Stewart Detention Center in Lumpkin, Georgia, a facility for male detainees. Sylvia was sent to a facility in Texas. For months, Mateo was confined without notice of the charges against him and without an opportunity to see a judge about his release.

He was also waiting for a medical evaluation. He suffered from almost constant pain and vertigo as well as memory loss. He knew he needed treatment, but all he got was ibuprofen.

"The detention affected my body severely," he said. "My body, I couldn't get the medicine I needed, they took so long to get it to me. I felt so bad, sometimes I cried because the nausea and pain was so bad. So many people cry there. They miss their family. It was really sad for me."

As time passed, he grew increasingly worried that his case was at a standstill. Mateo regularly sent handwritten notes to a deportation officer, pleading for information about his case.

"Mr. Officer, I know I'm awaiting asylum but am I going to have court?" he wrote in early February 2017. "What is happening with my case? Since I don't know anything, I hope you understand, please."

He sent another note near the end of the month.

"Mr. Officer, I wanted to ask, for what reason

Santiago Simeón gave up on his appeal rather than face more detention. He was deported and is far from family.

## BOND HEARINGS

# What immigration courts should consider

The primary factors immigration judges should consider in bond proceedings are similar to those in the criminal justice system. The law instructs detained immigrants to show the court he or she does not pose a public safety risk and is not a flight risk warranting confinement.

Immigration courts, like criminal courts, look to family ties and community involvement through work or civic or religious activities to gauge flight risk. If a person does not pose a safety risk but poses a flight risk, courts should impose conditions to ensure the person appears in court for removal proceedings.

Frequently, money bail is imposed to ensure an appearance, but courts may impose other conditions, such as requiring the person to surrender travel documents to Immigration and Customs Enforcement (ICE).

Santiago's experience, which is documented in this report, highlights a troubling disparity among courts in bond grant rates and bond amounts. In the first eight months of fiscal year 2018, 30.5 percent of detained immigrants nationwide got an immigration judge to grant them release on bond, at a median bond amount of \$7,500.<sup>1</sup> In Atlanta, while bond grant rates were 49 percent, the median bond amount was far higher at \$12,000, a sum many cannot afford to pay.<sup>2</sup>

### **'Punishing a person for his poverty'**

When immigration courts grant a bond, they often fail to consider the person's ability to pay, setting an amount a noncitizen cannot afford despite the Eighth Amendment forbidding excessive bail.<sup>3</sup>

In FY 2015, the average initial bond at Stewart Detention Center was \$13,714.<sup>4</sup> At Irwin County Detention Center, another facility in Georgia, the amount was \$11,637. These amounts are far higher than the national average initial bond amount of \$8,200. They also fail to show that an immigration judge can grant bonds as low as \$1,500.

These bond amounts, unaffordable for many, help explain why one in five people granted bond in immigration proceedings remain detained at the close of the case.<sup>5</sup>

Compounding the hardship for people is the fact that immigration officials require posting of the full cash amount of the bond rather than a percentage

accompanied by collateral, which would occur in a criminal case. These practices undermine the very purpose of bail, which is to ensure a court appearance when a person isn't a risk warranting confinement.

A line of cases involving detention in criminal matters has well established the principle that a poor person cannot be detained "for inability to post money bail" if there are alternatives to detention that can reasonably assure a court appearance.<sup>6</sup>

In 2017, the 9th U.S. Circuit Court of Appeals considered whether the due process clause of the Constitution requires immigration officials to consider immigrants' ability to pay bond and alternatives to detention in deciding what conditions are reasonably necessary to ensure they appear in court.<sup>7</sup>

The case, *Hernandez v. Sessions*, involved a class of noncitizen plaintiffs granted bond but unable to afford the high amounts. The court held that plaintiffs were likely to win on their claim that due process requires consideration of ability to pay. It also stated that by "maintaining a process for establishing the amount of a bond that likewise fails to consider the individual's financial ability to obtain a bond in the amount assessed or to consider alternative conditions of release, the government risks detention that accomplishes 'little more than punishing a person for his poverty.'"<sup>8</sup>

### **Orders of recognizance and supervision**

Another avenue for immigration courts is release on orders of recognizance or supervision, which allows a person to be released without paying bond. They were widely used in FY 2015, with release on orders of recognizance or supervision accounting for 19.8 percent of those released from ICE custody.<sup>9</sup>

That avenue was practically foreclosed to people detained at Stewart – such as the Simeón brothers, whose experience is included in this report – and detainees at the LaSalle ICE Processing Center in Louisiana and the Irwin County Detention Center in Georgia. The respective rates of release on such orders at the facilities were 5.2 percent, 2.4 percent and 2.8 percent respectively.<sup>10</sup>

## Mandatory detention

In immigration courts, many migrants are denied the right to a bail hearing before a judge. The Immigration and Nationality Act (INA) subjects certain noncitizens to mandatory detention throughout their removal proceedings, again reflecting punitive measures for migrants who have been criminalized.<sup>11</sup> This includes people removable due to a sweeping range of criminal offenses – including nonviolent offenses, such as drug offenses – despite the person having *already served his or her sentence*.<sup>12</sup> ICE confined more than 12,000 such people in 2016.<sup>13</sup>

Similarly, asylum seekers at ports of entry who pass credible fear screenings – but are still detained by ICE – do not have the right to seek bail before a judge.<sup>14</sup> In fiscal year 2015, an estimated 7,500 such asylum seekers were detained by ICE.<sup>15</sup>

The U.S. Supreme Court recently reviewed the blanket denial of bail hearings to these populations during removal proceedings and held the statute allowed it, regardless of the length of the confinement.<sup>16</sup> It declined, however, to hear whether these parts of the INA violated the U.S. Constitution.<sup>17</sup>

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1 TRAC Immigration, Three-Fold Increase in Immigration Bond Amounts by Court Location (July 2, 2018), available at: <http://trac.syr.edu/immigration/reports/519/>.

2 *Id.*

3 U.S. Const. amend. VIII.

4 Eunice Cho, Immigrant detainees in Georgia more likely to be deported than detainees elsewhere (Aug. 23, 2016) (analysis of data provided by Human Rights Watch), available at: <https://www.splcenter.org/news/2016/08/23/immigrant-detainees-georgia-more-likely-be-deported-detainees-elsewhere>.

5 Transactional Records Access Clearinghouse at Syracuse University, “What Happens When Individuals Are Released on Bond in Immigration Court Proceedings?” available at: <http://trac.syr.edu/immigration/reports/438/>.

6 See *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc); *Bearden v. Georgia*, 461 U.S. 660, 671 (1983).

7 *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017).

8 *Id.* at 992 (quoting *Bearden*, 461 U.S. at 671).

9 Transactional Records Access Clearinghouse, Detainees Leaving ICE Detention from the Stewart Detention Center, available at: <http://trac.syr.edu/immigration/detention/201509/STWRTGA/exit/>.

10 Detainees Leaving ICE Detention from the Jena/LaSalle Facility (FY 2015, ie, Oct. 2014–Sept. 2015), available at: <http://trac.syr.edu/immigration/detention/201509/JENADLA/exit/>; Detainees Leaving ICE Detention from the Stewart Detention Center (FY 2015, ie, Oct. 2014–Sept. 2015), available at: <http://trac.syr.edu/immigration/detention/201509/STWRTGA/exit/>; Detainees Leaving ICE Detention from the Irwin County Detention Center (FY 2015, ie, Oct. 2014–Sept. 2015), available at: <http://trac.syr.edu/immigration/detention/201509/IRWINGA/exit/>.

11 8 U.S.C. § 1226(c).

12 See *Jennings v. Rodriguez*, 138 S. Ct. 830, 860 (2018) (Breyer, J., dissenting).

13 Brief of 43 Social Science Researchers and Professors as Amici Curiae Supporting Respondents at 6, *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).

14 8 C.F.R. § 1003.19(h)(2)(i)(B) (“an immigration judge may not redetermine the conditions of custody imposed by [ICE] with respect to...[a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act”).

15 Brief of 43 Social Science Researchers and Professors as Amici Curiae Supporting Respondents at 8, *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).

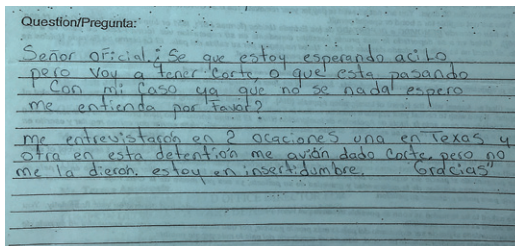
16 *Jennings*, 138 S. Ct. at 845, 847.

17 *Id.* at 851.





During his detention, Mateo sent several handwritten notes to a deportation officer, pleading for information about his case.



was I not given my first court [hearing], which was [scheduled for] February 23, 2017?" he wrote. "I was waiting all day and I wasn't called. I want to know how my case is going, since my life is at risk if I return to [my home country]. I hope you understand? Thanks."

He tried again in March 2017.

"Mr. Officer. I need to know how my asylum case is going," he wrote. "I am still waiting. I have been waiting a long time ... I have been detained, waiting for asylum, two months and three days. Thank you for helping me since I cannot return to my country for fear of losing my life. I am in an uncertain situation, I need help, I await your response."

With no action on his case in immigration court, Mateo had to take matters into his own hands. He filed a habeas petition in federal court on his own, asking for his release from custody. It wasn't until he took this action that ICE issued the required document outlining the immigration charges against him. ICE also set a bond of \$25,000 – an amount far beyond what Mateo could afford.

Seven months after being detained, he had

his first hearing. He asked the judge to lower the bond amount in light of his medical problems. "I ask you for an opportunity," he said. "The legal system is hard. I have never committed an infraction. I ask you for a fair bond."

Instead of lowering the bond amount, the judge denied bond altogether, finding Mateo posed a significant risk of flight because he lacked family in the United States. The fact that his sister and his wife – the woman he risked his life for by making the journey – were in the U.S. apparently did not persuade the judge.

Meanwhile, Sylvia was released from custody in Texas and continued to press her asylum case despite not having an attorney. The lack of an attorney was only one of several hardships for her. She didn't have Mateo by her side. And she was still separated from her three children whom she left in Central America to make the journey.

"My detention really affected my kids," said Sylvia, who had planned for her children to join her after she and Mateo received asylum. "Sometimes they got very depressed not being with me, but they knew that I couldn't bring them because their father would find out, be very angry, and my own mother and remaining family in Central America would be in danger."

Mateo soon met SPLC lawyers who offered to help with his case. He, however, saw his chances of release slipping away. The confinement was becoming too much. He gave up on his case in January 2018 and accepted deportation.

"I was just trying to live my life, but I was

## DETENTION CONDITIONS

# Medical neglect, death and other immigration prison failures

As Mateo's story demonstrates, immigrants held at immigration prisons struggle to receive the health care they need.

The 2016 SPLC report *Shadow Prisons* describes conditions in immigration prisons across the Deep South, including the Stewart Detention Center in Georgia, where Mateo was held.<sup>1</sup> Detained immigrants reported inadequate medical and mental health treatment, causing needless death and suffering. At all the facilities investigated in the report, detainees with chronic medical conditions, such as diabetes, reported an inability to obtain medically appropriate meals.

In 2016, at least three people died in ICE custody at the LaSalle ICE Processing Center in Jena, Louisiana, arguably due to a lack of medical or mental health treatment: Saul Enrique Banegas-Guzman, Thongchay Saengsiri and Juan Luis Boch-Paniagua. A year later, Jean Jimenez-Joseph committed suicide at Stewart while being held in solitary confinement. And in early 2018, Yulio Castro-Garrido died after being transferred to a hospital from Stewart.

The 2016 SPLC report also found a general lack of protection from violence within the facilities. This failure is particularly acute among vulnerable detainees, including elderly, disabled and LGBT individuals.

Other reports have echoed these concerns. A 2017 report by Project South and the Penn State Law Center for Immigrants' Rights Clinic found widespread

human rights violations at the Stewart and the Irwin County immigration prisons after interviewing more than 80 detainees.

It noted that the "unhygienic environment and poor living conditions not only take a toll on the detained immigrants' health, but also have a negative and disturbing impact on the minds of the individuals being held in detention."<sup>2</sup>

The report documented the arbitrary and excessive use of solitary confinement, denial of medical care and severe understaffing of the medical unit. It also found religious discrimination, exorbitant phone fees and unreasonable restrictions on access to law libraries.<sup>3</sup>

A 2017 report by the Department of Homeland Security's own Office of Inspector General found issues at four of the five facilities examined during unannounced visits, noting that the problems "undermine the protection of detainees' rights, their humane treatment, and the provision of a safe and healthy environment."<sup>4</sup>

At Stewart, the staff impermissibly housed high-risk and low-risk detainees together, maintained an inadequate process for submitting grievances, and delayed medical care.<sup>5</sup> At Stewart and two other facilities, the report noted violations of ICE standards "in the administration, justification, and documentation of segregation and lock-down of detainees."<sup>6</sup>

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1 Eunice Cho and Paromita Shah. "Shadow Prisons" (Nov. 2016), available at: [bit.ly/2GtLWcT](http://bit.ly/2GtLWcT).

2 Project South & Penn State Law Center for Immigrants' Rights Clinic. "Imprisoned Justice: Inside Two Georgia Immigrant Detention Centers" (May 2017), at 5, available at: [bit.ly/2JLj1Br](http://bit.ly/2JLj1Br).

3 Project South & Penn State Law Center for Immigrants' Rights Clinic. "Imprisoned Justice: Inside Two Georgia Immigrant Detention Centers" (May 2017), available at: [bit.ly/2JLj1Br](http://bit.ly/2JLj1Br).

4 U.S. Department of Homeland Security Office of the Inspector General, "OIG-18-32: Concerns about ICE Detainee Treatment and Care at Detention Facilities" (Dec. 11, 2017), available at: [bit.ly/2yuiPAw](http://bit.ly/2yuiPAw).

5 Id. at 6.

6 Id.

thrown in jail, denied my liberty,” he said. “Imagine, this was all because I tried to save my life and escape a life of fear and danger. It was too much – more than a year detained without ever committing a crime.”

Sylvia returned to Central America after one of her children was hospitalized with an illness. After being separated from Mateo for more than a year, the couple reunited in Central America.

They are in hiding because they still fear for their lives.

## PROLONGED DETENTION

### Guillermo

Guillermo’s family was like many in Central America. The military violence in the region – as well as U.S. actions that only helped to further destabilize the area – led to his family fracturing as they struggled to survive.<sup>62</sup> Guillermo’s father, searching for a way to support his wife and six kids, left for el Norte: the United States. And by the time Guillermo was 15 his abusive mother had abandoned him and his five younger siblings.

He became their sole caregiver for seven years.

The memories of that time, such as his infant sister crying on his shoulder, are vivid. His father sent a monthly stipend, but the family struggled to make ends meet. At a time when most high schoolers are focused on dates and friends, Guillermo split his time between work, family and school. His life was consumed with raising the children. There simply wasn’t time to be a teenager.

The violence in the region also forced him to quickly grow up. Criminal organizations targeted and killed Guillermo’s cousin. The relative had failed to pay a gang’s “war tax” – money the gang extorts from people through threats of violence.

They then turned their attention to Guillermo for payment.

In 2016, he was kidnapped and beaten by two uniformed police officers carrying out the gang’s orders. Their message was clear: Pay the war tax or face the murder and rape of his siblings. He realized that as long as they stayed in

## DUE PROCESS

# Remote immigration prisons impede access to attorneys, chances for success

The Stewart Detention Center where Mateo was held sits in Lumpkin, Georgia, about 150 miles south of Atlanta.

With a capacity of 1,996 people, it is one of the nation’s largest immigration prisons. In one important way, however, Stewart is like many other such facilities: It is far from cities where detainees would have easier access to counsel.

Almost 200 miles southeast of Atlanta, for example, is the Irwin County Detention Center in Georgia, which ordinarily holds more than 700 migrants at any given time. And more than 220 miles north of New Orleans is Louisiana’s LaSalle ICE Processing Center, which can hold up to 1,200 people.

Given the remoteness of these facilities, there should be little surprise that people confined to them, such as Mateo, are among the least likely to have a lawyer, despite having the right to an attorney at their own expense when facing a violation of immigration law, a civil infraction.<sup>1</sup>

When researchers examined representation at removal proceedings from FY 2007 through FY 2012, they found that 66 percent of people who were not detained had lawyers, but only 14 percent of detained immigrants had counsel.<sup>2</sup>

Small cities with populations of less than 50,000 had the lowest representation rates for detainees – 10 percent over the six-year period studied.<sup>3</sup> In Lumpkin, Georgia, where the Stewart Immigration Court is located, only 6 percent of people had a lawyer.<sup>4</sup>

The same dismal representation rate was found in Louisiana’s Oakdale Immigration Court. These findings mean almost 19 out of 20 detained people were alone as they faced deportation proceedings that carry potentially life or death consequences.



## The attorney advantage

Many attorneys do not represent people in detention because of the significant time constraints and investment required. In addition to the case work, the travel and wait times for meeting with a client at these remote facilities are frequently too great to justify taking a case.

Immigration law, however, has been described as “second only to the Internal Revenue Code in complexity.”<sup>5</sup> Competent counsel improves case outcomes at every step. Detained immigrants represented by counsel were more than twice as likely to be granted a bond hearing and about four times as likely to win bond hearings compared to detainees without counsel.<sup>6</sup>

The advantage of legal representation is also evident at the SPLC’s Southeast Immigrant Freedom Initiative (SIFI), a project that provides pro bono legal representation to detained immigrants. During its first year of operation in 2017, SIFI’s bond grant rate was 58 percent.

Overall, national data shows that immigrants who were released from detention and had a lawyer were five-and-a-half times more likely to win their cases than those without counsel.<sup>7</sup> Immigrants who remained detained were 10-and-a-half times more likely to succeed in their cases if they had lawyers.<sup>8</sup>

## Other obstacles

Detainees with counsel, however, have encountered other obstacles preventing effective representation, such as a lack of meeting spaces at these facilities. Both the LaSalle and Irwin immigration prisons have only one meeting room for as many as 1,200 detained immigrants. At Stewart, there are three rooms for over 2,000 detainees.

Facility policies and practices also systematically undermine effective representation. The SPLC found that at all three facilities, staffers unjustifiably interrupt attorney-client visits, deny meetings during head counts and shift changes, and force attorneys to wait hours to meet with a single client.

Guards also prevent attorneys from seeing clients even when visitation rooms are available, frequently and arbitrarily change visitation rules, and listen in on attorney-client conversations. They also unreasonably delay attorney-client discussions by phone or video conference.

In-person visits are complicated by visitation rooms where clients are behind a glass window, which makes communication and exchange of documents

**“The detention affected my body severely,” Mateo said. “My body, I couldn’t get the medicine I needed, they took so long to get it to me. I felt so bad, sometimes I cried because the nausea and pain was so bad. So many people cry there. They miss their family. It was really sad for me.”**

*Mateo*

difficult. Some immigration prisons’ electronic device bans also create obstacles for attorneys.

For example, such bans prevent attorneys from using smartphones to call translation services or use translation apps to speak with clients. And many of the visitation rooms encountered by the SPLC lack landlines that would allow an attorney to call a translation service. As a result, an attorney may be unable to communicate with a client unless an interpreter willing to come to the facility can be found – a difficult prospect, particularly if few interpreters speak the client’s language.

As a result of the obstacles the SPLC has encountered, it filed a federal lawsuit against DHS in April 2018. The lawsuit, filed in the U.S. District Court for the District of Columbia, describes how detainees at the Stewart, LaSalle and Irwin facilities are prevented from accessing counsel – violating their Fifth Amendment due process rights and the attorneys’ First Amendment free speech rights.

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1 See INA § 240(b)(4)(A) (recognizing “privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing...”).

2 Ingrid V. Eagly & Steven Shafer, A National Study of Access to Counsel in Immigration Court, 164 U. Pa.L. Rev. 1, 2 (2015).

3 Id. at 10.

4 Id. at 9.

5 Castro-O’Ryan v. INS, 847 F.2d 1307, 1312 (9th Cir. 1987).

6 Eagly & Shafer at 16-17.

7 Id. at 19.

8 Id.



Despite immigration violations being civil in nature, detained immigrants may endure prison-like conditions.

the region, they would never be free from gang violence – or the gangs’ attempts to pull them into a life of crime.

Guillermo, 21, and his siblings had to flee to the United States, where they would seek asylum. What he encountered was a system that locked him away in a facility virtually indistinguishable from a prison as he pursued his asylum case. It was a case he would ultimately give up out of frustration, opting instead to face the prospect of returning alone to his home country and the danger that awaits him there.

**Escape to the U.S.**

On the day the war tax was due, Guillermo, his 20-year-old brother and four minor siblings embarked on a 1,500-mile journey to Hidalgo, Texas. Rather than risk the danger of sneaking across the U.S.-Mexico border, they

turned themselves over to border authorities. Guillermo knew he and his eldest brother were likely to be arrested. It was, however, a price he was willing to pay for the safety of the children.

The kids were placed in the custody of a relative in the United States, while Guillermo and his brother, barely adults themselves, were arrested and sent to separate prisons. Guillermo was sent to the Stewart Detention Center in Lumpkin, Georgia. He applied for asylum without legal help. The process was slow, but he had faith that his claim was legitimate. With the help of the SPLC, he sought bond so he could be with his relatives in the U.S.

Family members, such as his youngest sister, wrote letters of support. “I miss you and cry for you and won’t stop praying and I love you lots, Guillermo, and will continue to love you, even more than you can imagine, and want you

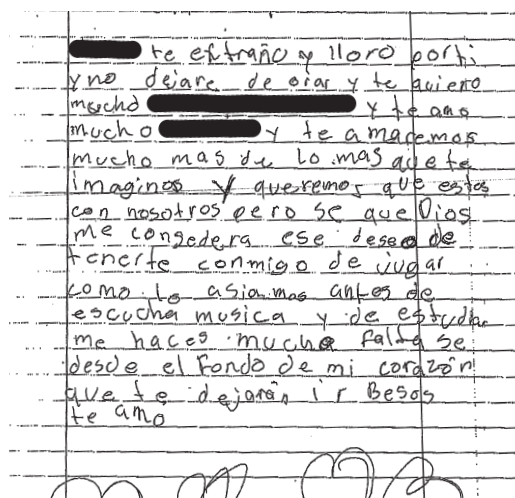
PHOTOGRAPHY BY  
*Mary Claire Kelly*





**“The treatment was the hardest part of being detained,” Guillermo said. “The guards looked for ways to make us feel bad, on purpose. They humiliate us. They call us ‘dogs’ and throw our things on the ground. They say things like, ‘you have no rights’ and ‘time to eat, dogs!’ The food was horrible.”**

Guillermo



Letter from Guillermo's sister.

to be with us,” she wrote in Spanish. “[B]ut I know that God will grant me the wish of having you with me, to play like we used to, to listen to music and study together. I miss you and have faith from the bottom of my heart that you will be set free. Kisses, I love you.”

Despite providing evidence of family ties, the immigration judge denied bond, ruling Guillermo was a flight risk as a recent entrant because he did not have enough family ties in the United States. That same day, the judge moved forward with his asylum hearing, denying counsel’s request to reschedule the hearing to allow time to properly prepare the case. The judge ultimately denied his asylum request.

Things only worsened for Guillermo.

He learned another cousin was murdered in Central America. The Board of Immigration Appeals summarily denied the appeal of his

bond denial. It offered no explanation. The SPLC also petitioned the immigration judge to reconsider the asylum denial. The judge denied the petition in September 2017, noting “no good cause shown.”

Life in the immigration prison was wearing Guillermo down. What he once saw as a system that would impartially hear his case for asylum now appeared to be a system designed to make him and his fellow detainees give up their cases by breaking their will.

“The treatment was the hardest part of being detained,” he said. “The guards looked for ways to make us feel bad, on purpose. They humiliate us. They call us ‘dogs’ and throw our things on the ground. They say things like, ‘you have no rights’ and ‘time to eat, dogs!’ The food was horrible.”

In an attempt to fight the hunger he suffered as a result of food that was poor quality



# Immigrant detention and forced labor

Guillermo's need to take a job at the Stewart Detention Center to buy additional food to stave off hunger highlights a problem at immigration prisons operated by private, for-profit prison companies: forced labor used to boost profits.

In April 2018, the SPLC and its allies filed a class action lawsuit against CoreCivic, the company that operates the Stewart Detention Center, where Guillermo had been held.<sup>1</sup> The lawsuit describes how CoreCivic coerces detainees at Stewart to participate in its so-called "voluntary" work program by depriving them of basic necessities like food, hygiene products and phone calls, in violation of federal anti-trafficking laws.

In exchange, CoreCivic pays subminimum wages – \$1, \$2 or \$4 a day – ensuring a steady supply of cheap labor while maximizing profits. When people protest conditions, pay, or refuse to work, CoreCivic has thrown them in solitary confinement.<sup>2</sup>

Similar lawsuits have been filed against private immigration prisons across the country.<sup>3</sup> Remarkably, 18 members of Congress signed a letter in March 2018 urging Attorney General Jeff Sessions and the heads of ICE and the U.S. Department of Labor to side with the private prison companies in these cases, saying there is no issue with paying detainees \$1 a day.<sup>4</sup>

1 Complaint for Declaratory and Injunctive Relief and Damages, *Barrientos v. CoreCivic*, No. 4:18-cv-00070-CDL (M.D. Ga. Apr. 17, 2018), available at: [https://www.splcenter.org/sites/default/files/documents/01\\_-\\_complaint.pdf](https://www.splcenter.org/sites/default/files/documents/01_-_complaint.pdf).

2 Spencer Woodman, "ICE Detainee Sent to Solitary Confinement for Encouraging Protest of 'Voluntary' Low Wage Labor," *The Intercept*, Oct. 10, 2017, available at <https://theintercept.com/2017/10/10/ice-immigrant-detainee-solitary-confinement-work-stoppage/>

3 See, e.g., *Menocal v. The GEO Group*, 1:14-cv-02887-JLK (D. Colo.); *Chen v. The GEO Group*, No. 3:17-cv-05769-RJB (W.D. Wash.); *Novoa v. The GEO Group*, No. 5:17-cv-02514 (C.D. Cal.); and *Gonzalez v. CoreCivic*, No. 3:17-cv-02573-AJB-NLS (S.D. Cal.).

4 Letter from U.S. Congress members to Sessions, Acosta, and Homan. "RE: Recent Lawsuits Seeking Substantial Payments to Alien Detainees for Voluntary Institutional Work Performed while in Immigration Detention at Contract Detention Facilities," (March 7, 2018), available at: <https://www.documentcloud.org/documents/4412763-2018-03-12-Novoa-Dkt-24-2-Exhibit-a-Re-Motion-to.html#document/p1>. See also Betsy Woodruff, "Republicans Say Forced Labor Is Good for Detained Immigrants in Letter Defending Private Prison," *Daily Beast* (March 15, 2018), available at: <https://www.thedailybeast.com/republicans-say-forced-labor-is-good-for-detained-immigrants-in-letter-defending-private-prison/>; Tracy Jan, "These GOP lawmakers say it's okay for imprisoned immigrants to work for a \$1 a day," *The Washington Post* wonkblog (March 16, 2018), available at: [https://www.washingtonpost.com/news/wonk/wp/2018/03/16/republican-congressmen-defend-1-a-day-wage-for-immigrant-detainees-who-work-in-private-prisons/?utm\\_term=.22767d21afba](https://www.washingtonpost.com/news/wonk/wp/2018/03/16/republican-congressmen-defend-1-a-day-wage-for-immigrant-detainees-who-work-in-private-prisons/?utm_term=.22767d21afba).

or served in small portions, he took a job mopping the prison's floors for \$2 a day. A day's work was enough to buy some rice at the commissary, which cost \$1.70, or five soups at \$2. It took a bit longer to earn enough for beans (\$2.40), chicken (\$4) or sardines (\$3).

After nine months in detention, separated from his family, Guillermo chose not to appeal the asylum denial any further. After enduring insults and hunger at the Stewart Detention Center, he was spent – physically, emotionally

and psychologically. He could not imagine spending another six months in confinement fighting an appeal with little hope for success.

In November 2017, Guillermo was deported. Some of his siblings remain in the United States, fighting for asylum. "The deportation has really affected my siblings, mostly my youngest sister, who I have cared for since she was five months old," he said. "The little ones have never been away from me for so long. They have been really terribly affected."

## SEXUAL HARASSMENT IN CONFINEMENT

### Francisco

The criminal gangs in Francisco's Central American community repeatedly attempted to extort his family.

They wanted to store drugs and weapons in his home. The teen and his sister refused, which resulted in a beating. When they reported the incident to police, the cops tipped off the gang that the youths had turned to the authorities.

The brother and sister were brutally beaten again by the gang.

Later, the gang members showed up at the family home with guns blazing. They broke down the door and delivered an ultimatum to Francisco and his sister: leave or die. The siblings knew they had no choice but to leave.

Francisco already faced danger as a young gay man. In the community where he grew up, his sexual orientation was more than taboo – it made him a target for persecution, even death. He had already been rejected by some family members who saw his sexual orientation as a sickness. And his godfather, who knew he was gay, had sexually abused him.

Francisco and his sister ran for their lives, crossing into the U.S. at Hidalgo, Texas. Both siblings passed their initial asylum interviews. His sister, 16, was released into the custody of her father, who lived in the United States. In November 2016, Francisco, barely an adult himself at age 18, was sent to Stewart Detention Center in Georgia.

At the facility, he encountered people who had been indoctrinated with anti-LGBT beliefs and propaganda, similar to the beliefs held by those targeting him for persecution back home. While these anti-LGBT beliefs were certainly not held by everyone in detention, those who held such prejudices – and were willing to act on them – made Francisco's life hell.

He quickly became a target for sexual harassment.

He reported the harassment to staff, telling them that he was afraid. They granted his request to be moved to a different unit, but the harassment only became worse. As

Francisco showered one day, a detained immigrant approached him with his erect penis in his hand. He told Francisco that if they were in his home country, he would rape him.

Francisco reported the incident, but the man was only moved to another unit – the unit adjacent to where Francisco slept. Every day in the cafeteria, Francisco still faced his abuser, who would hurl homophobic slurs at him. He was the target of daily taunts and threats from others.

"Here in detention, I don't feel safe in any place," he said. "When I go to the bathroom standing up they make fun of me: 'Why don't you sit down like a woman?' When I'm bathing there are people who harass me. They have erections and ask for sexual favors. When you go to eat, they call you 'bitch,' 'faggot.'"

Francisco's mental health deteriorated. He complained to officials about depression, but was ignored. After filing a complaint, he was thrown into segregation for five days, "for his own good," he was told. He was put in a cell directly across from where another young man, Jean Jimenez-Joseph, had recently committed suicide.

"From my window, I could see yellow tape and the words 'do not enter,' and I could hear the click of cameras [photographing the scene]," he said. "Being so close to that cell made me think about killing myself because it was such a horrible place to be. I had nothing in my cell except a shoddy mattress. For three days, I was alone without any visitors. On the last two days, I was visited once a day, at nighttime."

The staff not only failed to protect Francisco, but joined the harassment. One officer in the cafeteria called him a slur and twice made obscene gestures, including one instance that Francisco considered a threat.

He filed a complaint with supervisors, but it was dismissed within a week. No one interviewed witnesses. No one let Francisco review video that could contain evidence of the guard's actions. Francisco had no chance to appeal the dismissal. The guard remained in his post, where he continued to intimidate him.

In October 2017, Francisco and the SPLC filed a complaint with the Department of Homeland Security's Office for Civil Rights and





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Civil Liberties (CRCL). It described how ICE violated its own standards for the treatment of detainees and the prevention of sexual abuse.

It also noted how staff repeatedly violated the Prison Rape Elimination Act by failing to take appropriate action when Francisco reported the abuse, even retaliating against him for lodging the complaints.<sup>1</sup> CRCL has since launched an investigation.

During the harassment, Francisco still had an asylum case before the immigration court. He and the SPLC worked together to win his release on bond. They gathered evidence that showed Francisco's brother, aunt and a family friend would provide him with financial support in the United States and assure his court appearances. The court was also presented with evidence that showed Francisco did not have a criminal history.

The judge denied bond, deeming him a flight risk. He later denied Francisco's request for asylum, finding his testimony was not credible. The judge found inconsistency in the fact that some in Francisco's family shunned his sexual orientation but wrote letters of support on his behalf.

And, despite recognizing that Francisco was likely to be harassed in his home country, the judge found the prospect of harassment did not rise to the level of persecution. Perhaps unsurprisingly, the judge had a 97.7 percent asylum denial rate in five years on the bench.<sup>2</sup>

"I have no trust that there will be justice in my case," Francisco said. "The judges don't have a sense of justice for people. Their work is to deny everything. For nothing more than fleeing, crossing and trying to be reunited with my family I have been detained for so long, it is an injustice. This journey was about saving my life. Three or six months in detention, I can take, but one-and-a-half years in detention is too unjust. This is one of the things that bothers me most – to be young and locked up."

Francisco appealed both decisions to the Board of Immigration Appeals (BIA), where the appeals were dismissed. He was seeking a review of the case by the 11th U.S. Circuit Court of Appeals when he was deported in March 2018. (Under the law, ICE can remove migrants

**"I have no trust that there will be justice in my case," Francisco said. "The judges don't have a sense of justice for people. Their work is to deny everything. For nothing more than fleeing, crossing and trying to be reunited with my family I have been detained for so long, it is an injustice. This journey was about saving my life. Three or six months in detention, I can take, but one-and-a-half years in detention is too unjust. This is one of the things that bothers me most – to be young and locked up."**

Francisco

after the BIA dismisses their appeals and their deportation orders become final.)

He had spent almost two years behind bars when he was deported.

As for the future, Francisco hopes to eventually write a memoir about his experience in detention. He wants to call it *Unbroken*.

**Francisco's family holds letters and cards sent to him during his time at an immigrant prison.**

PHOTOGRAPHY BY  
*Octavian Cantilli*

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# RECOMMENDATIONS

As this report demonstrates, the current system of immigrant detention is needlessly punitive, frequently pushing detainees to give up on their cases rather than spend another day in detention. The simplest solution is to end the practice of detaining immigrants. Congress should hold hearings to investigate the civil and human rights abuses in detention centers and the due process violations in the immigration court system. In addition, federal lawmakers and policymakers should implement the following recommendations to transform this broken system.

## **END DETENTION, ALLOW IMMIGRANTS TO LIVE WITH THEIR FAMILIES WHILE FIGHTING THEIR CASES.**

Detention harms families and communities by removing needed members: parents, employees, volunteers and neighbors. It pushes detained immigrants to give up on their cases even when they may succeed and avoid deportation.

Detention is also expensive. As this report went to press, the Trump administration's FY 2019 budget sought billions of dollars to detain even more immigrants, which would only expand an already bloated and harsh system.<sup>63</sup>

The federal government and many states have reduced prison populations already, recognizing detention should be a last resort. Immigrants – who by definition are not facing criminal charges or serving criminal sentences if they are in immigration detention – should not be behind bars.

The following steps should be taken to end mass immigrant detention:

- **Congress must increase oversight of ICE and hold the agency accountable.** Congress already requires ICE to use detention alternatives such as release on bond, but the agency is flouting the mandate by increasing detention and reducing use of alternatives.<sup>64</sup> Ensuring accountability is crucial if Congress does not heed calls from the public to abolish ICE.
- **Congress must repeal the detention bed quota and guaranteed minimums.** Unlike any other detention system, Congress sets a quota for how many beds must be available for detaining migrants. And at some immigrant prisons, ICE guarantees a set minimum payment to private prison companies regardless of the number of people actually detained. These practices encourage detention and must end.
- **Repeal the mandatory detention statute.** A judge's hands should not be tied by mandatory detention statutes. Most immigrants show up at hearings because they have a great incentive – winning the ability to stay in the United States.
- **If bond is necessary, the judge must consider a person's ability to pay.** Judges should not set an arbitrary amount for bond. They must recognize that the purpose of bond is to ensure future attendance at hearings, not to foreclose working-class people from meaningful access to release on bond.
- **End indefinite detention by setting a time limit.** As this report demonstrates, indefinite detention is psychologically – and sometimes physically – harmful, causing people to abandon strong cases simply to put an end to their detention. We must remove the risk of indefinite detention by setting a limit on how long an immigrant may be detained while awaiting a ruling in his or her case.

➤ **Congress must remove the profit motive from detaining immigrants.** Most immigrant detention is in private prisons and other facilities that profit from the practice. The profit motive creates incentives to cut corners, leading to the deprivation of basic needs like adequate food, medical care and contact with loved ones.<sup>65</sup>

The quickest solution is to stop paying tax dollars to private prison companies. Congress should pass the Dignity for Detained Immigrants Act, which phases out the profit motive and requires DHS to establish binding standards for treatment of detained immigrants.

Congress should also enforce the law requiring ICE to report to the DHS Office of Inspector

General by Oct. 15, 2018, all grants and contracts awarded by any means other than full and open competition.

➤ **Phase out civil detention for immigrants.**

As an interim step, adopt an alternative model to detention using smaller facilities, allowing greater freedom of movement and granting detained immigrants greater control over their schedule, food and clothing. Facilities should be staffed by service-oriented personnel rather than personnel trained for correctional or custodial settings. Independent federal monitors should conduct random audits of the facilities to ensure people are treated humanely.

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## PROTECT THE RIGHTS OF DETAINED IMMIGRANTS.

The rights of immigrants do not disappear once they enter an immigration prison. It is imperative that their rights are respected. As this report has shown, such violations can push an immigrant to give up on his or her case, regardless of the likelihood of success. The following steps must be taken to protect the rights of immigrants:

➤ **Congress should order the comptroller general to investigate immigration prisons that unreasonably limit access to lawyers.** Many of these facilities sharply limit immigrants' access to their lawyers, such as LaSalle ICE Processing Center in Jena, Louisiana, which houses nearly 1,200 people yet has only one visitation room for immigrants to meet with their lawyers. Such conditions, which cause delays and denials of access to counsel, cannot be tolerated.

➤ **Congress should pass the Detention Oversight Not Expansion (DONE) Act and the Dignity for Detained Immigrants Act.** The acts would require the DHS Office of Inspector

General to conduct unannounced inspections of all immigration prisons to ensure compliance with national standards. A report of the inspections' findings would be submitted to Congress. The DONE legislation would require the DHS secretary to submit a plan to Congress to cut the number of detention beds by 50 percent.

➤ **Congress must enforce the mandate in the 2018 appropriations bill requiring ICE to publicly post all reports of in-custody deaths within 30 days.** Enforcement of the mandate is necessary for transparency and, ultimately, the protection of immigrant rights.



### **ENSURE FAIRNESS IN IMMIGRATION COURT THROUGH REFORM.**

As this report demonstrates, the nation's deportation machine was not built overnight but through decades of policy. Reforming immigration courts would help ensure fairness for all people before the courts. The following steps must be implemented:

➤ **Reform the structure of immigration courts.**

The current structure of these courts imposes heavy caseloads on judges, while granting little judicial independence or protection from political pressures. The courts need a new structure. The most sensible option is to establish an Article I court staffed in the manner already in use in U.S. bankruptcy courts. This is an important step in ensuring fairness, impartiality and due process.

➤ **Independent auditors should investigate disparities in bond grant rates across immigration courts.** Independent monitors should also investigate the consequences of the case quotas imposed on immigration judges in 2018.

➤ **Eliminate case quotas for immigration judges, which infringe on due process rights.**

For as long as the Department of Justice's Executive Office for Immigration Review employs immigration judges, it must forbid case quotas because they infringe upon immigrants' due process rights and inhibit judicial independence.

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