



On an average day, the U.S. Department of Homeland Security (DHS) detains roughly 33,400 non-citizens in federal detention facilities and local jails across the country, over a threefold increase in its detention population since just over a decade ago. The government's hugely expanded use of immigration detention has meant that thousands of immigrants are detained for prolonged periods of time—for months, if not years, and often in inhuman and cruel conditions—while the immigration courts and federal courts resolve their cases. Many individuals are imprisoned without ever receiving the most basic element of due process: a bond hearing to determine whether their detention is even necessary. Thus, these individuals are needlessly subjected to prolonged imprisonment even though they may have substantial challenges to removal from the United States and pose no significant danger to society or flight risk. Many are also forced to choose between being locked up indefinitely and giving up their immigration claims. Prolonged immigration detention is arbitrary and unfair, and imposes tremendous hardship on immigrants and their relatives, many of whom are U.S. citizens or otherwise residing lawfully within the United States.

The ACLU has long been at the forefront of efforts to challenge prolonged immigration detention. Recently, the ACLU, with the leadership of the Immigrants' Rights Project (IRP), has won a number of major cases imposing statutory and constitutional constraints on prolonged immigration detention.¹



In *Demore v. Kim*, 538 U.S. 510 (2003), a case litigated by the ACLU, the Supreme Court upheld the constitutionality of mandatory detention. However, the Court only did so where the immigrant had conceded deportability and where detention lasted for the “*brief*” period necessary for [completing] removal proceedings—a period that typically “lasts roughly a month and a half in the vast majority of cases . . . and about five months in the minority of

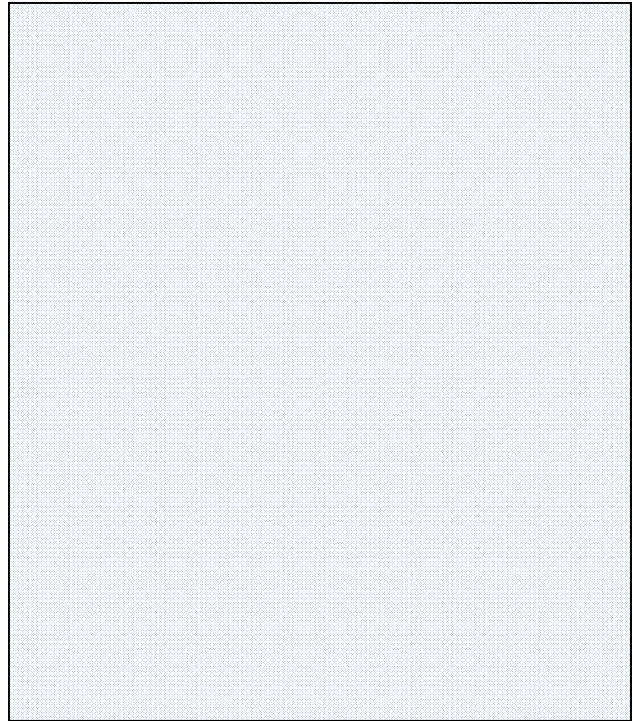


Luis Casas-Castrillon, a longtime LPR, spent seven



Notably, only approximately 16 percent of immigration detainees are represented by counsel,¹⁶ and the often remote location of their incarceration and the complexity of the immigration laws makes it difficult for them to pursue their cases.

Prolonged detention also has perverse policy effects. Individuals with the strongest challenges to removability or claims to immigration relief are the most likely to fight their cases and thus face the greatest risk of prolonged imprisonment. The prospect of continued detention coerces many of them to abandon their meritorious claims to stay in the United States.¹⁵





The following chart provides a state-by-state breakdown showing the location of individuals subject to detention for six mon



Prolonged immigration detention deprives individuals of their liberty without a sufficient justification and adequate procedural safeguards. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the U.S. Supreme Court recognized that “[f]reedom from imprisonment—from Government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” For this reason, the Court held that detention violates due process unless it is reasonably related to its purpose. Due process requires a sufficiently strong special justification for detention that outweighs its significant deprivation of liberty as well as “strong procedural protections.”²⁰ As detention becomes prolonged, the deprivation of liberty becomes greater, requiring an even stronger justification and more rigorous procedural protections.²¹ Yet the government subjects thousands of individuals to detention for prolonged periods



Given the serious due process and public policy concerns raised by prolonged immigration detention, the government can and should implement several immediate reforms to significantly reduce the use of arbitrary and unnecessary imprisonment; bring cost-savings for the government; and alleviate the hardship that prolonged detention imposes on immigrants and their families:

The government should take the minimal step of providing for independent and impartial review of all ICE detention decisions (e.g., bond hearings before an IJ) except where detention is clearly





We recently obtained updated statistics on the scope of prolonged detention, as a result of a FOIA request we filed seeking data about individuals who had been detained for six months or more. ICE provided us with a detainee population report for November 1, 2010, indicating that on that date 4,303 individuals in ICE detention had been held for six months or more. Of those individuals, at least 2,743 were still in the process of fighting their cases; the remaining 1560 were detained pursuant to final orders that had not been stayed.¹ The procedural breakdown for those who still had pending cases is as follows:

- 1,976 had cases pending before an Immigration Judge,
- 534 had cases pending before the Board of Immigration Appeals (BIA)
- 233 had final orders that were judicially stayed (presumably pending federal court review)

The breakdown of the prolonged detainee population by circuit is as follows:

1st Circuit: 123 individuals

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