

JENNINGS V. RODRIGUEZ 101

The Case

This term, the Supreme Court holds in its hands the fate of thousands of people languishing in immigration prisons in the United States. On November 30, 2016, the Court will hear arguments in the case, *Jennings v. Rodriguez*. *Jennings* is about solving the problem of the long-term incarceration of people who are navigating our broken immigration system. Under current law, the government detains thousands of immigrants—many of whom will ultimately win their cases— for months and even years, without the basic due process of a bond hearing to consider whether their detention is even justified.

In 2015, the ACLU won a ruling from the Ninth Circuit Court of Appeals that individuals who are fighting their deportation cases are entitled to a bond hearing once their immigration detention exceeds six months. At this bond hearing, they can secure release if the judge finds that they are not a danger to the community or a flight risk. A similar ruling was reached in the Second Circuit Court of Appeals.

The government appealed the rulings, and the Supreme Court will now decide in *Jennings* whether the law requires that individuals who have been detained for six months have access to a day in court on whether their detention is justified.

The Problem

1. **Any individual facing the possibility of deportation can be put in immigration detention—for months or even years—while they pursue their case to remain in the U.S.** This includes lawful permanent residents (green card holders) who have lived in the U.S. most of their lives, asylum seekers and survivors of torture, including women and children, parents of young U.S. citizen children, elderly people, people with serious illnesses, and even U.S. citizens who are wrongly classified as non-citizens.
2. **Without bond hearings, people with strong immigration cases must fight their cases behind bars without any consideration as to whether the detention is necessary or fair.** An individual can be held in prolonged detention despite having deep family and community ties in the U.S. and a very strong legal case. In fact, the stronger a person's case is, and the longer they fight, the longer they have to suffer in detention. This toll can become so intolerable that some people with meritorious cases ultimately give up and accept deportation. Read the story of Arnold Giammarco, a U.S. veteran who accepted deportation after

enduring a year and a half of imprisonment and is now separated indefinitely from his U.S. citizen wife and daughter.

3. **Conditions in immigration detention are extraordinarily inhumane.** Detainees are held behind bars in prison jumpsuits, shackled during visitation hours, and subjected to surveillance, strip searches and solitary confinement. Facilities are often located hundreds of miles from urban centers, making visitation by families difficult, and limiting access to counsel. Detention centers are also notorious for poor medical care, insufficient and inedible food, and rampant physical and verbal abuse. In some places, there is a total absence of access to sunlight or fresh air or any outdoor recreation time.
4. **Prolonged detention has devastating consequences for the people detained and their families.** Many people who ultimately win their cases nevertheless lose their homes, jobs, and savings due to the length of detention. Families are evicted and separated, children are put into foster care, and vulnerable children and elderly are left without caretakers.
5. **Taxpayer dollars are being used to imprison more immigrants than ever before.** By November 2016, this number is expected to reach a record-breaking 45,000 people a day. This is largely due to the Obama Administration's mass detention of asylum seekers – people like Gloria Cervantes Flores, a survivor of torture and domestic violence who was detained for six months despite passing her credible fear interview. This explosion in immigration detention is benefiting the private prison industry, whose facilities hold more than 70% of immigration detainees, at a cost of approximately \$2 billion a year to taxpayers. Research and practice show there are many effective and less costly alternatives to detention.

The Solution

Jennings presents an opportunity to take a modest step forward in addressing the many problems with immigration detention. A bond hearing would afford due process to people languishing in detention by allowing them to be considered for release based on their individualized circumstances. By preventing needless detention, the Supreme Court can minimize the enormous harms and costs of detention not only on detained persons but also on their families and communities.