

Obama administration defends indefinite detention of immigrants before Supreme Court

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The Obama administration went before the US Supreme Court this week to defend its power to indefinitely detain immigrants facing deportation proceedings—many of them legal US residents and asylum seekers—without granting them the right afforded to virtually anyone facing criminal prosecution to appear before a judge for a bond hearing to determine whether or not their imprisonment is justified.

Barely seven weeks before Donald Trump takes office, having vowed to deport up to 3 million people and prosecute an even more draconian crackdown against immigrants, the Democratic administration is fighting intransigently to defend one of the more egregious features of the massive and brutally repressive immigration enforcement system that it will hand over to the Republican president-elect.

Obama's acting solicitor general, Ian Gershengorn, went before the high court in an attempt to overturn a ruling by the San Francisco-based US Court of Appeals for the 9th Circuit, which upheld a district court injunction requiring that immigrants fighting deportation orders be granted bond hearings after being held for more than six months in detention and every six months thereafter.

The 9th Circuit ruling followed a similar decision by the 2nd Circuit Court of Appeals in New York City, which held that people detained for more than six months in its jurisdiction, which includes New York, Connecticut, and Vermont, must be granted a bond hearing.

The original case leading to the 2015 ruling by the 9th Circuit was brought by the American Civil Liberties Union on behalf of Alejandro Rodriguez, who came to the US with his parents as a baby, grew up in Los Angeles and worked legally as a dental assistant to support his two children. He had two minor scrapes with the law, one for "joyriding" when he was 19 and a second when he was

convicted on misdemeanor drug possession charges when he was 24 and sentenced to five years' probation.

After the second conviction, for which he was not sentenced to a single day in jail, he was picked up by ICE (Immigration and Customs Enforcement) agents and locked up while facing deportation proceedings to send him back to Mexico, a country he had left as an infant. He remained incarcerated for three years before immigration authorities finally dropped removal proceedings against him.

The government released Rodriguez from custody only after the ACLU filed its lawsuit on behalf of Rodriguez and similarly incarcerated immigrants in the Los Angeles area, claiming that its ending of his incarceration rendered the case moot, a contention rejected by the district and appeals courts. Rodriguez finally won his case and retained his lawful permanent resident status in the US, but only after forfeiting three years of his life.

Rodriguez's lengthy incarceration was not an aberration. The ACLU cited numerous similar cases. Among them was that of Warren Joseph, a legal permanent resident from Trinidad, who joined the US Army at the age of 21 and saw combat in the first Persian Gulf War. Sentenced to six months for violating probation, he was picked up by ICE and spent three and a half years in a for-profit immigration jail in New Jersey, suffering aggravation of injuries he incurred in the military that ultimately required hospitalization and surgery that left him with difficulty walking. In the end, the government dropped its attempt to deport him, his legal permanent residence was restored and he subsequently became a US citizen.

According to the ACLU, since the 9th Circuit ruling, judges in the Los Angeles area "found about 70 percent of immigrants eligible for release at their bond hearings, and

about 70 percent of those found eligible were able to post bond and go home to their families.” The Obama administration’s intervention is aimed at calling a halt to these releases and restoring its unfettered indefinite detention of all those fighting deportation.

Asked in the November 30 Supreme Court hearing whether he believed the court could rule that “three years is too long” to detain someone without justifying their incarceration, Gershengorn responded, “I mean, if it were 20 years, I mean, we could go on, then, of course, that might be a concern that, in fact, we were no longer trying to effectuate removal.”

The government also argued that bond hearings are unnecessary because those detained pending deportation can file individual habeas corpus petitions in federal courts. This complicated remedy is effectively denied to the majority of those incarcerated, who have no legal counsel, and, according to the ACLU, such cases take on average of 19 months to wind their way through the courts.

The government’s position is that it is required to detain all immigrants subject to deportation for past crimes including drug charges and other minor offenses under a draconian law signed by Democratic President Bill Clinton in 1996.

Ahilan Arulanantham, the ACLU lawyer who argued against the government, pointed out that under the USA Patriot Act, non-citizens subject to long-term detention on terrorism charges are granted hearings every six months, while those picked up for deportation based on shoplifting or minor drug possession charges are denied them under the 1996 law.

The government’s appeal to the Supreme Court is effectively the defense of what amounts to a police state system in its treatment of immigrants in which the constitution does not apply.

With a remaining vacancy leaving eight members on the Supreme Court, a split decision on the case would allow the bond hearings taking place in the 9th and 2nd Circuits to continue, but provide them nowhere else. If the court rules in favor of the government, the bond hearings would be ended and indefinite detention enforced nationwide.

Just a day after the high court hearing, a Department of Homeland Security review panel issued a report recommending that the government continue locking up immigrants in private, for-profit prisons, despite multiple investigations, including by the US Commission on Human Rights, demonstrating that these facilities fail to provide even the abysmal standards of treatment and

medical care prevailing in government-run prisons. Sexual and physical abuse, including of immigrant children, have been reported in a number of facilities.

Homeland Security Secretary Jeh Johnson ordered the review following a decision by the Federal Bureau of Prisons to stop using private prisons because of the widespread reports of abuse.

The thrust of the panel’s findings was that private facilities are cheaper than public, and the DHS must prepare for “dramatic surges in detention.” An estimated 73 percent of immigrants detained by the government are being held in the private prisons. In at least one case, a private facility that the Bureau of Prisons stopped using because of abuses and poor standards is now being converted into an immigrant detention facility.

The projected “surges in detention” have led to a surge in profits for the private jailers. The value of shares in CoreCivic, the new name chosen to perfume the abysmal record of Corrections Corp. of America, increased by 67 percent in the wake of Donald Trump’s election victory. Stocks in the GEO Group, another private prison company, rose by 40 percent.

The total number of immigrants in detention has already risen from a “normal” level of 34,000 to over 41,000, and DHS is scrambling to acquire new detention facilities.

While Trump campaigned on the basis of fascistic anti-immigrant demagoguery and has vowed to deport between 2 and 3 million immigrants, whatever attacks are carried out by the incoming administration have been prepared by the administration of Barack Obama, who has been dubbed the “deporter in chief.” His administration is on track to deport 3 million immigrants before it leaves office, more than all the presidents who preceded him.



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