

# Executive Summary

## No End in Sight: Prolonged and Punitive Detention of Immigrants in Louisiana

For the past two years, Louisiana has detained more immigrants than any other state, except Texas. Louisiana has long held the title as the incarceration capital of the world and, with the recent expansion of immigration detention became an immigrant detention hub. As nine new facilities opened in the state, expanding the federal government's detention capacity to 9,000 immigrants in a patchwork of twelve facilities spread across hundreds of miles, overwhelmingly in remote areas. While the number of detained immigrants fell dramatically during the COVID-19 pandemic because of restrictive border closures and some releases, Louisiana continues to serve as a hub, holding nearly 2,000 detained immigrants, the second-highest detained population in the country.

Detained immigrants in Louisiana often remain in confinement for months or years in squalid conditions. Detained immigrants can request release from ICE or, in some cases, through a bond hearing in immigration court. But those avenues face extraordinarily long odds in recent years, even in meritorious cases. This has led detained immigrants to increasingly turn to a last resort remedy: writs of habeas corpus in federal court to seek release because their detention has become unlawful. The Supreme Court has held that indefinite immigration detention raises a serious constitutional problem, and that detained immigrants are entitled to release if their detention has become unreasonable. Immigration detention can also become unlawful if it is punitive, such as for detained immigrants vulnerable to serious illness or death from the COVID-19 virus spreading in congregate facilities. Given the stakes in these cases and their increasing relevance, the Tulane Immigrant Rights Clinic embarked on a comprehensive study of 499 federal habeas court cases filed over a ten year period (2010 to 2020) by immigrants detained in Louisiana seeking release from detention.

### Key Findings

- More than half of detained immigrants filing for habeas were Black immigrants. More than a third had Caribbean countries of origin, and more than one fifth had African countries of origin.
- Almost 1 out of 4 detained immigrants filing for habeas were previously lawful permanent residents. Almost half previously held some form of lawful status.
- By the time that detained immigrants filed their petition, they have typically already endured months or even years of confinement. On average, detained immigrants had been detained for nearly one year and one month at the time they filed a habeas petition.
- These cases face frequent delays and take months or years to resolve. On average, habeas petitions take about six months from filing to case resolution. This means that for the average case, the detained immigrant is detained for over one year and six months in total by the time that their habeas case is resolved.
- Detained immigrants won court-ordered release from detention through habeas in only 5 cases during the study period. However, in 22% of cases (112 cases), ICE released the detained immigrant to their community during the case before the Court ruled on whether continued detention is unlawful. These voluntary administrative

releases—“shadow wins” where the immigrant is released without court vindication—show up in the formal court record as losses. This is because the Court dismisses the case because there is no further legal remedy as the petitioner has already achieved their goal of release.

- Though the filing fee for these cases is only \$5, this fee presents a common obstacle to detained immigrants. In over 40% of cases, detained immigrants did not pay the initial fee. The Court denied 30% of fee waivers requested, and 45 cases were dismissed for failure to pay \$5.
- Detained immigrants who do not have the help of a lawyer must also file their petition on a specific court-issued habeas petition form according to local rules of the Court. The form is only in English, and it spans nine pages long. The Court dismissed 22 cases for failing to comply with an order to fill out the required form or revise the petition.
- Habeas cases are taking longer because of long deadlines for ICE, represented by the U.S. Attorney’s office. Over the study period, the Court nearly tripled the number of days that ICE is allotted to respond to allegations of unlawful detention. Those deadlines are sometimes extended even further with extension requests, which are always granted.
- The vast majority (85%) of detained immigrants filed their habeas petitions without the help of a lawyer. Legal representation seems to make a significant difference. More than 1 out of 4 detained immigrants represented by lawyers at filing were released from detention, whereas only 9% of those who filed unrepresented were released.

## Key Recommendations

- **Congress** should restrict immigration detention, ban private immigration detention centers, and permit custody review before an immigration judge for every detained immigrant.
- **ICE** should close detention centers, especially those that are remote and not accessible to attorneys, advocates, and detainees’ families.
- **The Court** should consider shorter deadlines for ICE, represented by U.S. attorneys, to substantively respond to habeas petitions. Given that liberty is at stake in these cases, all deadlines should be set to the minimum reasonable time, and extensions should be limited to rare and exceptional instances. **The Court** should consider issuing orders quickly in these cases.
- **The Court** should consider resolving claims expeditiously based on evidence submitted by each party after the petition, response, and any rebuttal. **The Court** should act quickly to use all available tools for fact-finding under the habeas statute. For any proceedings where a limited English proficient petitioner is brought to court, **the Court** should provide simultaneous interpretation by a court interpreter at no expense.
- **The Court** should appoint counsel for unrepresented petitioners with regularity. **The Court** should award attorneys’ fees and costs to successful detained immigrants who win release under habeas.
- All detained immigrants should have access to legal information about habeas corpus through **Department of Justice’s Legal Orientation Program (LOP)**. **Any detention center holding immigrants should** contain a legal library with habeas corpus forms, relevant cases and other legal resources, and a guide to self-representation in multiple languages.
- **ICE** should publicly report the number of people detained longer than 6 months at each detention center. In each custody review, **ICE** should give any detained immigrant who is denied release the form for a habeas corpus petition and a notice from legal service providers to seek further information.