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## **Study Finds 'Shadow Wins' Common For Louisiana Immigrants Hoping To Challenge Long Detention Stays In Court**

For Phillip, an asylum seeker and a former attorney from East Africa who lived at the Pine Prairie Immigration and Customs Enforcement Processing Center for more than a year, detention felt like prison. "You put on a uniform just like in prison. You're known as a number just like in prison, Phillip, who asked to go by his middle name for fear of retribution, said. "Officers look at you like some piece of crap. You have officers that will ask you, 'What are you doing time for?'" In May 2020, Phillip filed a habeas corpus petition in hopes of securing a court-ordered release on the grounds that his detention had become punitive and was therefore unconstitutional. His petition was denied that June. By October, he was able to appeal and had been granted a 7-hour deposition, in which he intended to make his case. Just days later, ICE released him and his case was dismissed. Phillip's case is one of 499 that took place in Western Louisiana between 2010 and 2020 that Tulane University Law School's Immigrant Rights Clinic reviewed in a year-long study. The study's findings were released in a report called, "No End in Sight." The study found that Phillip's case is part of a trend - ICE releases immigrants who use habeas corpus petitions to challenge their detentions rather than allowing their cases to be heard in courts. Immigrants with habeas corpus cases in Louisiana's Western District Court spent an average of 13 months in detention before filing their petitions. Only five of the cases researchers reviewed were resolved with a court-ordered release from detention through habeas corpus. Immigrants seeking asylum or facing deportation are not entitled to the same rights as defendants facing criminal charges - like the right to a probable cause hearing if they are arrested or the right to a court-appointed attorney. That is because immigration matters, including detention, are considered civil and not criminal. "That sort of ruling maintains the legal fiction that someone who's been in immigration detention for a year is facing meaningfully different conditions than someone who's been incarcerated," Mary Yanik, director of the Immigration Rights Clinic, said. Like many of the for-profit detention centers that have opened in Louisiana in recent years, Pine Prairie was formerly a prison and is owned by one of the largest private prison companies in the United States, the Geo Group. Despite the similarities between these centers and carceral facilities in Louisiana, immigrant detention can only be deemed constitutional if the conditions are not punitive. For immigrants who have spent several months or even years in detention with no clear idea of when they will be let out or deported, filing a habeas corpus petition is a last resort to secure their release. The writ of habeas corpus protects against unlawful imprisonment or detention by allowing someone in government custody to go before a magistrate judge, who can decide whether further detention is justified. Phillip filed his petition because he said his life in detention felt like imprisonment by a different name. "It is a prison," he said. "I would say they have just tried to sanitize [it] by calling it a detention." Aside from being in ICE custody for more than six months, Phillip noted in his petition that he was at an increased risk of severe illness from COVID-19, were he to contract it in the communal living space where he lived, because of pre-existing health conditions. He had previously had deep vein thrombosis or blood clots in his leg, and had been diagnosed with hypoglycemia. In a 2001 Supreme Court decision on immigration case *Zadvydas v. Davis*, justices ruled 5-4 that indefinite detention of deportable immigrants is unconstitutional. In his majority opinion Justice Stephen G. Breyer said that if an immigrant has spent more than six months in detention and deportation will not happen in the "reasonably foreseeable future" the government may have to release the detainee or cite a special reason for keeping them in custody. But Yanik and her team found that most habeas corpus cases in Western Louisiana are not fulfilled. Most petitioners are simply detained and released before they can get a day in court. These releases from ICE custody before a habeas hearing are called "shadow wins," because even though the detainees get what they want - their release - they don't get their formal vindication in court, and the district court never gets to weigh in on detention limits. "[Phillip is] very aware that the way his case was resolved means that someone else in his position will start over from the beginning," Yanik said. "And so everyone's just filing and fighting these cases individually, until ICE will hopefully release them and give up. But that overall problem of really prolonged detention is not is not being addressed." Shadow win releases can come several months after detainees have filed a habeas petition, prolonging their releases even longer. The reports found that the courts began allowing ICE to take roughly 60 days to respond to habeas petitions, despite ordering response deadlines of 20 or 21 days. Other barriers to habeas petitions include a \$5 filing fee and the requirement for detainees to update their addresses with the courts by mail whenever they are transferred to different facilities. Yanik said her clients have been transferred in the middle of the night without notice from the government to them or to their family members or attorneys. "There's this

constant instability," she said. "And when that happens, even though the government, who's the other party in the case, made the decision to transfer you on a whim, it's the detained person's responsibility to update the court." Phillip said he was moved at least four times after he filed his habeas petition. "I would have to keep on changing addresses with the court every week," he said. The immigration rights clinic's report recommends that the court move quickly in deciding habeas corpus cases, to ensure that immigrants do not spend even more time in detention. It also suggests decreasing time limits for ICE to respond to petitions and removing requirements like filing the petition on a specific court-issued form. Ultimately, it suggests that many of the for-profit detention centers in Louisiana, like the ones that Philip stayed in, should close.