

Locked Up and Locked Out: *Jennings v. Rodriguez* as a Justification of Indefinite Detention

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Introduction

The United States has 30,000 people incarcerated in “administrative” immigration detention on any given day.¹

In 2018, the Supreme Court ruled in *Jennings v. Rodriguez* that migrants in immigration detention were not entitled to periodic bond hearings, allowing for the possibility of indefinite detention without the right to due process.

Puzzle

Given the due process protections in the Constitution, how is it possible for the U.S. government to deny a right to periodic bond hearings to immigrant detainees?

Migrant detainees’ dual precarious status as stateless people and criminals under the law leaves them vulnerable to rights abuses and state violence. Exploiting that vulnerability, law has the interpretive and institutional power to, as in the case of *Jennings v. Rodriguez*, solidify detainees’ civil death.

Literature Review

Law’s interpretive power to facilitate state violence

- The law distinguishes between “legitimate” and “illegitimate” violence and recognizes certain kinds of suffering over others, justifying state violence and downplaying the harm it causes.
- Technical, euphemistic, and “hyperlegal” language renders law’s violence invisible.

Social death

- Specific racialized groups in the United States are “ineligible for personhood,” or enjoy “negative personhood,” where one is subject to criminalization, but not protection, by the state.
- The law produces criminalized statuses and relegates specific racialized groups to those categories, assigning to them a condition of legal rightlessness.

Migrant personhood

- Because rights are primarily located in the nation-state, stateless people fundamentally exist in a condition of rightlessness. Rights have *territoriality*.
- A condition of “rightlessness” is not an absolute loss of rights, but rather a condition in which one’s legal, political, and human standing is *precarious*.

Analysis

Precarious Personhood in the Immigration Law System

- Migrants’ criminalization under U.S. law and racialized status in U.S. society makes them “ineligible for personhood” and thus vulnerable to the abuses of the carceral system.
- The denial of the right to bond hearings in *Jennings v. Rodriguez* is a logical reflection of migrants’ rightless status and the precariousness of their civil rights overall.

Justification for Indefinite Detention in *Jennings v. Rodriguez*

- “Indefinite” detention is ambiguously defined, leaving room for interpreters of the law to justify long periods of detention without accountability.
- The Court used a strict textualist interpretation of the law to deny that migrants had any guarantee to bond hearings, even after six months of detention.
 - The Court argued that ruling of *Zadvydas v. Davis* had misapplied the canon of constitutional avoidance in reading a six-month limit on detention into the statute of the Immigration Nationality Act.
- The Court avoided recognizing migrants’ 5th Amendment rights by citing a “legal fiction” that since detained migrants have not been legally admitted into the country, they are not “legally” within U.S. borders and, accordingly, are not entitled to constitutional rights.

Theoretical takeaways:

- The majority’s argument revealed its approach to migrant personhood because it defended the ruling based on whether the U.S. state was *obligated* to provide a bond hearing, rather than whether migrants were *entitled* to due process.
- The majority’s argument was emblematic of the ways in which legal interpretation and definition-making can be weaponized to exclude certain people from the protection of the law, and the ways in which the institutional limitations of legal decision-making can provide justification for racist and inhumane decisions.

The Consequence of *Jennings v. Rodriguez*: Civil Death

- Following *Jennings v. Rodriguez*, migrants are not guaranteed the right to question their incarceration or attempt to curtail its length. This amounts to civil death.
- The Court did not provide clear guidance to lower courts about whether or not indefinite detention of migrants without access to bond hearings constitutes a due process violation.
 - Legal ambiguity leaves migrants unprotected and dependent on the good will of lower courts and individual judges, underscoring their precarious personhood under the law.

Length of Detention

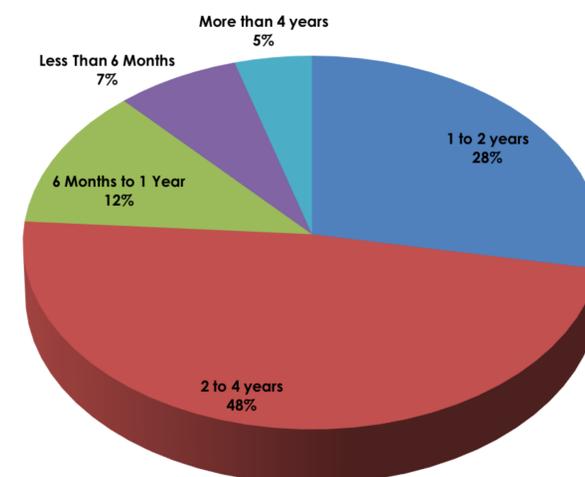


Figure 1: Average length of time in immigration detention²

Conclusions

Freedom from arbitrary detention is one of the most fundamental rights afforded to people under national and international law—and yet, when this freedom is constrained by the state, the law itself justifies and rationalizes this violence.

The denial of rights to periodic bond hearings in *Jennings v. Rodriguez* both reflected conventional migrant rights challenges and featured unique justifications that displayed the interpretive and institutional power of the law to facilitate state violence.

Conventional appeals to rights and redress will not necessarily solve this problem, because for criminalized and “rightless” groups like detained migrants, winning specific rights doesn’t necessarily ameliorate the condition of rightlessness that they exist in. However, protecting and affirming migrants’ rights under the law, such as the right to periodic bond hearings while in detention, is an essential first step towards a just system.



Figure 2: Prisoners entering an immigration detention facility³

Submitted to the Department of Political Science on April 15, 2021

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