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Why some immigrants spend many years in detention

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LOS ANGELES — In 2003, Kenyan immigrant Sylvester Owino was convicted of second-degree robbery in San Diego.

He finished a more than two-year prison sentence and was transferred to the Otay Mesa Detention Center as Immigration and Customs Enforcement began removal proceedings against him.

Owino applied for asylum but almost 10 years went by before he was released from immigration detention in 2015.

The long years in detention for Owino might seem the simple byproduct of his criminal record — were it not for cases like those of two Rwandan men being held 2,500 miles away in Virginia.

The men have been at the Farmville Detention Center since February 2007 — longer than any other immigrants in the U.S. But no crimes blot their history in the U.S.

Two dozen other detainees in California alone have spent more than three years in ICE custody, according to data obtained through a public records request by the Transactional Records Access Clearinghouse of Syracuse University and released last month. Most of them, like Owino, have already served time for criminal convictions.

The longest detained immigrant in the state is a Mexican man whose most serious criminal conviction is drug possession. The man has been at the Imperial Regional Detention Facility in Calexico, Calif., since December 2012.

According to TRAC data, ICE classified the conviction as a “Level 3,” which is the agency’s lowest seriousness level and includes misdemeanor offenses and other minor violations of the law. An ICE spokeswoman said she could not provide other specifics about any case without a date of birth or “alien number,” which is used to track detainees.

The TRAC report provides a snapshot of ICE detainees around the country through June. It also shows that, when it comes to how long an immigrant can spend in detention, it doesn't always make a difference whether the person has a criminal history.

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"It's not about what's best for families, or even what's best for this country," said Christina Fialho, co-executive director of Freedom for Immigrants, which advocates for ending immigrant detention. "That's indicative of the system as a whole; there really isn't a pattern to any aspect of immigration detention."

ICE spokeswoman Lori Haley said no category of immigrants is exempt from enforcement. She said ICE also analyzed its detainee population in June and found that 54 percent of detainees had a criminal conviction. Nationally and in California, the majority of the more than 44,000 detained immigrants have no criminal convictions, according to TRAC data. Among those with criminal histories, the most common convictions include illegal entry, DUI and assault, or pending charges, and that 70 percent were subject to mandatory detention.

"These figures reflect appropriate allocation of limited resources," she said.

People who are subject to mandatory detention are not entitled to a bond hearing and must stay in detention while they are in removal proceedings. Haley said federal law mandates the detention of people who arrive at ports of entry, are subject to expedited removal and are convicted of certain crimes. Immigrant rights groups say ICE has the discretion to release anyone.

The majority of detainees had been in ICE custody only for a few months when the numbers were released to TRAC.

But the varying detention cases illustrate the complicated nature of immigration law. Nationally and in California, the majority of the more than 44,000 detained immigrants have no criminal convictions, according to TRAC data. Among those with criminal histories, the most common convictions include illegal entry, DUI and assault. A patchwork of legislation put together over the years and modified by administrations, policymakers and case law, said Judge Ashley Tabaddor, who leads the National Assn. of Immigration Judges.

The Department of Homeland Security, which oversees ICE, also has "a lot of leeway and discretion, particularly at the outset, in terms of determining someone's detention status," she said.

Private companies run most of the nation's detention facilities. It costs the federal government \$134 a day on average to maintain one adult detention bed, according to ICE's fiscal year 2018 budget. The National Immigration Forum calculates a higher cost of \$208 a day. Each family residential center bed, which keeps mothers or fathers with their children, costs about \$319 a day, according to the ICE budget.

People from Mexico and India make up about half of the nearly 5,800 detainees in California, with smaller numbers coming from Guatemala, El Salvador and Honduras, the data show.

The vast majority of detainees from India have no criminal convictions and only one Indian person out of more than 1,100 detained in California is labeled an asylum seeker. But The Times reported recently that a growing number of California detainees are Indians crossing through Mexico to seek asylum.

Similarly, just 48 people detained in California were labeled as legal residents.

Fialho, of Freedom for Immigrants, said those numbers seem too low.

David Bier, an immigration policy analyst at the Libertarian Cato Institute, said ICE should focus on detaining people who are likely to pose a risk to U.S. citizens, taking into account the social cost of different crimes, the likelihood that a person could reoffend and flight risk compared to the cost of detaining them.

“All of those resources that are going into detaining those people who haven’t committed any kind of serious offense are resources that are going away from tracking down people who are a threat,” he said.

In September, news outlets reported that then-Atty. Gen. Jeff Sessions planned to review a court case that, if overruled, would cause most asylum seekers to remain in detention indefinitely while their claims are processed. Currently, asylum seekers who enter the U.S. illegally are allowed a bond hearing before an immigration judge.

This year, the Supreme Court determined in *Jennings v. Rodriguez* that immigrants are not entitled to periodic bond hearings and sent the case back to the U.S. 9th Circuit Court of Appeals for further litigation. At issue in another case the high court heard last month, *Nielsen v. Preap*, is whether immigrants convicted of certain crimes should be exempt from mandatory detention after they are released from custody if ICE doesn’t detain them immediately.

Fialho said half of the more than 7,000 people her organization worked with the first three months of this year had spent two to four years in detention. She said the Trump administration’s hard-line stance on immigration enforcement means ICE agents no longer have incentive to use their discretion to release people from detention.

Many people remain in detention because they can’t afford to pay a bond, Fialho said. Judges have the discretion to set the amount Nationally and in California, the majority of the more than 44,000 detained immigrants have no criminal convictions, according to TRAC data. Among those with criminal histories, the most common convictions include illegal entry, DUI and assault. at minimum \$1,500, though the median amount nationwide is \$7,500, according to another TRAC report. Others remain in detention because they aren’t eligible for release.

Immigrants who are ordered deported have the right to appeal. For people who are subject to mandatory detention, that can mean years of waiting from inside a facility.

That’s exactly what happened to Owino, who fled Kenya in 1998, arriving in the U.S. on a student visa after he said he’d been jailed, beaten and threatened by the government.

It took two rounds of appeals to the Board of Immigration Appeals and then the 9th Circuit Court of Appeals before he was granted bond, with the help of Fialho’s organization, in 2015. He spent nine years in immigration detention. His asylum petition remains ongoing.

Part of what kept Owino in detention for so long was something that binds many immigrants whether they were arrested for a crime: determination not to be deported. Owino said there were days he considered accepting deportation, as others had, just to get out.

Owino's next court date is in January. Meanwhile, he's glad to be with his wife and 3-month-old daughter on his time off from running a Kenyan food truck in San Diego.

He said it's difficult to fight a deportation case from detention. He didn't have a lawyer half the time because, unlike in criminal proceedings, immigrants are not entitled to court-appointed attorneys. But he considers himself an example of what could happen if more detained immigrants were granted bond.

"We can leave our mistakes behind and push forward," he said. "Nobody should be detained that long."