

US court denies damage claim for American citizen wrongfully held for more than three years by ICE

By Nick Barrickman
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Last week, the US Court of Appeals for the Second Circuit handed down a ruling denying the payment of damages to Davino Watson, a United States citizen detained wrongfully by Immigration and Customs Enforcement (ICE) officers from 2008 to 2011, nearly three and a half years.

The ruling, passed by a 2-1 court majority, reversed a 2016 court ruling which found the US government liable for a mere \$82,500 in damages, repayment for only 27 of the 1,273 days Watson spent wrongfully imprisoned.

Watson, who became a naturalized US citizen in 2002 at age 17, was arrested in 2008 on nonviolent drug charges and later released after serving a brief sentence. Upon release, Watson was seized by ICE agents who began the deportation process.

Ignoring efforts by the Jamaican-born Watson to provide documentation and family contacts establishing his US citizenship, ICE officers instead negligently contacted individuals unrelated to Watson while ignoring their own guidelines for dealing with detained US citizens.

Under current ICE policies, officers must “immediately examine the merits of the claim [of citizenship] and notify and consult with his or her local OCC [Office of Chief Counsel].” If a detainee does not have an attorney, the officer involved should “immediately provide the individual with [a] list of pro bono legal service providers, even if one was previously provided.”

Watson, who was denied legal representation throughout his detention, was forced into a drawn-out process lasting over three and a half years, exceeding the two-year statute of limitations which would have

allowed him to legally bring charges against the US government for his unlawful imprisonment.

In 2014, citing the credible claim that he was not aware of his legal options before the statute of limitations passed, Watson was able to bring charges against the US government, with a district court judge determining the US government’s behavior represented a “mindless failure.”

The US Appeals Court last week clawed back the meager damages Watson had won, denying his right to seek a waiver from the statute of limitations. “We reverse the judgment with respect to the false imprisonment claim, which is time-barred,” the appeals court said, adding “[t]here is no doubt that the government botched the investigation into Watson’s assertion of citizenship, and that as a result a U.S. citizen was held for years in immigration detention and was nearly deported. Nonetheless, we must conclude that Watson is not entitled to damages from the government.”

Ominously, the court found that keeping an American citizen falsely detained without legal remedy was “an entirely common state of affairs” and Watson’s case did not justify a waiving of the statute of limitations.

Mary McCarthy, chief director of the Heartland Alliance National Immigrant Justice Center, told the WSWs that the Appeals Court ruling has set “a very dangerous precedent which we hope doesn’t spread.”

Mark Flessner, Watson’s attorney, noted that the ruling created a legal catch-22 “requiring that Watson file a case [for compensation and damages] before it was even determined he was falsely imprisoned.”

Increasing numbers of individuals, both immigrants and US citizens, have been detained by ICE as the

United States has tightened its immigration policies.

According to a 2011 University of California, Berkeley study of the Department of Homeland Security's "Secure Communities" program around 3,600 US citizens were detained by ICE agents between 2008 and April 2011.

These arrests have led to American citizens being deported. In 2008, Mark Lyttle, who was mentally handicapped, was deported to Mexico where according to the ACLU he was "forced to live on the streets and in prison for months."

In 2014, the DHS discontinued Secure Communities after it received public backlash. Upon his inauguration, President Donald Trump reinstated the program along with the "travel ban," cracking down on immigrants from seven predominantly Muslim nations. Deportations have increased under Trump by nearly 40 percent since the same period last year.

Watson's case demonstrates the reactionary and undemocratic character of the US immigration system, in which American citizens can be swept up and be held for years without legal recourse or the ability to seek compensation. Such circumstances are likely to increase as Trump has vowed to "unshackle" ICE agents while attempting to cut the flow of immigration by as much as half the current rate.

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