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## Suits for wrongful deportation by ICE rise

Tyche Hendricks, Chronicle Staff Writer

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**(07-27) 20:18 PDT** -- Citizens who

have been wrongfully locked up in immigration jails can't reclaim the months or years they spent behind bars, but some of them are seeking restitution and suing the U.S. government.

Hundreds of U.S. citizens have been detained and, in some cases, deported by U.S. Immigration and Customs Enforcement, The Chronicle revealed in a special report Monday. Legal experts say the numbers have grown as immigration detention has tripled over the past dozen years to 33,000 inmates at a time.

Cesar Ramirez Lopez, a San Pablo truck driver, won a \$10,000 settlement in 2007 after he was held for four days by U.S. Immigration and Customs Enforcement agents even after his lawyer convinced ICE investigators that he was a citizen.

"When ICE came and detained me, I told the officer I was a citizen," said Ramirez Lopez, 25. "They told me they didn't want to hear it, that I was going to get deported."

Others - detained for months or years and in some cases even deported - are suing for much more. Among them are:

-- Pedro Guzman, a mentally disabled man born and raised in Southern California, who was deported in 2007 to Mexico, where he survived by eating out of garbage cans for three months while his frantic mother searched for him.

"The immigration service has no jurisdiction over U.S. citizens," said San Francisco attorney James Brosnahan, a member of Guzman's legal team.

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-- Rennison Castillo, a Washington state man who was born in Belize but took his oath of citizenship while serving in the U.S. Army in 1998, who spent seven months in an ICE prison in 2006. He is suing the government with the help of the Northwest Immigrant Rights Project in Seattle.

"Part of the problem goes back to a system that locks people up when they're placed in deportation proceedings and then doesn't provide them with legal representation," said Matt Adams, the legal director at the project.

ICE spokeswoman Cori Bassett said the agency did not track such lawsuits and she could not comment on them. She added that ICE is careful to look at all available evidence of a person's immigration or citizenship status before detaining or removing someone. "There is no national database (of citizens)," she said. "So we're reliant on the person to provide clear and convincing evidence that they are a citizen."

### **Lack of due process**

Some longtime observers of the immigration agency say that, while citizens make up a tiny fraction of the roughly 400,000 people who pass through ICE custody each year, such cases occur with some regularity. The problem is exacerbated, they say, by the fact that immigration detainees, unlike those in the criminal justice system, lack the right to legal counsel and other due process protections.

"This is a real problem. You can't deport citizens, and yet it's clear that they have been deported," said Donald Kerwin, vice president for programs at the nonpartisan Migration Policy Institute.

Some analysts say that the growing practice of detaining people who are in deportation proceedings, whether they are immigrants who committed crimes or those who entered the country without authorization, is an important step toward putting teeth in the country's immigration system.

The deportation process includes ample opportunity for people who may be wrongly detained to make the case that they don't belong in custody, according to Jena McNeill, a homeland security policy analyst at the conservative Heritage Foundation.

"We have to balance the due process rights that should be given to them ... but we also have to look at what's best for the American people: tackling the illegal immigration problem," she said.

But civil rights advocates say immigration agents need to take greater care to investigate detainees' claims of citizenship.

"In my experience, ICE or the Department of Homeland Security doesn't really take these issues as seriously until lawsuits are filed and they are hit in the pocketbook," said Philip Hwang, a staff attorney at the Lawyers' Committee for Civil Rights in San Francisco. "It's an important way to make sure immigration agents are doing things by the book."

Hwang won \$700,000 for a dozen clients who sued the immigration agency, including a U.S.-born woman who received a settlement of \$50,000 after agents at San Francisco International Airport, who didn't believe her passport and birth certificate were legitimate, shackled her to a chair and held her for hours.

### **Making a claim**

Lawsuits for wrongful detention or deportation are usually brought under the Federal Tort Claims Act, or via a so-called Bivens Claim, which names not just the U.S. government but individual government employees. But there are plenty of obstacles - among them: the fact that immigration agents may be sued for wrongdoing but ICE prosecutors have legal immunity.

In addition, lawsuits are expensive and many potential plaintiffs have difficulty finding pro bono legal help, said Judy Rabinovitz, deputy director of the ACLU Immigrants' Rights Project.

"Even if you can win damages, it doesn't make up for three months or three years in detention, or being deported and spending three months on the streets," she said.

E-mail Tyche Hendricks at [thendricks@sfchronicle.com](mailto:thendricks@sfchronicle.com).

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