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Criminal Justice Issues and Prisoners' Rights

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Campaign and Advocacy

close

Search

close

close

by [Jean Casella and James Ridgeway](#) | March 31, 2010

Continuing her [incisive reporting](#) on the travesty of immigrant detention in the United States, the [New York Times](#) [Nina Bernstein](#) yesterday documented the three-year nightmare of a legal immigrant from Haiti. Bernstein describes what happened to the young man after he was convicted of a non-criminal drug offense, considered so minor in the state of New York that it carries a fine smaller than some parking tickets.

When a police officer in this Long Island suburb found a marijuana cigarette in Jerry Lemaine's pocket one night in January 2007, a Legal Aid lawyer counseled him to plead guilty. Under state statutes, the penalty was only a \$100 fine, and though Mr. Lemaine had been caught with a small amount of marijuana years earlier as a teenager, that case had been dismissed.

But Mr. Lemaine, a legal permanent resident, soon discovered that his quick guilty plea had dire consequences. Immigration authorities flew him in shackles to Texas, where he spent three years behind bars, including 10 months in solitary confinement, as he fought deportation to Haiti, the country he had left at age 3.

Under federal rulings that prevailed in Texas, Mr. Lemaine had lost the legal opportunity that rulings in New York would have allowed: to have an immigration judge weigh his offenses, including earlier misdemeanors resolved without jail time, against other aspects of his life, like his nursing studies at Hunter Business School; his care for his little sister, a United States citizen with a brain disorder; and the help he gave his divorced mother, who had worked double shifts to move the family out of a dangerous Brooklyn neighborhood.

Now Mr. Lemaine, 28, is among thousands of noncitizens whose fate may hinge on a case to be argued on Wednesday before the United States Supreme Court, in a challenge to the way the government interprets immigration laws about drug-related convictions. The government maintains that for deportation purposes, two convictions for drug possession add up to the equivalent of drug trafficking, an aggravated felony that requires expulsion and prohibits immigration courts from granting exceptions based on individual life circumstances.

Lemaine's nightmare began when he was transferred as tens of thousands of detainees are every year to Texas, where the federal Court of Appeals for the Fifth Circuit has upheld this interpretation of the law. In the criminal justice system, defendants have to be tried where their alleged offenses took place, immigration authorities can send detainees anywhere in the country, without notice or legal counsel, and start deportation proceedings wherever they choose, Bernstein writes. The fallout from this practice has only increased in the past year, since the Obama administration has stepped up detention and deportation of so-called criminal aliens, including many legal immigrants with low-level drug convictions.

Lemaine was fortunate enough to secure pro-bono legal counsel from a large New York law firm. (Some 86 percent of detainees who face deportation in Texas, Bernstein reports, have no lawyers at all.) His lawyer who described the case as surreal has had to contend with an absurd system that requires immigration authorities to match the elements of a variety of state criminal statutes with federal criminal laws, and proceed as though the noncitizen had been convicted of the federal crime.

In the meantime, Lemaine was transferred from a government-run detention center to private prisons run by the notorious [GEO Group](#) where he eventually landed in the hole by no fault of his own.

His lowest point, he said, came in the private Karnes County Correctional Center, which houses a mix of immigration detainees and federal prisoners. As he tells it, guards there let inmate gangs impose their own pecking order, and as the only black detainee in his dormitory, he seemed especially vulnerable. In the first days, the guards refused him utensils at mealtime, he said, leaving him alone eating stew and cereal with his hands. Later, half a dozen inmates beat him up in a racially motivated attack, he and his lawyers said.

Early on, after he wrote the medical staff that he was depressed, he was placed on a 10-day suicide watch in a filthy segregation unit where he did not see a psychiatrist for a week, he said. They just break you down so much, Mr. Lemaine said. They just forget about you. Basically, you fend for yourself.

He was returned to isolation for his own protection after being beaten up, and chose to stay there, he said, locked in a tiny cell 23 hours a

day, rather than go back to the same dorm.

On January 11, officials abruptly decided to grant Lemaire supervised release, and let him make his way back to New York on a Greyhound bus where he rejoined his family. It was the same day that the earthquake devastated his country of birth. The White House has suspended deportations to Haiti but if his case goes the wrong way, Lemoine could still be shipped back to Texas



James Ridgeway (1936-2021) was the founder and co-director of Solitary Watch. An investigative journalist for over 60 years, he served as Washington Correspondent for the Village Voice and Mother Jones, reporting domestically on subjects ranging from electoral politics to corporate malfeasance to the rise of the racist far-right, and abroad from Central America, Northern Ireland, Eastern Europe, Haiti, and the former Yugoslavia. Earlier, he wrote for The New Republic and Ramparts, and his work appeared in dozens of other publications. He was the co-director of two films and author of 20 books, including a forthcoming posthumous edition of his groundbreaking 1991 work on the far right, Blood in the Face. Jean Casella is the director of Solitary Watch. She has also published work in The Guardian, The Nation, and Mother Jones, and is co-editor of the book Hell Is a Very Small Place: Voices from Solitary Confinement. She has received a Soros Justice Media Fellowship and an Alicia Patterson Fellowship. She tweets @solitarywatch.

Accurate information and authentic storytelling can serve as powerful antidotes to ignorance and injustice. We have helped generate public awareness, mainstream media attention, and informed policymaking on what was once an invisible domestic human rights crisis.

Only with your support can we continue this groundbreaking work, shining light into the darkest corners of the U.S. criminal punishment system.

by [Juan Moreno Haines](#)

October 25, 2022

by [Solitary Watch Guest Author](#)

October 13, 2022

by [Vaidya Gullapalli](#)

September 29, 2022

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Here is an excerpt of an article, which contains a decision by the Supreme Court that is related to your article.

http://realcostofprisons.org/blog/archives/2010/03/supreme_court_u_1.html

Supreme Court Upholds Integrity of Criminal Justice System for Immigrants

Washington, D.C. (March 31, 2010) The Supreme Court today issued a landmark decision in Padilla v. Kentucky, holding that defense lawyers must give correct advice to clients about the immigration consequences of pleading guilty. Immigrant rights groups and criminal justice advocates alike celebrated this victory..

The Supreme Court's decision in Padilla acknowledges that as a result of the 1996 immigration laws, even low-level offenses such as one-time shoplifting or marijuana possession can lead to deportation for all types of immigrants, including green card holders. In many of these cases, immigration judges are not even allowed to consider immigrants length of time in the country, U.S. citizen spouses and children, or other equities.

Unfortunately, many immigrants have few options available to fight deportation because of the harshness of our current laws, said Benita Jain, Co-Director of IDP. Today the Supreme Court has clearly held that providing advice on deportation to noncitizens accused of crimes has never been more important.

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