

GLOBAL ATLANTA: Legal labyrinth;
U.S. jails many immigrants it's unable to deport

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Body

The jail doors have finally opened for Sivilay Sengchanh.

The federal government detained the legal immigrant from Laos for four years, nine months--- beyond the two years, 10 months, he spent in a South Carolina prison for shooting at a police officer --- much of that time in Georgia. The government tried to deport him, but Laos would not take him back. So Sengchanh became one of thousands of people jailed for years by the Immigration and Naturalization Service in Georgia and around the country.

The detentions cost \$80 million a year and raise constitutional questions the U.S. Supreme Court is expected to answer this month.

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The INS freed Sengchanh (pronounced "SING-chan") as part of a little-noticed policy begun last year. He got out on a Wednesday morning last month.

"I was just crying and hugging my mom," said Sengchanh, 25.

Most people sent to prison in the United States do their time and get out, but about 3,000 are kept for years beyond the end of their sentences. They are legal immigrants whose crimes led judges to order their deportation but whose countries will not accept them. The INS keeps them in rented cells in jails and prisons around the country --- Sengchanh spent years in jails in Forest Park, Moultrie and Dallas, Ga., where the INS leases cells.

"I don't believe it's right to hold people indefinitely," he said.

Sengchanh's family left Laos and came to the United States as refugees in 1981, when Sengchanh was 5. As a teenager in Spartanburg, S.C., Sengchanh got into fights and stole cars. One night in 1993, while riding in a stolen car, he shot at another car. He said he thought it carried two men with whom he had argued. It actually carried an undercover police officer, and Sengchanh soon found himself in prison.

State officials released him in 1996, but the INS kept him locked up. It routinely detains legal immigrants convicted of crimes because of a 1996 law, the Illegal Immigration Reform and Immigrant Responsibility Act. The law requires the government to deport most legal immigrants who commit crimes with a sentence of 12 months or more, even minor crimes like shoplifting that come with no jail time.

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The INS **deports** most criminal **immigrants** without a hitch, but people from Laos, Cambodia, Cuba, Vietnam and some republics of the former Soviet Union are left in limbo because those countries rarely accept convicts from the **United States**. The INS says it does not want to release them because **many** pose a danger.

Sengchanh was one of several **immigrants** to challenge his detention in federal court. He appeared to have won a major victory in **U.S.** District Court in **Atlanta** in January 2000, when Judge Willis B. Hunt Jr. ruled that his detention violated the Constitution's guarantee that "no person shall . . . be deprived of . . . liberty . . . without due process of law." He ordered the INS to review the Sengchanh case.

Sengchanh's lawyer, Charles Kuck, expected the government to free Sengchanh. But officials in **Atlanta's** INS office kept him in custody. They said his arrests from December 1992 to September 1993, when he was 17, showed "a rapid escalation" from nonviolent offenses to convictions in the shooting for assault with intent to kill, possession of a stolen vehicle and carrying a prohibited weapon. He also has convictions for breaking into a vehicle, trespassing and larceny.

In an interview last year in the Paulding County **Jail** in Dallas, Sengchanh acknowledged his crimes but said the INS was wrong to keep citing them as a reason for his detention. He said agents periodically interviewed him to decide whether to release him but inevitably reached the same conclusion: His crimes proved he would endanger the public if released.

"I made mistakes when I was younger, but I've changed for the better," he said. "I think **it's** wrong because I've paid my debt to society."

In addition to the **Atlanta** judge's opinion in Sengchanh's case, federal judges in California, Rhode Island and Washington found constitutional problems with the INS policy, but courts in Colorado and Los Angeles upheld it. Advocates say the Constitution bans indefinite detention, but the government says **immigrants** who have been ordered **deported** enjoy lesser protections than **U.S.** citizens.

The Supreme Court heard arguments from both sides Feb. 21. It is to issue a ruling before its summer recess that will govern the fate of the detainees that Sengchanh left behind.

Judy Rabinovitz, senior lawyer at the **Immigrants'** Rights Project of the American Civil Liberties Union in New York, is one of **many** advocates awaiting the court's decision. "These are people who have already served their time," she said. "The idea of locking somebody up for life when their country won't take them back . . . just shocks the conscience."

Law changed in '96

Prolonged detentions became an issue as a result of the 1996 immigration law. Before then, the INS could hold a deportable **immigrant** for only 90 days if it could not **deport** him. The '96 law removed the limit but did not address how long a deportable **immigrant** could remain behind bars.

As of May 14, the INS had detained 2,898 people for more than a year, said Karen Kraushaar, an agency spokeswoman in Washington. Nearly all are **legal immigrants** who cannot be **deported**. They will be directly affected by the Supreme Court's decision. About 135 people are in so-called indefinite detention in the INS' **Atlanta** district, which covers Georgia, Alabama and the two Carolinas.

Last year, as cases challenging the detentions wended their way through the courts, the INS unveiled a change "to ensure fair, independent and consistent review" of detainees who could not be **deported**.

It announced the creation of the Headquarters Post-Order Detention Unit, a group of INS officers in Washington that now has the final say on whether to release **immigrants** whose countries won't take them back. Those decisions previously were in the hands of directors of 33 INS districts around the nation. The change seemed arcane and received little notice, but it was big news to Sengchanh.

Another interview

On Feb. 23, shortly after **Atlanta** INS officers decided again to continue his detention, Sengchanh met with two agents conducting a fresh review of his case. They spoke in an office in the INS district headquarters in downtown **Atlanta**. Sengchanh wore black and white Reebok athletic shoes and a blue **jail** jumpsuit, hands cuffed in front of him.

The agents asked about the night he shot at the car. He told the story. They also discussed the judge's (Hunt) opinion, then 13 months old, that Sengchanh's detention was unconstitutional.

About three months later, on May 16, a **jail** guard told Sengchanh that the INS had decided to release him. His mother, two sisters and a cousin took him home.

"They started crying. I started crying," he said.

Since the INS completed plans for the post-order detention unit on Dec. 21, agents have freed 39 of 132 detainees whose cases have been decided. Another 317 **immigrants** nationally are awaiting a decision, Kraushaar said.

Sengchanh, meanwhile, is settling into a new life in Boiling Springs, **S.C.** He lives with his family and works for a friend, cutting grass, trimming hedges and raking for \$8 an hour. Occasionally he checks in with an INS officer --- the agency released him on a type of parole. It plans to return him to Laos if that country begins accepting its citizens who are ordered **deported** from the **United States**.

There is no sign that will happen anytime soon, however, and Sengchanh envisions a future in South Carolina, not the country of his birth. He said he hopes to work at a nearby Mitsubishi factory, where he could earn \$10 an hour. Then, maybe, he will study computer programming at a community college. "I just want to do something to benefit myself, you know, keep myself out of trouble and help my family," he said.

Graphic

Photo:

Sivilay Sengchanh Photo:

Sivilay Sengchanh is back home in Boiling Springs, **S.C.**, with niece Kierra Gomez after being released from **jail** by the Immigration and Naturalization Service. INS had him locked up since 1996, much of that time in Georgia. / BITA HONARVAR / Staff

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