

## Habeas Petitions for Detained Immigrants 2019

San Francisco, Live Webcast and [www.pli.edu](http://www.pli.edu),\*  
November 13, 2019

### Why You Should Attend

The U.S. Department of Homeland Security imprisons more than 400,000 noncitizens in civil immigration detention every year. A congressional quota mandates that Immigration and Customs Enforcement (ICE) maintain 34,000 beds daily for immigrants in detention, many in privately run detention facilities. Tens of thousands more are subject to onerous conditions of release, including high bonds and GPS tracking devices. Immigrants who are incarcerated include asylum seekers, victims of trafficking or crimes in the United States, longtime lawful permanent residents, and others with avenues to immigration relief. Research shows that represented noncitizens who are released from detention are nearly three times more likely to win their immigration case as represented noncitizens who remain detained.

The writ of habeas corpus is a constitutionally-protected device by which individuals can petition a federal district court judge to remedy unlawful deprivation of liberty by government officials. Challenging ICE and immigration court custody decisions in federal court is becoming more essential and a decisive tool to secure noncitizens' freedom from incarceration. The first segment of this training is designed to provide immigration attorneys who are new to federal district court practice the knowledge and tools necessary to litigate habeas petitions on behalf of detained immigrant clients. The second and third segments will cover recent developments in legal strategies since *Jennings v. Rodriguez* and *Nielsen v. Preap*, and other creative uses of habeas petitions.

### What You Will Learn

- What is a Habeas Petition, When to Use It, and Nuts and Bolts of Filing
- Habeas Challenges to Constitutionality of Detention *Post-Jennings v. Rodriguez* and *Nielsen v. Preap*
- Other Creative Uses of Habeas Petitions

**Who Should Attend**

All attorneys interested in or currently assisting immigrant clients who are detained or subject to conditions of custody, including private and pro bono attorneys, law clinic students and faculty, and public interest and nonprofit organization attorneys, would benefit from attending this program. Participants are expected to have a basic knowledge of immigration law but need not have prior experience with habeas petitions.

## **AGENDA**

9:00

### **Opening Remarks**

***Jehan Laner***

9:05

### **What is a Habeas Petition, When to Use It, and Nuts and Bolts of Filing**

This panel will provide an introduction to immigration habeas petitions. It will cover common uses of habeas in the immigration context, how to screen clients, what the main jurisdictional and exhaustion requirements are, what documents to prepare, what to expect after filing, how to negotiate with AUSAs, how to use temporary restraining orders/injunctions, and how to prepare for oral argument. Panelists will reference their experience practicing in the Northern District of California but much of the discussion will be relevant to other jurisdictions.

***Jehan Laner, Alison Pennington***

10:05

### **Habeas Challenges to Constitutionality of Detention Post-*Jennings v. Rodriguez* and *Nielsen v. Preap***

This panel will focus on how to challenge mandatory and prolonged detention through habeas petitions following the Supreme Court's decisions in *Nielsen v. Preap*, 139 S. Ct. 954 (2019) and *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), which construed the INA to authorize mandatory and prolonged detention of certain noncitizens without a custody hearing during their removal proceedings.

Importantly, because the Court reserved the question of whether the Constitution can prohibit mandatory or prolonged detention in certain circumstances, panelists will discuss how constitutional challenges are faring in federal courts post-*Preap* and *Jennings*, and how some courts have continued to recognize a right for certain noncitizens to prolonged detention custody hearings where the government bears the burden of justifying continued detention. Additionally, panelists will share successful habeas petitions challenging who bears the burden of proof at initial and prolonged custody hearings, as well as successful petitions challenging how the immigration judge applied the burden of proof in custody hearings.

***Zoey Jones, Michael Kaufman, Alexandra Lampert, Jehan Laner***

11:05 Networking Break

11:20

**Other Creative Uses of Habeas Petitions**

This panel will discuss novel legal challenges brought through habeas and hot topics in current litigation, including habeas petitions in the context of the “Migrant Protection Protocols (MPP),” pursuant to which asylum seekers are forced to remain in Mexico during the pendency of their asylum application. Panelists will also discuss the use of habeas to prevent re-detention, to challenge high bond amounts, and to obtain stays of removal.

***Judah Lakin, Jehan Laner, Amy Maldonado***

12:20 Adjourn

**Faculty:**

**Chair:**

**Jehan Laner**

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