



[Cover Story](#) | [Otay Mesa](#)

Go Directly to Jail...and Die

By [Thomas Larson](#) | Published Wednesday, Dec. 10, 2008

Francisco Castaneda came to the United States from El Salvador during its civil war of the 1980s. Fleeing the violence, his mother crossed the U.S.-Mexico border illegally in 1982 with Francisco, aged 10, and his three siblings. Her husband had died of a heart attack just before they left. For years, she did odd jobs and sewing in and around Los Angeles. But she died of cancer before turning 40 and before she secured legal status for her children.

After her death, Castaneda, by then in his late teens, was on his own. For a time he had a work permit and did construction. But then he got involved in drugs. In 2005, he was convicted of methamphetamine possession with intent to sell, a felony, and was sent to prison for three and a half months. Upon his release, federal authorities immediately detained him as an illegal immigrant. Pending deportation, he was transferred to a detention center in San Diego operated under the auspices of Immigration and Customs Enforcement, an agency newly organized under the Department of Homeland Security.

The agency's acronym, ICE, a rare instance of bureaucratic humor, has stuck. According to its website, ICE "investigates a wide range of domestic and international activities arising from the movement of people and goods that violate immigration and customs laws and threaten national security." Immigration and Customs Enforcement is the largest investigative agency in the Department of Homeland Security. In 300 facilities, both detention centers and jails, the government processes more than 300,000 detainees — men, women, and children — every year. One of the agency's five divisions, the Office of Detention and Removal Operations, "is responsible for promoting public safety and national security by ensuring the departure of all removable aliens from the United States through the fair enforcement of the nation's immigration laws." The agency is required to detain immigrants in humane conditions, their "departure" just and swift.

While in prison, Castaneda had noticed a sore on his penis and pain in his groin. His back and kidneys were also hurting. He filled out the requisite health-care request forms and was examined at the prison's "wart clinic." There, a Department of Corrections medical provider, a man believed to be "S. Pasha," found "a 2 cm x 2 cm raised white and yellow lesion on his foreskin." He prescribed antibiotics and ordered an "urgent urological referral," but Castaneda never received either.

Castaneda was taken to the San Diego Correctional Facility on Otay Mesa in March 2006. The minimum-medium-security lockup, whose population was 1000 when Castaneda arrived, holds detainees while their cases are reviewed; some stay for weeks, some for years. The facility is leased from the County of San Diego by the publicly traded Corrections Corporation of America, which owns or operates 66 prisons and detention centers. (In the wake of September 11, the Corrections Corporation of America received a boon in new contracts. In 2000, the company was nearly bankrupt while last year its revenue topped \$1.4 billion.) When ICE contracts with private prisons, the agency guarantees "fair

enforcement” of immigration laws, including inmate access to health care. In 2002, the Corrections Corporation of America was relieved of its contract to provide health care at the San Diego Correctional Facility; at the time, a federal medical director found the corporation had decreased its services severely. He returned the job to the Public Health Services’ Division of Immigration Health Services, which, in an ironic twist, outsources some of its care, sending detainees to private doctors.

At the Otay Mesa facility, Castaneda complained, according to court records, that “a lesion on his penis was becoming painful, growing in size, and exuding discharge.” He ranked the pain during urination and erection an eight out of ten. The suppurating wound had a “foul odor,” a necrotic smell, the death of living tissue. The lesion was “now draining pus” and was “more macerated at the glans,” or penis head. Lieutenant Anthony Walker, a physician’s assistant employed by the Division of Immigration Health Services, examined him and requested a “urology consult” as soon as possible — and a biopsy, which he termed “a pertinent surgical” follow-up.

Castaneda told Walker that he was worried about the growth because his mother had died of pancreatic cancer at age 39. Walker, who stated later that he was not sure “what the lesion would present, if and when the biopsy was completed,” realized it was best to “rule out penile cancer — the sooner the better.” (A biopsy was the only way to do that.) Walker drained and cleaned the lesion, but within a few days the pus was back.

Castaneda was getting ibuprofen. At times, he would show his bloodied underpants to guards. They said they couldn’t help his medical condition but would bring him clean bedsheets. One guard told Castaneda that he would pray for him because he could see how much he was suffering.

Two and a half months after the initial diagnosis, Castaneda saw Dr. John Wilkinson, an outside oncologist. His recommendation was unequivocal: “I strongly agree that” the lesion “requires urgent urologic assessment of biopsy and definitive treatment.” He wrote that from even “benign lesions” there can be “considerable morbidity.” Castaneda should also have his foreskin circumcised, Wilkinson wrote, adding that everyone understood “the need for urgent...treatment.”

Enter Dr. Esther Yun-Hung Hui, the clinical director at the Otay Mesa facility and the only onsite physician for the facility’s 1000 detainees. After assessing Castaneda’s case, she wrote that the Division of Immigration Health Services rated a biopsy as an “elective outpatient procedure.” Her recommendation was “to pursue outpatient biopsy that would be more cost effective.” The upshot was, Castaneda received nothing except more pills.

Castaneda filed a grievance, citing Wilkinson’s recommendation, but the grievance was denied. A day later, health services personnel documented that Castaneda’s penis was “getting worse, more swelling to the area, foul odor, drainage, more difficult to urinate, bleeding from the foreskin.” The record also expressed the opinion that he did “not have cancer at this time,” as he had not had a biopsy diagnosing cancer. He was advised “to be patient and wait.”

Another month passed without his condition changing, while immigration officials continued, with Kafkaesque efficiency, to document his pain: “The lesion on his penis is draining clear, foul malodorous smell.” The “foreskin is bleeding at this time and the patient states his colon feels swollen.”

A new request for treatment authorization states that “the lesion now appears to be ‘exploding’ for lack of better words.” This request was approved, and in mid-July Castaneda was taken to the emergency room at Scripps Mercy hospital in Chula Vista.

At Scripps, emergency room doctor Juan Tovar documented the “fungating lesion” and made arrangements for Castaneda to be admitted to the hospital, where Tovar, like Walker, wanted to “rule out cancer, versus [an] infectious etiology.”

Next, Scripps urologist Dr. Daniel Hunting performed a brief exam but did not biopsy the lesion. Instead, Hunting “guessed that the problem was condyloma,” or genital warts. Documents reveal that Dr. Hunting did not ask about a family history of cancer and referred the patient back to his primary urologist, dismissing the symptoms as “not an urgent problem.” Castaneda was handcuffed and shackled and returned to Otay Mesa.

He Begged for Amoxicillin, but His Request Was Denied

In July, facing not only the complications of his medical condition but a complicated detainee health-care bureaucracy, Castaneda again saw Walker. Walker requested an early release to allow Castaneda to seek medical care on his own, but Castaneda was not released. A week later, David Lusche, a physician’s assistant at the Otay Mesa facility, wrote that he explained to Castaneda the following: “While a surgical procedure might be recommended long-term that does not imply that the Federal Government is obligated to provide that surgery if the condition is not threatening to life, limb or eyesight.” Castaneda filed a grievance against Lusche, but that was denied. Officials still considered his surgery “elective” and therefore disallowable. Castaneda was characterized in this report as “conversational and calm, not confrontational.”

In August 2006, Castaneda was sent to see Dr. Masters, another outside urologist whose opinion he hoped would bolster that of Dr. Wilkinson. Dr. Masters recommended a biopsy and circumcision and said that he would arrange admission to a hospital, but again Castaneda did not receive treatment.

By fall, the pain was so bad that Castaneda couldn’t sleep at night. He was given antihistamines and trazodone, a strong sedative with antidepressant properties. The ibuprofen he took for pain, he said, had “no effect.” He told registered nurse Joanne Galano that at night he’d have a “white discharge” and the lesion was “getting bigger.” She noted “a whitish growth approximately 8 mm in diameter.” The nurse noted that 800 mg of ibuprofen was having no effect on his pain. He begged for amoxicillin, but his request was denied.

In October 2006, six months after his first medical evaluation at Otay Mesa, a prison guard noted that he “saw some dried blood on [Castaneda’s] boxers.” In early November, Castaneda told health officials that there was a “constant pinching pain, especially at night.” He said his rectum had swollen, which made his “bowel movements hard.”

If this weren’t enough, a second lesion appeared, on the underside of his penis. This lesion was moist, and Castaneda could not stand and urinate because the urine sprayed everywhere and he could not direct the stream. The treatment ordered: seven pairs of boxer shorts brought in weekly.

Also that fall, a Division of Immigration Health Services memo seems to acknowledge that officials knew Castaneda needed treatment and recognized it would be impossible for him to seek it himself. The memo states that Castaneda cannot “be released to seek further care due to mandatory hold and, according to Immigration and Customs Enforcement authorities, may be with this facility for quite a while.”

Equally damning is the charge that authorities may have tried to cover up their inadequate treatment by altering official government records. In July, physician’s assistant Lusche emailed a colleague that

Castaneda's grievance needed to be altered because federal auditors were coming to inspect Otay Mesa's medical files. "We need to write something different," Lusche wrote, "or make some amendment on the grievance for Francisco Castaneda." The grievance stated that his case was "not resolved," which would "attract all kinds of attention." "Could you," Lusche asked his colleague, "somehow 'patch up' that grievance with an amendment then put it in my box. I just want to avoid problems when the auditors show up."

Mid-November, Castaneda was transferred to the San Pedro Service Processing Center, in Los Angeles. On his summary form, an immigration official said Castaneda had no "current medical problems." According to an article in the *Progressive* magazine, Castaneda had been "forced to leave behind all his possessions, including his legal and medical papers." Roused by a fellow inmate, he contacted the American Civil Liberties Union and explained his eight-month fight with immigration's health officials. Attorney Tom Jawetz of the ACLU's National Prison Project began writing letters in December on behalf of Castaneda. (One reason the ACLU and other prisoner-rights advocates take on such cases is that detainees, unlike criminal defendants, have no right to free counsel.) Jawetz wrote to ICE and Health Services Administration officials that Castaneda's "long term health is being jeopardized by the lack of appropriate medical care he continues to receive in ICE custody."

Jawetz's letters had impact. On Thursday, December 14, Castaneda was taken off-site to see San Pedro urologist Lawrence Greenberg, who wrote that his penis was a "mess." He required a circumcision. Greenberg's exam noted that Castaneda was in "severe pain."

That weekend, a lump appeared in Castaneda's groin, and he filled out another sick-call slip. Castaneda's surgical consult was forwarded to Asghar Askari, another urologist. It was not until 40 days later that Askari examined the fungating penile lesion on Castaneda and the lump in his groin; his assessment was "most likely penile cancer." Askari ordered a biopsy, which was scheduled for early February 2007, almost a year after ICE officials had diagnosed Castaneda with a lesion on his penis.

Castaneda Was Right: It Was Too Late

If the failures to help Castaneda were not bizarre enough already, his case now took an even stranger turn. Just before the biopsy was to occur, immigration officials released him from custody. Castaneda later described how "a doctor actually walked me out of San Pedro and told me I was released because of my serious medical condition and he encouraged me to get medical attention." Castaneda immediately called the ICE medical office to check on his biopsy appointment; the secretary told him that because he was released, his biopsy had been canceled.

Three days later, Castaneda, a free man, limped into the Harbor-UCLA emergency room. At the urology clinic, he finally got his biopsy. The next day, a doctor told Castaneda that he had metastatic squamous cell carcinoma, treatable if caught early. The doctor told him that without drastic measures, he'd be dead in a year. On Valentine's Day, nine days after he was released from custody, Castaneda's penis was amputated.

The amputation did not take care of the problem: the cancer had metastasized, spreading not only to his groin, where a large nodal mass measured 7 cm by March, but throughout his body. It necessitated a series of five aggressive chemotherapy sessions, each a week long. The aggressive treatments were able to slow — but not halt — the rapid growth of the cancer.

In October 2007, the U.S. House Judiciary Committee's Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law convened a hearing, "Detention and Removal:

Immigration Detainee Medical Care.” Castaneda was invited to testify. In a photo taken of him, he looks almost serene; his broad, kind face conveys an immigrant’s optimism that fair treatment is still possible in America. Adele Kimmel is a lawyer with Public Justice, a public-interest law firm. Having met Castaneda when she helped him with his statement to Congress, Kimmel describes him as a “gentle, exceedingly polite man. He had a good sense of humor. Very sweet.”

In his testimony, Castaneda lauded the American Civil Liberties Union for helping him and excoriated Division of Immigration Health Services officials for their negligence. He spoke eloquently about the damage he was suffering.

“I am a 35-year-old man without a penis, with my life on the line. I have a young daughter, Vanessa, who is only 14. She is here with me today because she wanted to support me — and because I wanted her to see her father do something for the greater good, so that she will have that memory of me. The thought that her pain — and mine — could have been avoided almost makes this too much to bear.

“I had to be here today because I am not the only one who didn’t get the medical care I needed. It was routine for detainees to have to wait weeks or months to get even basic care. Who knows how many tragic endings can be avoided if ICE will only remember that, regardless of why a person is in detention and regardless of where they will end up, they are still human and deserve basic humane medical care.

“In many ways, it’s too late for me. Short of a miracle, the most I can hope for are some good days with Vanessa and justice.”

Despite nearly a year of chemo and other treatments, Castaneda was right: it was too late. On February 16, 2008, he died.

Tantamount to Torture

In October 2007, the same month Castaneda testified to Congress, attorneys with Public Justice and the firm Willoughby Doyle filed a lawsuit in U.S. District Court, Central District of California on behalf of Francisco Castaneda. The suit named as defendants the United States of America, California, government officials, and Drs. Esther Hui and Daniel Hunting. The suit listed nine causes of action, among them medical negligence and constitutional violations.

At the time the lawsuit was filed, Castaneda was alive. The suit, nevertheless, declared flatly that he had “fatal penile cancer” and that health officials’ “refusal to provide Castaneda reasonable and humane medical care while he was in custody was tantamount to torture...the most painful, terrifying, and humiliating experiences imaginable.”

Among other defendants in the suit were officials at the San Pedro detention facility and Stephen Gonsalves, the health services administrator at the San Diego Correctional Facility, who, the suit said, “was aware that Castaneda had a life-threatening medical condition that required urgent medical attention, diagnosis, and treatment, and he purposely denied him basic and humane medical care.”

In 183 paragraphs, the suit (later amended) detailed Castaneda’s care by ICE and explicated claims against the defendants.

The United States failed to use reasonable care in the establishment of policies and directives in the provision of medical care to immigration detainees.

The United States was negligent in caring for Castaneda.

The United States intentionally inflicted emotional distress. Its treatment of Castaneda was conducted in an extreme and outrageous manner with the knowledge that he was unable to care for himself during his incarceration.

The individual defendants (excluding Hunting), all agents of the United States, violated Castaneda's right to adequate medical care under the 5th, 8th, and 14th Amendments of the United States Constitution. Their conduct amounted to cruel and unusual punishment and a violation of due process.

The decision of the defendants (excluding Hunting) to deny Castaneda medical care was not based on a medical reason but rather on economic and/or other reasons.

Dr. Hunting carelessly and negligently cared for and treated Castaneda.

The individual defendants (excluding Hunting) violated the Equal Protection Clause of the 5th and 14th Amendments "by discriminating against Castaneda based on his immigration status with no rational basis to do so."

The suit asked for compensatory damages, punitive damages, and reasonable attorneys' fees and court costs.

The prospects for recovering a large amount in damages were not good. The United States of America cannot be sued for constitutional violations, and in California, medical malpractice awards are capped at \$250,000. In addition, the government argued that Public Health Service employees were immune from being sued. But the lawsuit brought on Castaneda's behalf, and after he died, on his daughter's behalf, argued that there should be no immunity because the defendants treated Castaneda's serious medical needs with deliberate indifference. The plaintiffs asked for a jury trial. If a jury found the defendants guilty of violating Castaneda's constitutional rights, there would be no cap on damages.

In January of this year, Public Health Service defendants brought a motion to dismiss the charges. U.S. District Judge Dean Pregerson denied the motion on March 11.

In his denial, Pregerson noted that Dr. Hui and other defendants had "purposefully mischaracterized" Castaneda's "conditions as elective in order to refuse him care." He said they had remained "willfully blind." Judge Pregerson wrote, "The Court rejects Defendants' attempt to sidestep responsibility for what appears to be...one of the most, if not the most, egregious Eighth Amendment violations the Court has ever encountered." Such treatment, if the allegations were substantiated in a jury trial, went "beyond cruel and unusual." The government's own records, Pregerson wrote, "bespeak of conduct that transcends negligence by miles." The judge characterized health officials' response to Castaneda's condition with "one word: nothing."

A few weeks later, in late April, the federal government admitted negligence in Castaneda's death, and in late summer, the Public Health Service defendants appealed Judge Pregerson's ruling to the U.S. Ninth Circuit Court of Appeals.

Francisco Castaneda is not the only man who died...

...as a result of the poor care meted out at the Otay Mesa facility. In July 2003, according to an ACLU lawsuit, a detainee "known to be suffering from depression committed suicide by hanging." In January

2005, Ignacio Sarabia-Villasenor collapsed with an apparent seizure while taking a shower. He couldn't breathe, and fellow detainees called for assistance. One officer who responded "ordered the pod on lockdown." This meant moving all inmates to their cells. Not until 25 minutes after his collapse did anyone apply CPR. By then, Sarabia was dead.

In early June 2006, Yusif Osman, a national of Ghana and a diabetic, complained to the medical staff of chest pain. When he was examined, he was told nothing was wrong, only "that he probably ate too much." Indigestion. One night, weeks later, Osman's pain became so bad that he and his cellmate banged on their door and used the facility's intercom system to call for help. The response, according to the ACLU's suit, was bureaucratic: "a medical unit supervisor pulled Osman's chart, which allegedly contained no documented medical history, and informed the control officer to instruct Osman to file a written sick call request." When Osman was checked again, another officer found him "unresponsive and cool to the touch." More than an hour passed between the time Osman first called for help and the 911 call. The call went to American Medical Response, which sent an ambulance. But Osman was already dead of coronary vasculitis, still locked in his cell.

The Division of Immigration Health Services "primarily provides health care services for emergency care," according to its Medical Dental Detainee Covered Services Package. "Emergency care is defined as 'a condition that is threatening to life, limb, hearing, or sight.'" Acute illnesses, diseases, accidents, traumas, and maladies that would cause "uncontrolled suffering" are subject to a physician's discretion and "will be reviewed for appropriate care" on a case-by-case basis. What's more, nonemergency care requires prior authorization from division bureaucrats.

Such medical policies do not "govern convicted criminals in the custody of the United States Department of Justice," says Adele Kimmel of Public Justice. Public Justice's lawsuit on behalf of Castaneda's family states that the director and the associate director of the Division of Immigration Health Services "were aware or should have been aware that this policy violates the United States Constitution."

"If you take away a person's liberty and make it impossible for them to care for themselves," says Alison Hardy of the advocacy firm Prison Law Office, in San Rafael, California, "then society has to ensure they get the basic medical care they need."

Between 2004 and July 2008, 74 people died in the nation's 300 detention facilities, with suicides, cardiac ailments, HIV and AIDS, and cancer the most common causes. Immigration officials say that fewer people have died each year since 2004 and the department's health-care budget in 2007 — \$91.6 million — was an 82 percent increase since 2004. Others have suggested that fewer deaths have occurred because some detainees, like Castaneda, are put out on the street before they die.

Despite these deaths, the American Civil Liberties Union and prison advocacy groups have had to fight the perception that immigrant detainees are being coddled in detention and that people who are in this country illegally don't deserve medical care. Last June, Congressman Steve King, the ranking Republican on the House Judiciary Committee's subcommittee on immigration, said it like this: "Why should the American people be responsible for paying for Rolls-Royce medical care for illegal aliens?"

Supreme Court Justice Thurgood Marshall, however, in his 1976 opinion in *Estelle v. Gamble*, another case involving poor inmate health care, wrote, "The infliction of such unnecessary suffering is inconsistent with contemporary standards of decency." The Eighth Amendment to the Constitution prohibits the infliction of cruel and unusual punishments. Justice Marshall continued in his opinion, "We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the

‘unnecessary and wanton infliction of pain’ ...proscribed by the Eighth Amendment.”

The San Diego Correctional Facility has been the target of two ACLU lawsuits. One, a class-action complaint filed in June 2007, addresses the “grossly deficient” medical care at the facility. According to the suit, the medical staff “routinely ignores requests for urgent care by detainees with dangerous and painful health problems.” Detainees typically must submit multiple written sick-call requests, which may go unanswered for weeks or months; the care they receive is often “superficial or inappropriate” and administered by “unqualified” staff; they often get only pain medication for serious illnesses; they are routinely denied diagnostic tests; and they often go undertreated, “premised on the often-false notion” that an inmate’s time is short and he’ll be released soon. An audit conducted by Homeland Security’s inspector general found that substantial numbers of inmates had not received a physical exam when they entered the facility, as the rules require.

The 11 plaintiffs in the lawsuit represent a plethora of serious cases that received inadequate or no care. Among these are people who have neurofibromatosis, a genetic ailment of the nervous system; bipolar disorder and depression; serious dental pain; vision problems; post-traumatic stress resulting from witnessing the murder of a family member in another country; suicidal ideation; diabetes; hypertension; hemorrhoids; chronic asthma; thyroid problems; and hepatitis.

Moreover, the lawsuit points out, a Department of Homeland Security review found that the Otay Mesa facility had “immediate staffing needs,” including “a full-time psychologist; increased psychiatric services; increased use of registered nurses, rather than licensed vocational nurses; and a second primary care physician.”

The goal of the suit is to obtain a judgment that declares the medical-care policies at the Otay Mesa facility unconstitutional and that prohibits the government from subjecting detainees to the current conditions.

The other ACLU lawsuit, filed in January 2007, charges Immigration and Customs Enforcement employees and the Corrections Corporation of America with overcrowding at the San Diego Correctional Facility. In June 2006, three months after Francisco Castaneda was moved to the facility, the Corrections Corporation of America lost 200 beds when the County began using one unit for prisoners. The result was that immigration detainees were housed three to a cell. The 12-by-6-foot cells were built for two. The unlucky third detainee slept on the floor in a “plastic boat,” his or her head right next to the toilet. Inmates were confined to their cells about half the time, seven hours at night and five during the day. Some detainees slept in makeshift beds in a common dayroom area.

Such overcrowding, the lawsuit states, leads to “increased violence, tension, discomfort, stress, mental suffering, psychiatric problems, and exposure to respiratory and other infections.” Of the latter, overcrowding puts people at risk for contracting methicillin-resistant staphylococcus aureus (MRSA), “highly contagious bacteria known to spread rapidly in institutional settings where poor sanitation and close confinement create a greater likelihood of transmission.” In September 2006, inmates in Unit D revolted. They congregated peacefully in the dayroom, according to the lawsuit, and asked to talk to officials. Instead of officials, officers in anti-riot gear appeared and released pepper spray; in the ensuing melee, detainees were shot at with pepper-ball guns and later beaten. Detainees accused of participating in the “riot” were placed in disciplinary segregation. The remaining detainees in the unit were put on lockdown for a week; deprived of exercise, showers, mail, and phone calls; and served peanut butter sandwiches for breakfast, lunch, and dinner. Phased out over a period of weeks, the lockdown was intended, the lawsuit asserts, to “suppress complaints about overcrowding.”

The people whom ICE has locked up in the Otay Mesa prison, points out David Blair-Loy, legal director of the local ACLU office, have been “detained on civil charges” while they “contest and dispute whether the government can, in fact, remove them.” Some are political refugees who have escaped torture and persecution in their native countries; seeking refuge or asylum, they may have been detained at the border. Others are detained upon their release after serving a criminal sentence. But more than half have never been convicted of a crime. Having overstayed a visa or entered the country illegally, the ACLU argues, many “have been law-abiding, productive residents for many years, and have spouses, children and siblings who are U.S. citizens.” Some of those held cannot be deported; their countries will not accept them. They might languish in custody for years. In fact, there is often “no ascertainable limit to the amount of time immigration detainees” can stay in custody. Blair-Loy admits that immigration laws are “very complex. There are multiple levels of civil immigration violations and criminal immigration violations. If the government wants to charge someone criminally, they certainly can and do,” he says. But a detainee, by definition, has not been found guilty of anything.

The lawsuit argues that the U.S. Court of Appeals for the Ninth Circuit “has held that conditions of confinement for civil detainees must be superior to those of pre-trial detainees, who, though not adjudged guilty of a crime, are held pursuant to criminal processes.”

The government responded to the overcrowding lawsuit the same month it was filed, Blair-Loy says, “by immediately transferring numerous detainees out of the facility and since that time has maintained the facility at or below the design capacity.” This, he says, came about only “because we filed the suit.”

On June 4, 2008, a settlement was reached in which the defendants indicated that they had “no reasonable expectation” that they would triple-cell or otherwise overcrowd detainees at the facility again. Defendants agreed to provide the ACLU with daily pod rosters and other documents during June, on October 1, and on January 9, 2009, to demonstrate their compliance.

Spurred by the ACLU and its lawsuits, as well as by Castaneda’s testimony to Congress in October 2007, a few members of the House of Representatives are trying to change what they see as an abusive detention system, described by the *New York Times* in an editorial last year as “Gitmo Across America.” Democrat representative Zoe Lofgren (D-San Jose) has introduced HR 5950, the Detainee Basic Medical Care Act. Lofgren’s bill would establish mandatory standards to provide detainees with health care, including chronic care, dental care, eye care, and mental health care.

More Than a Few Inmates Have Died in San Diego County Jails and Prisons

Poor medical care is not confined to immigrant detention centers. In San Diego jails, between 2000 and 2006, 71 people died in custody, according to the U.S. Bureau of Justice Statistics. The worst year was 2005, when 15 died.

In 1999, Juan Leon died while in custody at the George F. Bailey Detention Facility. He suffered from peritonitis, an inflammation of the stomach lining. Attorneys who filed a wrongful-death lawsuit on behalf of Leon’s family argued that he died as the result of severe understaffing in Bailey’s medical unit. In the days before his death, he lost control of his bowels; fellow inmates pleaded with guards and nurses to help him. According to the *San Diego Union-Tribune*, the jail’s doctor “was so overworked that he could handle only 30 percent of the requests for medical attention.” Leon collapsed, vomiting uncontrollably, and died while being transferred from jail to court for a hearing.

In 2001, Marshawn Washington also died at Bailey. Following a struggle over nude pictures in his cell, Washington was hogtied: his hands were secured behind his back and his ankles were tied and corded to

his belt loop. He suffered a heart attack and was checked by nurses. He was placed in a padded cell where he later died. Though San Diego County officials admitted no wrongdoing, they paid \$400,000 to Washington's widow, whose lawsuit charged that the force was excessive and his medical treatment substandard.

In 2006, Alberto Cruz Peraza was acting crazy when he climbed into the driver's-side window of a National City bus. Peraza, who was high on methamphetamine and had a preexisting mental condition, was subdued by San Diego police at the scene but went berserk in the back of the patrol car, kicking out a window. At the jail, he was hogtied. Peraza kept fighting until he was more forcibly restrained with lap, shoulder, leg, and ankle straps. Then he stopped breathing. He was taken to a hospital, but two days later he died. District Attorney Bonnie Dumanis ruled that the personnel who acted to apprehend and restrain Peraza "acted reasonably under the circumstances," and no charges were filed.

California state prisons have been documented as extremely dangerous by California's Legislative Analyst's Office. In 2005, the 33 facilities had almost twice the number of violent incidents reported in Texas prisons and almost three times the number reported in federal prisons, where the inmate populations are about the same as in California.

In response to deaths in California's state prisons, to the understaffing of nurses and doctors, to out-of-date treatment rooms and equipment, and to a California public and a state legislature that clamors for more prisons and stiffer sentencing yet shows scant interest in expanding the prison system's medical budget, U.S. District Judge Thelton Henderson in February 2006 appointed a federal receiver to take over the \$1.1 billion California prison medical system. (The judgment was the result of a lawsuit filed by the Prison Law Office in the early years of the millennium.) While overcrowding is one issue — more than 165,000 prisoners were crammed into state facilities built for 84,000 — Henderson ruled that state prison medical care was so bad it violated the Constitution. One inmate, he wrote, "needlessly dies every six to seven days due to constitutional deficiencies in the [California Department of Corrections and Rehabilitation's] medical delivery system."

Henderson cited several changes to the "dysfunctional" health-care system the receiver must make: attract nurses and physicians with decent pay and safe working conditions; upgrade examination rooms; improve record keeping and the pharmacy.

It is a chicken-egg problem. Do inhumane conditions make people sicker, or does an already sick population worsen the living conditions? Gang activity, racial clashes, and violence by guards all increase the likelihood that inmates will need medical care. But care is often not provided because there is a shortage of medical staff.

As of July 2007, at Richard J. Donovan Correctional Facility on Otay Mesa, there was a high vacancy rate and a steady turnover of the 75 nurses and doctors who oversaw some 4700 inmates.

Sixty-Six Preventable Deaths

In August 2007, the office of the prison health-care receiver, under the leadership of Robert Sillen, issued a report on deaths in California prisons. Of the 426 deaths in 2006, 66 were found to be "preventable" (18) or "possibly preventable" (48). (For privacy reasons, none of the institutions or inmates was named.) In the preventable categories, causes included chronic diseases like asthma, sudden cardiac arrest, congestive heart failure, ulcer, hernia, acute pancreatitis, and testicular cancer. While some of these deaths were attributed to lapses on the part of individual doctors and nurses, the avertable fatalities, the report stated, were also due to "systemic" failure — delays in triaging and processing

patient requests for care; fragmented care and clinical inertia; delays in specialty referrals; no system for flagging abnormal test results; incomplete medical records; and practices that placemidlevel providers in vulnerable clinical situations, poorly supported or unsupported.

Sillen told the *Sacramento Bee* that “you can’t expect clinicians to practice good medicine if they don’t have good medical records, if they don’t have lab results to help diagnosis, if they don’t have a pharmacy system to support the right order of medications, if you don’t have a culture within that says, ‘My goodness, these are human beings and they ought to be treated as human beings.’ ”

Despite what seems to be an endless parade of deficiencies, Sillen proposed and, in some cases, made appreciable changes between April 2006 and January 2008, when he was replaced by J. Clark Kelso. During Sillen’s tenure, pay for doctors, surgeons, and supervisory medical officers increased; in November 2007, Sillen reported that doctors’ salaries had gone up to between \$223,000 and \$265,000. (The vacancy rate for doctors at that time was 39 percent.) Nurses’ pay increased, and the receiver’s office lowered their abysmal vacancy rate, which was then 87 percent in some prisons. Plans were made to automate the pharmacy system, build an acute care facility at San Quentin, and bankroll new prison medical care construction projects throughout the state. Some prisons now have new medical equipment and supplies.

Sillen also red-flagged the number-one killer of inmates in California prisons, asthma, which has a 250 percent higher incidence rate than in the general population. Sillen took steps to “educate all clinicians and custody personnel” about the “seriousness” of the disease by issuing asthma-medication guidelines, and he proposed that inmates be automatically screened for asthma and other diseases when they enter.

By September 2008, Kelso, the new receiver, reported, 65 physicians had been “separated” from employment as a result of the peer review process and 172 new physicians hired; 488 registered nurses and 533 licensed vocational nurses had also been hired. Although funding for the new construction projects was stalled, the prisoner death rate had declined.

The receiver’s office estimated that it would require ten years “to bring the system into constitutional compliance,” the price tag in the billions.

Postmortem Justice for Francisco Castaneda

In early October, the Ninth Circuit Court of Appeals published its opinion in the Castaneda case. The appeals court agreed with the lower court’s decision, allowing Francisco Castaneda’s daughter and estate to proceed with their case against federal doctors and officials. The individual plaintiffs have until January 2, 2009, to file a *writ of certiorari*, asking the U.S. Supreme Court to review the case.