

# Public Justice prevails in key California court decisions

*Medical neglect of immigration detainees spurs landmark civil rights decision.*

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As more and more instances of medical neglect within the country's immigration detention system come to light, Public Justice, the national public interest law firm, is accumulating victories in the courts on behalf of wronged detainees, recently winning favorable decisions in two especially egregious cases of neglect.

## **The Francisco Castaneda case - Untreated penile cancer leads to amputation and death**

Francisco Castaneda was an illegal immigrant who spent eight months in custody on a charge of possession of methamphetamine with intent to sell. Because he was not a legal resident, Castaneda was transferred to Immigration and Customs Enforcement (ICE). In March 2006, Castaneda first told ICE medical staff that a lesion on his penis was becoming painful and growing larger. The next day, a physician's assistant at the facility examined Castaneda and issued a treatment plan calling for a consultation with a urologist "ASAP" and requested a biopsy.

Over the next 11 months, several doctors made the same recommendations, one reporting that Castaneda had an urgent need for a biopsy and needed an assessment by a urologist because he might have penile cancer. (In this sensitive area of the body, the risk of death is considerable if lesions, even if they are benign, are not treated right away.) Although the medical officials acknowledged Castaneda's condition, they would not admit him to a hospital because a biopsy was considered an elective outpatient procedure.

In February 2007, nearly two years after he first noticed the lesion on his

penis and after the American Civil Liberties Union intervened on his behalf, Castaneda was scheduled for a biopsy. However, only days before the biopsy was to take place, ICE officials suddenly released Castaneda from custody. He then went to the emergency room of Harbor-UCLA Medical Center and was diagnosed with metastatic squamous cell carcinoma. Eventually, Castaneda had to have his penis amputated, and the chemotherapy was not effective.

Francisco Castaneda died on February 16, 2008, one year after he was released from custody and diagnosed with invasive squamous cell carcinoma.

For a summary of these proceedings, see "Feds' Actions Beyond Cruel" published in the Los Angeles Times and found at <http://articles.latimes.com/2008/mar/13/local/me-cruel13>.

### **Procedural history**

Francisco Castaneda's family sued ICE and its officials in federal court. In a stinging ruling, U.S. District Judge Dean Pregerson said that the immigration officials' alleged decision to withhold a critical medical test and other treatment from a detainee who later died of cancer was "beyond cruel and unusual" punishment. That decision allowed the family of Francisco Castaneda to seek financial damages from the government. The government appealed.

On October 2, 2008, the United States Court of Appeals for the Ninth Circuit unanimously ruled that federal officials can be sued for violating the constitutional rights of immigration detainees.

### **A "Kafkaesque nightmare"**

The appellate court sharply rebuked the government's claim, describing Castaneda's ordeal as a "Kafkaesque nightmare" stemming from not only the

government's "alleged deliberate indifference, but also from Castaneda's state-imposed helplessness in the face of that indifference."

In October 2007, Public Justice filed a lawsuit on Castaneda's behalf, naming the United States government, several federal and California state officials, and a California physician as defendants. The suit alleged medical neglect and violations of Francisco Castaneda's due process and equal protection rights under the Fifth Amendment. This latest ruling applies to the federal Public Health Service officials who were named in the lawsuit but claimed immunity under the Federal Tort Claims Act.

In upholding the district court's decision, the Ninth Circuit found that the Public Health Service defendants "provided no explanation for why Congress would want to provide these persons with the privilege, shared with no other federal employees, to violate the Constitution without consequence."

### **Landmark civil rights decision**

"This is a landmark civil rights decision," said attorney Conal Doyle, Public Justice's lead counsel in the case and a partner in the law firm of Willoughby Doyle in Oakland, California. "The Court has ensured that the 'Kafkaesque nightmare' endured by Mr. Castaneda will not go unpunished. We intend to relentlessly pursue this case until every government official is held accountable for the atrocities inflicted upon this helpless detainee."

Castaneda's case drew national attention last fall, when he shared his horror story with a House subcommittee, explaining that California state officials and U.S. Immigration officials had repeatedly refused him reasonable and humane medical care, including the criti-

cal biopsy, even though it had been recommended by state, federal and private doctors.

In May 2008, both the Washington Post and CBS's "60 Minutes" featured the Castaneda case in reports about a series of abuses in the immigration detention system.

**The Martin Hernandez Banderas Case - Inadequate care leads to gangrene**

In October 2008, Public Justice sued the United States and several government officials in another medical neglect case. Martin Hernandez Banderas is a former detainee who is in danger of losing his right leg because of the grossly inadequate medical care he received at the San Diego Correctional Facility.

Banderas was being held at the San Diego Correctional Facility (the same facility where Francisco Castaneda was held.) In early December 2006, Banderas, 41, slipped on a bathroom floor and got a small cut on his right ankle. His ankle was not treated, and within a week, his foot began to hurt and

swell significantly. His repeated requests for medical assistance were ignored.

When Banderas was finally seen at the detention center's medical clinic on December 12, 2006, his foot was numb and oozing pus. Blood work revealed that Banderas was diabetic. However, instead of sending Banderas to a diabetic wound specialist for appropriate care, the medical staff provided inadequate treatment that did not control the spread of infection, his pain, or his insulin levels. Banderas was simply sent back to his cell.

"The level of willful neglect and incompetence in our nation's detention centers is both astounding and shameful," said Public Justice Managing Attorney Adele Kimmel, co-counsel in both the Banderas and Castaneda cases. "Amputation and death are well recognized consequences of failing to treat a diabetic foot wound in a timely, appropriate manner. But, for two months, the detention center's medical staff did little more than watch Mr. Banderas's condition deteriorate, allowing a small, treatable cut on his right foot to transform into a raging infection that blackened his

right leg with gangrene, resulting in an open bloody wound that oozed a foul-smelling pus; causing him extreme pain that left him unable to walk; and threatening his limb and his life."

Banderas's condition continued to deteriorate, becoming so bad at one point that his cellmates went on a hunger strike, hoping to force officials to give Banderas the medical treatment that he desperately needed. When he was finally sent to the hospital - two months after he injured his foot - Banderas had developed gangrene in his right leg. Rather than undergo amputation, Banderas opted for a series of surgeries in an attempt to save his leg. ICE released him on February 22, 2007, because the federal government did not want to pay for his medical care.

The Banderas lawsuit names three of the same defendants that were named in Francisco Castaneda's case. The Banderas lawsuit charges the United States government, Dr. Esther Hui, Dr. Timothy Shack, and Eugene Miglaccio, former Division of Immigration Health Services officials, with medical neglect and constitutional violations.

"This case is yet another example of a concerted attempt by the current administration to deny and delay necessary medical care to immigration detainees," said attorney Doyle, who is also leading Banderas's legal team for Public Justice. "The Ninth Circuit's recent decision in Castaneda v. United States has paved the way for Mr. Banderas to hold governmental officials personally responsible for their deliberate efforts to refuse him constitutionally mandated care."

*Arthur Bryant is the Executive Director of the Public Justice Foundation. In addition to Conal Doyle and Adele Kimmel, the Public Justice legal team includes Public Justice Goldberg, Waters & Kraus Fellow Amy Radon and Tom Dempsey of Los Angeles.*



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