

THE REPUBLIC

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WASHINGTON —The family of a Los Angeles-area immigrant who languished in federal detention for 10 months while a cancerous growth went untreated despite his pleas for help cannot sue government doctors for medical neglect, the Supreme Court ruled Monday.

The case of Francisco Castaneda had gained the attention of a judge in Los Angeles who called it shocking and "beyond cruel and unusual punishment."

But in a 9-0 opinion written by Justice Sonia Sotomayor, the high court said federal law permits claims against the U.S. government, but not against the employees of the Public Health Service.

A refugee from El Salvador who came to Los Angeles with his mother when he was 10, Castanada was convicted of a drug charge in his early 30s. He was briefly held in a state prison and then transferred to a federal facility in San Diego pending his deportation.

Over 10 months, he repeatedly complained to doctors and a physician assistant that he had a growing wart on his penis that he believed was cancerous. They refused to order a biopsy and told him, according to a report in his files, that he needed "to be patient and to wait." He was given ibuprofen and an extra set of boxer shorts because the painful and growing "wart" was bleeding. Three outside specialists recommended a biopsy, but Dr. Esther Hui, his treating physician, refused. Castaneda filed a grievance saying he was great pain and "in desperate need of medical attention."

Finally, in January 2007, another specialist recommended a biopsy, but instead immigration officials ordered Castaneda released, sparing the agency the cost of treating him. Three days later, he went to a hospital where he was diagnosed with cancer. His penis was amputated, but it was too late. The cancer had spread, and he died at his home in Los Angeles in February 2008.

Before that, however, he had testified before a House subcommittee that was investigating the poor medical care given to immigrants held in federal custody. He also filed a broad lawsuit against the U.S. government, California's prison system and Hui and a physician's assistant at the Public Health Service who denied him treatment. His sister and his daughter continued the suit after his death.

"Today's ruling is a disappointment and yet another missed opportunity to bring about the meaningful reforms that our nation's immigration detention system desperately needs," said Gabriel Eber, staff attorney with the American Civil Liberties Union's National Prison Project.

Two years ago, U.S. District Judge Dean Pregerson in Los Angeles called the case "one of the most, if not the most egregious" violations of a detainee's constitutional rights that he "had ever encountered." The 9th U.S. Circuit Court of Appeals, in a 3-0 decision, agreed last year and said the public health employees could be sued for ignoring a desperate prisoner's need for medical care.

The Supreme Court disagreed, however, and said Congress had specifically prohibited suits against the employees of the Public Health Service. They provide medical care at immigration facilities and at some federal prisons. Sotomayor said the law governing the Public Health Service says a damage suit against the government itself is the "exclusive" remedy for victims of medical errors or negligence.

"We are mindful of the confines of our judicial role," Sotomayor said in *Hui v. Castaneda*. There may be good arguments for allowing sympathetic plaintiffs to sue over egregious conduct, she said, but "we are required to read the statute according to its text." She noted, however, that the federal government has admitted liability for "medical negligence" in Castaneda's case.

"We are, of course, disappointed. But this is far from over," said Arthur Bryant, a lawyer for Public Justice in Oakland, Calif., who represented Castaneda's family. He said the family will press forward with its claims against the government.

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