

Panel Grants Rare Review to Immigrants: Complaint Alleges Poor Medical Care For Detainees

Sandra Hernandez

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LOS ANGELES - In an unusual move, the U.S. 9th Circuit Court of Appeals will decide whether to grant class status to a case brought by immigrants suing federal officials over lax medical care at a San Diego detention center.

Judges Thomas G. Nelson and A. Wallace Tashima agreed to grant interlocutory review of class certification last month, without comment.

Legal experts said circuit courts rarely review class certification appeals.

"The great majority of these petitions are denied," said Michael Lieder, a partner with Sprenger + Lang in Washington D.C., who specializes in class action litigation.

The court will review whether to expand a lawsuit brought by 11 immigrants detained at the San Diego Correctional Facility, a sprawling jail perched atop the hills that overlook the U.S. border with Mexico.

Public Health

The immigrants sued the Department of Homeland Security and public health staff, alleging poor medical care at the facility puts their lives in danger and violates their constitutional rights.

The immigrants appealed in December, after U.S. District Court Judge Dana M. Sabraw in San Diego denied the plaintiffs' request for class certification, finding the allegations were so wide-ranging that no single solution was available.

Tom Jawetz, a staff attorney with the American Civil Liberty Union's National Prison Project, said the immigrants aren't seeking money, and certification is the only way to address problems in prisons and detention centers.

"Any individual plaintiff's interest can be mooted out if they are released," said Jawetz, who is representing the immigrants.

Systemic Problems

"The purpose of the appeal is to prove that the problems that exist at the facility don't just affect the named plaintiffs, but are systemic problems that affect everyone," Jawetz said.

Immigration and Customs Enforcement spokeswoman Virginia Kice declined comment, citing the ongoing litigation.

Circuit courts began reviewing class certification in 1999, after a new rule known as 23(f) was introduced.

A 2002 Drake Law Review article found circuit courts rarely took up such appeals.

The article found that in three cases reviewed by the 9th Circuit, the court upheld a district court's denial of certification in two and overturned the certification in the other case.

Lieder said circuit courts appear more likely to consider requests to vacate certification.

"It's quite rare for plaintiffs to get review, so it's a very good sign for the plaintiffs," Lieder said.

The ACLU first filed suit in July 2007, on behalf of immigrants held at the San Diego Correctional Facility, a privately run facility that houses more than 600 immigrants.

In the lawsuit, detainees allege myriad medical problems, including a failure to monitor chronic conditions, failure to make timely referrals to specialists and delays in providing prescribed drugs.

The lawsuit received public attention after Francisco Castaneda, a Salvadoran immigrant who was held at the facility, testified before Congress about medical care in detention centers.

Last year, Castaneda told lawmakers he noticed a growth on his penis and requested medical care. A doctor ordered a biopsy, but health officials denied the request because the biopsy was considered an elective procedure.

Castaneda spent 10 months in detention. He was diagnosed with penile cancer shortly after he was released, and it later spread to other parts of his body.

Castaneda died in February.

Since his death, new reports of medical problems at the San Diego facility have surfaced.

Last month, Rok Gjurashaj, a 54-year-old Albanian man with a history of heart problems and seizures, said he was denied medication despite having been rushed to a hospital days earlier.

"Mr. Gjuarshaj has requested to see a doctor and receive medical attention when he isn't feeling well, and each time [that] he is denied care, his medical condition worsens to the point [that] his blood pressure shoots up," said Leon Hazany, a Beverly Hills attorney representing Gjurashaj. "He's had at least one emergency room visit that I know of."

His family said they are worried because Gjurashaj has repeatedly been denied drugs to treat his blood pressure.

"My father doesn't get his medication," said Gjurashaj's daughter, Jennifer. "It's taken away from him all the time. He has gotten sick about three times since being in detention. He has had two seizures and a stroke."

The Daily Journal confirmed Gjurashaj is housed in the medical unit of the San Diego detention center and obtained copies of complaints he filed involving medical problems.

"I have been trying to get my medication," Gjurashaj wrote in a request for help filed with officials at the San Diego Correction Facility on May 31, 2007.

"I put in request for refill 12 days ago then nothing. I have put in second [request] still nothing. I put in third request three days [ago, and] they send something but not what I need," Gjurashaj wrote, adding "Please give me my medication."

Gjuarshaj was turned over to immigration officials in March 2007, after he finished serving time for grand theft in state prison.

"The case of Mr. Gjurashaj is one of many that the ACLU is following," Jawetz said.

He said detainees repeatedly report problems receiving medication.

"One of the principle problems we have noted is getting prescription medication in a consistent manner, and that refills be made available," he said.

Gjuarshaj's family is following the appeal but said it may not help them deal with the current problem.

"I'm worried to death over him," Gjuarshaj daughter, Jennifer, said. "This is so hard because I don't know what to do, how to help him. Every time I get I call from him, I just hope he is OK."

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