

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

11/16/09
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DISTRICT COURT
DISTRICT OF MASS.

IN RE:)
)
 PETITION OF)
 JUDITH TAVAREZ)
)
 ex. rel.)
)
 ANDREA CABRAL, Individually and as)
 Sheriff of Suffolk County Massachusetts;)
)
 JOHN DOES (I-III);)
)
 COMMONWEALTH OF)
 MASSACHUSETTS;)
)
 ERIC HOLDER, Attorney General of the)
 United States of America;)
)
 JANET NAPOLITANO, Director of)
 Homeland Security of the United States of)
 America;)
)
 IMMIGRATION AND CUSTOMS)
 ENFORCEMENT AGENCY of the)
 Department of Homeland Security of the)
 United States of America.)
)
 Respondents)
)
 ex. rel.)
)
 DOMINGO MARTINEZ a.k.a. Jose Familia)
 LEONEL BELLO)

**VERIFIED PETITION TO
MEMORIALIZE TESTIMONY
PURSUANT TO FED. R. CIV. P. 27.**

This is a petition to memorialize testimony of two witnesses to a possible civil rights violation who face potential immediate deportation.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1331 as detainees are presently in custody under color of authority of the United States. This Court may grant relief pursuant to 28 U.S.C. §§ 1651, (power to issue writs) 2201, (power to enter declaratory judgments) 2241 (power to grant writ) and 2242 (power to issue writ of habeas corpus upon proper application) and Rule 65 of the Federal Rules of Civil Procedure. Although only Rule 27 relief is requested at this juncture, an action pursuant 42 U.S.C. § 1983 is contemplated.

VENUE

Venue lies in the United States District Court for the District of Massachusetts, the judicial district in which Respondent ICE initiated seizure and detention, where the events giving rise to the claims alleged herein occurred, and where the witnesses whom we request to depose are being held and ICE's regional field office is located.

PARTIES

1. The petitioner Judith Tavaréz is an individual who resides at 6724 Rose Drive, Miramas, Florida 33023.
2. Respondent Andrea Cabral is the duly elected Sheriff of Suffolk County, Commonwealth of Massachusetts and has offices at 20 Bradston Street, Boston, Massachusetts.
3. The respondent Immigration and Customs Enforcement Agency (ICE) of the Department of Homeland security is a law enforcement agency of the United States of America that can sue and be sued. ICE has a regional office in the Town of Burlington, County of Middlesex, Massachusetts. ICE is charged with supervising and managing the deportation of persons who

the United States Government believes do not properly reside within the United States of America.

4. Persons described as John Does are individual employees or servants of the respondent Cabral and/or the respondent ICE who are employed as security officers (or guards) at the South Bay House of Corrections or who engaged in supervision or training of such guards or who were responsible for medical care.

5. The Commonwealth of Massachusetts is a body politic that can sue or be sued.

6. Respondent Eric Holder is the duly appointed Attorney General of the United States of America. The Attorney General has a local office at 12 Northern Avenue, Boston, Massachusetts.

7. Respondent Janet Napolitano is the duly appointed Director of Homeland Security of the United States of America. The Department of Homeland Security has a local office at 37 N. 2nd Street, New Bedford, Massachusetts.

8. Domingo Martinez is an individual who was born in the Dominican Republic on or about December 4, 1969. Mr. Martinez is also known as Jose Familia. Mr. Martinez' current domicile is the Suffolk County House of Correction at South Bay where he resides in the custody of the Respondents.

9. Leonel Bello is an individual whose current domicile is the Suffolk County House of Correction at South Bay where he resides in the custody of the Respondents.

FACTS

10. Pedro Tavaréz is an individual who was born on July 25, 1960.

11. Some time in 2008 Mr. Tavaréz was detained by the respondent ICE upon an allegation that he was not properly residing in the United States. ICE was seeking his deportation. Mr. Tavaréz remained in detention ever since and has contested the deportation.

12. The petitioner Judith Tavaréz is the daughter of the late Pedro Tavaréz. The undersigned counsel believes she is his only natural heir eligible to become a beneficiary of his estate in accord with Massachusetts laws of intestacy. Ms. Tavaréz has filed a formal petition in the Suffolk County Probate Court requesting her appointment as administratrix of the Estate of Pedro Tavaréz.

13. On information and belief, Mr. Tavaréz was held in custody at the "South Bay House of Corrections" pursuant to a contractual agreement between ICE and the Commonwealth or Cabral.

14. On or about, October 19, 2009, while in the custody of the respondents, Pedro Tavaréz passed away. The circumstances of his passing are unusual and were reported in the Boston Globe, appended as Exhibit A. These circumstances raise questions concerning whether Mr. Tavaréz death was preventable and whether or not those who undertook to hold him in custody fulfilled their moral, ethical, and legal obligations to him and his family. More specific legal questions include:

- A. Whether the respondents or any of them (or their servants agents and assigns) violated 18 U.S.C. § 1983 by failing to provide reasonably available medical care for Mr. Tavaréz and/or by engaging in a pattern of deliberate indifference to the quality of such care?
- B. Whether the respondents or any of them (or their servants agents and assigns) violated M.G.L. ch. 12 § 11(I) (MCRA) by failing to provide reasonably available

medical care for Mr. Tavaréz and/or by engaging in a pattern of deliberate indifference to the quality of such care?

- C. Whether the Commonwealth or Cabral violated Massachusetts General Laws Ch. 258?
- D. Whether ICE or any of its agents or assigns, by failing to provide reasonably available medical care for Mr. Tavaréz and/or by engaging in a pattern of deliberate indifference to the quality of such care violated Mr. Tavaréz constitutional rights as applied to individual federal agents in Bivens v. Six Unknown Agent of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).
- E. Whether ICE or its agents violated the Federal Torts Claim Act. (FTCA).

15. Shortly after Mr. Tavaréz passed away, the Dominican consul received a letter purported to have been signed by 5 individuals who observed Mr. Tavaréz physical condition while he was in custody, shortly before he passed away. A copy of this letter has apparently been obtained by the Boston Globe as discussed in the attached article.

16. The undersigned counsel has been engaged by the plaintiff and other close family of the deceased, Mr. Tavaréz to investigate the matter. We have conducted a limited good faith investigation and have learned that only two (2) of the five (5) signatories of the letter remain in Sheriff Cabral's custody in Massachusetts within the venue of this Honorable Court. (As of Monday, November 9, 2009). These two individuals are the above captioned Domingo Martínez A.K.A. Jose Familia and Leonel Bello

17. These witnesses have been interviewed by an attorney employed by the undersigned. It is anticipated that the witnesses would testify as follows:

Tavarez was in apparent good health when first brought to South Bay. Tavarez was a friendly person who exercised every day.

On a Monday Tavarez said he wasn't feeling well. He opted out of going to the gym or exercising. He did not go hang out with everyone but instead stayed in his cell.

Tavarez's disposition did not improve, so his friends made him some tea. Tavarez drank some of it but just stayed in bed. At some point on Monday Tavarez wrote out a medical request.

On Tuesday Tavarez had not improved. He stayed in his cell in bed all day. He only came out to get his tray of food but did not eat much, nor did he eat with the group as he usually would. Tavarez put in another medical request.

On Wednesday Tavarez did not leave his bed all day and did not eat. Tavarez filled out another medical request form. Around 10:30/11:00p.m. Martinez, Pedro Lara and Jonatan San Pablo went to check on Tavarez. They found him pale, shivering in a cocoon of blankets on his bed covered in sweat. They went to C.O. Pugsley and told him what they found. Pugsley took one look at Tavarez and called for medical.

It appeared to the lay witnesses that he was dying.

It appeared that he needed medical care much sooner than was provided.

18. The intention of the respondents is to deport the potential witnesses. It may become extra-ordinarily difficult to memorialize their testimony if they are deported.

19. In accord with Fed R. Civ. P. 27:

1. Ms. Tavaraz subjectively "expects to be a party in claims" such as those described supra. Although as counsel we have identified these questions as worthy of judicial review, we believe that the filing of a formal claim alleging violations of civil rights statutes and/or torts would at this time be premature if for no reason

other than Ms. Tavaraz has not yet been formally appointed Administratrix of the Estate of Pedro Tavaraz. Therefore, she is “unable” to bring the action at present.

2 The subject matter of a potential claim or claims would include the questions raised in paragraph fourteen (14) above with emphasis on claims sounding in Bivens, and 42 U.S.C. § 1983.

3. The facts petitioner wishes to memorialize are those set forth in paragraph seventeen (17) above and should include:

- a. The conditions of Pedro Tavaraz’ incarceration;
- b. Observations of Pedro Tavaraz physical condition at any time;
- c. Any statements Pedro Martinez may have made;
- d. The conduct of any law enforcement agent as related to Mr. Tavaraz including but not limited to interactions;
- e. Observations and inferences regarding the larger question of whether the respondents engage in a pattern of deliberate indifference to the health of detainees;

4. All known potential parties (and/or) their agencies are named in the caption (including “john doe” employees) and listed in the section labeled “parties, supra.

5. The names and addresses of those to be deposed are Domingo Martinez and Leonel Bello in the custody of the Suffolk County Sheriff.

20. Therefore, we believe and aver that justice would allow the taking of a deposition in accord with Fed. R. Civ. P. 27, forthwith.

21. On or about November 4, 2009 the undersigned counsel sent a letter appended as Exhibit B to the Sheriff and ICE requesting documents, reports and preservation of evidence. To date there has been no response.

22. ICE has unchecked power to move detainees around the country. See *Detention and Deportation in the Age of ICE: Immigrants and Human Rights in Massachusetts*, p. 23. American Civil Liberties Union (December 2008).

23. Immediate and irreparable harm, will result if the detainees are moved far from Massachusetts prior to the taking of the contemplated depositions.

WHEREFORE,

The Petitioner Respectfully requests;

1. That the court ex parte schedule an emergency hearing as soon as possible, and that the court issue a short order of notice to the above named Andrea Cabral, the Commonwealth of Massachusetts, Eric Holder, Janet Napolitano and ICE, and that further, pursuant to Fed. R. Civ. P. 4, order that notice shall be sufficient served by sending the same by commercial overnight mail (and or hand-delivering) to Sheriff Cabral, the office of the Massachusetts Attorney General, the offices of the United States Attorney General in Boston, the offices of the Department of Homeland Security in New Bedford and the Burlington Office of ICE.
2. That, pursuant to Fed. R. Civ. P. 65, the court issue a temporary restraining order enjoining Respondents from transferring Domingo Martinez and Leonel Bello out of this District until they have been deposed, pending a hearing.
3. That the court issue a temporary injunction enjoining Respondents from transferring Domingo Martinez and Leonel Bello out of this District until they have been deposed

4. The petitioner respectfully requests that, pursuant to Fed R. Civ. P. 27, and all relevant statutory rules and authorities, and the General Equitable Powers of this court, the court allow the Petitioner Judith Tavaréz to take the deposition of Domingo Martínez and Leonel Bello forthwith. And that the petitioner be allowed to pose any and all reasonable questions relating to:

- a. The conditions of Pedro Tavaréz' incarceration;
- b. Observations of Pedro Tavaréz physical condition at any time;
- c. Any statements Pedro Martínez may have made;
- d. The conduct of any law enforcement agent as related to Mr. Tavaréz including but not limited to interactions;
- e. Observations and inferences regarding the larger question of whether the respondents engage in a pattern of deliberate indifference to the health of detainees;
- f. and that further order that:
 - i. No additional formal notice of deposition need served but rather respondent Cabral is to provide a reasonable facility and allow a stenographer to enter the facility.
 - ii. No subpoena to the witnesses need issue. It is requested that the Sheriff be ordered to produce them to a **location secure within the facility** (in a manner similar to habeus corpus).
 - iii. That the petitioner be allowed to videotape the deposition without strict formal compliance with Fed. R. Civ. P. 30 so long as the videotape is prepared by a disinterested professional;

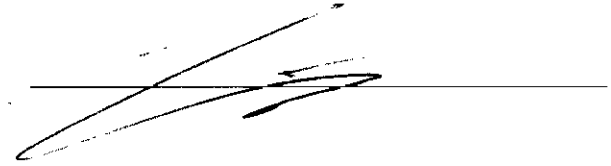
- iv. That any such testimony (subject to motions to strike) be admissible in any subsequent proceedings brought by Ms. Tavarez or the Estate of Pedro Tavarez for wrongful death, personal injury or civil rights violations.
- v. That the court Issue a preliminary injunction enjoining said respondent Cabral from spoiling or destroying any materials that could be utilized as evidence in any way related to Pedro Tavarez custody and care; and order that the following be preserved and made available forthwith to Ms. Tavarez counsel:
 - A. All video security camera footage from any location where Mr. Tavarez might have traveled in the last month of his life;
 - B. All audio recordings of communications between officers or telephone calls to ambulance services;
 - C. All photographs taken;
 - D. All handwritten notes of any investigative officer involved;
 - E. Any and all information whatsoever currently in Cabral's files concerning Mr. Tavarez.

RESPECTFULLY SUBMITTED:

By her attorney:


Robert S. Sinsheimer, BBO #464940
Sinsheimer & Associates
92 State Street, 9th Floor
Boston, MA 02109
(617) 722-9954

I Robert S. Sinsheimer depose and on my oath do swear that I have reviewed the above petition and hereby verify the same under pains and penalties of perjury.

A handwritten signature in black ink is written over a solid horizontal line. The signature is stylized and appears to be 'R. Sinsheimer'.

EXHIBIT

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Detained immigrant's death leaves far-reaching questions The Boston Globe



By Maria Sacchetti
 Globe Staff / October 30, 2009

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The last time Milady Tavarez spoke with her brother, Pedro, he sounded lonely but otherwise fine. For a year and a half, he had been bounced from jail to jail, fighting deportation to the Dominican Republic. Now, he sat in the Suffolk County House of Correction, eager for her to visit.

Five days later, her telephone rang just before dawn. Pedro Tavarez was dying.

As his stunned family gathered on Oct. 19 around his bed at Brigham and Women's Hospital for their final goodbyes, hard questions about his medical

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care swirled around them. How long had he been sick? Why was he taken to three hospitals? What had caused the rapid decline of an otherwise healthy 49-year-old man?

The death of Tavaréz, a Providence shuttle driver, occurred just weeks after the Obama administration pledged to improve conditions and medical care in the immigrant detention system, which is spread out across the country in federal, local, and privately run jails. The goal is to hold immigrants to ensure their deportation, but the system has faced criticism for its cost, lack of oversight, and inadequate access to care.

"We're calling for an investigation," said Dominico Cabral, the Dominican Republic consul in Boston. "As the consulate, we feel this case could have been handled better."

Last year federal officials removed immigrants from the privately operated Wyatt Detention Facility in Central Falls, R.I., after discovering that a 34-year-old Chinese citizen was denied medical treatment shortly before he died of cancer.

Advocates for immigrants say the system is still prone to neglect.

"I don't think that it's gotten any better yet," said Laura Rótolo, a staff attorney with the ACLU of Massachusetts who has researched conditions in Massachusetts jails. "There's a little more transparency now, but we have not gotten any indication that the medical attention is a lot better, or even adequate."

US Immigration and Customs Enforcement, which is in charge of detaining and deporting immigrants, said the agency is committed to providing medical care to all detainees. The agency has referred Tavaréz's death to its Office of Professional Responsibility and the state medical examiner for an investigation.

"The agency takes every allegation of misconduct or treatment involving an individual in the agency's custody incredibly seriously," said Marc J. Moore, assistant director for field operations for detention and removal for ICE, as the agency is known, in Washington. "We want to do a full and comprehensive review."

Peter Van Delft, spokesman for the Suffolk County jail, declined to comment on the case because of the federal investigation. The Suffolk jail was reviewed during the summer and received a good rating, ICE spokeswoman Nina Pruneda said. The jail typically houses 270 immigrant detainees and receives \$90 a day in federal funding for each of them. Continued...

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EXHIBIT

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November 4, 2009

VIA CERTIFIED MAIL NO. 7009 0080 0000 6886 3216

Office of the Suffolk County Sheriff
20 Bradston Street
Boston, MA 02118

Re: Pedro Tavarez
DOB: July 25, 1960

Dear Sir/Madam,

This office together with Attorney Christopher Heberg of Providence, Rhode Island, represents Judith C. Tavarez. Ms. Tavarez is the daughter of the late Pedro Tavarez, and we believe she is his only natural heir. We therefore also represent the estate of Pedro Tavarez, although the process of obtaining a formal administration is on-going.

Mr. Tavarez passed away in the custody of immigration and customs enforcement agency on or about October 19, 2009. We understand that he was housed in your facility until he was brought to a hospital shortly before his passing. The circumstances of his passing are unusual and warrant an independent investigation.

By this letter, I am respectfully requesting that your office immediately take steps to preserve any and all evidence in any way related to Mr. Tavarez and do not destroy the same regardless of any other document retention policies or the like. This would include:

1. All video security camera footage from any location where Mr. Tavarez might travel in the last month of his life;
2. All audio recordings of communications between officers or telephone calls to ambulance services;
3. All photographs taken;
4. All handwritten notes of any investigative officer involved;
5. Any and all information whatsoever currently in your files concerning Mr. Tavarez.

Sinsheimer & Associates

Robert S. Sinsheimer
Liaison Counsel

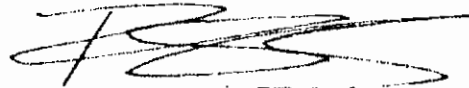
COUNSELLORS AT LAW

We would also respectfully request that you send to us, at your very earliest convenience:

1. Any and all medical records (as broadly construed as possible to include hospital records Doctors reports, nurses notes, prescriptions, diagnoses, prognoses, test etc.);
2. Names of all prison personnel who had contact with Mr. Tavarez in the last thirty days of his life;
3. Names and contact information of any cell-mates or "roommates" of Mr. Tavarez.

Thank you for your anticipated co-operation.

Very truly yours,



Robert S. Sinsheimer

cc: Judith C. Tavarez
Christopher Heberg, Esq.
Laura Rotolo, Esq



Letter Sent by
Eileen Teresi

November 4, 2009

VIA CERTIFIED MAIL NO. 7009 0080 0000 6886 3209

Mr. Todd Thurlow
Assistant Field Office Director
Immigration, Customs, and Enforcement
10 New England Executive Park
Burlington, Mass. 01803

**Re: PEDRO TAVAREZ
DOB: July 25, 1960**

Dear Mr. Thurlow,

This office together with Attorney Christopher Heberg of Providence, Rhode Island, represents Judith C. Tavarez. Ms. Tavarez is the daughter of the late Pedro Tavarez, and we believe she is his only natural heir. We therefore also represent the estate of Pedro Tavarez, although the process of obtaining a formal administration is on-going.

Mr. Tavarez passed away in the custody of immigration and customs enforcement agency on or about October 19, 2009. The circumstances of his passing are unusual and warrant an independent investigation.

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1. All video security camera footage from any location where Mr. Tavarez might have traveled in the last month of his life;
2. All audio recordings of communications between officers or telephone calls to ambulance services;
3. All photographs taken;
4. All handwritten notes of any investigative officer involved;
5. Any and all information whatsoever currently in your files concerning Mr. Tavarez.

Sinsheimer & Associates

COUNSELLORS AT LAW

Robert S. Sinsheimer
Lauren H. Sinsheimer

We would also respectfully request that you send to us, at your very earliest convenience:

1. Name, address and dates of custody for each facility in which Mr. Tavarez was in custody from the date of his seizure until his passing;
2. Any and all medical records (as broadly construed as possible to include hospital records: Doctors reports, nurses notes, prescriptions, diagnoses, prognoses, test etc.);
3. Names of all prison personnel who had contact with Mr. Tavarez in the last thirty days of his life;
4. Names and contact information of any cell-mates or "roommates" of Mr. Tavarez.

I would also respectfully request that you telephone me upon receipt of this letter. Please note that a similar letter is being sent to the Office of the Suffolk County Sheriff (copy enclosed).

Thank you for your anticipated co-operation.

Very truly yours,



Robert S. Sinsheimer

cc: Judith C. Tavarez
Christopher Heberg, Esq.
Laura Rotolo, Esq.