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## NEWS RELEASE

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OCTOBER 2, 2008

### U.S. APPELLATE COURT IN CASTANEDA CASE REJECTS FEDERAL OFFICIALS' CLAIMED IMMUNITY FROM CONSTITUTIONAL CHARGES

The U. S. Court of Appeals for the Ninth Circuit ruled Oct. 2 that federal officials can be sued for violating the constitutional rights of an immigration detainee who had his penis amputated and later died from penile cancer that was left untreated and undiagnosed while in detention.

The government had argued that a federal statute makes a lawsuit against the United States the exclusive remedy for illegal actions by the government doctors and other officials, but the appellate court unanimously ruled that federal officials cannot violate the Constitution and avoid accountability.

In a sharp rebuke of the defendants' claim, the appellate court described former detainee Francisco 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."

Castaneda died in February, one year after he was released from custody and diagnosed with invasive squamous cell carcinoma, necessitating the amputation of his penis in what turned out to be a futile attempt to arrest the cancer and save his life.

Public Justice, the national public interest law firm, filed a lawsuit last October against the U.S. government, several federal and California state officials, and a California physician, alleging medical neglect and violations of Francisco Castaneda's due process and equal protection rights under the Fifth Amendment. Thursday's ruling applies to the federal Public Health Service (PHS) officials who were named in the lawsuit and sought immunity under the Federal Tort Claims Act.

In upholding the district court's decision, the appeals court found that PHS 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."

"This is a landmark civil rights decision," said Conal Doyle, Public Justice's lead counsel in the case. "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 critical biopsy, even though it had been recommended by state, federal and private doctors.

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The U.S. government has admitted that it is liable for medical negligence, but other claims have yet to be resolved.

“Francisco Castaneda had his penis amputated and lost his life because of the deliberate indifference of federal officials,” said Public Justice Attorney Adele Kimmel, co-counsel for Castaneda. “This ruling is an enormous victory for the Castaneda family and all who care about the Constitution.”

In addition to Doyle, a partner in Willoughby Doyle of Oakland, Calif., and 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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Public Justice is America’s public interest law firm, supported by – and calling on -- a nationwide network of more than 3,000 of the nation’s top lawyers to pursue precedent-setting and socially significant litigation. It has a wide-ranging litigation docket in the areas of consumer rights, worker safety, civil rights and liberties, toxic torts, environmental protection, and access to the courts. Public Justice is the principal project of the Public Justice Foundation, a not-for-profit membership organization headquartered in Washington, DC, with a West Coast office in Oakland, California. The Public Justice web site address is [www.publicjustice.net](http://www.publicjustice.net).