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Lawsuits Renew Questions on Immigrant Detention

By Nina Bernstein

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When the Obama administration vowed to overhaul immigration detention last year, its promise of more humane treatment and accountability was spurred in part by the harrowing treatment of two detainees who died in the Bush years.

In one case, captured by security cameras in 2008, a Chinese computer engineer was dragged from a Rhode Island immigration jail and mocked by guards as he screamed in pain from undiagnosed cancer and a broken spine. In the other, a Salvadoran detainee held for two years in a California detention center was denied a biopsy for a painful penile lesion, though government doctors suspected the cancer that eventually required amputation of his penis.

But on Wednesday, the administration argued in federal court that the government had no liability for neglect or abuse by private contractors running the Donald W. Wyatt Detention Facility in Central Falls, R.I., where the computer engineer was held. And in oral arguments before the United States Supreme Court on Tuesday, federal lawyers maintained that government doctors responsible for the Salvadoran's care in detention were immune from being personally sued for medical negligence.

In both cases, the arguments were made against lawsuits brought by the families of the men who died, Hiu Lui Ng, 34, and Francisco Castaneda, 36. In the Ng case, the government sought to be dropped as a defendant, and in the other, it tried to sharply limit potential monetary damages.

But critics of the sprawling immigration detention system, which relies mainly on privately run jails to hold noncitizens facing deportation, said those arguments had broader and more disturbing implications.

“The government's positions both in Castaneda and in the Ng case fly in the face of the stated commitment to overhauling the immigration detention system and bringing to it more transparency and accountability,” said Vanita Gupta, a lawyer with the American

Civil Liberties Union, which filed an amicus brief in the Castaneda case and through its Rhode Island affiliate supported the lawsuit brought by Mr. Ng's widow, Lin Li Qu, and two children, all United States citizens who live in New York.

“Real reform wouldn't be about pointing the finger elsewhere,” Ms. Gupta said. “It would be about promulgating legally binding standards and making individualized determinations about whether someone like Ng needs to be detained in the first place.”

Brian P. Hale, a spokesman for Immigration and Customs Enforcement, reiterated the agency's commitment to an overhaul. “This administration takes any allegation of inadequate medical care or ill treatment seriously and will not accept or tolerate any willful misconduct,” he wrote. “We have taken important initial steps to change this system and are committed to finishing the job.”

Oral arguments in the Ng case, in Federal District Court in Providence, centered on the federal agency's role in ordering that the gravely ill man be taken in shackles to a federal office in Hartford and returned the same day to the Wyatt detention center. For that trip, Mr. Ng was dragged from his cell.

The government's lawyer, Helene Kazanjian, argued that it was “completely unfair” to expect an agency “that has no contact with the detainee on a regular basis,” to know that Mr. Ng was in dire condition.

But Fidelma L. Fitzpatrick, arguing the other side, pointed out that the agency had been repeatedly notified that Mr. Ng was in terrible pain and unable to walk, and that he had been denied a wheelchair and outside medical care by the detention center, run for profit by a municipal corporation in Central Falls.

“The U.S. government cannot just hire someone and then close the file,” Ms. Fitzpatrick said. “The government must take responsibility for the actions of ICE.”

Judge William E. Smith said he would rule later, but his questions took up the plaintiffs' theme. “If you know about the severity of the detainee's condition, isn't there an obligation to give him special treatment, to put him on an ambulance?” he asked.

Ms. Kazanjian contended that when the agency learned how sick Mr. Ng was, it sent him to the hospital where he died six days later. But the judge corrected her.

“I ordered him hospitalized,” he said, referring to his unusual intervention at a habeas corpus hearing the day after the Hartford trip. “I don't think ICE can take credit for that.”

In the Castaneda case, the government has admitted to medical negligence, and a federal judge has said “the word ‘cruel’ is an understatement” for the treatment described in the lawsuit.

But on Tuesday, the Supreme Court seemed receptive to the government’s argument that Public Health Service doctors were immune from suit under a 1970 federal law.

A government lawyer argued that that immunity reflected “a balance of evils,” adding, “Congress has decided that it would rather protect the P.H.S., make sure that causes of action and liability aren’t hanging over the heads of P.H.S. officers, even if that means some individuals don’t get recovery against certain specific P.H.S. personnel.”

Lawyers representing Mr. Castaneda’s teenage daughter have said a ruling for the government would preclude a jury trial in the case and cap any damages at \$250,000, which they called insufficient deterrence to the negligence that has been widely documented.