

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA (Williamsport)**

BENEDICTUS YARZUE Plaintiff,	:	NO. 4:05-CV-01415-JFM-JVW
	:	
v.	:	
	:	
THOMAS HOGAN, Warden, York County Prison, SECRETARY MICHAEL CHERTOFF, Department of Homeland Security, BEATA, Deputy Warden ROGER THOMAS, and DENNIS BOWEN, York County Prison, Defendants,	:	CIVIL ACTION - LAW
	:	
v.	:	
	:	
THOMAS HOGAN, Warden, York County Prison, BEATA, Deputy Warden ROGER THOMAS, and DENNIS BOWEN, York County Prison, Third Party Plaintiffs,	:	(JUDGE JAMES F. McCLURE, Jr.)
	:	
v.	:	
	:	
UNITED STATES OF AMERICA DEPARTMENT OF HOMELAND SECURITY, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, Office of Detention and Removal of Operations, Division of Immigration Health Services, Third Party Defendant.	:	

**EXHIBITS TO THIRD PARTY PLAINTIFFS' BRIEF IN OPPOSITION TO THE
THIRD PARTY DEFENDANTS' MOTION TO DISMISS
THE THIRD PARTY COMPLAINT**

By: /s/ Donald L. Reihart, Esquire
Donald L. Reihart, Esq.
Sup. Ct. I.D. #07421
3015 Eastern Boulevard
York, PA 17402
Telephone (717) 755-2799
Assistant Solicitor for York County

Date: APRIL 7, 2006

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AFFIDAVIT OF DEPUTY WARDEN ROGER THOMAS

My name is Roger Thomas. I am a Deputy Warden at the York County Prison. I have served as a Deputy Warden for the York County Prison since March of 1990. This Affidavit is based upon my personal knowledge and information. I am competent to testify and would state as follows if called as a witness at trial:

1.

I am the Deputy Warden of Treatment at the York County Prison and have been acting in that capacity since March of 1990. I was serving in that capacity during the entire time that inmate Benedictus Yarzue was confined in the York County Prison. I continue to be a Deputy Warden through the present time.

2.

On and before July 2004 and up to the present time the York County Prison had a grievance system in effect. I am custodian of all grievances filed by inmates at the York County Prison.

3.

In March of 2005, inmate Benedictus Yarzue filed an inmate complaint (801) that was processed through the complaint review system.

4.

The nature of inmate Yarzue's complaint involved his request for medical assistance, specifically a request that he be seen by a Urologist concerning what he described as a "prostate problem".

5.

The staff at the York County Prison in passing upon inmate Yarzue's request determined that he needed to receive the urology consult and that he should also receive a cystoscopic examination.

6.

A request was made to the Immigration Health Services Division for approval of the requested evaluation of inmate Yarzue. This was denied.

7.

The contract that exists between the Immigration Department and the York County Prison requires approval of non-emergency medical care by the federal government. If approval is not obtained, any charges that are incurred in delivery of healthcare will not be paid by the government.

8.

The complaint of Benedictus Yarzue was appealed to the York County Assistant Solicitor who directed that the matter be heard by the Complaint Review Board. The Board is independent of the staff at the York County Prison. Warden Hogan sits on the Board together with the President of the York County Prison Board and a lay member from York County.

9.

The Solicitor determined that:

"The inmate does have a valid Eighth Amendment claim when he produces evidence of a serious medical need that is not addressed. If there is a reckless indifference to the inmate's serious medical need, a constitutional violation occurs."

10.

When the matter was presented to the Complaint Review Board a transcript of the proceedings was taken, as occurs in every case heard by the Board. A Copy of the transcript is appended hereto as **EXHIBIT "A"**.

11.

At the hearing, the Medical Director who is licensed by the Commonwealth as a physician expressed the opinion that the care requested by inmate Yarzue was needed and should be given.

12.

The Complaint Review Board granted the request of the inmate and directed that the care be provided.

13.

The local BICE agent was notified of the decision, but before the inmate could be scheduled for the necessary medical evaluation, he was transferred by the INS from York County Prison to Berks County Prison.

14.

As the Deputy Warden in charge of Treatment I am familiar with the efforts of the medical section to obtain medical care for INS inmates that are located in the York County Prison.

15.

During the past year and a half, there has been a pattern by the Department of Immigration Health Service (DIHS) of routinely either denying legitimate requests for serious medical needs of INS inmates that is requested by the medical staff at the York County Prison or a protracted delay by DIHS by requests of "more information" so that with the expiration of time the Department can deport aliens without having to incur the expense of giving them treatment determined by the medical section at the York County Prison as necessary.

16.

Some examples of the pattern are set forth as follows:

Amadou Diallo, #90832, Left knee injury (fall) request for orthopedic consult by prison Medical Director (Denied by DIHS, September 2005)

Manuel Genaro Gavilanes-Quijije, #89666, Urology consult for PSA of 5.6 and prostate complaint requested by medical staff (Denied by DIHS, August 2005)

Kwame McAuley, #87243, Request by medical staff for x-ray following operation on a broken leg (Denied by DIHS, August 2005)

Mohammed Seyed Ghaziaskar, #79459, Request by medical staff for colonoscopy to rule out cancer (Denied by DIHS, August 2005)

Houng Thach, #89056, Request by Dr. Norris, Medical Director for CT scan to evaluate three nodular densities found on x-ray in inmates lung (Denied by DIHS, August 2005)

Mannan Pepari, #88989, Dr. Gustin ordered an echocardiogram on follow up for coronary angioplasty (Denied by DIHS, August 2005)

17.

In addition, in another case involving inmate Kailash Kailash the DIHS refused without valid excuse to approve the evaluation and removal of a baseball sized cyst on the back of an INS inmate's neck.

18.

This matter identified as case number 120105B-0603 (Inmate Kailash Kailash) was also submitted to the Complaint Review Board with the result that the requested surgery was determined to be both serious and necessary.

19.

The surgery was performed despite the refusal of DIHS. The cost, however, of this surgery was placed upon the County.

20.

The County Prison staff is faced with a dilemma. DIHS must be requested to approve non-emergency off site evaluation and treatment. DIHS does not approve non-emergency treatment and it is delivered, the County must pay for this.

21.

The decisions made by DIHS are not in compliance with the constitutional requirements required by the federal courts.

22.

In a letter that I wrote to the local BICE agent concerning the DIHS pattern is set forth on a letter dated August 23, 2005 which is appended hereto and marked as **EXHIBIT "B"**.

23.

A letter addressed to the Assistant County Solicitor with which I am familiar is appended hereto as **EXHIBIT "C"**. This letter reflects the ongoing pattern of the DIHS whose procedures appear to delay and stretch out the requests for legitimate inmate healthcare so that it is either not given or that the cost of the care is born by the local municipalities.

24.

On November 28, 2005, I spelled out again the problems in a letter sent to the local BICE agent which is appended as **Exhibit "D"**.

25.

With reference inmate Yarzue, DIHS used the "failure to provide chronic masturbation counseling" as one of the reasons for denying the request of inmate Yarzue that had been previously approved by the Complaint Review Board and apparently which prompted his removal from the York County Prison to the Berks County Prison.

26.

I have been sued by INS inmates because they did not receive healthcare which they requested.

27.

For example, I was named as a defendant in Ferreiras v. York County, et al., 4:CV-04-1799, and as I understand it, will have to stand trial because I was not granted either quasi judicial immunity or qualified immunity. I am facing trial because I endeavored to follow the directions of the INS concerning dental treatment.

28.

In that case, inmate Ferreiras, an INS inmate who suffered from HIV, had his 801 appeal approved for a hearing by the Complaint Review Board. Had the matter been presented to the Complaint Review Board, it is likely that he, like Mr. Yarzue and other inmates, would have been given the treatment that he requested.

29.

Because Ferreiras was transferred before the hearing, the administrative system could not function, and the result was he was denied treatment that he requested, and I now am facing federal trial.

Holly Belter
Witness

Roger Thomas
ROGER THOMAS, Deputy Warden

Sworn or affirmed to and subscribed to before me,
this 7th day of April, 2006.

Karen L. Saxton
Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Karen L. Saxton, Notary Public
Springettsbury Twp., York County
My Commission Expires June 2, 2007
Member, Pennsylvania Association of Notaries

EXHIBIT "A"

1 MR. REIHART: May it please the Board, this
2 is the appointed hour to consider complaint
3 grievance appeals. And our first case this
4 morning is Benedictus Yarsue, 031805H-0539. As
5 the Board knows, this is a matter that deals
6 with a medical request by the inmate concerning
7 some urologic concerns.

8 You have the right to make a sworn or an
9 unsworn statement. What would you like to do
10 this morning?

11 MR. YARSUE: I'd like to make a statement.

12 MR. REIHART: Would you like to be sworn or
13 unsworn?

14 MR. YARSUE: Sworn.

15 MR. REIHART: Please stand and raise your
16 right hand.

17 BENEDICTUS YARSUE, called as a witness,
18 having been duly sworn, testified as follows:

19 EXAMINATION

20 BY MR. REIHART:

21 Q. Would you state your name.

22 A. Benedictus Yarsue.

23 Q. Why are you in the York County Prison? You're
24 an INS prisoner?

25 A. Yes, sir.

1 Q. What's your country of origin?

2 A. Liberia.

3 Q. Have you been convicted of any crimes?

4 A. Yeah, I've been convicted of reentry and
5 manslaughter in '91 manslaughter and '95
6 traffic.

7 Q. Are you presently under any charges of any kind
8 other than as an INS prisoner?

9 A. No, sir.

10 Q. Now, you have filed an 801, a grievance,
11 indicating that you have some concerns about
12 your care here at the York County Prison. Is
13 that right?

14 A. Yes, sir.

15 Q. Would you tell the Board what it is that you
16 would like to have them do?

17 A. Ever since I got here like about nine months --
18 It's been about nine months now. I came through
19 Clinton County before I came to York County -- I
20 was complaining about urinating and in pain a
21 lot at night.

22 And I filled out a request form in Clinton
23 County to the doctor, and he refused to see me.
24 I had to go to like the warden before I could
25 see the doctor after complaining every night,

1 getting up at like four or five times a night
2 urinating, constantly in pain.

3 And about two weeks -- two or three weeks
4 later on they shipped me from there to York
5 County, York County Prison. When I got here, I
6 filled out a request, a medical request form. I
7 went to see the doctor, and he put me on this
8 medication. It's for urinary tract infection.

9 And about two weeks later on my problem
10 wasn't improved, so I went back to him and
11 started complaining that I was in pain and I'm
12 waking up at night like four or five times a
13 night and constantly urinating. And because of
14 that, on my private area I'm in pain all my
15 private area.

16 And I can't sleep at night because of the
17 pain. I can't sleep. I get up at night.
18 Sometimes I have to wake up my bunkie to explain
19 my problem to him and tell him the condition
20 that I'm going through in here.

21 So he filled out a form-- The doctor
22 filled out a form for me to see the urologist.
23 I went to see the urologist about four or five
24 months ago, and he told me the problem that I
25 was having. He checked my prostate, and he told

1 me that my prostate was enlarged a little bit
2 but he was going to put me on some medication
3 and if my condition has not improved to go back
4 to the doctor and let the doctor know so I can
5 come back for a reevaluation so he can check me
6 to make sure that everything is all right with
7 me.

8 And I fill out a request form about two
9 months ago after being on the medication that he
10 put me on complaining to the doctor that my
11 problem have not improved and I'm constantly in
12 pain and for him to fill out a form for me to
13 see the urologist. He filled out the form for
14 me to see the urologist, and INS denied my
15 request for me to see the urologist.

16 Every week I fill out a request form
17 complaining about my problem that I'm still in
18 pain and because of this I'm uncomfortable and
19 the pain give me headaches at night. I feel
20 like-- I don't know how the feeling is. It's
21 just unbearable. You know, like I get--
22 Because of my pain in my private area, I get
23 headaches. You know, I just feel real, real
24 bad.

25 I went back to the doctor and complained to

1 him my problem. He checked my prostate and told
2 me that my prostate is still enlarged, that he
3 was going to fill out a request form for me to
4 see the urologist.

5 I filled out an INS request form -- I mean
6 talk to the INS why they have denied me for me
7 to see the urologist, that it was wrong for them
8 to deny me upon the urologist request for me to
9 go back to see him to make sure I was all right.
10 And they told me to fill out a medical request
11 form again to go back to the doctor.

12 I took this form back to the doctor, and I
13 show him, and he filled out another second
14 request form for me to see the urologist and
15 sent to INS. And when I went back two weeks
16 ago, he told me that INS denied me again so
17 there was nothing he could do.

18 So I fill out a 801. And from the 801, I
19 got a response, a 802 and a 804 respond back. I
20 give it to my lawyer. My lawyer have it. And I
21 put a request for her to send me back the form,
22 but she have not send it yet. On the request
23 form I got 801-- I got a 805 and respond from
24 the 805 saying that the warden was going to turn
25 my case to the solicitor. That's the problem

1 I'm having, sir.

2 MR. REIHART: As you know from looking at
3 the opinion that was written in this case,
4 apparently this is a situation where the medical
5 department in a timely way sent this inmate to
6 Dr. Baselli who is a local urologist who made a
7 determination that if he did not -- if this
8 inmate did not respond to conservative drug
9 therapy that he needed a cystoscopic evaluation
10 to rule out urethral stricture disease and
11 perhaps a voiding dysfunction.

12 Now, without this test, I don't think a
13 diagnosis of inmate's condition can be made, and
14 I concluded that the prison here, York County
15 Prison, did everything right but the inmate
16 didn't get the treatment and the reason is that
17 INS refuses.

18 Deputy Warden Thomas has advised me they
19 have their own layer of bureaucracy that
20 apparently is designed to make it very difficult
21 to get a timely decision and to get a positive
22 decision on even meritorious requests.

23 Since we have this grievance system in
24 effect, the proper procedure for the inmate is
25 to proceed and for a recommendation to be made.

1 Now, your recommendation would be to the York
2 County Prison Board who in turn would invoke the
3 services of the solicitor and take whatever
4 action is necessary to see the inmate gets the
5 treatment necessary.

6 Now, there's a problem here, and it deals
7 with delay. The obligation to pay for this lies
8 with the INS, not with York County. But if the
9 service is not paid for, the inmate can't get
10 it. So we have a problem here of we recognize
11 now there's a need and probably a need for a
12 more timely response, not only this man's
13 request, but this is not I think the first time
14 that we've had problems with INS turning down
15 what the staff here thought were legitimate
16 requests.

17 So in addition to solving the problem with
18 this inmate, we probably should find a procedure
19 to be able to address this kind of an issue in a
20 more expeditious way.

21 MR. HOGAN: Don, if I may, Doctor, as we
22 speak today, is that the circumstance?

23 MR. REIHART: Let me ask you a question.
24 Would you state your name, please.

25 DR. NORRIS: Yes, I'm Dr. Charles Norris.

1 MR. REIHART: Are you an official here at
2 the York County Prison?

3 DR. NORRIS: Yes.

4 MR. REIHART: You're the medical director?

5 DR. NORRIS: Yes.

6 MR. REIHART: Do you have a comment about
7 this inmate's need?

8 DR. NORRIS: I would say they are qualified
9 and everything that has been presented thus far
10 is correct. I feel that the need to have
11 further evaluation as far as a urology
12 consultation is necessary. Urology-- According
13 to the urologist's notes from his prior
14 encounter with urology, it was recommended that
15 he have a cystogram or cystoscope to rule out
16 bladder neck obstruction or some kind of voiding
17 irregularity.

18 The other alternate diagnosis that we were
19 trying to evaluate was if Mr. Yarsue has
20 diabetes insipidus from a prior head injury,
21 blow to the head. We do know that sometimes
22 with such injuries that can result in diabetes
23 insipidus.

24 He has been treated conservatively with
25 medicine to reduce the size of his prostate and

1 also Flomax which helps as far as with voiding.
2 Neither of these have had much impact as far as
3 the overall condition at this point, so we need
4 to progress forward.

5 MR. REIHART: So diabetes insipidus has not
6 been ruled out at this point?

7 DR. NORRIS: No, it has not. And I have
8 submitted a request to INS.

9 MR. HOGAN: I think in the interest of--
10 You recommend it. We recommend it. I think we
11 just do this, and then I'll battle it out with
12 INS.

13 MR. ANDERSON: Do we have any choice but
14 that?

15 MR. HOGAN: I believe we can have enough
16 leverage with INS. I know we have a second
17 problem here where this has happened in other
18 issues where we recommend it, but we don't have
19 the authority to do it unless we're going to pay
20 for it. But I think in this case we need to do
21 that ASAP and follow the recommended medical
22 guidelines, and I'll deal with it.

23 MR. REIHART: Probably what you should
24 consider in your opinion would be to not only
25 solve this problem but to make some

1 recommendations of an investigation into
2 improving the procedures to when there are
3 legitimate requests. I mean, when the medical
4 section is saying and the staff is saying that
5 there is a need for an evaluation and you have
6 to wait five months to get it, that's just--

7 MR. ANDERSON: Does the contract with INS
8 address these kinds of issues at all? Does it
9 go into that kind of detail?

10 MR. HOGAN: Not in that detail.

11 MR. ANDERSON: Could it? I mean, is this
12 something that could be negotiated as part of
13 the contract?

14 MR. REIHART: Well, they don't honor
15 everything about the contract right now.

16 MR. HOGAN: This is one of those we need to
17 do it, and I'll put the heat on them.

18 MR. CHRONISTER: What would be wrong if he
19 needs medical treatment, we went ahead and did
20 it and bill INS?

21 MR. HOGAN: The worst thing they could do
22 is they wouldn't pay, and that would be a
23 mistake.

24 MR. THOMAS: They have indicated that if
25 you provide treatment without authorization they

1 will refuse to pay.

2 MR. HOGAN: That's okay. I'll deal with
3 that.

4 MR. THOMAS: I understand.

5 MR. HOGAN: I think in this case we need to
6 resolve it now.

7 MR. THOMAS: Approximately four or five
8 months ago they came up with a new level of
9 bureaucracy in Washington, D.C. Very quickly
10 what they were trying to do is cut down the
11 costs of medical care for their detainees
12 throughout the country. And so they've got
13 doctors in Washington reviewing requests. Well,
14 the end result is they're in Washington. We're
15 here. We've got the inmate, and they've got the
16 purse strings.

17 MR. CHRONISTER: If this continues, is
18 there any more damage or any more problems that
19 could occur if he doesn't have the treatment?

20 DR. NORRIS: I would say not that I know of
21 other than just being in the discomfort level
22 that he's at. However--

23 MR. CHRONISTER: But, I mean, there's no
24 chance that it could be cancerous?

25 DR. NORRIS: There's always a remote chance

1 of that.

2 MR. HOGAN: I think he's done everything he
3 can do. I think we just need to resolve it, and
4 then I'll fight the battle with them.

5 MR. ANDERSON: I agree. This has to be
6 resolved. If we wait for INS, that's not fair
7 to him because he's caught in the bureaucracy.

8 MR. REIHART: I think we do need to address
9 this issue of what happens now when the next
10 request is made by the medical section for a
11 legitimate need and they say no. There ought to
12 be a more-- And in that case that person does
13 have something where early recognition would
14 make a difference, can't--

15 MR. ANDERSON: Don, with a bureaucracy like
16 INS and the attitude they have, we can make up a
17 major wish list, but they have the last say.

18 MR. REIHART: I think on this particular
19 thing I think there needs to be a clarification
20 as you suggested on the contract. I don't think
21 we can live with a situation where they can
22 stonewall and delay the entire time and put us
23 in a position where we pay for it and then can't
24 get the money back because we haven't complied
25 with their--

1 MR. CHRONISTER: I mean, how often has this
2 come up over the years? Is it once a year? Is
3 this something that regularly happens?

4 MR. THOMAS: We've had-- We've had four
5 this year.

6 MR. CHRONISTER: Where the medical--

7 MR. THOMAS: This is just starting.

8 MS. SABOL: I would just like to add we
9 requested a change to the contract as far as
10 remuneration last year in March, and we still
11 haven't heard anything, so it's not something
12 they proceed with quickly. So if you're looking
13 for a modification to the contract to solve this
14 problem quickly, I don't see that happening.

15 MR. HOGAN: There is an alternative which
16 we'll talk about later.

17 MR. REIHART: Do you have any other
18 comments that you would like to make other
19 than-- You've heard that we're going to do
20 whatever is necessary to get you this
21 cystoscopic evaluation you need and to get you
22 proper treatment, okay?

23 MR. YARSUE: Yes, sir.

24 MR. REIHART: Thank you for coming.

25

EXHIBIT "B"

YORK COUNTY PRISON

THOMAS H. HOGAN
WARDEN



TELEPHONE 840-7580
AREA CODE 717
FAX 840-7204

3400 CONCORD ROAD
YORK, PENNSYLVANIA 17402-9007

TO: Joe Sallemi, DADD
BICE

FROM: Roger S. Thomas
Deputy Warden

RE: Medical Problems

DATE: August 23, 2005

I am in receipt of your letter of 8/18/05. In your letter you indicated that you were seeking something in writing stating that DIHS would be legally liable in any lawsuit filed by a detainee in cases where DIHS denied specific treatment. As of today's date no such correspondence has been received.

York County Prison is required to provide medical treatment to all inmates incarcerated at the prison. We cannot and will not be deliberately indifferent to serious medical needs. When a BICE detainee requires medical attention, our medical department will cooperate with DIHS procedures and complete and submit a Treatment Authorization Request (TAR). If DIHS requests further information (they frequently do), our medical department will then send the entire medical record. DIHS will then have in their possession all the information that our medical department has obtained. If DIHS denies or delays the request, our medical department will then determine if the medical request is serious enough that it cannot be ignored. If our medical department determines that the detainee has a serious medical need that requires medical attention that has been denied or delayed by DIHS, then BICE will be asked to remove the detainee to a facility that accepts the treatment that DIHS is willing to provide. If BICE does not act on our request within 10 days, then our medical department will make arrangements to provide the detainee with the medical treatment they feel is necessary.

As I have stated in the past, we will not beg DIHS to provide necessary medical treatment to detainees. I am sure that DIHS has access to numerous attorneys who will defend their decisions and instead seek to blame York County Prison for any failure to provide medical care. I am not going to attempt to tell DIHS what to do or not do. If DIHS's decisions are appropriate, then there are numerous institutions that would be

willing to accept the detainee and not provide the medical treatment. All we ask is that you send the detainee to one of those institutions.

In your letter you stated, "If YCP proceeds with unauthorized medical treatment after the 10 day period, you are doing so on your own volition."

Regardless of what you say, BICE's actions will speak louder than their words. If after 10 days the detainee is not removed, York County Prison will have no choice but to provide the health care that the prison's medical department feels is necessary. BICE will be charged for that medical care. If BICE does not wish to assume financial responsibility for the detainee's health care, then please remove the detainee. BICE cannot refuse to move the detainee, refuse to authorize necessary medical treatment and then leave YCP to assume all the legal ramifications of BICE's decisions.

EXHIBIT "C"

RECEIVED

SEP 06 2005

YORK COUNTY COMMISSIONERS

Solicitor

RECEIVED SEP 07 2005

September 1, 2005

Office of Detention and Removal Operations
U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

RECEIVED

SEP 06 2005

YORK COUNTY COMMISSIONERS

Mr. Donald L. Reihard
The County Commissioner of York County
County Administrative Office
One West Marketway, 4th Floor
York, Pennsylvania 17401

Dear Mr. Reihart:

Thank you for your recent letter dated June 23, 2005, to the Department of Homeland Security (DHS). DHS has forwarded your letter to U.S. Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (DRO), to address your concerns. First we wish to state that the health issues of Mr. Benedictus Yarzue are very important to us, we wish our detainees to be in good health while in detention.

We understand that York medical is requesting a urologic procedure called a cystoscopy, an outpatient procedure done by an urologist, who inserts a thin flexible fiber optic camera lens through the penile urethra and into the urinary bladder. This test is indicated primarily to look for bladder abnormalities such as cancer, structural problems or deformities of the bladder, urethra, or urethral opening.

However, an urologist saw Mr. Yarzue on November 18, 2004, for complaints of dysuria (difficulty or pain in urination). The urologist stated that the problem was most likely due to either a urethral stricture, an infectious cause, to voiding dysfunction, or to irritation due to chronic masturbation. The urologist doubted that the symptoms were due to an enlargement of the prostate gland. He prescribed Flomax for possible voiding dysfunction. He also recommended addressing the issue of chronic masturbation with the detainee at the next office visit. If the detainee's symptoms were no better while taking Flomax, then the urologist recommended catheterization to check for residual urine and to calibrate the urethra to check for urethral stricture. *Only after the above evaluations were completed would the urologist proceed to cystoscopy.* To date, York medical has not completed the evaluation and counseling requested by the urologist.

Based on that review, Department of Immigration Health Services (DIHS) believes that the medical staff at York has not provided proper evaluation and counseling of the detainee on-site and that further off-site evaluation is not yet warranted. Chronic masturbation counseling and the check for post-void residual can and should be done on-site by the York medical staff. Regarding the determination of the York County Prison Complaint Review Board, which met on May 5, 2005, ICE medical personnel were not involved in the discussion and were not given an chance to present an opposing medical opinion.

In previous discussions with the Warden of York County Prison, DRO Detention Management has consistently taken the position that ICE will not reimburse the prison for any unauthorized off-site medical testing or treatment provided to Mr. Yarzue that their medical department independently chooses to pursue. Detention Management still maintains this position.

Mr. Yarzue has since been transferred to Berks County Jail, Leesport, PA, on August 3, 2005. DIHS will continue to follow this case and if medical indications change, will recommend whatever testing deemed warranted.

Thank you for your patience in awaiting our response, and thank you for writing.

Sincerely,

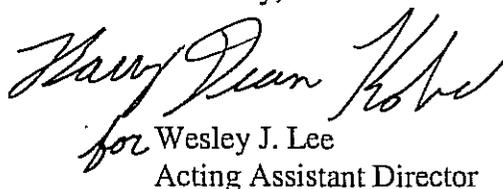

for Wesley J. Lee
Acting Assistant Director

EXHIBIT "D"

YORK COUNTY PRISON

THOMAS H. HOGAN
WARDEN



TELEPHONE 840-7580
AREA CODE 717
FAX 840-7204

3400 CONCORD ROAD
YORK, PENNSYLVANIA 17402-9007

TO: Joe Sallemi
D.A.D.D.

FROM: Roger Thomas
Deputy Warden *Roger Thomas*

DATE: 11/28/05

RE: Division of Immigration Health Services (DIHS)

As you know, we have had quite a few problems with DIHS of late. While it may appear that they are simply trying to save the government money by looking at detainee medical expenses, in my opinion they have set up an elaborate system that is primarily interested in delaying and/or denying medical care to detainees. You are my contact person with the Philadelphia District so I feel it is my responsibility to keep you informed of the problems DIHS has caused.

Let me explain:

1. In order to receive authorization for detainee medical care, you must fill out a Treatment Authorization Request (TAR). Although the space to request treatment is only $\frac{3}{4}$ of an inch, DIHS demands that we provide:
 - a. Physicians Diagnoses
 - b. What are we requesting
 - c. Duration of the complaint
 - d. Date of complaint
 - e. Precipitating factors
 - f. What are the symptoms
 - g. What treatments/meds have been provided
 - h. Provide progress notes/substantiating information

Demanding that all that information be jammed into a $\frac{3}{4}$ inch space is not something an agency would do if the agency were interested in things running smoothly.

2. Regardless of how serious the request is, DIHS has a habit of "sitting" on TAR's. The latest example (Mei Ying Xiao) was a 13-day delay. If DIHS were truly interested in providing a service (instead of delaying service) they wouldn't sit on a request for nearly 2 weeks.
3. Many times when we do receive a response it is not given an approval or denial. Instead DIHS requests further information. This further delays treatment.
4. Many times when DIHS requests further information it is for things they know we would not have (e.g. X-rays from 1997, or mammogram from a recently incarcerated detainee). When we receive detainees from BICE we never receive medical records and DIHS knows that. I am sure that DIHS would state that they are only trying to obtain information to make a decision. To request information, however, that they know or should know we do not have serves only to delay authorization for necessary health care.
5. If DIHS requests additional information and they don't receive it in what they consider "a timely manner", then the case is closed and a new TAR is required. Our policy is to send the entire medical record to DIHS but that doesn't count. I have no idea how long a "timely manner" is but it is certainly shorter than the 13 days DIHS takes while they sit on TAR's. If they close the case, that delays treatment.
6. While our medical department must prepare elaborate TAR's to request authorization, all DIHS has to do to stop the process is to demand ridiculous information (e.g. X-rays from 1997 for a detainee received in 2005). DIHS is in the position of "placing the ball back in our court" with one 10 word sentence. In the guise of seeking information they have deliberately delayed treatment.
7. If a TAR is returned unapprovable or denied, then the case is locked and in order to open the case our medical department must start the process all over again. An example of a case that is "unapprovable" occurred recently. One of the Doctors at DIHS wanted to "watch" the case of the detainee with lumps in her breasts. He can't possibly watch the case because he is located in Washington D.C. Our medical staff will watch the case and we don't work for DIHS. According to DIHS we are to keep DIHS informed of any changes. In the meantime, however, they have completely closed the case. They will never even ask how the detainee is doing. DIHS seeks to deny necessary treatment while making it appear as if they are truly interested in the detainees well being.
8. While DIHS has informed you verbally that they are responsible for their medical decisions they have never put that in writing. I don't believe they will without pages of legal caveats. If something went wrong and a detainee died after following one of the recommendations from DIHS, I believe that an army of BICE attorneys would suddenly appear claiming that our medical department did not give them enough information for DIHS to make a decision. Therefore, it would be our medical department's fault that the detainee died.

9. There is nothing easy about working with DIHS. If something can be delayed, it is delayed. If it can be denied, it is denied. If something can be made difficult, it is made difficult. Most importantly, if there is some bureaucratic procedure that will delay/deny treatment to a detainee, place the "ball back in our medical department's court" and "cover the backsides" of DIHS, you can be assured that DIHS will do it.
10. I am attaching copies of TAR's to support what I have stated. You may do what you want with this information. You are my contact for the Philadelphia District. I have not and will not tell a massive Washington D.C. Bureaucracy like DIHS what to do. I can only state that I will not participate in the denial or delay of what our medical department feels is necessary health care. If DIHS refuses to authorize medical care then I will ask you to move the detainee to a location that concurs with DIHS. If you refuse to move the detainee then BICE will assume the cost of that necessary care.

SEND CLAIMS TO:
 Immigration Health Services
 1220 L Street, NW
 PMB 468
 Washington, DC 20005-4018
 Phone: 1.800.479.0523
 Fax: 1.866.475.9349

A separate treatment authorization request will be required for services beyond and outside the scope of the original authorization. Services rendered may not be paid without an approved authorization. All payment for services is subject to detainees' eligibility and custody. All claims are subject to retrospective review. For further guidance and information, please refer to the DIHS website: www.inshealth.org or contact the Immigration Health Services' Managed Care Branch at 1.888.718.8947, M-F 8AM - 8PM EST.

Please ensure all claims include the Patient Identification Information and the Authorization number.

IMPRINT OF DETAINEE ID PLATE, COMPUTER LABEL OR COMPLETE BELOW:	
Name: KWAME ATIBA MC AULEY	Alias:
DOB: 09/27/1980	A #: 074953075
Nationality: TRINIDAD AND TOBAGO	Facility: YORK COUNTY JAIL, PA

AUTHORIZED ACTION:

Status: Pended - More Info Auth #: 200507156606 00 Authorizer: Eileen Falzini, RN
 Service Type: Emergency
 Referral Type:

To: (Name and Phone to whom referral is being made)

Dialogue of Request:

- Cannot approve due to requested clinical information not received.
1. Physician's Dx: (If a mass or lump, indicate size)
 2. What you are requesting:
 3. Duration of complaint:
 4. Date of complaint:
 5. Precipitating factor(s):
 6. What are the symptoms:
 7. What treatment(s) / meds have been used:
 8. Fax any progress notes/substantiating information that will assist LCDR Falzini/CAPT Ganaway, 202.732.0119.
- Updated by Eileen Falzini, RN on Monday, July 18, 2005

NOTE DEMANDED
 INFORMATION



OPEN REDUCTION INTERNAL FIXATION
 ORIF right femur 6/2004 C/O pain ambulates with crutches needs x

Provisional Diagnosis: 88.3 OTH X-RAY

Consultation Report:



**UNITED STATES PUBLIC HEALTH SERVICE
DIVISION OF IMMIGRATION HEALTH SERVICES (DIHS)
TREATMENT AUTHORIZATION REQUEST (TAR)**



Immigration Health Services
1228 I Street, N.W. PMB 468 · Washington, D.C., 20005
Phone 1-888-718-8947 Fax 1-866-475-9349

Is this request a TAR APPEAL (Please circle one?) YES NO

If YES, it is required that you provide the TAR NUMBER you are appealing: _____

Detention Facility*: _____ Phone#: _____

Address*: 8724B Fax#: _____

City*: _____ State*: _____ Zip*: _____

DETAINEE INFORMATION

Last Name*: McCoyley, KWAME First*: Kwane

Alien ID*: 74 4531075 Date of Birth*: 9/27/60 Sex*: Male Female

Camp Arrival Date*: 1/11/05 Country of Origin*: Trinidad

REASON FOR REFERRAL REQUEST

Diagnosis/Symptoms*: DRIF (R) femur 6/2004, do PAIN, AMBULATES

Course Of Treatment*: NEED XRAY (R) femur/HIP CPT/CDT: _____ with CPURATES

ATTESTATION OF DETAINEE CUSTODY

I _____ as of _____
(PRINT NAME*) (TODAY'S DATE)

TAR form is correct to the best of my knowledge and that the detainee is not a U.S.
 US Border Patrol (BP) - Please circle one of the following and provide: FIN or
 US Immigration and Customs Enforcement/Detention and Removal (ICE/DRG)
 US Office of Refugee Resettlement (ORR)
from _____ to _____
(CUSTODY BEGINNING DATE*) (CUSTODY END DATE*)

NOTE SPACE TO
↑
PROVIDE INFORMATION

(SIGNATURE*) (TITLE*)

PROVIDER OF MEDICAL CARE AND OTI

Provider's Name**: _____

Provider's Phone Number**: _____ Provider's City**: _____

DIHS AUTHORIZATION ACTI

(To be completed by DIHS ONLY)

DIHS Managed Care Coordinator (MCC): _____

(Signature)

MCC TAR Action: Approved Denied Pending

MCC Comments: _____

Please provide a copy of the "Approved" TAR to the Health Service Provider. Non-emergent health services will not be paid without an approved TAR issued prior to health services being rendered. Emergency health services require TAR submittal within one business day after being sought. A separate TAR will be required for health services beyond and outside the scope of the original authorized TAR. For health care claim status inquiries, call 1-800-479-0523. To appeal a TAR decision of DIHS to not authorize a service, a detention facility must submit a TAR Appeal through the TAR process and include the following information: a) "TAR Appeal", b) TAR number and other information from TAR being appealed, c) requested action, and c) justification for the requested action. For further guidance and information, please visit our website at www.inshelth.org or contact the DIHS' Managed Care Coordinators at 1-888-718-8947. M F. 8AM - 6 PM EST.

* Failure to complete required fields will result in an inability of DIHS to process TAR.

** Required when reason for TAR submittal is for emergency health services.

* What do they expect to find *



PRISON HEALTH
SERVICES, INC.

Date: ~~11/3/05~~ → 11/4/05

Time: ~~2:30pm~~ → 10²⁰am

To: DIHS

From: Bridget

Re: Can not

in comp
ITT said

NOTE FAX TO
DIHS ON
11/4/05

Number of transmitting pages (including this page) _____

Telecopy Number: (717) 840 - 7604

If you are having any problems with this transmission, please call us as soon as possible at (717) 840 - 7637.

Thank You.

Bridget Smith
PHS/EMSA Correctional Care
York County Prison
Medical Department

SEND CLAIMS TO:
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1220 L Street, NW
PMB 468
Washington, DC 20005-4018
Phone: 1.800.479.0523
Fax: 1.866.475.9349

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Please ensure all claims include the Patient Identification Information and the Authorization number.

IMPRINT OF DI
Name: Mei Ying
DOB: 08/08/1962
Nationality: CHINA, PEOPLE'S RE

NOTE DELAY
PENDING MORE
INFO
←

IR COMPLETE BELOW:

AUTHORIZED ACTION:
Status: Pended - More Info
Service Type: Non-Emergency
Referral Type: 33

Chang Park, MD

To: (Name and Phone to whom)

Smith Rad

Dialogue of Request:

2. Dr. Park wanted to know:

When was her last mamogram? Are results available? - No prio
Does the lump change during her cycle? - No change d

1. Left breast mass R/O malignancy

Left breast mass about 1cm x 2cm slightly tender
first noticed about 9 months ago

numerous smaller cystic masses in both breast
positive family history of breast cancer - mother.

Patient needs approval for mammograms

I did fax this tar on 11/3/05 because it would not go through system I di
so i entered

NOTE FAX FROM
DIHS TO OUR
MEDICAL DEPT

This event's case was created by TARweb and should be verified for data

The following patient information was entered manually:

Patient Alien # :073572851

Division of Immigration Health Services

Treatment, Authorization & Consultation Form

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Please ensure all claims include the Patient Identification Information and the Authorization number.

IMPRINT OF DETAINEE ID PLATE, COMPUTER I	
Name: AMADOU DIALLO	Alias:
DOB: 11/20/1968	A #: 07360
Nationality: MALI	Facility: York

NOTE DENIAL
 BECAUSE OF
 INFORMATION NOT
 RECEIVED
 YET THEY HAVE
 ENTIRE MEDICAL
 RECORD!

AUTHORIZED ACTION:

Status: Denied Auth #: 200510065101 00 Authorizer: Marylk
 Service Type: Non-Emergency
 Referral Type: 11

To: (Name and Phone to whom referral is being made)

Ortho Clinic 717.851.2427

Dialogue of Request:

No information received. Please resubmit TAR w/ the requested info.

2. Please fac 202.732.0119 consult notes and other relative progress notes for medical review by COB OCT 14. I do have medical record (AUG 05) Thank you.
 Updated by Marylouise Ganaway, RN on Tuesday, October 11, 2005

1. These are not duplicate there are 4 appointments that need approved

patient seen by ortho on with the diagnosis below.

Patient dx with Torn ACL/meniscus tear left knee Ortho doctor recommend that he have ortho follow up to give consent for surgery

This occurred July 2 2005 complain of pain left knee instability leg immobilized , non weight bearing. Therapy NSAID / crutches

Provisional Diagnosis: 717.83 OLD DISRUPTION OF ACL

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Please ensure all claims include the Patient Identification Information and the Authorization number.

IMPRINT OF DETAINEE ID PLATE, COMPUTER LABEL OR COMPLETE BELOW:	
Name: Mei Ying	Alias:
DOB: 08/08/1962	A #: 073572851
Nationality: CHINA, PEOPLE'S REPUBLIC OF	Facility: York Co Jail, PA

AUTHORIZED ACTION:

Status: Unapprovable Auth #: 00003094200511186593 00 Authorizer: Marylouise Ganaway, RN
 Service Type: Non-Emergency
 Referral Type: 33

To: (Name and Phone to whom referral is being made)

Dialogue of Request:

Rec'd faxed information today. Previous TAR was closed so I opened this

Faxed info indicates that lump does not change during her cycle and that studies have been done.

- i. Dr. Park would like to watch this for 3-months.
- ii. If there is any change in size or its condition before the 3 months, please
- iii. If you know there has been a change in size from your intake physical changes now.

Thank you. Updated by Marylouise Ganaway, RN on Friday, November 11

NOTE TAR CLOSED
 AND LOCKED IF
 INFO NOT RECEIVED IN
 "TIMELY MANNER."
 NOTE TAR CLOSE IF
 UNAPPROVABLE OR
 DENIED

1. REASON FOR REFERRAL:

Information below copied from previous TAR which was closed since information had not been received in a timely manner. PLEASE NOTE: When a TAR is marked APPD, Unapprovable or has been denied, it is locked and requires that a new TAR be submitted RE that request.

3. When you have the requested info, please resubmit for consideration.

SEND CLAIMS TO:
 Immigration Health Services
 1220 L Street, NW
 PMB 468,
 Washington, DC 20005-4018
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 Fax: 1.866.475.9349

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Name: Mei Ying	Alias:
DOB: 08/08/1962	A #: 073572851
Nationality: CHINA, PEOPLE'S REPUBLIC OF	Facility: York Co Jail, PA

AUTHORIZED ACTION:

Status: Unapprovable Auth #: 00003094200511186593 00
 Service Type: Non-Emergency
 Referral Type: 33

NOTE DIHS DOCTOR
 WANTS TO "WATCH"
 DETAINEE YET
 CASE IS CLOSED!

To: (Name and Phone to whom referral is being made)

Dialogue of Request:

Rec'd faxed information today. Previous TAR was closed so I opened

Faxed info indicates that lump does not change during her cycle and studies have been done.

- i. Dr. Park would like to watch this for 3-months.
- ii. If there is any change in size or its condition before the 3 months, please submit a TAR with the new information.
- iii. If you know there has been a change in size from your intake physical to now, please submit a TAR with those changes now.

Thank you. Updated by Marylouise Ganaway, RN on Friday, November 18, 2005

1. REASON FOR REFERRAL:

Information below copied from previous TAR which was closed since information had not been received in a timely manner. PLEASE NOTE: When a TAR is marked APPD, Unapprovable or has been denied, it is locked and requires that a new TAR be submitted RE that request.

3. When you have the requested info, please resubmit for consideration.