

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

BENEDICTUS YARZUE	:	NO. 4:05-CV-01415-JFM-JVW
Plaintiff,	:	
	:	CIVIL ACTION - LAW
v.	:	
	:	
THOMAS HOGAN, Warden, York	:	
County Prison, JOHN DOE, Supervisor,	:	
Department of Homeland Security,	:	(JUDGE JAMES F. McCLURE, Jr.)
BEATA, Deputy Warden ROGER	:	
THOMAS, and DENNIS BOWEN,	:	
York County Prison,	:	
Defendants,	:	
	:	
v.	:	
	:	
THOMAS HOGAN, Warden, York	:	
County Prison,	:	
BEATA, Deputy Warden ROGER	:	
THOMAS, and DENNIS BOWEN,	:	
York County Prison,	:	
Third Party Plaintiffs,	:	
	:	
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.	:	

**THIRD PARTY COMPLAINT**

1.

Plaintiff, Benedictus Yarzue, has filed against the Defendants, Thomas Hogan, Warden of the York County Prison, Beata, Deputy Warden Roger Thomas and Deputy Warden Dennis Bowen of the York County Prison, a Complaint, a copy of which is attached as **Exhibit "A"**.

2.

The Defendants in this case are all employees of the York County Prison who endeavored to obtain medical care for the Plaintiff, Benedictus Yarzue, as part of an administrative system established in the York County Prison under the Laws of the Commonwealth of Pennsylvania.

3.

The additional Defendants are the United States of America and its officials and agents working in the Department of Homeland Security, United States Customs Enforcement Office of Detention and Removal Operations, Division of Immigration Health Services who are responsible for the healthcare of non U.S. citizens who are in the custody of the said Defendants and pending sentencing or deportation.

4.

On March 10, 2005, Plaintiff, Benedictus Yarzue, filed an inmate complaint claiming:

"I have a prostate problem which I am in pain. I went to see the doctor and she said I need to see urologist. INS denied my request to see the urologist and my condition is getting worst and the doctor is supposed to put in a request to the INS if that happened. It did."

5.

Beata Erni, the Complaint Supervisor of the York County Prison investigated the inmate's complaint and provided an 802 response, which is a required step of the York County Prison administrative system which stated the following:

"Immigration has denied the medical department's request for you to be seen by urologist. Without Immigrations approval, the medical department cannot schedule an appointment with a specialist for you. If you believe your symptoms are getting worse, then you are to notify the medical department via sick call slip. The grievance system isn't the appropriate form to complete regarding such a notification."

6.

The inmate appealed this decision to Deputy Warden Roger Thomas who in reviewing the appeal provided an 805 A response as follows:

"Your appeal was received on 4/4/05. Inmates have five days to appeal grievances. This appeal is late you had received your answer from the Complaint Supervisor on 3/18/05. Your case was reviewed by Dr. Shack from the Division of Immigration Health Services. These are the medical people responsible for overseeing INS inmates. The request for a cystoscopic evaluation was denied due to lack of medical necessity."

7.

The Plaintiff, Benedictus Yarzue, filed a second appeal to Deputy Warden Dennis Bowen who responded as follows in his 805 A response:

"Immigration Health Services has refused approval for a cystoscopic evaluation. There is nothing I can do make them (Immigration) grant approval for the procedure. I suggest that you write to Mr. Joe Sallemi of BICE requesting assistance. I will provide you with an 806 appeal form."

8.

The inmate filed a timely appeal designated as an 806 Request for Solicitor's Review.

9.

On April 26, 2005, the Solicitor in reviewing the appeal of the inmate determined that the inmate's rights may have been violated by the refusal to provide him with appropriate medical care. A copy of the Solicitor's opinion is marked **Exhibit "B"** and is appended hereto. The Solicitor recommended that the matter be determined by the Complaint Review Board.

10.

The Complaint Review Board met on May 5, 2005. This Board heard evidence from Plaintiff, Benedictus Yarzue, and the medical staff at the prison who recommended that inmate Yarzue be given a cystoscopic evaluation and other healthcare. The Board determined that the requested healthcare was constitutionally required and granted the appeal and made the following recommendation:

"Prisoner shall be provided needed treatment. INS shall be billed for reimbursement. Efforts be made to assure a procedure for alleviating in the future the delay in requiring INS approval or better define INS obligation to reimburse the county."

11.

The local INS representative was notified that the Complaint Review Board had determined that Plaintiff, Benedictus Yarzue, should be given medical treatment that was being requested by the inmate and also being recommended by the York County contract provider, Prison Health Services.

12.

The response of the INS was to move Plaintiff, Benedictus Yarzue, from the York County Prison to another location so that the healthcare that had been approved by the

Complaint Review Board could not be delivered and to avoid providing the inmate with necessary and constitutionally required healthcare.

13.

The Defendant, the United States by and through its agencies and agents have established an unconstitutional plan, custom and practice of denying INS inmates constitutionally mandated healthcare. The plan, custom and practice consists of denying legitimate requests through an alleged pretextual need for “more information” or through arbitrary denial, which is coupled with repeated acts of moving the inmate from confinement facility to confinement facility thereby provided the Defendants with additional time needed to deport the inmate without providing needed healthcare.

14.

The Third Party Defendant in this case is solely responsible for the medical care requested by Plaintiff in this action and under the law should be required to provide adequate medical care to all illegal immigrants that are in their custody.

WHEREFORE, Third Party Plaintiffs, Thomas Hogan, Warden of the York County Prison, Beata, Deputy Warden Roger Thomas and Deputy Warden Dennis Bowen of the York County Prison, demand judgment against the Third Party Defendants and specifically request the Court to enter an Order to enter a mandatory injunction requiring that the Defendants provide the inmate in the instant case and all inmates in their custody with healthcare that is mandated by the Constitution of the United States and to cease and desist from its present unlawful practices.

Respectfully submitted,

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: November 8, 2005

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

BENEDICTUS YARZUE	:	NO. 4:05-CV-01415-JFM-JVW
Plaintiff,	:	
	:	CIVIL ACTION - LAW
v.	:	
	:	
THOMAS HOGAN, Warden, York	:	
County Prison, JOHN DOE, Supervisor,	:	
Department of Homeland Security,	:	(JUDGE JAMES F. McCLURE, Jr.)
BEATA, Deputy Warden ROGER	:	
THOMAS, and DENNIS BOWEN,	:	
York County Prison,	:	
Defendants,	:	
	:	
v.	:	
	:	
THOMAS HOGAN, Warden, York	:	
County Prison,	:	
BEATA, Deputy Warden ROGER	:	
THOMAS, and DENNIS BOWEN,	:	
York County Prison,	:	
Third Party Plaintiffs,	:	
	:	
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.	:	

**CERTIFICATE OF SERVICE**

I, Donald L. Reihart, Esquire, certify that a true and correct copy of the foregoing Third Party Complaint was caused to be served on the date shown below by depositing same in the United States mail, first-class, postage prepaid thereon, addressed as follows:

Benedictus Yarzue  
Inmate No. 84579  
BERKS COUNTY PRISON  
1287 County Welfare Road  
Leesport, PA 19533

Respectfully submitted,

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: November 8, 2005