

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

Sara Hernandez-Gonzalez, Widow of Roberto
Medina-Martinez, §

Plaintiff, §

United States of America, §

Defendant. §

CIVIL ACTION FILE

NO. 4-12-cv-75 (CDL)

**COMPLAINT FOR WRONGFUL DEATH
UNDER THE FEDERAL TORT CLAIMS ACT**

SARA HERNANDEZ-GONZALEZ ("Plaintiff"), the widow of Roberto Medina-Martinez, states this, her Complaint against the United States of America ("Defendant" or the "Government"). Plaintiff brings this suit for damages arising from the death of Roberto Medina-Martinez ("Mr. Medina") under the Federal Tort Claims Act ("FTCA") as follows:

1.

This Court has jurisdiction pursuant to the provisions of 28 U.S.C. § 1346(b) under the FTCA.

2.

On March 4, 2011, Plaintiff submitted her administrative claim under the FTCA, 28 U.S.C. § 2671, *et seq.* The claim seeks money damages in the amount of One Million Dollars (\$1,000,000.00) for Mr. Medina's death that was caused by the negligence of the Government.

3.

On September 28, 2011, the Government, acting by and through the U.S. Department of Homeland Security's U.S. Immigration and Customs Enforcement Department, denied Plaintiff's claim.

4.

A true and correct copy of the September 28, 2011 denial of Plaintiff's claim is attached hereto as Exhibit "A."

5.

Plaintiff exhausted her FTCA administrative remedies, and under 28 U.S.C. § 2675(a) is entitled to institute this action under the FTCA against the Government.

6.

Venue is proper in this Court under 28 U.S.C. § 1402 because the Defendant engaged in the conduct of which this Plaintiff complains in the Middle District of Georgia.

7.

All conditions precedent to the maintenance of this action have been met, waived, or excused.

8.

Service of process may be perfected upon the Government under Federal Rule of Civil Procedure 4(i)(1) by delivering a copy of the summons and complaint to the United States Attorney for the Middle District of Georgia, U.S. Attorney's Office, Columbus Division, 1246 First Avenue, SunTrust Building, 3rd Floor, Columbus, Georgia 31901 (or by sending a copy of each by registered or certified mail to the civil-

process clerk at the United States attorney's office), and by sending a copy by registered or certified mail to the Attorney General of the United States, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

9.

Plaintiff is the widow of Mr. Medina.

10.

Mr. Medina died while a detainee of the U.S. Immigration and Customs Enforcement department of the Department of Homeland Security at the Stewart Detention Center located in Lumpkin, Stewart County, Georgia.

11.

On or about January 18, 2009, Mr. Medina was arrested by officers of the Charlotte-Mecklenburg County Police Department in North Carolina for operating a motor vehicle without a driver's license and speeding.

12.

Mr. Medina was booked into the Mecklenburg County Jail, where a 287(g) ICE detainer was placed on his file.

13.

On or about February 6, 2009, Mr. Medina was sentenced to "time served" for the traffic violations and held pursuant to the ICE detainer.

14.

On or about February 12, 2009, Defendant transferred custody of Mr. Medina from Mecklenburg County, North Carolina to the Stewart Detention Center located in Lumpkin, Georgia (the "Facility").

15.

In connection with his admission to the Facility, Mr. Medina received an initial physical examination, including a chest x-ray which was the subject of a radiography report performed by DIANA Associates Teleradiology. A true and correct copy of the radiography report is attached hereto as Exhibit "B."

16.

The radiography report reflected a finding of "low lung volumes, lower lobe atelectasis."

17.

The U.S. Immigration and Customs Enforcement's Division of Immigration Health Services' ("DIHS") policy requires an initial examination of a detainee at or about the time he is admitted to a facility. DIHS policy also requires that a physician sign the physical examination report, indicating that the physician has reviewed the report. The DIHS physical examination conducted upon Mr. Medina upon admittance to the Facility was not reviewed or signed by a physician as required by DIHS policy.

18.

The on-site physician at the Facility failed to review the results of the physical examination conducted upon Mr. Medina, including the x-ray and the radiography report attached as Exhibit "B."

19.

On or about March 10, 2009, Mr. Medina complained to a detention officer at the Facility that he was having difficulty breathing. Mr. Medina was thereafter transported to the infirmary of the Facility via wheelchair.

20.

While at the infirmary on March 10, 2009, an EKG was conducted which showed evidence of a pulmonary disease.

21.

As his physical condition worsened, Mr. Medina was transported to the St. Francis Hospital in Columbus, Georgia.

22.

Mr. Medina died in the early morning hours of March 11, 2009 at St. Francis Hospital in Columbus, Georgia. According to two separate forensic pathology autopsy reports, the cause of death was myocarditis.

23.

According to the initial autopsy report prepared by the Georgia Bureau of Investigation, Mr. Medina's lungs showed congestion and a mild to focally moderate lymphocytic interstitial pneumonitis, congestion, and edema.

24.

According to the second autopsy report, Mr. Medina's lungs showed hemorrhagic congestion and edema. The second autopsy report also noted the presence of focal lymphocytic interstitial pneumonitis and pleural inflammation.

25.

DIHS performed an investigation into the facts and circumstance surrounding the treatment and death of Mr. Medina. The DIHS findings included the following:

- The DIHS physical examination was not reviewed or signed by a physician as required by DIHS policy.
- The assessment made by the physician, to include a complete set of vital signs and a symptoms-oriented physical examination was deficient.
- An abnormal chest x-ray was assessed as normal and never reviewed by the physician as required by DIHS policy.

- The doctor that examined Mr. Medina at the Stewart Detention Center demonstrated a lack of basic knowledge as to how to medically manage an emergency situation in which the patient is hypotensive and hypoxic.
- The Facility had over 1,000 physical exams that were not reviewed by a physician within a one-year period, including the physical examination performed for Mr. Medina.
- The abnormal finding on the intake screening chest x-ray could be a manifestation of the initial infection that led to his complications and fatal outcome.

26.

On March 4, 2011, Plaintiff submitted her claim to the Government. A true and correct copy of Plaintiff's claim with exhibits is attached hereto as Exhibit "C."

27.

The Government denied Plaintiff's claim on September 28, 2011, and a true and correct copy of the written denial is attached as Exhibit "A."

28.

The Government's failure to provide proper medical treatment of Mr. Medina breached the applicable standard of care and was negligent. The negligence included, but was not limited to, the conduct of the physician and of the nursing staff and, furthermore, the failure to properly supervise and monitor the performance of the

physician. The systematic failure by the physician to review the results of the physical examinations for over a year's time should have been discovered through the exercise of reasonable care on the part of the physician's supervisors.

29.

The negligent acts and omissions of the Government or its agents who were acting within the course and scope of their employment proximately caused the death of Mr. Medina. It is reasonably foreseeable that the routine failure by staff physicians to review the findings of the physical examinations of prisoners will result in the failure to identify and treat both chronic and emergent medical conditions.

30.

Georgia law permits patients who have been injured by the negligent failure of a physician or of medical staff to properly examine and diagnose such patient to maintain actions for damages. The claim submitted herein by Plaintiff is one which would be available to her under Georgia state law if the United States were a private person.

31.

The Defendant is liable for the full value of the life of Mr. Medina as a result of his wrongful death in the amount of One Million Dollars (\$1,000,000.00).

WHEREFORE, Plaintiff requests that she be awarded One Million Dollars (\$1,000,000.00) under the FTCA for the wrongful death of Mr. Medina and such other further relief as the Court may deem just and proper.

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