

1 Conal Doyle, Cal. Bar #: 227554  
2 WILLOUGHBY DOYLE LLP  
3 1814 Franklin Street, Suite 800  
4 Oakland, CA 94612  
5 (510) 451-2777  
6 fax: (510) 835-1050  
7 www. willoughbydoyle.com

8 Adele Kimmel, Cal. Bar #: 126843  
9 PUBLIC JUSTICE, P.C.  
10 1825 K Street, NW, Suite 200  
11 Washington, DC 20006  
12 (202) 797-8600  
13 fax: (202) 232-7203  
14 www.publicjustice.net

15 Attorneys for Plaintiff

16 **UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**

17 FRANCISCO CASTANEDA,  
18 Plaintiff,

19 vs.

20 THE UNITED STATES OF AMERICA,  
21 CALIFORNIA, GEORGE MOLINAR, in his  
22 individual capacity, CHRIS HENNEFORD,  
23 in his individual capacity, JEFF  
24 BRINKLEY, in his individual capacity,  
25 GENE MIGLIACCIO, in his individual  
26 capacity, TIMOTHY SHACK, M.D., in his  
27 individual capacity, ESTHER HUI, M.D.,  
28 in her individual capacity, STEPHEN  
GONSALVES, in his individual capacity,  
CLAUDIA MAZUR, in her individual  
capacity, DANIEL HUNTING, M.D., and  
DOES 1-10,

Defendants.

) Case No.:

) **COMPLAINT AND DEMAND FOR JURY TRIAL**

) **First Cause of Action-FTCA Claim**  
) against UNITED STATES for Medical  
) Negligence (Non-Jury Claim)

) **Second Cause of Action-FTCA Claim**  
) against UNITED STATES for Negligent  
) Establishment of Policy for Provision of  
) Medical Care to Immigration Detainees  
) (Non-Jury Claim)

) **Third Cause of Action-FTCA Claim**  
) against UNITED STATES for Negligent  
) Application of Policy for Provision of  
) Medical Care to Immigration Detainees  
) (Non-Jury Claim)

) **Fourth Cause of Action-FTCA Claim**  
) against UNITED STATES for Intentional  
) Infliction of Emotional Distress (Non-Jury  
) Claim)

- ) **Fifth Cause of Action**-Bivens Claim for
- ) Inadequate Medical Care against all
- ) Individually Named Defendants (except
- ) Hunting) and DOES 1-10
- )
- ) **Sixth Cause of Action**-Bivens Claim for
- ) Equal Protection Violation against all
- ) Individually Named Defendants (except
- ) Hunting) and DOES 1-10
- )
- ) **Seventh Cause of Action**-Section 1983
- ) Claim against DOES 1-10
- )
- ) **Eighth Cause of Action**-Medical
- ) Negligence Claim against CALIFORNIA
- ) and DOES 1-10
- )
- ) **Ninth Cause of Action**-Medical
- ) Negligence Claim against HUNTING and
- ) DOES 1-10

Plaintiff, FRANCISCO CASTANEDA ("CASTANEDA"), by and through his undersigned counsel, hereby files his Complaint and Demand for Jury Trial and states as follows:

**PRELIMINARY STATEMENT**

1. CASTANEDA, a former immigration detainee, received such grossly inadequate medical care for a penile lesion while in California State and federal custody that he now has fatal penile cancer and had to have his penis amputated. This lawsuit charges the federal and California governments, and/or their agents, with constitutional violations, medical negligence and other torts, based on their egregious medical neglect of CASTANEDA.

2. The Defendants' refusal to provide CASTANEDA reasonable and humane medical care while he was in custody was tantamount to torture. He was

1 forced to endure one of the most painful, terrifying, and humiliating experiences  
2 imaginable. CASTANEDA continually pleaded for the biopsy recommended by  
3 California medical providers, federal medical providers, and outside specialists selected  
4 by the federal government, but was denied this simple and inexpensive diagnostic test.  
5 As a result, he was denied medical treatment that would have prevented his penile  
6 cancer from spreading and becoming terminal.

8 3. CASTANEDA was held in custody by the California Department of  
9 Corrections from December 6, 2005 to March 26, 2006. During this time, he was  
10 examined by California medical providers who documented a 2 cm. by 2 cm. lesion on  
11 his penis and issued multiple orders for a urologic consult and biopsy. Yet,  
12 CASTANEDA was denied access to a urologist and was never given a biopsy.

14 4. CASTANEDA was detained in Immigration and Customs Enforcement  
15 ("ICE") custody from March 27, 2006 to February 5, 2007. During his over ten months  
16 in ICE custody, federal medical providers and outside medical specialists selected by  
17 the federal government documented that the lesion on CASTANEDA's penis might be  
18 cancerous, recommended a biopsy, and recognized that the need for diagnosis and  
19 treatment was urgent. Yet, the federal government denied CASTANEDA the medical  
20 diagnosis and treatment both recommended and needed. All the while, CASTANEDA's  
21 condition grew worse. He experienced extreme pain, swelling, tumor growth, bleeding,  
22 drainage and a discharge, a foul odor, and the inability to urinate standing up.

25 5. Finally, after prolonged pressure from the ACLU National Prison Project,  
26 the federal government scheduled CASTANEDA for a biopsy to occur in February 2007,  
27 but released CASTANEDA from custody just a few days before the scheduled biopsy,  
28



1 judicial district in which this case is filed. Venue is also proper pursuant to 28 U.S.C. §  
2 1391(e), in that a substantial part of the acts or omissions giving rise to this claim  
3 occurred within the judicial district in which this case is filed and the plaintiff is a resident  
4 of the judicial district.

5 10. This is an action for medical negligence and civil rights violations pursuant  
6 to applicable California statutes, 42 USCA § 1983, 28 U.S.C. § 2674 (the Federal Tort  
7 Claims Act), and *Bivens* claims for inadequate medical care and equal protection  
8 violations under the Fifth, Eighth and Fourteenth Amendments to the United States  
9 Constitution.  
10

11 11. Compensatory damages are sought pursuant to applicable California  
12 statutes, 42 U.S.C. § 1983, the Federal Tort Claims Act, and the *Bivens* claims.  
13 Punitive damages are sought against all Defendants sued in their individual capacity  
14 pursuant to applicable California statutes, 42 USCA § 1983, and the *Bivens* claims.  
15

16 12. Attorneys' fees and costs are sought pursuant to 42 U.S.C. § 1988 for  
17 Plaintiff's claim under 42 USCA § 1983 and pursuant to applicable California law for  
18 Plaintiff's state law claims.  
19

20 13. This Court has supplemental jurisdiction to consider state causes of action  
21 under 28 USCA §1367, as the ancillary state claims "form part of the same case or  
22 controversy" as other counts for which this Court has jurisdiction.  
23

24 14. All governmental entities were notified of this claim in a timely fashion and  
25 all administrative exhaustion and notice requirements under both the FTCA and state  
26 statutes have been satisfied.  
27  
28

**PARTIES**

1  
2           15.     CASTANEDA is an adult male natural person and a resident of the State  
3 of California, County of Los Angeles. At all relevant times, he was detained and in the  
4 custody of either the United States as a “civil or pre-trial detainee,” or the State of  
5 California as a convicted prisoner.  
6

7           16.     THE UNITED STATES OF AMERICA (“UNITED STATES” or “the  
8 GOVERNMENT”) is a governmental entity with jurisdiction and control over Immigration  
9 and Customs Enforcement (“ICE”) and the Department of Immigration Health Services  
10 (“DIHS”). Plaintiff was detained in two ICE facilities during the relevant time period:  
11 San Diego Correctional Facility (“SDCF”) in San Diego and San Pedro Service  
12 Processing Center (“San Pedro”) in Los Angeles County.  
13

14           17.     CALIFORNIA is a governmental entity and State with jurisdiction and  
15 control over the California Department of Corrections, where Plaintiff was detained  
16 during the relevant time period.  
17

18           18.     GEORGE MOLINAR (“MOLINAR”), at all relevant times, was the ICE  
19 Officer-in-Charge at San Pedro and was directly responsible for the care and medical  
20 treatment received by detainees at that facility. He was also responsible for arranging  
21 specialized health care and hospitalization for detainees within the local community. At  
22 all material times, he was aware that CASTANEDA had a life threatening medical  
23 condition that required urgent medical attention, diagnosis, and treatment, and he  
24 purposefully denied him basic and humane medical care for illegal and improper  
25 reasons unrelated to medical decision making and related functions. He is being sued  
26 in his individual capacity.  
27  
28

1           19.     CHRIS HENNEFORD (“HENNEFORD”), at all relevant times, was the  
2 Health Services Administrator of San Pedro. As the Health Services Administrator,  
3 HENNEFORD was responsible for the daily administration and functioning of the health  
4 care program and medical services, and provided supervision and direction to all health  
5 services staff at San Pedro. HENNEFORD was the direct avenue of communication  
6 between DIHS medical staff and ICE officials, including the Officer-in-Charge. At all  
7 material times, he was aware that CASTANEDA had a life threatening medical condition  
8 that required urgent medical attention, diagnosis, and treatment, and he purposefully  
9 denied him basic and humane medical care for illegal and improper reasons unrelated  
10 to medical decision making and related functions. He is being sued in his individual  
11 capacity.  
12  
13

14           20.     JEFF BRINKLEY (“BRINKLEY”), at all relevant times, was a nurse  
15 practitioner at San Pedro. In December 2006, Plaintiff met with BRINKLEY after filing  
16 several sick call requests regarding his need for surgery, as well as the pain, bleeding,  
17 and discharge that he was experiencing from his penis. BRINKLEY did nothing to treat  
18 Plaintiff's condition or to ensure that Plaintiff received treatment. At all material times, he  
19 was aware that CASTANEDA had a life threatening medical condition that required  
20 urgent medical attention, diagnosis, and treatment, and he purposefully denied him  
21 basic and humane medical care for illegal and improper reasons unrelated to medical  
22 decision making and related functions. He is being sued in his individual capacity.  
23  
24

25           21.     GENE MIGLIACCIO (“MIGLIACCIO”), at all relevant times, was Director of  
26 DIHS. DIHS, a component of the U.S. Department of Health and Human Services  
27 (HHS), provides and oversees health care services to immigration detainees pursuant  
28

1 to an Interagency Agreement between ICE and HHS. DIHS provides primary on-site  
2 health care to detainees at both SDCF and San Pedro. At all material times, he was  
3 aware that CASTANEDA had a life threatening medical condition that required urgent  
4 medical attention, diagnosis, and treatment, and he purposefully denied him basic and  
5 humane medical care for illegal and improper reasons unrelated to medical decision  
6 making and related functions. He is being sued in his individual capacity.  
7

8 22. TIMOTHY SHACK, M.D. ("SHACK"), at all relevant times, was Associate  
9 Director for Medical Services at DIHS. As such, SHACK was responsible for the  
10 administration and provision of health care services to individuals in ICE custody, and  
11 for developing and ensuring compliance with policies, procedures and clinical guidelines  
12 related to detainee health care. At all material times, he was aware that CASTANEDA  
13 had a life threatening medical condition that required urgent medical attention,  
14 diagnosis, and treatment, and he purposefully denied him basic and humane medical  
15 care for illegal and improper reasons unrelated to medical decision making and related  
16 functions. He is being sued in his individual capacity.  
17  
18

19 23. CLAUDIA MAZUR, R.N. ("MAZUR"), at all relevant times, was the  
20 Managed Care Coordinator for the Western Region of DIHS. MAZUR was responsible  
21 for responding to requests for authorization for detainee health care services, including  
22 off-site visits with specialists and subsequent surgery, from medical providers and ICE  
23 officials at facilities in the Western Region, which includes both SDCF and San Pedro.  
24 At all material times, she was aware that CASTANEDA had a life threatening medical  
25 condition that required urgent medical attention, diagnosis, and treatment, and she  
26 purposefully denied him basic and humane medical care for illegal and improper  
27  
28

1 reasons unrelated to medical decision making and related functions. She is being sued  
2 in her individual capacity.

3 24. ESTHER HUI, M.D. ("HUI"), at all relevant times, was a Medical Doctor at  
4 SDCF, and was the physician responsible for CASTANEDA's care and treatment while  
5 he was incarcerated at that facility from March 2006 until November 2006. At all  
6 material times, she was aware that CASTANEDA had a life threatening medical  
7 condition that required urgent medical attention, diagnosis, and treatment, and she  
8 purposefully denied him basic and humane medical care for illegal and improper  
9 reasons unrelated to medical decision making and related functions. She is being sued  
10 in her individual capacity.  
11

12 25. STEPHEN GONSALVES ("GONSALVES"), at all relevant times, was the  
13 Health Services Administrator at SDCF. At all material times, he was aware that  
14 CASTANDA had a life threatening medical condition that required urgent medical  
15 attention, diagnosis, and treatment, and he purposefully denied him basic and humane  
16 medical care for illegal and improper reasons unrelated to medical decision making and  
17 related functions. He is being sued in his individual capacity.  
18  
19

20 26. DANIEL HUNTING, M.D. ("HUNTING"), at all relevant times, was a private  
21 physician licensed to practice medicine in the State of California and was practicing  
22 medicine in San Diego, California. He rendered medical services to CASTANEDA on  
23 July 13, 2006 at Scripps Mercy Chula Vista Hospital. He is being sued in his individual  
24 capacity.  
25

26 27. Defendants Does 1-5 are business entities of unknown form who were the  
27 employers of the individually named Defendants and/or Does 5-10. Defendants Does  
28

1 1-10 are herein sued under fictitious names. Their true names and capacities are  
2 unknown to Plaintiff. Based on information and belief, Plaintiff alleges that Does 5-10  
3 were the employees, officers, directors, managing agents, and/or supervisors of the  
4 UNITED STATES, CALIFORNIA, and/or Does 1-10 who were acting within the scope  
5 and course of their employment and authority at all times relevant to this Complaint.  
6

### 7 **FACTUAL ALLEGATIONS**

8 28. CASTANEDA was detained in the California Department of Corrections  
9 and Rehabilitation (“DOC”) after conviction by CALIFORNIA on December 6, 2005 and  
10 held until his early release date on March 26, 2006.

11 29. On December 8, 2005, CASTANEDA was seen by a DOC medical  
12 provider who ordered a “follow up with M.D.” regarding a growth on Plaintiff’s penis.  
13

14 30. On December 27, 2005, a DOC medical provider entered an order to refer  
15 CASTANEDA to a urologist. Despite this referral, CASTANEDA was never allowed to  
16 see a urologist during the course of his confinement. CASTANEDA’S confinement  
17 lasted for approximately another three months.  
18

19 31. On January 13, 2006, CASTANEDA filled out a Health Services Request  
20 Form, complaining of back and kidney pain and requested medical attention from the  
21 DOC. It appears that the medical staff scheduled appointments on January 20 and/or  
22 24<sup>th</sup>, but he was not brought to the medical center by prison guards as ordered.  
23

24 32. On January 30, 2006, CASTANEDA filled out another Health Services  
25 Request Form, stating that his genital warts needed to be removed, he needed help,  
26 and he needed to see a doctor soon.

27 33. On February 7, 2006, CASTANEDA was examined in the “wart clinic” and  
28

1 the DOC medical provider noted a 2 cm. x 2 cm. raised white and yellow lesion on his  
2 foreskin. The doctor's assessment was to rule out squamous cell cancer and  
3 Chlamydia. For the second time, a DOC doctor ordered an "urgent urology referral."  
4 Antibiotics were also prescribed.

5 34. By February 17, 2006, CASTANEDA had still not received his antibiotics  
6 and they were re-ordered.

7 35. On February 27, 2006, CASTANEDA was again seen by a DOC provider,  
8 who documented that he was unable to retract CASTANEDA's prepuce (the  
9 uncircumcised skin on the head of his penis) and that his lesion was foul smelling. He  
10 also documented that CASTANEDA had been referred to a urologist for removal of the  
11 lesion.  
12

13 36. On March 7, 2006, CASTANEDA was seen by a medical provider for the  
14 last time during his detention with DOC. A medical provider again documented that  
15 CASTANEDA had a "2cm x 2cm raised white irregular shaped lesion to his foreskin."  
16 However, nothing was done to diagnose or treat this problem and CASTANEDA was  
17 never provided the urgent urologic consult ordered in December 2005 and again in  
18 February 2006.  
19

20 37. CASTANEDA was transferred to federal custody (San Diego Correctional  
21 Facility) on March 27, 2006. He immediately brought his medical condition to the  
22 attention of the SDCF staff upon admission, specifically informing them of a lesion on  
23 his penis that was becoming painful, growing in size, bleeding, and exuding discharge.  
24

25 38. On March 28, 2006, CASTANEDA was examined by Lieutenant Anthony  
26 Walker ("Walker"), a Physician's Assistant, as part of the medical intake screening  
27  
28

1 process at SDCF. Walker noted Castaneda's history of genital warts and his plan called  
2 for a urology consult "ASAP" with a request for biopsy.

3 39. CASTANEDA was next seen by a medical provider on April 11, 2006,  
4 when Walker again assessed CASTANEDA as having a penile lesion that required  
5 ruling out cancer. Walker also documented that CASTANEDA'S mother died of  
6 pancreatic cancer at age thirty-nine.  
7

8 40. CASTANEDA was not seen again by a medical provider until April 28,  
9 2006, when he informed Walker that the lesion on his penis smelled worse and was  
10 now draining pus. Walker noted that the lesion was more macerated at the glans (penis  
11 head) and emitted a foul odor.  
12

13 41. Medical personnel filed a Treatment Authorization Request form ("TAR") in  
14 April 2006 with DIHS, requesting approval to have the lesion removed for purposes of a  
15 biopsy and to have CASTANEDA's penis circumcised. The TAR noted that  
16 CASTANEDA'S penile lesion had grown and that his pain level was measured at 8 out  
17 of 10 during urination and erection. The TAR also observed that "[patient] ("pt") has  
18 been treated for possible infections to no avail. Lesion has foul odor." The form further  
19 concluded that a biopsy should be performed "due to family history and pt discomfort,  
20 sooner the better."  
21

22 42. The TAR was not approved until May 31, 2006, approximately two months  
23 after Walker ordered the consult and biopsy.  
24

25 43. On June 7, 2006, the GOVERNMENT sent CASTANEDA to an outside  
26 specialist of its choice—John R. Wilkinson, M.D., Hematology Oncology Diplomat.  
27 CASTANEDA presented with a history of a fungating lesion on the left side of his  
28

1 foreskin. The lesion was growing and Dr. Wilkinson documented his agreement with  
2 the medical staff at SDCF “that this may represent either a penile cancer or a  
3 progressive viral based lesion.” His medical record states: “Strongly agree[d] that it  
4 requires urgent urologic assessment of biopsy and definitive treatment. In this  
5 extremely delicate area and [sic] there can be considerable morbidity from even benign  
6 lesions which are not promptly and appropriately treated...I spoke with the physicians at  
7 the correctional facility. I have offered to admit patient for a urologic consultation and  
8 biopsy. Physicians there wish to pursue outpatient biopsy which would be more cost  
9 effective. They understand the need for urgent diagnosis and treatment.”  
10

11 44. Dr. Wilkinson also documented that there was “no evidence of regional  
12 lymphadenopathy, no sign of distant metastasis.” This meant that there was no  
13 observable evidence that the cancer had metastasized at that point.  
14

15 45. On June 7, 2006, HUI documented a conversation she had with Dr.  
16 Wilkinson regarding his examination of CASTANEDA. HUI specifically noted that  
17 CASTANEDA had a penile lesion that required a biopsy and that Dr. Wilkinson offered  
18 to admit CASTANEDA to the hospital. She then documented that the biopsy, a  
19 diagnostic procedure to rule out a life threatening disease, was an “elective outpatient  
20 procedure” and therefore refused to admit CASTANEDA for treatment at that time. She  
21 also never made arrangements for an outpatient biopsy, even though Dr. Wilkinson’s  
22 note documented that HUI wished “to pursue outpatient biopsy which would be more  
23 cost effective.”  
24

25  
26 46. On June 12, 2006, CASTANEDA filed a grievance asking for the surgery  
27 recommended by Dr. Wilkinson: “[Dr. Wilkinson] gave his professional opinion and  
28

1 recommended that I should be admitted and that surgery should be performed. At this  
2 time, Dr. Hui decided against the proposed surgery and denied the admittance. I am in  
3 a considerable amount of pain and I am in desperate need of medical attention.”

4 47. On June 23, 2006, CASTANEDA informed Walker that his penis was  
5 getting worse: there was more swelling to the area, a foul odor, drainage, it was more  
6 difficult to urinate, and he was bleeding from the foreskin. Walker documented that  
7 there was “obvious slightly purulent drainage from foreskin of penis next to lesion on  
8 penis.” Nevertheless, the GOVERNMENT did nothing to treat the problem.

9  
10 48. Also on June 23, 2006, Dr. Wilkinson’s office received a telephone call  
11 from SDCF reporting that CASTANEDA’S “foreskin lesion is increased in size and  
12 pressing further on his penis causing increasing discomfort.” Dr. Wilkinson noted that  
13 CASTANEDA was to see Dr. Robert Masters, M.D., a urologist, and sent a copy of  
14 CASTANEDA’s medical records to Dr. Masters.

15  
16 49. On June 30, 2006, Walker authored a late entry progress note, stating that  
17 CASTANEDA “DOES NOT have cancer at this time due to not having a biopsy  
18 performed and evaluated in a laboratory.” Walker told CASTANEDA that he did not  
19 have cancer although Walker documented that he was not sure “what the lesion would  
20 present, if and when, the biopsy was completed.” The medical record documented that  
21 “this is something that can be managed also upon his release as well if that is the  
22 concern here,” that there is “a three-year history with the past few months of the lesion  
23 looking and acting a bit more angry,” and that there is “a severe deformed  
24 uncircumcised foreskin growth that could use attention but this lesion is an impediment  
25 at this time according to Dr. Masters.” Walker counseled CASTANEDA to be patient  
26  
27  
28

1 and wait.

2 50. On July 12, 2006, Walker responded to CASTANEDA'S grievance,  
3 stating: "Not resolved. Patient wants further evaluation, assessment and treatment.  
4 Patient will be reassessed and further outside resources readdressed. Patient (sic)  
5 explained that he was never denied any treatment but pre authorization must be gained  
6 prior to any treatment."  
7

8 51. On July 12, 2006, Walker again examined CASTANEDA and noted that  
9 the "lesion on his penis was draining clear, foul malodorous smell, cultures before were  
10 negative for growth, negative RPR, negative HIV, foreskin bleeding at this time, and  
11 patient states his colon feels swollen, previous rectal exam showed slightly swollen  
12 prostate, deferred today." The assessment at that time was still "unknown etiology of  
13 penile lesion."  
14

15 52. On July 12, 2006, Walker also authored another late entry progress note.  
16 The note stated that CASTANEDA "was not denied any treatment by Dr. Hui, although  
17 there was no active Treatment Authorization Request (TAR) placed for approval by  
18 DIHS headquarters in Washington, DC, nor was there an emergent need."  
19

20 53. A TAR form was submitted on July 13, 2006, seeking emergency room  
21 evaluation and treatment for CASTANEDA, despite the fact that Walker documented  
22 that there was no emergent need to treat CASTANEDA the day before. There is no  
23 documentation explaining why the GOVERNMENT did not schedule him for the  
24 circumcision and biopsy that was ordered by Dr. Wilkinson the previous month and  
25 Walker approximately three months prior.  
26

27 54. However, the TAR form documented that ICE officials spoke with Dr.  
28

1 Wilkinson and Dr. Masters, who: “both strongly recommended admission, urology  
2 consultation, surgical intervention via biopsy/exploration under anesthesia to include  
3 circumcision if non-malignant, with return follow-up with oncology depending upon  
4 findings, and potential treatment or surgery of any malignant findings.”

5           55.     The TAR form also documented that CASTANEDA’S penis was bleeding,  
6 had drainage, malodorous smell and the “lesion now appears to be ‘exploding’ for lack  
7 of better words, definitely macerated.” The request for inpatient urology and oncology  
8 evaluation and treatment was approved.  
9

10           56.     The GOVERNMENT failed to arrange for this evaluation with the treating  
11 doctors that were familiar with CASTANEDA’S condition, Dr. Wilkinson and/or Dr.  
12 Masters. Instead, ICE brought CASTANEDA to the emergency room at Scripps Mercy  
13 Chula Vista on July 13, 2006. This ultimately delayed CASTANEDA’S treatment further.  
14 CASTANEDA was examined at the Scripps emergency room by Juan Tovar, M.D., who  
15 noted a 1.5 cm. by 2 cm. fungating lesion on his penis with discharge but no  
16 lymphadenopathy, and made arrangements for admission to the hospital. His  
17 impression was: “penile mass, rule out cancer, versus infectious etiology.”  
18  
19

20           57.     HUNTING, a Scripps urologist, performed a very brief examination of  
21 CASTANEDA on July 13, 2006. He did not obtain CASTANEDA’S prior family history of  
22 cancer and believed CASTANEDA’S lesion was “probably condyloma.” (genital warts).  
23 HUNTING referred him back to his “primary treating urologist” (Dr. Masters), rather than  
24 admit him to the hospital on an emergent basis. As a result, a circumcision and biopsy  
25 were not performed at Scripps to rule out cancer.  
26

27           58.     On July 17, 2006, Walker again examined CASTANEDA, noting that the  
28

1 penile lesion had grown and he had severe phimosis, bleeding, drainage and foul odor.  
2 Walker documented that he spoke to Dr. Wilkinson and Dr. Masters, who both strongly  
3 recommended a circumcision and biopsy. He also documented that he spoke to a  
4 charge nurse at Scripps who stated that the urologist diagnosed condyloma acuminata  
5 (genital warts), "no need for biopsy but will need a resection of the penis due to severe  
6 phimosis and gross condyloma."  
7

8 59. Walker submitted CASTANEDA for early release on July 18, 2006 to  
9 further CASTANEDA'S opportunities for testing and potential treatment, due to the  
10 Scripps emergency room's failure to perform testing. The GOVERNMENT apparently  
11 denied this request and CASTANEDA was not released at that time.  
12

13 60. On July 26, 2006, David Lusche ("Lusche"), a physician's assistant at  
14 SDCF, documented that he explained to CASTANEDA "that while a surgical procedure  
15 might be recommended long-term, that does not imply that the federal Government is  
16 obligated to provide that surgery if the condition is not threatening to life, limb or  
17 eyesight." He also noted that his interaction with CASTANEDA "was conversational and  
18 calm, not confrontational."  
19

20 61. On July 28, 2006, CASTANEDA filed a grievance against Lusche. That  
21 grievance was also denied. Lusche completed the Grievance Officer's Report and  
22 wrote: "I have met with Mr. Castaneda and explained that the urologist informed us that  
23 surgery at this point is elective in nature. As such the federal Government will not  
24 approve this (elective) surgery. We will continue to monitor Mr. Castaneda's status at  
25 his request using the sick call system."  
26

27 62. On August 9, 2006, CASTANEDA was again examined by Lusche.  
28

1 Lusche noted that CASTANEDA's foreskin was inflamed and that there was a whitish  
2 growth approximately 8 mm. in diameter noted at the inferior margin of the foreskin.

3 Lusche again denied CASTANEDA'S request for surgery as elective. He documented  
4 that CASTANEDA "expressed understanding, but calmly stated he does not agree with  
5 the decision."  
6

7 63. On August 10, 2006, CASTANEDA again requested a biopsy via sick call  
8 slip. On August 11, 2006, Walker submitted a TAR form requesting "biopsy lesion on  
9 penis, surgical correction of glans penis, circumcision, by Dr. Robert Masters.

10 64. On August 22, 2006, almost five months after Walker's recommendation  
11 for a urology consult, CASTANEDA was taken to see Dr. Robert Masters, M.D. Dr.  
12 Masters observed the lesion and concluded that CASTANEDA had genital warts and  
13 might have urethral condylomata (i.e., genital warts inside of his urethra). Dr. Masters  
14 determined that CASTANEDA was in need of a circumcision, which would relieve the  
15 "ongoing medical side effects of the lesion including infection and bleeding" and would  
16 provide a biopsy for further analysis.  
17

18 65. Dr. Masters' report to Walker stated: "We will arrange for admission for  
19 circumcision at a local hospital. My principal hospital is Sharp Memorial."  
20

21 66. The GOVERNMENT denied CASTANEDA treatment and he was never  
22 brought to the hospital for biopsy and circumcision pursuant to Dr. Masters' order.  
23 Walker documented his conversation with Dr. Masters on August 22, 2006. Walker  
24 characterized Dr. Masters as stating that the "elective procedures this patient may need  
25 in the future are cytосcopy and circumcision." Walker did not document Dr. Masters'  
26 conclusion that cancer needed to be ruled out via biopsy and his offer to admit  
27  
28

1 CASTANEDA for treatment at Sharp Memorial Hospital. Despite Walker's continued  
2 use of the term "elective," that word does not appear anywhere in Dr. Masters' or Dr.  
3 Wilkinson's reports, the only specialist physicians who had documented performing a  
4 full examination of CASTANEDA.

5 67. On August 24, 2006, Walker told CASTANEDA that "according to policy,"  
6 the GOVERNMENT would prevent him from having a circumcision with a cystoscopy  
7 because it was "elective." Again, Walker documented that release for medical reasons  
8 would be discussed with the medical team so that CASTANEDA could pursue  
9 treatment, surgery, and follow up. Nevertheless, the GOVERNMENT did nothing to  
10 treat the problem and did not permit CASTANEDA to seek treatment on his own.  
11

12 68. On August 26, 2006, CASTANEDA was seen by medical staff because of  
13 "complaints of a stressful situation regarding his medical status, being unable to sleep at  
14 night as ICE won't allow surgical operation for the lesion on penis." He was then  
15 prescribed Diphenhydramine, an antihistamine.  
16

17 69. On August 28, 2006, CASTANEDA again requested treatment at sick call  
18 because he had stress and could not sleep. He attributed the stress to the chronic  
19 medical problems which the GOVERNMENT refused to correct. He was prescribed  
20 Trazodone, a psychoactive compound with sedative and anti-depressant properties,  
21 and a psychology consult, which he apparently never received. GOVERNMENT  
22 doctors were apparently indifferent to one of the well known side effects of Trazodone:  
23 priapism, a prolonged and painful erection in males.  
24

25 70. On August 30, 2006, CASTANEDA received a memo from GONSALVES,  
26 the Health Services Administrator at SDCF. The memo informed CASTANEDA that:  
27  
28

1 “the off site specialist you were referred to for your medical condition reports that any  
2 surgical intervention for the condition would be elective in nature. An independent  
3 review by our medical team is in agreement with the physician's assessment. The care  
4 you are currently receiving is necessary, appropriate and in accordance with our  
5 policies.”

6  
7 71. This conclusion is directly contradicted by Dr. Wilkinson and Dr. Masters’  
8 reports and by the GOVERNMENT’S TAR forms that specifically documented the off-  
9 site specialists’ recommendations for surgical intervention and diagnostic biopsy.

10 72. On September 8, 2006, CASTANEDA was seen by Joanne Galano, RN,  
11 who received a sick call request stating, “I have a lot (sic) pain and I’m having  
12 discharge.” She noted that 800 mg. of Ibuprofen was having no effect on his pain, he  
13 was having white discharge at night, and documented that “It’s getting worse. It’s like  
14 genital warts, but they’re getting bigger.”

15  
16 73. On September 12, 2006, CASTANEDA stated again, via a sick call  
17 request, that he was having more penile lesion discharge and discomfort.

18  
19 74. On September 14, 2006, Cindy Butler, RN, documented that  
20 CASTANEDA complained that: “My situation is getting worst and worst! I’m suffering  
21 pain, I cannot sleep because of the pain. Also the discharge does not stop nor the  
22 bleeding. It smells really bad! States that the antibiotic prescribed two days ago is not  
23 effective now, nor has it ever been in the past.” The GOVERNMENT still did nothing to  
24 treat the problem.  
25

26 75. On September 18, 2006, the GOVERNMENT denied CASTANEDA’S  
27 request to be prescribed amoxicillin.  
28

1           76.     On September 26, 2006, Walker examined CASTANEDA'S penis and  
2 noted "another condyloma type lesion is forming and foul odor emitting from  
3 uncircumcised area with mushroomed wart." Apparently, Walker discussed releasing  
4 CASTANEDA to obtain medical care, but was denied by ICE because CASTANEDA  
5 was a "mandatory hold due to legal status."  
6

7           77.     On October 17, 2006, the medical staff was informed by the detention  
8 center's personnel that CASTANEDA was bleeding from his penis and had blood on his  
9 underwear.  
10

11           78.     On October 23, 2006, Walker submitted a TAR for surgery, which was  
12 pending. On October 25, 2006, the TAR request was denied because a DIHS Staff  
13 Physician stated that "circumcisions are not a *covered benefit*."  
14

15           79.     The October 25 TAR form erroneously stated that "Patient has been seen  
16 by local urologist and oncologist and both are not impressed of possible cancerous  
17 lesions, however, there is an elective component to having the circumcision completed."  
18 This conclusion contradicted the July 13, 2006 TAR form, which documented that Dr.  
19 Wilkinson, the oncologist, and Dr. Masters, the urologist, both "strongly  
20 recommended...surgical intervention via biopsy/exploration" to rule out cancer via  
21 biopsy. This conclusion is also contradicted by the doctors' reports.  
22

23           80.     The October 25 TAR Form also documented that ICE authorities denied  
24 CASTANEDA'S request for release to seek medical care. It stated that CASTANEDA  
25 "is not able to be released to seek further care due to mandatory hold and according to  
26 ICE authorities, may be with this facility for quite a while." This document shows that  
27 high-ranking GOVERNMENT authorities were *aware* CASTANEDA needed treatment  
28

1 and knew he would be unable to receive it in the foreseeable future.

2 81. On or about October 29, 2006, Walker told CASTANEDA that multiple  
3 requests to Washington, D.C. seeking authorization for surgery had been denied.

4 82. On November 9, 2006, Cindy Butler, RN, documented that  
5 CASTANEDA'S "symptoms have worsened. States he feels a constant pinching pain,  
6 especially at night. States he constantly has blood and discharge on his shorts. . . .  
7 Also complains of a swollen rectum which he states make bowel movements hard." In  
8 response to these complaints, he was prescribed milk of magnesia and docusate  
9 sodium, a laxative. CASTANEDA was informed that the TAR was "in place for surgery  
10 and is pending approval", despite the fact that the TAR request was denied two weeks  
11 before.  
12

13  
14 83. On November 14, 2006, CASTANEDA was seen by Lusche, who  
15 documented that Castaneda complained of a new, second lesion on the underside of  
16 his penis and he requested assistance to obtain more fresh underwear.

17  
18 84. On November 15, 2006, the medical records document that the penile  
19 lesion was growing and that CASTANEDA could not stand and urinate because the  
20 urine "sprays everywhere." Lusche's examination documented a genital wart that was  
21 white in color and moist in appearance, approximately 2.5 cm. in diameter, and noted  
22 light pink stains in CASTANEDA'S underwear. Lusche treated this condition by making  
23 a request for seven pairs of clean boxer shorts weekly.  
24

25 85. CASTANEDA was transferred from SDCF on November 17, 2006. The  
26 "Medical Summary of Federal Prisoner/Alien in Transit" sheet, signed by Cindy Butler,  
27 listed no "current medical problems" and listed Trazodone as the only prescribed  
28

1 medication, with no medication for pain or antibiotics.

2 86. On November 23, 2006, CASTANEDA was examined at the LA/Santa Ana  
3 Staging area and was noted to have "other penile anomalies."

4 87. CASTANEDA was booked into San Pedro on November 24, 2006. On  
5 information and belief, CASTANEDA'S medical records were transferred with him and  
6 were provided to medical personnel at San Pedro.

8 88. On or about December 1, 2006, CASTANEDA filed a sick call slip at San  
9 Pedro complaining of pain, bleeding and discharge from his penis.

10 89. On or about December 3, 2006, CASTANEDA filed two more sick call  
11 slips complaining about his continuing pain, bleeding and discharge. CASTANEDA also  
12 requested a clean set of blankets because he had soiled his original sheets with blood  
13 and discharge from his penis.

15 90. ACLU National Prison Project ("ACLU") attorneys became involved in  
16 CASTANEDA'S case on or about December 5, 2006. The ACLU sent a letter to  
17 multiple SDCF and Health Services Administration ("HSA") officials, recounting  
18 CASTANEDA'S medical history since entering ICE custody. The letter fully informed  
19 these officials of the situation, including that "Mr. Castaneda, who has a strong family  
20 history of cancer, legitimately fears that his long term health is being jeopardized by the  
21 lack of appropriate medical care he continues to receive in ICE custody. In the short  
22 term, Mr. Castaneda continues to experience severe pain, bleeding, and discharge."  
23 Among other requests, the letter asked for confirmation that arrangements had been  
24 made to appropriately treat CASTANEDA.  
25  
26

27 91. It appears that a TAR form was filed sometime on or about December 5,  
28

1 2006, seeking a second professional opinion and follow up due to the degree of  
2 phimosis and hypospadias, stating “he should have a biopsy of this lesion as well to  
3 ensure its status.”

4 92. The TAR was approved on December 5, 2006 for “urology consult only.  
5 Please submit treatment plan and clinical assessment if other care recommended.” The  
6 TAR request sought a consultation with Lawrence Greenberg, M.D., because of a  
7 “history of severe HPV infection causing large, painful, penile warts, has bleeding and  
8 pain from the lesions. May also have an underlying structural deformity of penis.”

9 93. As a result of the ACLU’s advocacy, CASTANEDA was transported to the  
10 office of Lawrence S. Greenberg, M.D. on December 14, 2006. Dr. Greenberg  
11 reviewed CASTANEDA’S medical records, which were provided to him by an ICE  
12 officer, and then physically examined CASTANEDA’s penis. Dr. Greenberg noted the  
13 blood and discharge and asked why CASTANEDA had not had surgery.

14 94. Dr. Greenberg informed CASTANEDA that he required a circumcision and  
15 remarked that CASTANEDA’S penis was a “mess.” At the end of the visit, Dr.  
16 Greenberg stated that CASTANEDA required surgery and that he would send a fax  
17 recommendation to the doctor at San Pedro later that day.

18 95. When CASTANEDA left Dr. Greenberg's office he was transported back to  
19 San Pedro and was told that he would be seen by the medical staff either on December  
20 15 or December 18.

21 96. CASTANEDA was not seen by the medical staff on either December 15  
22 or 18, despite filing a sick call slip on December 18 that reported a lump that had  
23 developed in his groin over the weekend.  
24  
25  
26  
27  
28

1           97.     On December 19, an ACLU attorney telephoned various officials regarding  
2 CASTANEDA’S medical care. The December 5 letter was again emailed to the Officer  
3 in Charge at that time. The Officer in Charge replied to the email, stating: “I am in  
4 receipt of your request. I am currently dealing with a couple serious issues this date. I  
5 will however, consult with the affected departments tomorrow and see what can be  
6 done concerning your request.”  
7

8           98.     On December 26, 2006, Shelly Hollandsworth, RN, documented  
9 CASTANEDA’S complaint of blood coming from his penis. Although ICE had received  
10 Dr. Greenberg’s report by December 15, Nurse Hollandsworth had no knowledge of the  
11 report. CASTANEDA was provided no treatment, despite Dr. Greenberg’s report, the  
12 email from the ACLU and CASTANEDA’S disturbing medical presentation, which  
13 included a lump in his groin.  
14

15           99.     On January 11, 2007, CASTANEDA was again seen by Nurse  
16 Hollandsworth who still reported a “knowledge deficit related to follow up.” Danielle  
17 Didonna also authored a note on January 11, stating that CASTANEDA had been seen  
18 by Dr. Greenberg “who recommends advanced urology specialty care. Patient must  
19 have a biopsy and further treatment recommendations made.” She also documented  
20 that CASTANEDA was in severe pain that was not being alleviated by pain medication.  
21 She documented that CASTANEDA was to have another specialty evaluation with  
22 biopsy. The assessment was to rule out carcinoma of penis secondary to HPV  
23 infection.  
24  
25

26           100.    On January 19, 2007, the ACLU faxed another letter and request for  
27 medical treatment on CASTANEDA’S behalf to MOLINAR, Norma Bouales-Garibei,  
28

1 HENNEFORD, and MAZUR, higher level GOVERNMENT officials.

2 101. On January 24, 2007, forty days after Dr. Greenberg's surgical consult  
3 order, the records reflect that a TAR form requesting a specialty urology consult with  
4 Asghar Askari, M.D. was verbally approved by Dr. Collins, presumably an ICE doctor.

5 102. On January 25, 2007, CASTANEDA was seen by Dr. Askari, who  
6 diagnosed a fungating penile lesion with possible left lymphadenopathy that was "most  
7 likely penile cancer." He ordered a penile biopsy on an out-patient basis under general  
8 anesthesia. He communicated these findings to the GOVERNMENT.

9 103. On January 29, 2007, the ACLU again wrote to ICE officials, urging them  
10 to provide CASTANEDA the care that had been ordered for him for the past ten  
11 months. A biopsy was finally scheduled for CASTANEDA in February.

12 104. Instead of providing the treatment ordered by Dr. Askari, ICE released  
13 CASTANEDA from custody on February 5, 2007. Presumably, ICE released  
14 CASTANEDA to avoid having to pay for the biopsy that was originally recommended by  
15 Walker on CASTANEDA'S first day of admission in March 2006, by Dr. Wilkinson on  
16 June 7, 2006, by Dr. Masters on August 22, 2006, and by Dr. Greenberg on December  
17 14, 2006. The GOVERNMENT ultimately released CASTANEDA without ever providing  
18 the simple and inexpensive procedure essential to diagnosing a serious and life-  
19 threatening medical problem.  
20  
21  
22

23 105. After his release from ICE custody, CASTANEDA went to the emergency  
24 room of Harbor-UCLA Hospital in Los Angeles ("Harbor-UCLA") on February 8, 2007.  
25 He was scheduled for a biopsy in the Urology Clinic on February 12, 2007, and was  
26 admitted on February 13 with a diagnosis of squamous cell carcinoma of the penis.  
27  
28

1           106. His penis was amputated on February 14, 2007, Valentine's Day.

2           107. The partial penectomy left CASTANEDA with a 2 cm. stump. The  
3 remaining 8 cm. sample of his penis was sent to pathology, which revealed that  
4 CASTANEDA had "Invasive Squamous Cell Carcinoma (5.5 cm in size), keratinizing  
5 type." The tumor extended 4.5 cm. in depth.

6           108. Harbor-UCLA has confirmed that CASTANEDA has metastatic cancer that  
7 has spread to his groin or inguinal region in the form of a large nodal mass that  
8 measured approximately 7 cm. as of March 14, 2007. This fast growing cancer was  
9 notably increased in size from a February 8, 2007 scan.

10           109. CASTANEDA has been undergoing chemotherapy at Harbor-UCLA with  
11 the hope of shrinking the inguinal tumor to a size where surgical removal is a viable  
12 option. His prognosis is poor and his life is in imminent jeopardy. He has been  
13 diagnosed with terminal cancer.

14           110. The UNITED STATES and its agents/employees provided care based on  
15 a DIHS Detainee Covered Services Package providing that "benefits are provided for  
16 emergency care and not elective or non-emergent or pre-existing conditions. The  
17 definition of an emergency is 'a condition that poses an imminent threat to life, limb,  
18 hearing, or sight.'"

19           111. The DIHS policy differs from the medical policies that govern convicted  
20 criminals in the custody of the United States Department of Justice, Federal Bureau of  
21 Prisons. Convicted criminals are not faced with the presumption that their "pre-existing"  
22 or "non-emergent" medical needs will not be treated.  
23  
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**FIRST CAUSE OF ACTION**  
**Federal Tort Claims Act Claim against THE UNITED STATES OF AMERICA for  
Medical Negligence  
(Non Jury Claim)**

1  
2  
3  
4 112. Plaintiff incorporates by reference all allegations contained in the  
5 preceding paragraphs of this Complaint, as if fully set forth here.

6 113. Defendant UNITED STATES' treatment of CASTANEDA while he was  
7 detained at SDCF and San Pedro violated the Federal Tort Claims Act ("FTCA"), 28  
8 U.S.C. § 2674.

9  
10 114. All conditions precedent to this lawsuit have been performed or have  
11 occurred, including providing pre-suit notice to the UNITED STATES pursuant to the  
12 FTCA. Six months have elapsed from the date a pre-suit claim was filed. Therefore, all  
13 administrative exhaustion requirements have been met and this claim is ripe.

14  
15 115. At all material times, the UNITED STATES carelessly and negligently  
16 cared for and treated Plaintiff while he was detained at SDCF and San Pedro, and  
17 provided medical care in a careless and negligent manner and also acted with  
18 deliberate indifference to Plaintiff's known serious medical condition. The UNITED  
19 STATES carelessly and negligently treated, managed, monitored and supervised  
20 Plaintiff's condition during his detention from March 27, 2006 until February 5, 2007.  
21 The UNITED STATES' negligent care and negligent failure to administer appropriate  
22 care directly and proximately resulted in certain injury and disability to Plaintiff, all to his  
23 general damage.  
24

25 116. As a direct and proximate result of the UNITED STATES' negligence,  
26 Plaintiff suffered certain injuries, including the amputation of his penis and development  
27 of metastatic cancer, and other injuries presently unknown and undiagnosed. He has  
28

1 also suffered and will continue to suffer great physical, mental, and emotional pain  
2 Plaintiff has also been impaired in his mental and physical capacity, all of which will  
3 result in permanent disability to Plaintiff, all to his general damage.

4 117. As a further direct and proximate result of the negligent, acts, omissions  
5 and conduct of the UNITED STATES and its agents, and the injuries caused to Plaintiff,  
6 Plaintiff was required to and did incur expenses for services of hospitals, doctors, and  
7 other medical care and treatment in an amount not now known to him.  
8

9 **SECOND CAUSE OF ACTION**  
10 **FTCA Claim against UNITED STATES for Negligent Establishment of**  
11 **Unconstitutional Policy for Provision of Medical Care to Immigration Detainees**  
**(Non-Jury Claim)**

12 118. Plaintiff incorporates by reference all allegations contained in the  
13 preceding paragraphs of this Complaint, as if fully set forth here.  
14

15 119. Defendant UNITED STATES' treatment of CASTANEDA while he was  
16 detained at SDCF and San Pedro violated the Federal Tort Claims Act ("FTCA"), 28  
17 U.S.C. § 2674.

18 120. All conditions precedent to this lawsuit have been performed or have  
19 occurred, including providing pre-suit notice to the UNITED STATES pursuant to the  
20 FTCA. Six months have elapsed from the date a pre-suit claim was filed. Therefore, all  
21 administrative exhaustion requirements have been met and this claim is ripe.  
22

23 121. At all material times, the UNITED STATES failed to use reasonable care  
24 in the establishment of policies and directives for the provision of medical care to  
25 immigration detainees. The policies and directives for the provision of medical care  
26 were unreasonable and inadequate in part because these policies violated clearly  
27 established constitutional law.  
28



1 implemented and/or applied the ICE detainee medical care policy such that the  
2 Plaintiff's request for a diagnostic biopsy, a simple and inexpensive procedure to rule  
3 out a life threatening disease, was denied as elective. In addition to qualifying as  
4 negligence, the UNITED STATES' action violated the Plaintiff's constitutional right to  
5 adequate and reasonable medical care.

6  
7 128. As a direct and proximate result of the UNITED STATES' negligence,  
8 Plaintiff suffered certain injuries, including the amputation of his penis and development  
9 of metastatic cancer, and other injuries presently unknown and undiagnosed. He has  
10 also suffered and will continue to suffer great physical, mental and emotional pain.  
11 Plaintiff has also been impaired in his mental and physical capacity, all of which will  
12 result in permanent disability to Plaintiff, all to his general damage.

13  
14 129. As a further direct and proximate result of the negligent, acts, omissions  
15 and conduct of the UNITED STATES and its agents, and the injuries caused to Plaintiff,  
16 Plaintiff was required to and did incur expenses for services of hospitals, doctors, and  
17 other medical care and treatment in an amount not now known to him.

18  
19 **FOURTH CAUSE OF ACTION**  
20 **FTCA Claim against UNITED STATES for Intentional Infliction of**  
21 **Emotional Distress**  
22 **(Non-Jury Claim)**

23 130. Plaintiff incorporates by reference all allegations contained in the  
24 preceding paragraphs of this Complaint, as if fully set forth here.

25 131. Defendant UNITED STATES' treatment of CASTANEDA while he was  
26 detained at SDCF and San Pedro violated the Federal Tort Claims Act ("FTCA"), 28  
27 U.S.C. § 2674.

28 132. All conditions precedent to this lawsuit have been performed or have

1 occurred, including providing pre-suit notice to the UNITED STATES pursuant to the  
2 FTCA. Six months have elapsed from the date a pre-suit claim was filed. Therefore, all  
3 administrative exhaustion requirements have been met and this claim is ripe.

4 133. At all material times, the UNITED STATES' treatment of CASTANEDA  
5 during his detention, including but not limited to the failure to provide him reasonable  
6 and humane medical care, was conducted in an extreme and outrageous manner with  
7 the knowledge that Plaintiff was unable to care for himself during his incarceration.  
8

9 134. The UNITED STATES acted intentionally or with the reckless disregard of  
10 causing emotional distress.

11 135. As a direct and proximate result of the unlawful conduct of the UNITED  
12 STATES and its agents, Plaintiff has suffered special damages, including but not limited  
13 to past and future loss of income, benefits, medical expenses, and other damages to be  
14 proven at the time of trial.  
15

16 136. As a direct and proximate result of the unlawful conduct of the UNITED  
17 STATES and its agents, Plaintiff has suffered general damages, including but not  
18 limited to shock, embarrassment, physical distress and injury, humiliation, severe  
19 emotional distress, stress and other damages to be proven at the time of trial.  
20

21 137. Plaintiff is informed and believes, and thereon alleges, that the UNITED  
22 STATES and its agents committed the acts herein alleged maliciously, fraudulently and  
23 oppressively in conscious disregard for Plaintiff's rights and that the conduct of UNITED  
24 STATES and its agents was a substantial factor in causing Plaintiff's emotional distress.  
25  
26  
27  
28

**FIFTH CAUSE OF ACTION**  
***Bivens* Claim for Inadequate Medical Care against all Individual Defendants  
(except HUNTING) and DOES 1-10**

138. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs of this Complaint, as if fully set forth here.

139. This is a claim against all Defendants who were agents of the UNITED STATES and named in their individual capacity, excluding HUNTING ("INDIVIDUAL DEFENDANTS"), and DOES 1-10.

140. The INDIVIDUAL DEFENDANTS and DOES 1-10 violated Plaintiff's right to adequate medical care under the Fifth, Eighth and Fourteenth Amendments of the United States Constitution by failing to treat Plaintiff's known serious medical condition.

141. At all material times, the INDIVIDUAL DEFENDANTS and DOES 1-10 were aware that CASTANEDA had a growth on his penis that required a biopsy to rule out penile cancer, a very serious and life-threatening disease.

142. The INDIVIDUAL DEFENDANTS and DOES 1-10 purposefully denied CASTANEDA essential medical care for a known serious medical condition, despite knowledge that CASTANEDA's mother had died from cancer at age thirty-nine and that CASTANEDA was not going to be released from custody to treat the life-threatening condition in the foreseeable future.

143. The actions of The INDIVIDUAL DEFENDANTS and DOES 1-10 were so substandard and egregious that they were outside the course and scope of their employment. Their actions and judgments in ostensibly rendering "medical care" to CASTANEDA were so far below the acceptable standard that the INDIVIDUAL DEFENDANTS and DOES 1-10 could not have been making a "medical" judgment in

1 their decision to deny CASTANEDA a very basic and inexpensive diagnostic procedure  
2 to rule out a life-threatening disease.

3 144. The actions of the INDIVIDUAL DEFENDANTS and DOES 1-10 were  
4 outside of the scope of "medical or related functions" as defined in 42 U.S.C. § 233(a)  
5 because their decision to deny CASTANEDA medical care was not based on a medical  
6 reason, but rather economic and/or other constitutionally impermissible reasons  
7 unrelated to the provision of medical services.  
8

9 145. Each of the INDIVIDUAL DEFENDANTS and DOES 1-10 were acting  
10 under color of law by exercising power made possible because the Defendants were  
11 clothed with the authority of federal law.  
12

13 146. The INDIVIDUAL DEFENDANTS and DOES 1-10 acted with deliberate  
14 indifference to the serious health needs protected by the Fifth, Eighth, and Fourteenth  
15 Amendments to the United States Constitution, subjected Plaintiff to dangerous and  
16 debasing conditions of confinement, and violated basic fundamental rights to safe and  
17 humane confinement. The inhumane conditions of confinement caused Plaintiff medical  
18 injuries as alleged in this Complaint. The conduct constituted cruel and unusual  
19 punishment and a violation of due process.  
20

21 147. The INDIVIDUAL DEFENDANTS and DOES 1-10 violated clearly  
22 established law by failing to adequately treat and/or diagnose a known serious medical  
23 condition.  
24

25 148. As a result of the Defendants' constitutional violations of Plaintiff's rights,  
26 Plaintiff sustained injuries and damages as follows:

27 a. Non-economic damages consisting of past and future physical and mental  
28

1 pain and suffering, mental anguish, emotional stress, and the loss of the  
2 enjoyment of a full and complete life;

3 b. Physical impairment and disfigurement which is permanent; and

4 c. Economic losses consisting of past and future medical and health care  
5 expenses and loss of future earning capacity and ability to earn money in  
6 the future.  
7

8 149. The conduct of each of the INDIVIDUAL DEFENDANTS and DOES 1-10  
9 constitutes a reckless or callous disregard of Plaintiff's constitutional right to adequate  
10 medical care, entitling Plaintiff to punitive damages.  
11

12 **SIXTH CAUSE OF ACTION**

13 ***Bivens* Claim for Equal Protection Violations against all INDIVIDUAL  
14 DEFENDANTS (except HUNTING) and DOES 1-10**

15 150. Plaintiff incorporates by reference all allegations contained in the  
16 preceding paragraphs of this Complaint, as if fully set forth here.

17 151. This is a claim against all Defendants who were agents of the UNITED  
18 STATES and named in their individual capacity, excluding HUNTING ("INDIVIDUAL  
19 DEFENDANTS"), and DOES 1-10.

20 152. The INDIVIDUAL DEFENDANTS and DOES 1-10 violated Plaintiff's right  
21 to equal protection under the Fifth and Fourteenth Amendments of the United States'  
22 Constitution by failing to treat Plaintiff's known serious medical condition due to his  
23 immigration status, without a rational basis to do so.  
24

25 153. At all material times, the INDIVIDUAL DEFENDANTS and DOES 1-10  
26 were aware that CASTANEDA had a growth on his penis that required a biopsy to rule  
27 out penile cancer, a very serious and life-threatening disease.  
28

1           154. The INDIVIDUAL DEFENDANTS and DOES 1-10 purposefully denied  
2 CASTANEDA essential medical care for a known serious medical condition, despite  
3 knowledge that CASTANEDA's mother had died from cancer at age thirty-nine and that  
4 CASTANEDA was not going to be released from custody to treat the life-threatening  
5 condition in the foreseeable future.

6  
7           155. The actions of the INDIVIDUAL DEFENDANTS and DOES 1-10 were so  
8 substandard and egregious that they were outside the course and scope of their  
9 employment. Their actions and judgments in ostensibly rendering "medical care" to  
10 CASTANEDA were so far below the acceptable standard that the INDIVIDUAL  
11 DEFENDANTS and DOES 1-10 could not have been making a "medical" judgment in  
12 their decision to deny CASTANEDA a very basic and inexpensive diagnostic procedure  
13 to rule out a life-threatening disease.

14  
15           156. The actions of the INDIVIDUAL DEFENDANTS and DOES 1-10 were  
16 outside of the scope of "medical or related functions" as defined in 42 U.S.C. § 233(a)  
17 because their decision to deny CASTANEDA medical care was not based on a medical  
18 reason, but rather economic and/or other constitutionally impermissible reasons  
19 unrelated to the provision of medical services.

20  
21           157. Each of the INDIVIDUAL DEFENDANTS and DOES 1-10 were acting  
22 under color of law by exercising power made possible because the Defendants were  
23 clothed with the authority of federal law.

24  
25           158. The INDIVIDUAL DEFENDANTS and DOES 1-10 acted in violation of the  
26 Equal Protection Clause of the Fifth and Fourteenth Amendments of the United States  
27 Constitution by discriminating against CASTANEDA based on his immigration status  
28

1 with no rational basis to do so. In that regard, the INDIVIDUAL DEFENDANTS and  
2 DOES 1-10 failed to approve a simple and inexpensive diagnostic procedure for  
3 CASTANEDA because he was an immigration detainee, while having a policy to provide  
4 this type of care to other federal prisoners who were not in the same class as  
5 CASTANEDA.

6  
7 159. The INDIVIDUAL DEFENDANTS and DOES 1-10 violated clearly  
8 established law by violating CASTANEDA's rights to equal protection under the United  
9 States Constitution.

10 160. As a result of the Defendants' constitutional violations of Plaintiff's rights,  
11 Plaintiff sustained injuries and damages as follows:

- 12
- 13 a. Non-economic damages consisting of past and future physical and  
14 mental pain and suffering, mental anguish, emotional stress, and the  
15 loss of the enjoyment of a full and complete life;
  - 16 b. Physical impairment and disfigurement which is permanent; and
  - 17 c. Economic losses consisting of past and future medical and health care  
18 expenses and loss of future earning capacity and ability to earn money  
19 in the future.
- 20

21 161. The conduct of each of the INDIVIDUAL DEFENDANTS and DOES 1-10  
22 constitutes a reckless or callous disregard of Plaintiff's constitutional right to Equal  
23 Protection, entitling Plaintiff to punitive damages.  
24

25 **SEVENTH CAUSE OF ACTION**  
26 **42 U.S.C. § 1983 Claim against DOES 1-10**

27 162. Plaintiff incorporates by reference all allegations contained in the  
28 preceding paragraphs of this Complaint, as if fully set forth here.

1           163. This claim is brought under 42 U.S.C. § 1983. DOES 1-10, employees  
2 and/or agents of CALIFORNIA, violated Plaintiff's right to adequate medical care under  
3 the Eighth and Fourteenth Amendments of the United States Constitution by failing to  
4 treat Plaintiff's known serious medical condition.

5           164. Each of these Defendants was acting under color of law by exercising  
6 power made possible because the Defendants were clothed with the authority of state  
7 law.  
8

9           165. Each of these Defendants acted with deliberate indifference to the serious  
10 health needs protected by the Eighth and Fourteenth Amendments to the United States  
11 Constitution. The conduct constituted cruel and unusual punishment and a violation of  
12 due process.  
13

14           166. DOES 1-10 violated clearly established law by acting with deliberate  
15 indifference in failing to adequately treat and/or diagnose a known serious medical  
16 condition.  
17

18           167. As a result of these Defendants' constitutional violations of Plaintiff's  
19 rights, Plaintiff sustained injuries and damages as follows:

- 20           a. Non-economic damages consisting of past and future physical and  
21           mental pain and suffering, mental anguish, emotional stress, and the  
22           loss of the enjoyment of a full and complete life;  
23           b. Physical impairment and disfigurement which is permanent; and  
24           c. Economic losses consisting of past and future medical and health care  
25           expenses and loss of future earning capacity.  
26

27           168. The conduct of each of these Defendants constitutes a reckless or callous  
28

1 disregard of the Plaintiffs constitutional rights, entitling Plaintiff to punitive damages.

2 **EIGHTH CAUSE OF ACTION**  
3 **Medical Negligence against CALIFORNIA and DOES 1-10**

4 169. Plaintiff incorporates by reference all allegations contained in the  
5 preceding paragraphs of this Complaint, as if fully set forth here.

6 170. Defendants CALIFORNIA and DOES 1 through 10, inclusive, are sued  
7 under fictitious names because their true names, involvement, and capacities, whether  
8 individual, associate, corporate or governmental, are not now known to Plaintiff. This  
9 action is based on Cal. Govt Code 845.6, and alleges that the Defendants failed to treat  
10 a serious and obvious medical condition that required immediate care. Based on  
11 information and belief, Plaintiff alleges that each of these Defendants are negligent or  
12 responsible in some manner for the events alleged in this Complaint, either as  
13 manufacturers, suppliers, sellers, distributors, physicians, surgeons, anesthetists,  
14 nurses, other medical practitioners, pharmacists, hospitals or hospital attendants,  
15 ambulance companies or attendants, or otherwise. Plaintiff is uncertain as to the  
16 manner or function of these Defendants, whether as manufacturers, suppliers, sellers,  
17 distributors, physicians, surgeons, anesthetists, nurses, other medical practitioners,  
18 pharmacists, hospitals or hospital attendants, ambulance companies or attendants, or  
19 otherwise, and Plaintiff will ask leave to amend this Complaint to specifically name  
20 these Defendants when such names, capacities, functions, occupations and businesses  
21 of these Defendants have been more fully ascertained.

22 171. Based on information and belief, Plaintiff alleges that, at all times herein  
23 mentioned, each of these Defendants were the agents, servants and employees of each  
24 of the other Defendants named in this Complaint, and at all material times were acting  
25  
26  
27  
28

1 within the course and scope of their agency, service and employment.

2 172. At all times herein mentioned, Defendants CALIFORNIA and DOES 1  
3 through 5, inclusive, were and now are corporate and/or public entities duly organized  
4 and existing under the laws of the State of California, and were at all times engaged in  
5 owning, operating and maintaining hospitals and other medical facilities to treat  
6 detainees in the State of California.

7  
8 173. All conditions precedent to this lawsuit have been performed or have  
9 occurred, including providing pre-suit notice to the Defendants pursuant to California  
10 Code of Civil Procedure § 364 and Government Code § 910.

11  
12 174. At all times and places mentioned herein, each of these Defendants  
13 carelessly and negligent cared for and treated Plaintiff for his above-described medical  
14 condition and his general medical condition, and each of these Defendants provided  
15 hospital, medical, emergency, anesthetic, nursing, laboratory, x-ray, and ambulance  
16 services, care, and attention in a careless and negligent manner. Each of these  
17 Defendants carelessly and negligently treated, managed, monitored and supervised  
18 Plaintiff's condition during his detention by the State of California during 2005 and 2006,  
19 which, among other things, directly and proximately resulted in certain injury and  
20 disability to Plaintiff, all to his general damage.

21  
22 175. As a direct and proximate result of these Defendants' negligence and  
23 carelessness, Plaintiff suffered certain injuries, including the amputation of his penis and  
24 development of metastatic cancer, and other injuries presently unknown and  
25 undiagnosed, and he has suffered and will continue to suffer great physical, mental and  
26 emotional pain. As a further direct and proximate result of the negligent acts, omissions  
27  
28

1 and conduct of these Defendants and of the injuries caused to Plaintiff, Plaintiff was  
2 required to and did incur expenses for services of hospitals, doctors, and other medical  
3 care and treatment in an amount not now known to him.

4 **NINTH CAUSE OF ACTION**  
5 **Medical Negligence against HUNTING and DOES 1-10**

6 176. Plaintiff incorporates by reference all allegations contained in the  
7 preceding paragraphs of this Complaint, as if fully set forth here.

8 177. HUNTING was, at all material times, a medical doctor licensed by the  
9 State of California and practicing medicine in California.

10 178. All conditions precedent to this lawsuit have been performed or have  
11 occurred, including providing pre-suit notice to the Defendants pursuant to California  
12 Code of Civil Procedure § 364.

13 179. ICE brought CASTANEDA to the emergency room at Scripps Mercy Chula  
14 Vista on July 13, 2006. CASTANEDA was examined at the Scripps emergency room by  
15 Juan Tovar, M.D., who noted a 1.5 cm. by 2 cm. fungating lesion on his penis with  
16 discharge but no lymphadenopathy, and made arrangements for admission to the  
17 hospital. His impression was: "penile mass, rule out cancer, versus infectious etiology."  
18

19 180. HUNTING, a Scripps urologist, performed a very brief examination of  
20 CASTANEDA on July 13, 2006. He did not obtain CASTANEDA'S prior family history of  
21 cancer and believed CASTANEDA'S lesion was "probably condyloma" (genital warts).  
22 HUNTING declined to treat him and made the erroneous assumption that  
23 CASTANEDA'S lesion was not cancerous without the benefit of a diagnostic biopsy. As  
24 a result of HUNTING'S intervention, a circumcision and biopsy were not performed at  
25 Scripps to rule out cancer.  
26  
27  
28



- 1 (a) Award Plaintiff all compensatory damages reasonable under the  
2 circumstances, including physical pain and suffering, mental anguish  
3 and emotional distress, disfigurement, medical expenses, loss of  
4 enjoyment of life, and any other compensatory damages, for each  
5 count alleged in the Complaint;  
6  
7 (b) Award Plaintiff punitive damages against all Defendants sued in their  
8 individual capacity (Plaintiff acknowledges that punitive damages are  
9 not available against the governmental entity defendants);  
10  
11 (c) Award Plaintiff reasonable attorneys' fees, expert fees, and court  
12 costs under 42 U.S.C. §1988 for the prosecution of his 42 U.S.C. §  
13 1983 claims;  
14  
15 (d) Award Plaintiff reasonable attorneys fees' and court costs under state  
16 law for the prosecution of his state law claims;  
17  
18 (e) Award Plaintiff legal interest on all damages awarded from the date  
19 of judicial demand until paid; and  
20  
21 (f) Award Plaintiff such other and further relief as this Court deems just  
22 and proper.  
23  
24  
25  
26  
27  
28

Dated this 31st day of October, 2007

By: \_\_\_\_\_  
CONAL DOYLE