

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.

PRISON LEGAL NEWS,

Plaintiff,

v.

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS,

Defendant.

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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Prison Legal News, by and through its attorneys, Gail K. Johnson and Ari Krichiver of Smith & West, LLC, hereby states:

**INTRODUCTION**

Prison Legal News (PLN) is a legal journal that reports news and litigation concerning detention facilities and prisoners' rights. On March 12, 2007, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq., PLN submitted a request to the United States Attorney's Office in Denver, Colorado, for certain exhibits of the U.S. government in the federal capital trial of William Sablan, namely, a videotape and/or DVD and still photographs relating to the murder of an inmate at the United States Penitentiary in Florence, Colorado (USP-Florence). The FOIA request was denied, as was PLN's administrative appeal of the denial of the request. Pursuant to 5 U.S.C. § 552(a)(4)(B), PLN now seeks a declaration that the Executive Office for United States Attorneys (EOUSA) improperly withheld the requested records and an order requiring the EOUSA to produce the requested records to PLN.

**JURISDICTION AND VENUE**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, and this action is authorized and instituted pursuant to 5 U.S.C. § 552(a)(4)(B).
2. Venue is proper pursuant to 5 U.S.C. § 552(a)(4)(B), as the requested records are situated in the District of Colorado.

**PARTIES**

3. Plaintiff PLN is a 501(c)(3) non-profit organization which, via a monthly legal journal as well as on its website, reports news and provides analysis concerning prisoners' rights issues, prisoners' rights litigation, and other news about prison issues. PLN is headquartered and resides at 2400 N.W. 80<sup>th</sup> Street #148, in Seattle, Washington.
4. Defendant EOUSA is an agency of the United States and is charged with enforcing the laws of the United States. EOUSA is the official record-keeper for all records located in the various United States Attorney's Offices, including the United States Attorney's Office for the District of Colorado. The records requested in this action are currently in the possession of Defendant EOUSA.

**FACTUAL ALLEGATIONS**

5. Joey Jesus Estrella was a federal inmate at USP-Florence who was murdered in his prison cell on October 10, 1999.
6. USP-Florence is a high-security facility of the U.S. Bureau of Prisons (BOP).
7. At the time of Mr. Estrella's murder, the BOP was housing him and two other inmates in the same cell.

8. The two other inmates housed in the USP-Florence cell with Mr. Estrella at the time of his murder were William Concepcion Sablan and Rudy Cabrera Sablan.
9. Prior to Mr. Estrella's murder, one or more BOP officials received at least one electronic distress call from the cell where Mr. Estrella was housed with William Sablan and Rudy Sablan.
10. Prior to Mr. Estrella's murder, one or more BOP officials failed to respond to at least one electronic distress call from the cell where Mr. Estrella was housed with William Sablan and Rudy Sablan.
11. Following Mr. Estrella's murder, the BOP took video or digital moving images of the exterior of the cell where Mr. Estrella was killed.
12. Following Mr. Estrella's murder, the BOP took video or digital moving images of the interior of the cell where Mr. Estrella was killed.
13. The video or digital moving images of the interior of the cell where Mr. Estrella was killed show the conduct of William Sablan and Rudy Sablan in the cell after Mr. Estrella's murder.
14. Upon information and belief, the video or digital moving images of the interior of the cell where Mr. Estrella was killed show mutilation of Mr. Estrella's body by William Sablan and Rudy Sablan.
15. Upon information and belief, the video or digital moving images of the interior of the cell where Mr. Estrella was killed show William Sablan purporting to drink Mr. Estrella's blood.

16. Upon information and belief, the video or digital moving images of the interior of the cell where Mr. Estrella was killed show one or more physical injuries on William Sablan's body.
17. Upon information and belief, the video or digital moving images of the interior of the cell where Mr. Estrella was killed show William Sablan and Rudy Sablan discussing the destruction of evidence related to Mr. Estrella's murder.
18. Upon information and belief, the video or digital moving images of the interior of the cell where Mr. Estrella was killed show William Sablan and Rudy Sablan carrying out the destruction of evidence relate to Mr. Estrella's murder.
19. Upon information and belief, the video or digital moving images taken by the BOP include footage of the "cell extraction" of William Sablan and Rudy Sablan, that is, prison officials' removal of William Sablan and Rudy Sablan from the cell.
20. Upon information and belief, a blood test performed on William Sablan's blood following Mr. Estrella's murder indicated that William Sablan was intoxicated with alcohol.
21. Upon information and belief, William Sablan had become intoxicated with alcohol on the night of Mr. Estrella's murder as a result of having drunk prison "hooch," or homemade alcohol fermented inside the prison cell.
22. Upon information and belief, a blood test performed on Rudy Sablan's blood following Mr. Estrella's murder indicated that Rudy Sablan was intoxicated with alcohol.

23. Upon information and belief, Rudy Sablan had become intoxicated with alcohol on the night of Mr. Estrella's murder as a result of having drunk prison "hooch," or homemade alcohol fermented inside the prison cell.
24. Following Mr. Estrella's murder, officials of the United States took still photographs of Mr. Estrella's body.
25. The United States prosecuted both William Sablan and Rudy Sablan for the murder of Mr. Estrella. (*U.S. v. Sablan*, Criminal Action No. 1:00-cr-00531-WYD, United States District Court for the District of Colorado.)
26. The United States sought the federal death penalty against William Sablan and Rudy Sablan based on the murder of Mr. Estrella and the mutilation of Mr. Estrella's body.
27. William Sablan, through the attorneys representing him in his capital criminal case, received copies of the trial exhibits that are the subject of FOIA request 07-903.
28. Rudy Sablan, through the attorneys representing him in his capital criminal case, received copies of the trial exhibits that are the subject of FOIA request 07-903.
29. The Honorable Wiley Y. Daniel severed William Sablan's and Rudy Sablan's cases for trial.
30. During the trial of William Sablan, which was conducted between January 22, 2007 and March 15, 2007, the video or digital moving images taken in connection with Mr. Estrella's murder were admitted into evidence as an exhibit of the United States.
31. Upon information and belief, the exhibit containing the video or digital moving images taken in connection with Mr. Estrella's murder was not placed under seal when it was introduced into evidence at William Sablan's trial.

32. Upon information and belief, when introduced into evidence as an exhibit at William Sablan's trial, the exhibit containing the video or digital moving images taken in connection with Mr. Estrella's murder was displayed on monitors throughout the courtroom.
33. Upon information and belief, when introduced into evidence as an exhibit at William Sablan's trial, the exhibit containing the video or digital moving images taken in connection with Mr. Estrella's murder was displayed on one or more monitors placed for the sole purpose of enabling members of the public seated in the courtroom audience to view the images.
34. During the trial of William Sablan, still photographs of Mr. Estrella's body were admitted into evidence as one or more exhibits of the United States.
35. Upon information and belief, these still photographs of Mr. Estrella's body were not placed under seal when they were introduced into evidence as one or more exhibits at William Sablan's trial.
36. Upon information and belief, when introduced into evidence at William Sablan's trial, these still photographs of Mr. Estrella's body were displayed on monitors throughout the courtroom.
37. Upon information and belief, when introduced into evidence as an exhibit at William Sablan's trial, these still photographs of Mr. Estrella's body were displayed on one or more monitors placed for the sole purpose of enabling members of the public seated in the courtroom audience to view the photographs.
38. William Sablan was convicted for the murder of Mr. Estrella.

39. The United States failed to obtain a unanimous jury verdict for the death penalty against William Sablan.
40. William Sablan received a sentence of life in prison for the murder of Mr. Estrella.
41. By letter dated March 12, 2007, PLN made a FOIA request to the United States Attorney's Office for the District of Colorado seeking the production of the following records:

The complete videotape and/or the DVD created therefrom taken by USP Florence staff related to the October 10, 1999 death of Joey Jesus Estrella at USP Florence, listed as Exhibit No. 20 on an Exhibit List dated Jan. 22, 2007 that was filed by the U.S. Attorney's Office in *USA v. Sablan*, U.S. District Court for Colorado, Case No. 1:00-cr-00531-WYD [and] still photographs of the body of Joey Jesus Estrella, listed as Exhibits 168 through 177D, inclusive, on an Exhibit List dated Jan. 22, 2007 that was filed by the U.S. Attorney's Office in *USA v. Sablan*, U.S. District Court for Colorado, Case No. 1:00-cr-00531-WYD.
42. The United States numbered PLN's FOIA request "Request No. 07-903."
43. By letter dated May 15, 2007, Defendant EOUSA issued a "full denial" of Request No. 07-903.
44. By letter dated July 12, 2007, PLN submitted an administrative appeal of Defendant EOUSA's denial of Request No. 07-903.
45. The United States later numbered PLN's administrative FOIA appeal "Appeal No. 07-1937."
46. By letter dated November 19, 2007, the U.S. Department of Justice denied Appeal No. 07-1937, asserting that Defendant EOUSA had properly withheld the requested records pursuant to 5 U.S.C. § 552(b)(7)(A), (B), & (C).

47. In April 2008, during the trial of Rudy Sablan, the video and/or digital moving images taken in connection with Mr. Estrella's murder and the still photographs of Mr. Estrella's body were admitted into evidence as exhibits of the United States.
48. These exhibits were not placed under seal when they were introduced into evidence at Rudy Sablan's trial.
49. These exhibits were displayed on monitors throughout the courtroom during Rudy Sablan's trial.
50. During Rudy Sablan's trial, these exhibits were displayed on one or more monitors placed for the sole purpose of enabling members of the public seated in the courtroom audience to view the images.
51. Rudy Sablan was convicted for the murder of Mr. Estrella.
52. The United States has not prosecuted anyone other than William Sablan and Rudy Sablan for the murder of Mr. Estrella.

**CLAIM FOR RELIEF**

*Injunctive Relief to Order Production of Records Improperly Withheld*

53. PLN realleges and incorporates paragraphs 1-52 as if fully set forth herein.
54. Defendant EOUSA's denial of PLN's FOIA Request No. 07-903 was improper.
55. The requested records are public records subject to production under FOIA absent the applicability of a specific statutory exemption.
56. Production of the requested records could not reasonably be expected to interfere with any law enforcement proceedings.

57. Production of the requested records would not deprive a person of a right to a fair trial or an impartial adjudication.
58. Production of the requested records could not reasonably be expected to constitute an unwarranted invasion of personal privacy.
59. No personal privacy interests would be implicated by the production of the requested records.
60. To the extent that any personal privacy interests may have existed in the content of the requested records, those personal privacy interests have been waived or are otherwise extinguished.
61. To the extent that any personal privacy interests may have existed in the content of the requested records that have not been waived or otherwise become extinguished, the invasion of such personal privacy interests would not be unwarranted, in light of the public interest in production of the requested records.
62. The public has an interest in being informed about the BOP's performance of its constitutional duties.
63. The public has an interest in being informed about the BOP's performance of its statutory duties.
64. Production of the requested records would shed light on the BOP's performance of its constitutional and statutory duties.
65. Production of the requested records would contribute to the public's understanding of the operations and activities of the BOP.
66. Production of the requested records would subject the BOP to public scrutiny.

67. The public has an interest in being informed about circumstances related to the U.S. government's decision to seek the federal death penalty against William Sablan and Rudy Sablan.
68. Production of the requested records would significantly contribute to public understanding of the operations or activities of the United States government.
69. The public's interests in the disclosure of the requested records outweigh any personal privacy interests that may be invaded upon the production of the records.

**PRAYER FOR RELIEF**

Wherefore, PLN respectfully requests that this Court enter judgment against Defendant for:

- a. A declaration that the EOUSA's denial of FOIA Request No. 07-903 was improper;
- b. An injunction ordering the EOUSA to produce to PLN the records requested in FOIA Request No. 07-903;
- c. Attorney's fees and litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E); and
- d. Such further relief as the Court may deem just and proper.

Respectfully submitted this 20<sup>th</sup> day of May, 2008.

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