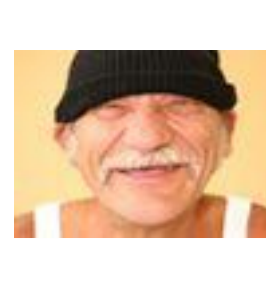




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Health and medical **Serious illness complicates deportation case**

By Grace Rubenstein grubenstein@sacbee.com Published: Saturday, Jan. 14, 2012 - 12:00 am | Page 1A Last Modified: Wednesday, Jan. 18, 2012 - 12:27 pm

The digital counter ticked down the remaining minutes of Ignacio Mesa Viera's dialysis treatment.

0:03, it read – three minutes to go.

For all he knew, that treatment on a recent Wednesday could have been his last. He expected the U.S. government to deport him to his birth country, Mexico, the next day.

"They don't understand," said the 50-year-old former tractor driver. "They are playing with my life."

Mesa, who has been diagnosed with end-stage kidney failure, depends on dialysis treatments three times a week to survive. His case demonstrates the complex web of immigration policy, international relations, humanitarian needs and family ties that emerges when the United States wants to deport someone with a life-threatening health condition.

Working against Mesa, who has lived in the United States for a total of about 26 years, are his two felony drug convictions and three prior deportations.

Balanced against that are the realities of his fragile life: The relatives who can and want to care for him live in the United States. He has very little money, no family left in Mexico and a disease that's terminal without treatment. People with his condition who stop dialysis typically die within weeks.

Mexico and the United States have agreed that this country won't deport seriously ill people until the Mexicans can arrange for ongoing care, and U.S. Immigration and Customs Enforcement already has delayed Mesa's deportation by nearly two years for that purpose. But ensuring that he can get affordable care in Mexico has proved nearly impossible.

Plus, the same federal directive that makes Mesa look like a prime candidate for deportation also suggests he should get leniency for humanitarian reasons. The decision rests with individual ICE agents – no court hearing, no judge, no appeals.

Mesa was not, in the end, deported Jan. 5, the day after his treatment.

Instead, he and his family have lived in limbo for more than a week while ICE agents, the Mexican Consulate in Sacramento and Mexican officials remained tangled in an elaborate dance of last-ditch efforts and delays that raise questions with no solid answers:

Is it fair that Mesa should have to go? Should the United States shoulder the costs of treatment for patients like him? Why can't Mexico assure him more reliable care? And, ultimately, just how long can all these delays and this tortuous uncertainty go on?

"It's a very tough situation," said Nicholas Starkman, a University of California, Davis, law student who is representing Mesa before ICE officials for free through the school's Immigration Law Clinic. As matters stand now, Starkman said, if his client is deported, "He is going to die, unless some miracle happens."

Placement options spotty

It's hard to say exactly how often U.S. and Mexican officials face this kind of situation, in which a prospective deportee has serious health problems – ICE does not track the numbers. But Virginia Kice, a spokeswoman for the agency, said it's not unusual.

ICE deported nearly 400,000 people in the fiscal year ending in June 2011.

Mesa entered ICE custody most recently in February 2010, after serving a little over a year in state prison and county jail on a federal charge of transporting and selling methamphetamine, to which he pleaded no contest.

Alejandro Celorio, the Mexican consul for protection and legal affairs in Sacramento, said he began looking for a treatment site in Mexico for Mesa immediately. ICE released Mesa temporarily so he could continue his treatments in the meantime.

However, clinics providing hemodialysis in his home state of Michoacán were "overwhelmed," Celorio said.

When he searched elsewhere, he said the same conundrum cropped up again and again: Residential shelters wouldn't take Mesa unless he had a hospital lined up, and hospitals wouldn't take him unless he had a shelter or family members to guarantee his housing, living expenses and transportation.

His family could not. Mesa's son-in-law, Martin Diaz, a legal U.S. resident, supports his family of four plus Mesa as a seasonal truck driver, shuttling produce around the Central Valley.

On paper, every citizen is entitled to health care in Mexico, said Adela de la Torre, director of the Center for Transnational Health at UC Davis. But in reality, she said, growing demand, inadequate funding and poor infrastructure mean that "the quality and the coverage is really dependent on the local environment. It's very tenuous."

In September, Starkman petitioned ICE to grant Mesa "deferred action," a long-term delay of deportation, based on his "extremely dire" health conditions and the uncertainty of care in Mexico.

Besides kidney failure, Mesa also has high blood pressure, congestive heart failure and diabetes, his doctor at UC Davis Medical Center confirmed.

ICE's field office director in San Francisco, Timothy Aitken, denied the petition. Starkman filed another appeal Jan. 4, this time asking for a stay of removal.

Meanwhile, the Sacramento consulate called in help from the Mexican federal government to find a place for Mesa to go.

United States foots the bill

In the kitchen of the family's small Meadowview duplex after treatment that Wednesday, Mesa hugged his 10-year-old grandson, also named Martin Diaz.

The boy said of his grandfather, "I love him very much." Then he covered his cheek with his right hand and looked down.

"Don't cry," his father admonished him.

The next day, Jan. 5, Mesa packed his bags and walked into the John E. Moss Federal Building on Capitol Mall, unsure whether he would emerge free or bound for Mexico.

His daughter, Alondra Mesa, waited in the car. "My greatest worry is that he is going to die there, alone," she said in Spanish.

ICE again rejected Starkman's request – Mexico had located a shelter and dialysis clinic for his client in Tijuana – but gave Mesa until last Monday. Mesa went home.

The plan fell through again. On Jan. 6, Celorio learned that the spot for Mesa in Tijuana was no longer available.

"While we look for a place for Mr. Mesa, other consulates are looking for places for other people – the need is everywhere," Celorio said.

Hemodialysis is particularly difficult to provide, he said, because there's high demand for it in Mexico, and it's costly.

The cost of dialysis complicates the picture on this side of the border, as well.

Immigrants in the United States illegally are generally not eligible for Medicaid or other government benefits. However, in cases of emergency – and end-stage kidney failure is considered an emergency – the federal government will cover the cost of care.

So the United States is paying for Mesa's dialysis, which the National Kidney Foundation says typically costs \$60,000 to \$70,000 per year.

The dialysis filters waste and excess liquid out of his blood – a job Mesa's kidneys can no longer do, since his high blood pressure destroyed them five years ago, said Shubha Ananthakrishnan, his nephrologist at UC Davis Medical Center. She declined to speculate on how long Mesa will live, even with treatment.

"I imagine the reason they don't want to let me stay in this country is they don't want to be paying for this," said Mesa, who spoke in Spanish, sitting in his chair at the clinic. He speaks English but feels more comfortable in his native tongue.

Mesa contends he has paid for his care through his decades of work in the United States, where he had various stints as a tractor driver, car mechanic and cook. The Congressional Budget Office confirms that immigrants here without legal status do pay sales and property taxes, and many have income tax taken out of their paychecks. Estimates vary on how much tax revenue this amounts to.

With Mesa's deportation again delayed, Mexican officials this week found a shelter and treatment site for him in Juárez, across the border from El Paso, Texas. Celorio said service providers there will help him sign up for Seguro Popular, Mexico's public health insurance program.

But there is a catch. Seguro Popular covers 275 medical treatments and procedures; dialysis is not one of them. So Mesa will have to pay the cost of about \$90 per treatment, or \$270 a week.

His family might be able to afford that for a week or two, Mesa said, "But after that, what will happen?"

Weighing the factors

In weighing the factors for or against deportation, the directions for ICE agents can be unclear.

ICE Director John Morton last June issued a memo urging agents to use their discretion. With more cases than it can handle, he explained, the agency has to prioritize the most important ones to enforce.

"Negative factors" include multiple crimes and a record of re-entering the country after deportation, he wrote – both strikes against Mesa.

At the same time, Morton wrote that people with serious health conditions – again, like Mesa – "warrant particular care" and that this is a "positive factor" for them.

"This is not black and white," explained Robert Juceam, a New York lawyer and former chairman of the American Bar Association's Commission on Immigration. "There are arguments to say that anybody who has drug offenses shouldn't get any discretion."

The counter argument, he said, "is to let him live his remaining life in the bosom of his family with the kind of medical treatment that will give him a shot at prolonging his life."

Mesa says he would take back those drug crimes if he could. He originally came to the United States in 1979, he said, to earn money to help his family. His father worked in the fields and his mother picked and sold limes in their isolated city, Apatzingán.

"We lived day to day," he said. "Sometimes we didn't even have enough for tortillas."

His first conviction, also for transporting and selling drugs, came in Ventura County in 1995. He said some acquaintances asked him to drive them around for a few days in exchange for \$1,500, and told him not to ask what they were doing. He needed the money, he said, but ended up spending about nine months in jail.

He was deported after that, then again in 2000 and 2002, according to ICE records. His wife and three children had moved from Mexico to Sacramento in the late 1990s. The couple later separated, and the two boys moved with their mother to Houston.

Mesa kept coming back to the U.S., he said, "because my children are here."

Regarding his second crime in 2008, Mesa claims he did no wrong but got swept up in a dragnet when his friend was caught selling drugs.

He said he wouldn't object to being deported, if not for his health. "The only reason I'm fighting it is because of my illness," he said. "If I were well, it wouldn't matter. I am Mexican."

Starkman argues that Mesa has already served his criminal sentences and is not a threat to the community, and given that his life span is probably short, he should stay.

In his denial of Mesa's second appeal for leniency, ICE's Aitken wrote, "While I am sympathetic to the disruption removal virtually always causes, this disruption is a normal consequence of removal and the factors you cite do not rise above the level of others facing the same situation."

On Friday, his appeals exhausted, Mesa followed ICE orders and appeared in front of the federal building on Capitol Mall. The Mexican Consulate had given him about \$1,000, enough to cover his treatments and expenses for several weeks.

Carrying two small duffel bags, Mesa climbed into a gray Dodge Durango with two ICE agents, heading for Sacramento International Airport and a US Airways flight to Phoenix and then El Paso.

The consulate expected he would be in Juárez by evening.

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Ignacio Mesa Viera, right, and his grandson Martin Diaz show their emotion Jan. 4 at Mesa's possibly imminent deportation. Mesa, who suffers from end-stage kidney failure, has no family left in Mexico and fears he will die there.

Slideshow: Dialysis Patient Fears Deportation

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