

Man held for 900 days in US prison without charge

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Benito Vasquez-Hernandez, 59, has been held for 900 days since his arrest in California on September 16, 2012. For 727 of those days he has been held without charge.

Originally arrested for “interfering with prosecution,” these charges were dropped after Vasquez-Hernandez’ first year of confinement. Since then he has been held without charge in Washington County jail in Oregon.

Vasquez-Hernandez is jailed as a “material witness” in the court case of his son, Eloy Vasquez-Santiago, who is accused of murder in the disappearance and suspected killing of Maria Bolanos-Rivera, 55, of Hillsboro, Oregon, who went missing on August 26, 2012.

Benito Vasquez-Hernandez and another son, Moise, allegedly provided testimony implicating Eloy in the disappearance. They were nonetheless arrested in Madera, in California’s Central Valley, for interfering with prosecution.

Eloy turned himself into police on September 29, 2012, but later claimed police tricked him into confessing with the promise that his brother and father would be released from jail. He had worked with the deceased at an Oregon berry packaging plant.

Eloy’s murder trial began on Tuesday. The body of Rivera, who was a mother of six, was never recovered.

Benito and Moise were transferred to Washington County Jail in Oregon on January 10, 2013. On March 21, 2013, two years ago next week, the state dropped its hindering prosecution charges, but called for their ongoing incarceration as material witnesses. Judge Don Letourneau rejected defense attorney requests for their release, and imposed punitive bail of \$500,000 each.

Attorneys for Benito and Moise say that their clients are incapable of understanding the case. An attempt to gain a videotaped deposition for Benito, an avenue that

might have secured his release, failed when in response to the question “Do you swear to tell the truth?” Benito Vasquez-Hernandez said, “That question, no. I want to get out.” Before being dismissed by the judge, he also asked the court, “Why am I in jail? It’s been two years. It’s been too long.”

Benito’s attorney, Alan Biedermann, tried to explain his client’s refusal to take the oath. “It was not a matter of contempt or defiance,” Biedermann said. “It was the result of his failure to understand the process.” *Oregonian* writer Emily Smith has also pointed to Benito’s “staggering disadvantages” in the case. She writes, “He’s poor. He’s had no formal education and can’t read or write. He’s an immigrant who doesn’t understand the American justice system. He’s had no contact with his family.” As the British *Guardian* put it, “it is unclear whether he understands anything at all about the whole situation.”

A video deposition did eventually pave the way for the release of Moise, who told prosecutors that his brother Eloy had confessed to the killing of Bolanos-Rivera.

Yet this testimony is of dubious value in light of Moise’s mental state after nearly 730 days in prison without charge, during which he suffered a “psychotic break” and was hospitalized and diagnosed with schizophrenia.

During his confinement without charge, Moise watched and yelled at a turned-off television, walked an imaginary dog in circles, and smeared his own feces on the walls and ceiling of his cell. In one instance he was hooded and placed in solitary confinement in a maximum-security unit after he allegedly spat at a prison guard.

In a court filing his attorney, David Rich, said Moise has “a poverty of intellect that can be described as

nothing short of stunning,” and that, “[q]uite frankly and bluntly spoken, being held in custody is making Mr. Vasquez-Santiago literally crazy.”

The state prosecutor maintains that his effort to secure a guilty conviction justifies the ongoing deprivation of Benito Vasquez-Hernandez’ basic rights. The courts have so far agreed with prosecution claims that his testimony is indispensable, and that he would not voluntarily show up for trial were he released.

“I’m trying to convict a man who has confessed to killing a mother,” prosecutor Jeff Lesowski said. “It’s not a real easy job. It’s not perfect.”

Prison conditions for Benito are bleak. “He lives in a small cell with a single window high above his head and sleeps on a skinny mattress resting on a cinderblock frame,” Smith writes. He is awoken each day at 5 a.m. Lights are shut off at 10 p.m.

State laws, including those in Oregon, allow material witnesses to be imprisoned awaiting their testimony. These are anti-democratic rules that police and prosecutors regularly abuse to elicit testimony from uncooperative witnesses.

In Oregon there is no formal limit on how long a material witness might be held, but in practice such incarcerations have typically been brief, and are often defended as a means of protecting a witness from reprisal. The length of Benito Vasquez-Hernandez’ imprisonment may in fact be a record for the detention of a witness, according to legal experts.

“Assuming it is ever constitutional to lock up an uncharged person to secure his testimony,” commented Lee Gelernt, an American Civil Liberties Union attorney, “the detention must be as minimal as possible to avoid a grave injustice.”

Vasquez-Hernandez’ jailing without charge is in keeping with an accelerating attack by American courts and politicians on basic democratic rights in a year that marks the 800th anniversary of the Magna Carta, which first established the core democratic principle of *habeas corpus*, prohibiting jailing without charges.



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