

Oregon man commits no crime, but held in jail for 900 days

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Benito Vasquez-Hernandez has orange canvas slip-ons, a single spoon, a wristband he wears at all times. He has little else.

He lives in a small cell with a single window high above his head and sleeps on a skinny mattress resting on a cinder-block frame.

Vasquez-Hernandez is treated like any other inmate in the Washington County Jail. But he's unlike every other inmate there.

At 900 days and counting, Vasquez-Hernandez, 58, may be the longest-held material witness in Oregon and perhaps the nation. He's waiting to testify in a murder case.

Legal experts are aware of no other witness jailed for so long. Though no one appears to systematically track such cases, a law professor recalls only one similar instance — more than a century ago, in California.

In Oregon, a judge can keep material witnesses in custody until they testify or release them pending trial. Material witness detentions have no expiration, but detention typically lasts less than a week.

Civil rights advocates say a witness should never be locked up for long, certainly not more than two years. But it's not only the extraordinary length of Vasquez-Hernandez's imprisonment that disturbs them. It's also his staggering disadvantages. He's poor. He has had no formal education and can't read or write. He's an immigrant who doesn't understand the U.S. justice system. He has had no contact with his family.

As his days in custody have turned into months and years, prosecutors have successfully argued that Vasquez-Hernandez's testimony is essential to their case and that he probably wouldn't show up in court if released.

His defense attorney has tried to get Vasquez-Hernandez out, devising a plan to take his sworn statement in a deposition so a judge could free him.

But Vasquez-Hernandez didn't cooperate, either because he couldn't follow what was happening, as his attorney argues, or because he didn't want to, as the prosecution claims.

Led into the courtroom in an orange jumpsuit and chains in September to make the statement, he had only questions: "Why am I in jail? It's been two years. It's been too

long.”

His imprisonment exceeds that of the other material witness in the case: His 28-year-old son, Moises Vasquez-Santiago, who was released last fall after 727 days in jail.

The incarceration pushed the son to breaking, a doctor noted. He was diagnosed with schizophrenia while in custody. His lawyer said the isolation Moises felt drove his unraveling.

As for the father, his days inside wear on. The lights come on at 5 a.m. For eight hours each day, he can leave his cell to drift around the common area of his unit. There’s a TV and a cluster of tables where inmates eat meals. Some sit, talk and play cards. Windows look out on a slab of pavement, a recreation space surrounded by walls. For 16 hours, he’s alone. The lights go out at 10 p.m.

The arrests

Benito Vasquez-Hernandez and Moises Vasquez-Santiago were arrested in fall 2012 in California’s Central Valley. The father and son had moved there with their family shortly after a woman in Hillsboro named Maria Bolanos-Rivera disappeared. Bolanos-Rivera was 55, a widow and the mother of six.

Hillsboro detectives suspected another of Vasquez-Hernandez’s sons killed her. Court records say Vasquez-Hernandez told the detectives that he had seen blood in the minivan that his elder son, Eloy Vasquez-Santiago, had been driving. Moises said his brother was in Mexico but had admitted to him that he stabbed the woman to death. Moises said his father also had seen Eloy hide a knife.

After the interviews, the detectives arrested Vasquez-Hernandez and his younger son on charges of hindering prosecution.

The next day, as the detectives were on their way to catch a return flight to Portland, their phone rang. Eloy Vasquez-Santiago was calling from Ensenada, Mexico, urging police to let his father and brother go. He promised to turn himself in.

A day later, he was talking with two Hillsboro investigators at the San Diego Central Jail. He had worked with Maria Bolanos-Rivera at Oregon Berry Packing Co. in Hillsboro, and they’d gone out on a date Aug. 26, 2012. Eloy Vasquez-Santiago told police he stabbed her because she had insulted him, but he offered only vague details about where he left her body, according to a transcript of the conversation.

Detective Joe Ganete made it clear the suspect’s father and brother were key witnesses: “I don’t want your family to be involved in this, but they are witnesses that have to go to the court here and say that you killed her. Your dad has to testify. Moises has to testify.

“I can’t let go of your family until I find the body, until I find the truth from you — all of

the details. Because they're all witnesses that can tell me what you said to them.”

Material witness laws

Almost every state has material witness laws. Oregon's statute is used most often when witnesses don't want to testify for fear of retaliation. Gang cases are a common example.

The laws allow attorneys to seek a warrant and court order to hold an important witness who presents a flight risk.

“We only ask for it in extraordinary situations,” said Washington County prosecutor Jeff Lesowski, who's handling Eloy Vasquez-Santiago's case.

The legal practice dates to the mid-1500s in England. In the U.S. it became law in 1789.

But with its longevity has come controversy.

Scholars have long criticized material witness laws, questioning whether they're constitutional. Courts identified problems with the laws as early as the late 1800s, researchers say. Their concerns included holding witnesses in jail alongside criminals, holding them for too long or holding them because they couldn't make bail.

Public outcry led New York to briefly repeal the practice in 1883. New Jersey legislators in the 1990s amended the law to say detained witnesses can't be held in jail. Some states restrict the length of the holds. In Arizona, for instance, the limit is seven days.

Historically, few witnesses have challenged their detainment. Many have lacked money and social standing, says Carolyn B. Ramsey, a University of Colorado law professor. And that has meant, “For the most part, the wrongs against them remained unredressed,” she wrote in a law journal.

Legal experts in Oregon and across the nation say they haven't heard of a witness imprisoned for as long as Vasquez-Hernandez or his son. The only one that comes close was a case cited by Ramsey: In 1913, three Chinese men were held in the San Diego County jail for almost two years.

Lee Gelernt, an American Civil Liberties Union attorney, argued against the federal government's use of material witness detention in the wake of the Sept. 11 attacks to hold terrorism suspects when there was no probable cause. He wouldn't comment directly on the Oregon case but said in general long witness detention shouldn't happen.

“Assuming it is ever constitutional to lock up an uncharged person to secure his testimony,” he said, “the detention must be as minimal as possible to avoid a grave injustice.”

Serving time

At the start of 2013, Vasquez-Hernandez and his two sons were transferred from California to the Washington County Jail, at the edge of downtown Hillsboro. By that time a Washington County judge had signed an order to hold Vasquez-Hernandez and son Moises as material witnesses.

Judge Don Letourneau denied arguments by their court-appointed lawyers for release and kept their bail at \$500,000 each. They would have to post 10 percent, \$50,000, to get out.

It was an amount neither could ever hope to post, said their attorneys, who argued for lower bail. Even \$50 would be an impossible figure, Vasquez-Hernandez's lawyer said.

Complicating the case, the men's attorneys told the court they were struggling to communicate with their clients. The lawyers noted the family's profound "lack of sophistication" and questioned the brothers' mental competence.

"He has a poverty of intellect that can be described as nothing short of stunning," Moises' attorney, David Rich, wrote in court filings.

Letourneau found Eloy Vasquez-Santiago fit to stand trial, but the situation for Moises was more tenuous. Jail staff noticed Moises watched the TV when it was off, court records say. He wore a shirt on his head like a "ninja." He walked an imaginary dog in circles around his cell. He smeared feces all over his cell.

One day while he was yelling at a blank TV screen, he spat at one of the deputies who tried to move him away. They put a hood over his head and put him in an isolation cell in the maximum-security unit.

At his lawyer's request, Moises was committed to the Oregon State Hospital, where doctors diagnosed him with schizophrenia. He probably had his first psychotic break while in jail, records say.

With treatment, his symptoms improved enough for him to return to jail, but a state doctor warned that more time there probably would undo his progress.

A way out

As the case plodded, Letourneau sometimes expressed concern about how long the witnesses had been in custody. Still, out of deference to prosecutors, he denied motions to release them.

But Oregon law offers another means of escape from long material witness detention: a pretrial deposition, with sworn statements preserved on video.

The father's attorney raised the point in November 2013, after Vasquez-Hernandez had been in custody for more than a year. By that time, prosecutors had dropped the hindering

prosecution charge against him without explanation. They did the same with Moises a few months later.

But prosecutors argued that this was a murder case with no body and limited forensic evidence, and to show testimony on a video screen would dilute the quality of important evidence.

The judge sided with prosecutors. But six months later, even he questioned the value of the father and son's testimony. "It is totally predictable that the material witnesses will not say

anything that will benefit the state at trial," Letourneau wrote in an email to the lawyers.

After that, prosecutors relented, and video-recorded depositions were scheduled.

One morning last September, Benito Vasquez-Hernandez took the witness stand, a Spanish interpreter at his side. The judge told him that if he would agree to answer some questions, he could go free.

But he didn't make it past the first question, "Do you swear to tell the truth?"

"I didn't do anything," he said. "I've been in jail. ... I'm innocent."

Vasquez-Hernandez asked why he was in jail. He repeated himself so often, Letourneau grew frustrated and eventually yelled, "Get him out of here." His testimony hadn't even started.

Next, Moises took the stand. His testimony, which an interpreter recited in English, was confused and rambling. But his meandering statements were enough: He said his brother had told him, "I killed her."

Letourneau released him from the material witness hold. Sheriff's deputies took him back to jail, where he was processed and released about 8 p.m., according to jail staff.

It was Sept. 23, three days shy of two years from the day that the father and son had been picked up on the street in California.

"Regrettable" situation

Eloy Vasquez-Santiago's murder trial is scheduled to start Tuesday. Until then, his father remains in jail waiting to testify.

The attorneys involved say the complications of the case are unprecedented in their experience.

Prosecutors told the court that they had no choice. Their fight, they said, is for Maria

Bolanos-Rivera's children, who also lost their father years ago in a homicide. His killing remains unsolved.

"I sincerely regret keeping this man locked up," Lesowski, the senior deputy district attorney, said when Vasquez-Hernandez's lawyer suggested a pretrial deposition.

"But I don't see any alternative that is fair to these people," he said, gesturing to the victim's family members seated in the courtroom. "I'm trying to convict a man who has confessed to killing a mother. It's not a real easy job. It's not perfect."

Lesowski later noted that prosecutors eventually "agreed to the unorthodox deposition process." And while "it worked out for Moises," he said, the father "declined to take advantage of it."

David Rich, who represented Moises, said being in jail ruined the son's mental health.

"Quite frankly and bluntly spoken, being held in custody is making Mr. Vasquez-Santiago literally crazy," he wrote in court filings.

The state owes Moises more than \$5,000 through an Oregon law that gives detained witnesses \$7.50 a day, but Rich said Moises didn't want the money. He only wanted out. The lawyer hasn't heard from him since.

The father's attorney, Alan Biedermann, said Vasquez-Hernandez wants to go home and be with his family. But he simply didn't grasp the implications of the deposition even though Biedermann had tried to explain what would happen in court.

"It was not a matter of contempt or defiance," he said. "It was the result of his failure to understand the process."

Biedermann said he thought about petitioning the Oregon Supreme Court for Vasquez-Hernandez's release but decided against it. The judge's order was lawful, he said, so he didn't think a challenge would succeed.

He declined a request from The Oregonian/OregonLive to interview Vasquez-Hernandez.

The situation is "sad," he said, "regrettable."

"That's a long time to spend in the Washington County Jail."