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6 **FEDERAL TORT CLAIM**

8 **TERRY RIVERA, ESTATE OF**  
9 **JOSE RIVERA by and through the**  
10 **executor, TERRY RIVERA**

11 **Claimants**

11 **FEDERAL TORT CLAIM**

13  
14 Terry Rivera, individually and as the Administrator of the Estate of Jose Rivera  
15 hereby submits this Federal Tort Claim as against the following persons and  
16 entities to which this claim is being submitted against, and each of them:

- 17 1. **FEDERAL BUREAU OF PRISONS**
- 18 2. **HARLEY LAPPIN - Director of the Federal Bureau of Prisons**
- 19 3. **ROBERT MCFADDEN - Regional Director, Western Region of the**  
20 **Federal Bureau of Prisons**
- 21 4. **DENNIS SMITH - Warden USP Atwater, Federal Bureau of Prisons**
- 22 5. **ZIRAGOSA - USP Atwater/Federal Bureau of Prisons**
- 23 6. **MARIE OROZCO - USP Atwater/Federal Bureau of Prisons**
- 24 7. **JESSE ESTRADA - USP Atwater/Federal Bureau of Prisons**

25 **SUBMITTED TO:**

26 United States Federal Bureau of Prisons  
27 Central Office  
28 320 First Street, NW  
Washington, DC 20534  
Fax: 202.514.6620

United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**FEDERAL TORT CLAIM**

1 **NAME OF CLAIMANTS/CLAIMANTS REPRESENTATIVE:**

2 **Claimants**

3 Terry Rivera, individually and as the administrator of the Estate of Jose Rivera -  
4 Plaintiff Terry Rivera is the surviving mother of Correctional Officer Rivera, who  
5 died unmarried and without children.

6 **Claimants Representative  
(and having express authority to act for the claimants)**

7 Mark J. Peacock, CA State Bar No. 156625  
8 Paul N.E. Evenson CA State Bar No. 258426  
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15 Website: [www.markpeacocklaw.com](http://www.markpeacocklaw.com)  
16 [www.officerjoserivera.com](http://www.officerjoserivera.com)  
17 [www.safetyheroes.org](http://www.safetyheroes.org)

18 **DATE/TIME OF INCIDENT:**

19 June 20, 2008 approximately 3:30 p.m.

20 **BASIS OF CLAIM**

21 **Introductory Note**

22 **Correctional Officer Jose V. Rivera** was a citizen of the United States and  
23 a resident of the city of Chowchilla, California. Correctional Officer Jose V.  
24 Rivera was employed by the United States as a correctional officer at the United  
25 States Penitentiary at Atwater, California ("USP Atwater"). He was a four-year  
26 veteran of the Navy, and completed two tours of military duty in Iraq. He began  
27 his career with the BOP as a Correctional Officer on August 5, 2007, and was in  
28 his probationary year. He was working as the Unit Officer in Unit 5A on the day  
he was murdered. He was in the process of locking down the unit, to conduct the  
3:30 p.m. official count, when he was attacked and killed by two inmates. He was  
22 years old when he was killed.

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1           **Factual background**

2           On **June 19, 2008**, inmate James Ninete Leon Guerrero arrived at USP  
3 Atwater from USP Coleman as a 309 disciplinary transfer. Guerrero was convicted  
4 and sentenced in the U. S. District Court for the Territory of Guam for Conspiracy  
5 to Commit Armed Bank Robbery. He received a life sentence on July 9, 1998. He  
6 had been previously convicted in the U. S. District Court for the Territory of  
7 Guam of Deprivation of Rights Under the Color of Law, 18 U.S.C. ' 242. He  
8 received a 10-year sentence on May 7, 1992. Guerrero had a history of assaulting  
9 staff, including several incidents of serious assault and fighting with inmates. On  
10 June 19, 2008 Guerrero was originally assigned a cell in Unit 2B by the Unit  
11 Manager. During intake screening Guerrero was interviewed by Special  
12 Investigation Specialist (SIS) technician Ziragosa. Guerrero indicated he would  
13 not cell with any other inmates on Unit 2. SIS technician Ziragosa convinced  
14 Guerrero to cell with another Guamainian, Jose Cabrera Sablan in Unit 5A. Sablan  
15 was a boarder from the Territory of Guam. Sablan was convicted and sentenced  
16 for Murder, Attempted Murder, and Felony Escape in Guam on August 15, 1990.  
17 Sablan received a Life Sentence for Murder, a consecutive 20-year sentence for  
18 Attempted Murder, and a consecutive five year sentence for Felony Escape. He  
19 currently has a U.S. Marshals Service detainer for Felon in Possession of a  
20 Firearm with a 33-month consecutive sentence. Sablan had a significant  
21 disciplinary history, including five 100-level incident reports, four 200-level  
22 incident reports, and four 300-level incident reports. Major incident reports  
23 included Assaulting With Serious Injury, Fighting, Possessing a Dangerous  
24 Weapon, Possessing Drugs and Intoxicants. In 1992, at USP Lompoc, he  
25 physically assaulted a female correctional officer. He had three years of clear  
26 disciplinary conduct prior to the homicide. He was the unit orderly at the time of  
27 the murder.

18           On the evening of June 19, 2008, Guerrero convinced the Operations  
19 Lieutenant he could not be celled with Sablan because they were both "alpha"  
20 personality types. The Operations Lieutenant told Guerrero to find another cell  
21 (cell assignment was changed for the third time in less than 24 hours). The rest of  
22 the evening was uneventful. The morning of June 20, 2008, things in Unit 5A  
23 appeared to be uneventful. During the afternoon, the Asian/Pacific Islanders in  
24 Unit 5A began consuming intoxicants. They continued to drink for an  
25 undetermined period of time prior to the call for the 3:30 p.m. count. Correctional  
26 Officer Rivera had been assigned as the Unit Officer to housing unit 5A for June  
27 20, 2008. At approximately 3:18 p.m., Officer Rivera called count and began to  
28 secure the unit in anticipation of the 3:30 p.m. count. At approximately 3:20 p.m.  
Officer Rivera approached a group of Asian/Pacific Islanders near cell 116.  
Officer Rivera engaged the group in a brief conversation. Sablan and Guerrero  
appear to be intoxicated. The group began to breakup. Guerrero grabbed a plastic  
chair and raised it in the air and dropped it to the floor. Guerrero and Sablan then  
left the first floor of the unit and went up the stairs to the second tier of Unit 5A.  
Officer Rivera began to secure the bottom tier of Unit 5A. Guerrero began to walk  
toward the stairwell near the front door. Two other inmates approached Guerrero

1 and appeared to be talking to him near cell 119. Sablan stood outside cell 115.  
2 Sablan walked over to Guerrero in front of cell 119. Guerrero and Sablan began to  
3 walk toward the stairwell and up to cell 223. When they reached cell 223, Sablan  
4 opened cell 223. Sablan and Guerrero continued to stand outside the cell with the  
5 door open. Sablan entered cell 223, followed by Guerrero who entered cell 223  
6 with a chair in his hand. At approximately 3:22 p.m., Officer Rivera finished  
7 securing the bottom tier of Unit 5A and began to approach the stairwell to the  
8 second tier. He began securing the top tier beginning with cell 232. At  
9 approximately 3:23 p.m., Officer Rivera reached cell 223 and began to close the  
10 door as Sablan and Guerrero were standing outside the cell. Guerrero stepped  
11 inside cell 223 as Officer Rivera began to close the door. Sablan remained  
12 standing outside cell 223. Sablan appeared to pull something from his pocket, and  
13 in a *stabbing motion* struck Officer Rivera in the torso. Guerrero rushed from the  
14 cell as Officer Rivera runs from Sablan and Guerrero. Officer Rivera reached the  
15 stairwell first and began to descend to the first floor of the unit. Sablan struck  
16 Officer Rivera in the shoulder as they ran down the stairwell. Officer Rivera  
17 turned while on the stairwell and head butted Guerrero in an attempt to defend  
18 himself. Sablan swung his arm with the weapon in hand attempting to strike  
19 Officer Rivera. Officer Rivera reached the bottom of the stairwell and ran in the  
20 direction of cell 108. It appeared Officer Rivera activated his body alarm at this  
21 point of the incident. He was being pursued by Sablan and Guerrero as they ran  
22 into a plastic trash can. Officer Rivera was tackled around the legs by Guerrero  
23 near cell 105. He was held to the ground by Guerrero. Sablan got on top of Officer  
24 Rivera and began to strike Officer Rivera with the ice pick type weapon. Sablan  
25 struck Officer Rivera approximately eight times in the torso until the arrival of the  
26 first staff on the scene. Unit Secretary Drayton entered the unit through the Unit  
27 Team Door. She approached the scene of the struggle. She appeared to be shouting  
28 commands at the inmates. She was followed into the unit several seconds later by  
Unit Manager Bowles. She entered the unit through the Unit Team Door. As Unit  
Manager Bowles moved toward the assault, she positioned herself near a chair.  
Several staff reported Unit Manager Bowles was on the radio requesting  
assistance. She also appeared to be shouting commands to the inmates. She did not  
intervene or render assistance during the assault. Unit Secretary Drayton closed  
the gap between herself and the inmates and Officer Rivera, who continued to  
struggle. It appeared she was yelling commands at the assailants. She did not  
attempt to physically intervene at that time. A few seconds later, Unit Secretary  
Drayton then moved closer to the assault and attempted to control Sablan's arm.

At approximately 3:25 p.m., responding staff entered through the Unit 5A  
door. Responding staff began heroically removing Sablan and Guerrero from  
Officer Rivera. Both inmates were resisting, were combative, as they continued to  
assault Officer Rivera. Sablan was the first to be removed from Officer Rivera by  
responding staff. Guerrero was next removed from Officer Rivera's lower body by  
the responding staff. Staff began administering life saving efforts to Officer  
Rivera. Officer Rivera was placed on a gurney and rushed to Health Services.  
Once in Health Services, BOP staff continued to perform life saving techniques  
and an outside ambulance was summoned. Officer Rivera was taken to an outside

1 hospital where he was pronounced dead.

2 Officer Rivera suffered 28 sharp force injuries. The cause of death was  
3 determined to be two puncture wounds to the left chest which penetrated the heart  
4 muscle.

5 On August 14, 2008, Sablan and Guerrero were charged with a violation of  
6 18 U.S.C. Section 1111(a), First Degree Murder, 18 U.S.C. Section 1114(a), First  
7 Degree Murder of a United States Correctional Officer, and 18 U.S.C. section  
8 1118, Murder by a Federal Prisoner Serving a Life Sentence.

9 *Attached hereto as Exhibit A (Department of Justice's "Board Of Inquiry*  
10 *Report June 20, 2008 Homicide of Correctional Officer Jose Rivera United*  
11 *State Penitentiary Atwater, California") which contains additional indicators*  
12 *that the persons and entities to which this claim is being submitted against, and*  
13 *each of them (see above), were responsible for, and participated in, the creation,*  
14 *development, promotion, encouragement and advancement of the dangerous*  
15 *conditions which existed at USP Atwater and that said persons and entities acted*  
16 *with deliberate indifference to these known and obvious dangers by repeatedly*  
17 *subjecting decedent Corrections Officer Rivera to these dangerous conditions*  
18 *and which resulted in his tragic and unnecessary death.*

#### 19 **Jurisdiction and Venue**

20 The claims in this matter arise under 42 United States Code section 1981  
21 and the Fifth and Fourteenth Amendments of the United States Constitution.  
22 Jurisdiction is conferred by 28 United States Code Section 1343 (federal question)  
23 and 28 United States Code Section 1343, subdivision 3 (civil rights).

24 Venue lies in the Eastern District of California, the judicial district in which  
25 the claim arose, pursuant to 28 United States Code section 1391, subdivision b.

26 At all times relevant herein, the persons and entities to which this claim is  
27 being submitted against, and each of them, were duly appointed, qualified and  
28 acting Employees of the United States Government and at all times each defendant  
was acting in the course and scope of such employment and under color of law.

#### 29 **Claims**

30 On June 20, 2008, Correctional Officer Rivera was fatally stabbed while on  
31 duty at USP Atwater. The assailants, Jose Cabrera Sablan and James Ninete Leon  
32 Guerrero ("the assailants"), were prisoners at USP Atwater, serving life terms.

33 The persons and entities to which this claim is being submitted against, and  
34 each of them, were responsible for, and participated in, the creation, development,  
35 promotion, encouragement and advancement of the dangerous conditions alleged  
36 in this complaint including, without limitation, the assignment of the assailants to  
37

1 a lower level of custody than warranted by their violent history and known violent  
2 propensities. At all relevant times the persons and entities to which this claim is  
3 being submitted against, and each of them acted with deliberate indifference to the  
4 known and obvious dangers presented by the assailants by subjecting decedent  
5 Corrections Officer Rivera to those dangerous conditions, resulting in his tragic  
6 and unnecessary death.

7 The persons and entities to which this claim is being submitted against, and  
8 each of them, participated in, or were responsible for, the classification,  
9 placement, incarceration and over-all handling of the assailants while they were  
10 incarcerated at USP Atwater.

11 The persons and entities to which this claim is being submitted against, and  
12 each of them, were specifically aware that the assailants were likely to assault and  
13 kill decedent Correctional Officer Rivera, other correctional staff and/or other  
14 inmates.

15 The persons and entities to which this claim is being submitted against, and  
16 each of them, were specifically aware of the dangers posed by the assailants as  
17 they were and are extremely dangerous.

18 The persons and entities to which this claim is being submitted against, and  
19 each of them, had a deep and unequivocal appreciation of the extreme violent  
20 propensities and dangerous mental instability of the assailants which posed a  
21 direct and appreciable danger to themselves, other inmates, correctional officers,  
22 including Correctional Officer Rivera, and staff.

23 On or about June 20, 2008, the persons and entities to which this claim is  
24 being submitted against, and each of them were aware of the assailants'  
25 dangerousness and the persons and entities to which this claim is being submitted  
26 against, and each of them were aware of the dangerous condition they had created  
27 in the manner in which they allocated the assailants' housing assignments and the  
28 manner in which they classified and placed the assailants.

The persons and entities to which this claim is being submitted against, and  
each of them, willingly and knowingly participated in the creation of the  
dangerous conditions that resulted in the death of Correctional Officer Jose  
Rivera. The persons and entities to which this claim is being submitted against,  
and each of them conduct was outrageous, despicable and malicious and shocks  
the conscience. Correctional Officer Rivera was knowingly, repeatedly and  
wrongfully subjected to the dangerous and violent propensities of the assailants  
and yet the persons and entities to which this claim is being submitted against, and  
each of them, acted with deliberate indifference in failing and refusing to properly  
classify, place, incarcerate and over-all handled the assailants and thereby protect  
Correctional Officer Rivera.

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1 The persons and entities to which this claim is being submitted against, and  
2 each of them, acted with deliberate indifference to the rights and safety of  
3 Correctional Officer Rivera in assigning the assailants to an inappropriate housing  
4 classification in light of the assailants' known history of violence and in violation  
5 of the policies and procedures designed to protect the safety and security of  
6 correctional officers, including Correctional Officer Rivera, thereby creating a  
7 dangerous condition which resulted in the death of Correctional Officer Rivera.

8  
9 As a result of the deliberate indifference of the persons and entities to which  
10 this claim is being submitted against, and each of them, in the creation and  
11 maintenance of a dangerous condition, Correctional Officer Rivera was killed in  
12 the line of duty on June 20, 2008.

13 The conduct of the persons and entities to which this claim is being  
14 submitted against, and each of them, was motivated by evil motive or intent, or  
15 involved reckless or callous indifference to the federally protected rights of  
16 Correctional Officer Rivera. The conduct of the persons and entities to which this  
17 claim is being submitted against, and each of them exhibited oppression, malice,  
18 gross negligence, willful or wanton misconduct or reckless disregard for the civil  
19 rights of Correctional Officer Rivera.

20 **PERSONAL INJURY/WRONGFUL DEATH**

21 Numerous physical injuries (stab wounds, abrasions, etc.), death, emotional  
22 damage, pain and suffering, and deprivation of constitutional rights. Claimants  
23 have suffered irreparable harm.

24 **WITNESSES**

- 25 1. **Harley Lappin**
- 26 2. **Robert McFadden**
- 27 3. **Dennis Smith**
- 28 4. **USP Atwater SIS Technician Ziragosa**
1. **Marie Orozco**
2. **Jesse Estrada**
3. **Various employees of USP Atwater - identities are currently unknown**
4. **Various inmates (USP Atwater and elsewhere) - identities are currently unknown**
5. **Various employees of Federal Bureau of Prisons - identities are currently unknown**

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1 **AMOUNT OF CLAIM (PROPERTY DAMAGE/PERSONAL**  
2 **INJURY/WRONGFUL DEATH/ETC...)**

3 **\$100,000,000.00 - One Hundred Million Dollars**

4 **INSURANCE COVERAGE**

5 **NONE**

7  
8 Respectfully submitted,

9  
10 Dated: June 8, 2009

**LAW OFFICES OF MARK PEACOCK**

11  
12  
13  
14 By: 

**MARK J. PEACOCK**  
**Attorney for Claimants**  
**(and having express authority to**  
**act for the Claimants)**



1 (Rivera) Federal Tort Claim

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am employed in the County of Orange, State of California. I am over the age  
4 of 18 and not a party to the within action; my business address is 5160 Campus Drive  
5 Newport Beach, California 92660.

6 On, **June 8, 2009**, I served the foregoing documents described as:  
7 **FEDERAL TORT CLAIM** on the interested parties in this action by placing a true  
8 copy thereof enclosed in a sealed envelope addressed as follows:

9 United States Federal Bureau of Prisons  
10 Central Office  
11 320 First Street, NW  
12 Washington, DC 20534  
13 Fax: 202-514-6620

14 United States Department of Justice  
15 950 Pennsylvania Avenue, NW  
16 Washington, DC 20530-0001

17 Civil Rights & Civil Liberties Complaints  
18 Office of the Inspector General  
19 U.S. Department of Justice  
20 950 Pennsylvania Avenue, N.W.  
21 Room 4706  
22 Washington, D.C. 20530  
23 Fax: 202-616-9898

- 24  (BY MAIL) I caused such envelope with postage thereon fully prepaid  
25 to be placed in the United States mail at Newport Beach, California.  
26  (BY PERSONAL SERVICE) I caused such envelope to be delivered by  
27 hand to the offices of the addressee.  
28  (VIA TELECOPY) I caused the above-mentioned document(s) to be  
telecopied to the parties named on the attached list.  
 (VIA EMAIL) I caused the above-mentioned document(s) to be emailed  
telecopied to the parties named on the attached list.  
 (BY FEDERAL EXPRESS) I caused such envelope to be delivered via  
Federal Express.

I caused the above-referenced documents to be sent via electronic mail  
to the parties named above.

Executed on **June 8, 2009**, at Newport Beach, California.

29  (STATE) I declare under penalty of perjury under the laws of  
30 the State of California that the above is true and  
31 correct.

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X (FEDERAL)

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

KELLY ATHERTON

  
Signature