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Young Widower Raising Small Children Hopes for INS Reprieve

By Susan McRae
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If Joe Fernandez does get a second chance, it will come too late to help his wife, who died of cancer while he was held without bail in an immigration jail, or their young son, who battled health problems alone in foster care.

But it could go far toward helping him rebuild a life that has been dogged by wrong turns, bad luck and tragedy.

Alternatively, authorities could send him back to El Salvador, a country the 45-year-old Fernandez left as a child, where he knows no one and would be unable to care for his two sons, now 12 and 15.

At a hearing last week, U.S. District Judge Christine Snyder delivered the lightest sentence possible under federal guidelines on criminal charges stemming from Fernandez's illegal re-entry into the United States. The terms effectively would allow Fernandez to go free, provided he is able to clear his immigra-

tion record.

In issuing her decision, Snyder cited "extraordinary family circumstances" and "cultural assimilation."

Fernandez's 4-inch-thick court file documents his life in the United States, from the time his immigrant mother sent for him when he was 6, through public schooling, his first communion, summers at the beach and his 1984 marriage to Whittier-born Catherine Bartholomew.

After thanking the judge, the burly Fernandez, clad in immigration-issue, navy blue prison garb, directed words to his children, the youngest in Boy Scout attire, his teary-eyed mother, an aunt and a handful of friends.

"Most of all, I want to apologize to my family for the trouble I've caused," a repentant Fernandez said, standing at the courtroom podium beside his lawyer, federal Deputy Public Defender Michael J. Proctor. "All I want is to get

See Page 10—WIDOWER



WIDOWED FATHER — "All I want is to get my life back together," Jose Antonio Fernandez, pictured at left with his two children — Jonathan Anthony Fernandez, 10, left, and Christopher Lauren Fernandez, 13, right — said at a hearing last week as he awaited word on his immigration status.

Courtesy of Jose Antonio Fernandez

Widower Appeals to INS

Continued from Page 1

my life back together."

Fernandez traces his troubles to the early 1990s.

That's when a doctor prescribed pain medication to ease a severe job-related back injury. He became addicted to the drugs and subsequently began using heroin. During that time, he committed several petty crimes. In 1994, he was convicted of second-degree robbery and sentenced to six years in prison.

Fernandez decided to plead guilty, even though the judge told him a plea could result in deportation. He said his attorney advised him that, because he had held a green card for 35 years, he could apply for a waiver or pardon to the deportation order.

But, at the end of 1996, when he was about to be paroled, Fernandez received a double whammy.

The Immigration and Naturalization Service served him with deportation papers, and his wife told him she had breast cancer that had metastasized to her brain.

Fernandez implored an immigration judge not to deport him, citing family hardship. But the judge said a change in the law under the 1996 Illegal Immigration Reform and Immigrant Responsibility Act made Fernandez no longer eligible for relief.

With little hope, Fernandez drafted an appeal. At the same time, he requested bail, citing special and compelling circumstances. The immigration judge told him he could not grant bail while the appeal was pending.

Meanwhile, Fernandez's wife's condition worsened.

She was having more and more difficulty caring for their children, especially their younger son, who must take daily medication for a learning and emotional disorder.

"I felt completely trapped," Fernandez said in a declaration. "There were so many things that I needed to do to help my wife and children. But I couldn't do any of those things because I was stuck in an immigration jail."

Fernandez said he learned that the appeal process could take a long time, and time was something he didn't have.

His wife was dying, and his children were about to be without a parent. He had to get out of jail one way or the other. So he withdrew his appeal, hoping to get out immediately, even if it meant being sent to El Salvador.

A week later, his wife died.

Still in custody, Fernandez asked for bail so he could bury his wife and make arrangements for his children's care.

Again, the INS refused his request.

Fernandez spent nearly two more months in custody before the INS acted on the deportation order. His anger and frustration are documented in a flurry of weekly letters, begging to be released and deported.

"What's a guy to do — go on a god-damned food strike to get answers?" Fernandez wrote in a July 1, 1997, letter to the INS.

"I've sent so many letters it's ludicrous. The time it takes the INS employees to do anything is totally depressing. I'm going crazy here. You people would not let me go to my wife's funeral and are now taking your sweet time in deporting me," he wrote.

Finally, in mid-July, 1997, authorities sent Fernandez to El Salvador.

While he was there, friends in the United States cared for his two sons. But his younger son was becoming difficult to handle, and they finally put him in a group foster home.

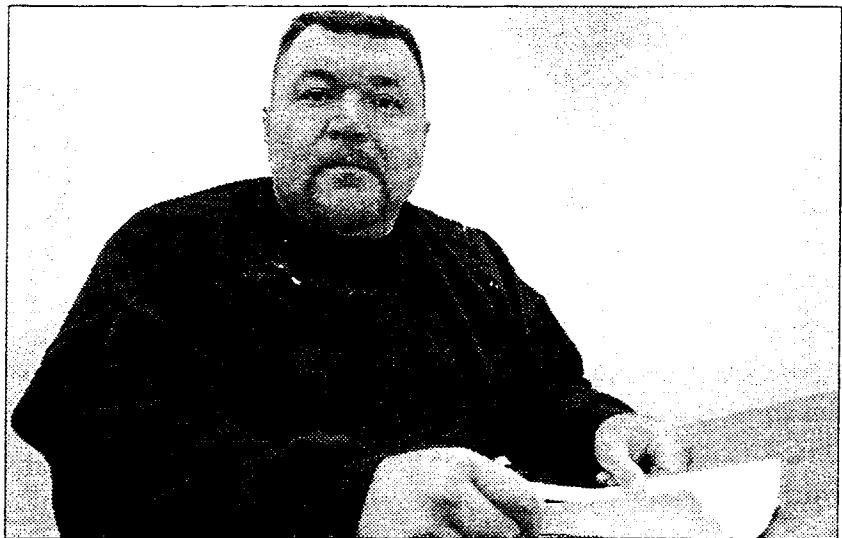
When Fernandez learned this, he returned, entering the country illegally at El Centro.

He retrieved his son from the home and signed a contract with the Department of Children's and Family Services to attend drug, alcohol and parenting classes and participate in joint parent-child counseling.

After rescuing his younger son, he picked up his older boy, moved in with his mother and landed a job, paying more than \$2,000 a month, selling tools and office supplies. In time, he even was able to buy a house for the family in the north San Fernando Valley, all while living in this country illegally.

But he may have pushed his luck too far when he sued his former employer over his work-related back injury.

On Nov. 2, 1998, days before his suit was to be heard, four Los Angeles police offi-



ROBERT LEVINS / Daily Journal

COMPASSION — INS inmate Jose Antonio Fernandez, above, attended a hearing last week at which U.S. District Judge Christine Snyder delivered the lightest sentence possible, saying, "I expect you to be the father you can be ... and I want to tell you this court is here, and if for any reason you want to come in and talk about how your life is going, I am here."

cers came to Fernandez's workplace and arrested him for illegal re-entry and failure to report to his parole officer on his previous conviction.

Fernandez believes the police knew about him because, his civil attorney told him, someone from his old company had notified authorities about his illegal status in an attempt to lower the value of his claim.

He eventually settled for \$15,000.

Fernandez spent six months in state prison for the parole violation while his mother cared for his children. Afterward, authorities transferred him to federal custody, where he was charged with re-entering the country illegally.

That's when federal Deputy Public Defender Proctor entered the case and arranged for bail. Instead of releasing him, however, authorities simply transferred Fernandez to the immigration jail at Terminal Island, where he has been ever since, awaiting the outcome of his federal case.

In June, Snyder agreed to accept a plea to a lesser charge than illegal re-entry, an aggravated felony that could have landed him in federal prison for about six years. Snyder also has taken under consideration a defense motion to dismiss the illegal re-entry charges on grounds that Fernandez

never should have been deported in the first place.

Last week, Snyder, clearly moved by Fernandez's situation, sentenced him on the lesser charges to a month in prison with credit for time served. She also ordered five months of electronic home monitoring and three years of supervised probation.

In issuing her decision, Snyder told Fernandez, "I expect you to be the father you can be ... and I want to tell you this court is here, and if for any reason you want to come in and talk about how your life is going, I am here."

Though Fernandez is still in INS custody, an immigration judge in El Centro has issued a stay on his deportation while he reviews Proctor's motion to reopen the case "to correct a gross miscarriage of justice" and to reinstate his green card.

Proctor bases his argument in part on a section of the immigration act that states Fernandez should have been given discretionary relief.

"The United States is Joe Fernandez's home," Proctor said. "It is also the home of his two U.S. citizen children. Nothing but harm would come from keeping Joe Fernandez out of this country."