

Man Exonerated Of Non-existent Sexual Assault Can Sue Lawyer For Legal Malpractice

U.S. District Judge Jerome Simandle is allowing a legal malpractice lawsuit [to go to trial](#) that was filed by Carlos Efrain Lopez-Siguenza against the lawyer who represented him at the time he was convicted in 2004 of a sexual assault that didn't happen.

Carlos Lopez-Siguenza was an El Salvadorian national living as a Legal Permanent Resident in Northfield, New Jersey in the early 2000s. Northfield is in south New Jersey a few miles west of Atlantic City.

On January 23, 2003 a complaint was filed with the police that 21-year-old Lopez Siguenza had sexual intercourse multiple times in 2002 with 15-year-old Melissa Aguilar Cruz in Atlantic City. Cruz was a native of Honduras. Sixteen is the legal age of sexual consent in New Jersey.

Lopez-Siguenza was arrested in March 2003 and indicted for two counts of second-degree aggravated sexual assault, two counts of fourth-degree child abuse, and two counts of third-degree endangering child welfare. There was no allegation that Cruz was not a willing partner -- just that she was under 16.

Lopez-Siguenza hired an attorney. He did not deny having sex with Cruz, but he insisted to his lawyer that she was over 16. To resolve the issue of Cruz' age, [his lawyer requested](#) that the prosecution provide a "certified and/or notarized copy of the alleged victim's birth certificate."

Assistant Prosecutor Janet Gravitz turned over a purported Honduran birth certificate handwritten in Spanish that was neither notarized nor certified, for Melissa Gabriela Aguilar Guerrero with a birth date of March 3, 1987.

Lopez-Siguenza's lawyer accepted the purported birth certificate at face value and did not investigate its authenticity -- even though there were red flags that it was handwritten and wasn't certified or notarized. Instead his lawyer told him that he had no chance to win a trial. Faced with a long jail sentence if convicted of all the charges after a trial, Lopez-Siguenza pled guilty on March 12, 2004 to one count of sexual assault in exchange for the prosecution dropping his aggravated sexual assault, endangering child welfare, and child abuse charges.

Carlos Lopez-Siguenza was sentenced to three years in prison. He was released after serving a more than a year in state prison, and he was immediately taken into federal custody for deportation since his status as a Legal Permanent Resident was revoked due to his felony sexual assault conviction. On April 22, 2005 he was deported to his native El Salvador.

On June 30, 2011 Lopez-Siguenza was arrested in Utah for being in the country illegally. His mother hired an immigration lawyer in New Jersey, Jorge F. Coombs, to investigate his immigration case and his 2004 conviction.



Jorge F. Coombs
(ylslegal.com)

Coombs had seen Honduran birth certificates before, so when he saw Cruz' purported birth certificate [he knew](#) "there was something fishy with it," because the "number was handwritten." Coombs contacted Honduras' consul general requesting information about the purported birth certificate.

On Aug. 2, 2011 Coombs received a letter from consul general that the name "Melissa Gabriela Aguilar Guerrero" did not exist in the Honduran National Register, and that the national identification number on the alleged birth certificate was not in the proper format. Furthermore, the consulate's attorney found a Honduran birth certificate for a "Melissa Gabriela Andino Munoz" born on March 3, 1984, and who was registered as living in southern New Jersey.

Coombs interviewed an ex-boyfriend of Cruz who told him that her age was well known in the Hispanic community. So Lopez-Siguenza's accuser was not 15 in 2002 as she claimed to the police, but she was 18 and two years older than New Jersey's 16 age of consent to have sexual relations.

On November 23, 2011 Lopez-Siguenza was charged in federal court in Utah with one count of being in the country illegally, with the U.S. Attorney's Office filing a notice it would seek a sentencing enhancement because he had violated his deportation order. He was ordered detained in custody pending trial.

Three weeks later, on December 11, 2011, Lopez-Siguenza filed a



Atlantic County Assistant Prosecutor Janet Gravitz (9-8-2010, Press of Atlantic City, Danny Drake)

post-conviction petition to withdraw his guilty plea and vacate his conviction, based on the new evidence that he did not knowingly plead guilty because Cruz lied to the police about her age and provided the fabricated evidence of a fraudulent birth certificate that the Atlantic County District Attorney's Office relied on to prosecute him, and which the DA's Office used to induce him to plead guilty.

During Lopez-Siguenza's plea hearing in federal court on January 23, 2012, his Utah federal public defender requested a [continuance based on](#) "complications arising from [Lopez-Siguenza's] New Jersey case." The U.S. Attorney's Office didn't oppose the request, which the judge granted.

The Atlantic County DA's Office opposed Lopez-Siguenza's petition, and presented the evidence of a second birth certificate provided by the Cruz' family -- but which also showed her birth date as March 3, 1987.

On August 3, 2012 an Atlantic County judge granted Lopez-Siguenza's petition and vacated his conviction. The judge's [ruling was based](#) on the "finding that Ms. Cruz and/or her family had perpetrated a fraud on the Prosecutor's Office, the Court, and Plaintiff [Lopez-Siguenza]."

The Atlantic County DA's Office declined to retry Lopez-Siguenza, stating it didn't want to put Cruz and her family through the stress of a trial. The DA's Office a motion to dismiss Lopez-Siguenza's indictment, which was granted on Aug. 17, 2012.

On November 2, 2012 the U.S. Attorney's Office in Utah filed a motion to dismiss Lopez-Siguenza's federal charges. The motion stated in part:

1. A conviction in State of Court of New Jersey - Atlantic County, case #03001088/001 was recently vacated against the Defendant on substantive grounds. This conviction formed the basis for the Defendant's original deportation and for the sentencing enhancement applied in the current prosecution. Had the Defendant never been convicted of the crime, it is unlikely he would have been deported or faced prosecution in this district for re-entry.

On November 7, 2012 the government's motion was granted, and Lopez-Siguenza was released after more than 16 months in federal custody following his arrest in June 2011.

Lopez-Siguenza filed a federal civil rights

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Justice Denied's [mobile device homepage](#) is now online. The mobile friendly homepage has the narrow width recommended for smartphones and other mobile devices.

Justice Denied's homepage detects when it is accessed by a mobile device, and the user is automatically redirected to the mobile homepage. There is also a link to the mobile homepage in the upper right-hand corner of [Justice Denied's homepage](#).

The mobile friendly homepage was created because half of all visitors to Justice Denied's website now use a hand-held device. The following shows the growth of hand-held devices used to access [justicedenied.org](#).

Year	Desktop	Mobile	Tablet
2008	100%		
2009	99.7%	0.3%	
2010	97%	3%	
2011	92%	8%	
2012	82%	13%	5%
2013	72%	19%	9%
2014	61%	28%	11%
2015	51%	37%	12%
2016	50%	39%	11% (Jan. - June)

Justice Denied's mobile device homepage is www.m.justicedenied.org.



Four Somalis Acquitted By Finnish Appeals Court Of Supporting Terrorism

The Helsinki Court of Appeals [has acquitted](#) four people convicted in Finland of supporting terrorism.

Four Somali immigrants to Finland, three men and one woman, were tried in 2014 in Helsinki of financing terrorism by raising 3,200 euros (\$3,900) for the al-Shabab group in Somalia between 2008-2011. Al-Shabab is an al-Qaida allied group, and they were charged based on the prosecution's contention the money was to be used for committing terror crimes.

Their defense was they raised and sent the money to Somalia for charitable purposes.

One of the male defendants was also prosecuted for supporting terrorism by recruiting his brother to join al-Shabab.

The prosecution of the four was major news in Finland, because it was the country's first terror-related case.

After their convictions of all charges, the four appealed their convictions.

On March 23, 2016 the Helsinki Court of Appeals [reversed the convictions](#) of the four defendants, and ordered their acquittal based on insufficient evidence they had criminal intent. The Court ruled the four



Helsinki Courts Building, Helsinki, Finland

defendants could not have known for certain the money they raised would be used for committing terror crimes, and that their claim was credible that they believed the

money was to be used for charitable causes. The Court also acquitted the defendant who was also convicted of recruiting his brother for al-Shabab, ruling that there was no clear evidence he had done so.

Sources:

[Finnish court acquits 4 defendants of terror-linked crimes](#), *Richmond Times-Dispatch*, March 23, 2016



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lawsuit on March 28, 2013 in the U.S. District Court in Camden, New Jersey that asserted claims related to his 2004 conviction. Named as defendants were: the Atlantic City Police Department and several officials; the Atlantic County Prosecutor's Office; Assistant Prosecutor Janet Gravitz; and Lopez-Siguenza's criminal lawyer Mark E. Roddy. Lopez-Siguenza accused Roddy of legal malpractice, breach of fiduciary duty, and breach of contract.

After the Atlantic City PD and officials were dismissed as defendants, on March 31, 2014 U.S. District Judge Jerome Simandle dismissed Lopez-Siguenza's claims against the Atlantic City Prosecutors Office and Asst. Prosecutor Gravitz on the basis they were entitled to immunity from civil liability. On September 30, 2014 the judge dismissed Lopez-Siguenza's breach of fiduciary duty and breach of contract claims against Roddy.

However, the judge allowed Lopez-Siguenza to amend his legal malpractice claim.

On May 27, 2016 Judge Simandle allowed Lopez-Siguenza's lawsuit to go forward, by denying Roddy's motion for summary judgment and to seal documents he filed that identified Cruz as Lopez-Siguenza's accuser. [The judge's order](#) noted that Roddy does not speak Spanish, and, "He never attempted to interview persons familiar with Ms. Cruz's age, nor did he ask an investigator to do so, nor did he take any steps to question the foreign document. The suspicious signs included the facts that the name Cruz is nowhere mentioned, no second surname is listed for the father (contrary to Hispanic naming conventions), and the information is handwritten rather than typed. (Parentheses in original)." Judge Simandle refused to seal Roddy's supporting exhibits to prevent disclosure of Cruz's identity, finding that she was not under the age of 18 when she had sex with Lopez-Siguenza.

Roddy can either attempt to settle the lawsuit or he can proceed to trial and try to convince a jury that he didn't commit malpractice by failing to investigate what was Cruz' fake birth certificate, and relying on it to recommend that Lopez-Siguenza pled guilty to a crime that never happened.

Lopez-Siguenza is now married and living in Utah.

Sources:

[Lopez-Siguenza v. Roddy, Esquire et al.](#), Civil No. 13-2005 (JBS/JS) (USDC NJ) (Order of 5-27-2016 denying summary judgment for defendant Roddy on the legal malpractice claim.)

[Wrongly Convicted Man Has Malpractice Claim](#), *Courthouse News Service*, May 31, 2016

[Wrongly Convicted Man May Sue His Lawyer Yet](#), *Courthouse News Service*, Oct. 3, 2014

[Man cleared when child-sex 'victim' proved to be 18 wins right to sue lawyer](#), *NJ.com*, October 07, 2014

[USA v. Lopez-Siguenza](#), No. 2:11-cr-00956 (USDC UT) (Information filed 11-23-2011) (Docket through 1-23-12)

