



June 10, 2020

VIA ELECTRONIC MAIL

The Privacy Office
U.S. Department of Homeland Security
Headquarters & Office of Civil Rights & Civil
Liberties
245 Murray Lane SW
STOP-0655
Washington, DC 20528-0655
foia@hq.dhs.gov

Catrina Pavlik-Keenan
Freedom of Information Act Office
U.S. Immigration and Customs Enforcement
500 12th Street SW, Stop 5009
Washington, DC 20536-5009
ice-foia@dhs.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Homeland Security (DHS), 6 C.F.R. Part 5, American Oversight makes the following request for records.

The continued deaths of people held in the custody of DHS components remain an issue of significant public concern. The ongoing public health crisis caused by the coronavirus exacerbates existing concerns about the treatment of detainees and the conditions within DHS facilities, given the limited access to healthcare, lack of essential supplies, and close confinement.¹ Furthermore, as fuller accounts of past deaths in custody come to light, new information has repeatedly revealed discrepancies between statements made to the public and internal documentation.²

To the extent that the public has been informed of the context for deaths in DHS custody, there are few available internal reviews detailing whether responsible agency officials adhered to prescribed

¹ Abigail Hauslohner, et al., *Coronavirus Could Pose Serious Concern in ICE Jails, Immigration Courts*, WASH. POST (Mar. 12, 2020, 6:38 PM), https://www.washingtonpost.com/immigration/coronavirus-immigration-jails/2020/03/12/44b5e56a-646a-11ea-845d-e35b0234b136_story.html.

² Ltr. from Rep. Bennie Thompson, Chair Comm. on Homeland Sec'y, to Joseph V. Cuffari, Inspector General, DHS, Mar. 26, 2020, <https://homeland.house.gov/imo/media/doc/2020-03-26%20DHS%20OIG.pdf>; Robert Moore et al., *Inside the Cell Where a Sick 16-Year-Old Boy Died in Border Patrol Care*, PROPUBLICA (Dec. 5, 2019, 1:30 PM), <https://www.propublica.org/article/inside-the-cell-where-a-sick-16-year-old-boy-died-in-border-patrol-care>.



procedures in the events leading to each detainee's death. It is in the public interest, however, to understand how DHS has investigated deaths occurring in its custody.

American Oversight seeks records with the potential to shed light on the treatment of vulnerable detainees and whether or to what extent DHS officials are upholding the standards of care prescribed by federal law and agency guidance.

Requested Records

American Oversight requests that DHS and Immigration & Customs Enforcement (ICE) produce the following within twenty business days:

Copies of Investigation Report Forms or equivalent postmortem compliance analyses completed by contractors operating ICE facilities for each of the following individuals:

- a. Gourgen Mirimanian
- b. Ronal Francisco Romero
- c. Huy Chi Tran
- d. Efraín Romero de la Rosa
- e. Augustina Ramirez-Arreola
- f. Wilfredo Padron
- g. Guerman Volkov
- h. Abel Reyes-Clemente
- i. Simratpal Singh
- j. Yimi Alexis Balderramos-Torres
- k. Pedro Arriago-Santoya
- l. Roberto Rodriguez-Espinoza
- m. Nebane Abienwi
- n. Roylan Hernandez-Diaz
- o. Anthony Oluseye Akinyemi
- p. Samuelino Mavinga
- q. Ben James Owen
- r. Alberto Hernandez-Fundora
- s. David Hernandez-Colula
- t. Maria Celeste Ochoa-Yoc De Ramirez
- u. Orlan Ariel Carcamo-Navarro
- v. Ramiro Hernandez-Ibarra
- w. Carlos Ernesto Escobar-Mejia
- x. Óscar López Acosta
- y. Choung Woong Ahn
- z. Santiago Baten-Oxlaj

Please provide all responsive records from April 1, 2018, through the date of the search.

An example of an investigation report from a contractor is attached as Exhibit A to aid your search.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government."³ This request relates directly to the work of DHS and its components, including some of the most important responsibilities of the Department—the safety and care of the individuals it has detained. This request seeks records that would shed light on how DHS is treating people it has detained, and how the Department responds when the life and safety of detainees is threatened. These are matters of significant public and congressional concern, and the requested records will provide the public with information necessary to hold DHS accountable for its actions and policies. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.⁴ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁵

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁶ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the

³ 5 U.S.C. § 552(a)(4)(A)(iii).

⁴ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁵ American Oversight currently has approximately 15,400 page likes on Facebook and 102,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited June 1, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 1, 2020).

⁶ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

Department's process for issuing such waivers;⁷ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁸ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;⁹ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹⁰ and posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.¹¹

Accordingly, American Oversight qualifies for a fee waiver.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.

⁷ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

⁸ *See generally Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

⁹ *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

¹⁰ *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

¹¹ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.¹² It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.¹³
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,¹⁴ and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records

¹² See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

¹³ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁴ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Dan McGrath at foia@americanoversight.org or 202.897.4213. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal line extending to the left.

Austin R. Evers
Executive Director
American Oversight

EXHIBIT A

THIS DOCUMENT IS CONFIDENTIAL

All or part of this report may be subject to the Attorney/Client Privilege and/or the Work Product Doctrine.

**CORECIVIC GENERAL COUNSEL OFFICE OF INVESTIGATIONS
INVESTIGATION REPORT FORM**

NAME OF SUBJECT FACILITY:	Cibola
FSC CASE #:	N/A
FACILITY CASE #:	(b)(7)(E)
PRIMARY ALLEGATION:	Death of a Detainee/Natural Causes/Illness

To: (b)(6); (b)(7)(C)

From:

(b)(6); (b)(7)(C)

Date: May 29, 2018

EXECUTIVE SUMMARY:

On May 25, 2018 (b)(6); (b)(7)(C) assigned me to check policy compliance of the intake procedures and medical transport of Detainee Jeffery Hernandez #206418141.

INVESTIGATION:

During the investigation I checked the intake paperwork, OMS, and reviewed the Milestone camera footage to determine if all our policies and procedures were followed.

Detainee Hernandez arrived at the facility on May 16, 2018 at 2043 hours via Transcor transport. During the investigation I interviewed the intake staff both (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) stated they called medical and made phone notification of the transport at about 2130 hours.

The booking process was continuous for detainee Hernandez and was completed at 0112 May 17, 2018. A nurse was notified and was in medical to get the paperwork for the transport at 2241 hours May 16, 2018.

At 0221 hours a group of the detainees was moved from intake to medical and were secured in the medical waiting area.

THIS DOCUMENT IS CONFIDENTIAL

All or part of this report may be subject to the Attorney/Client Privilege and/or the Work Product Doctrine.

At 0600 that group of detainees was served breakfast in the medical waiting room.

At 0726 detainee Hernandez was called out of the waiting room by a nurse to begin his medical intake process.

At 1100 hours detainee Hernandez was sent out on medical transport via facility vehicle.

On May 25, 2018 SIS (b)(6); (b)(7)(C) went to the morgue in Albuquerque where she took photographs and fingerprints from detainee Jeffery Hernandez. The fingerprints were taken at 1030 hours.

At 0908 hours Records Manager (b)(6); completed an inventory of detainee Hernandez property in an effort to find next of kin information. One phone number was found and given to ICE King.

CONCLUSION SUMMARY:

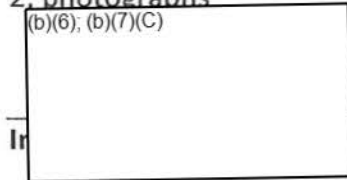
Based on this review of the intake procedures it appears that our policies and procedures were followed correctly. The detainees were moved from intake to medical at 0221 hours and detainee Hernandez was seen at 0726 hours.

EXHIBITS:

1; (2) fingerprint cards, one for each hand.

2: photographs

(b)(6); (b)(7)(C)



Ir

MAY 29, 2018
Date