



February 2, 2023

VIA EMAIL

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

Freedom of Information Act Office
U.S. Immigration & 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 your agency, American Oversight makes the following request for records.

The treatment and care of those held in immigration detention remain urgently important to the public.¹ Deaths in the custody of federal agencies² and conditions within detention facilities³ continue to generate public concern regarding the safety of vulnerable individuals.

¹ Eileen Sullivan, *A.C.L.U. Says Immigration Detention Facility Should Be Shut Down*, N.Y. Times, Sept. 22, 2022, <https://www.nytimes.com/2022/09/22/us/politics/aclu-ice-immigration-detention.html>.

² Marissa Armas, *Melvin Ariel Calero-Mendoza, Nicaraguan Father of 2, Dies in ICE Custody at Aurora Facility*, CBS Colo. (updated Oct. 20, 2022, 12:06 PM), <https://www.cbsnews.com/colorado/news/melvin-ariel-calero-mendoza-nicaraguan-father-dies-ice-custody-aurora-facility/>.

³ Andrea Castillo, *California Fines Detention Center Operator \$100,000 Over Immigrants' Working Conditions*, L.A. Times (Jan. 30, 2023, 11:45 AM), <https://www.latimes.com/politics/story/2023-01-30/detained-immigrants-alleged-unsafe-working-conditions-at-california-facility-fine>.



American Oversight seeks records with the potential to shed light on the conditions faced by individuals held in immigration detention, including those who have died in federal custody.

Requested Records

American Oversight requests that the Department of Homeland Security (DHS) produce the following records within twenty business days:

A complete copy of any ICE Health Service Corps (IHSC) Mortality Review Report of Findings for the following individuals who died in ICE custody: (a) Kuan Hui Lee, and (b) Felipe Montes.⁴

An example of an IHSC Mortality Review Report of Findings is included as Exhibit A to aid in your search.

Please provide all responsive records from August 5, 2020, through the date the search is conducted.

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."⁵ The public has a significant interest in the treatment and care of individuals held in immigration detention. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including the extent to which conditions within ICE facilities may have contributed to the deaths of these individuals. 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.

⁴ See *Detainee Death Reporting*, ICE, available at <https://www.ice.gov/detain/detainee-death-reporting>.

⁵ 5 U.S.C. § 552(a)(4)(A)(iii).

This request is primarily and fundamentally for non-commercial purposes.⁶ 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.⁷

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website.⁸ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the Trump Administration's contacts with Ukraine and analyses of those contacts;⁹ posting records and editorial content about the federal government's response to the Coronavirus pandemic;¹⁰ 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;¹¹ 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 Department's process for issuing such

⁶ *See id.*

⁷ American Oversight currently has approximately 16,000 followers on Facebook and 113,000 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Feb. 2, 2023); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Feb. 2, 2023).

⁸ *See generally* *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁹ *Trump Administration's Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

¹⁰ *See generally* *The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; *see, e.g., CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

¹¹ *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>.

waivers;¹² and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹³

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.
- In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- 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.
- 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

¹² *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>.

¹³ See generally *Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; see, e.g., *New Information on Pompeo's 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

Federal Records Act and FOIA.¹⁴ 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.¹⁵

- 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,¹⁶ 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.

¹⁴ 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).

¹⁵ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁶ 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>.

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 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, please contact Taylor Stoneman at foia@americanoversight.org or (202) 848-1319. 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,

/s/ Taylor Stoneman
Taylor Stoneman
on behalf of
American Oversight

EXHIBIT A

PREDECISIONAL/DELIBERATIVE PROCESS – FOR INTERNAL DISCUSSION ONLY / NOT FOR
DISTRIBUTION

Office of Enforcement and Removal Operations
ICE Health Service Corps

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



U.S. Immigration
and Customs
Enforcement

March 27, 2019

MEMORANDUM FOR:

Stewart D. Smith, DHSc, MPH
Assistant Director
ICE Health Service Corps

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

THROUGH:

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

Deputy Assistant Director of Clinical Services/Medical Director
ICE Health Service Corps

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

Chief of Staff
ICE Health Service Corps

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

FROM:

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

Western Regional Clinical Director
ICE Health Service Corps

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

CDR (b)(6); (b)(7)(C) PA-C
Western Regional Advanced Practice Provider
ICE Health Service Corps

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

CDR (b)(6); (b)(7)(C) RN
Field Medical Coordinator
ICE Health Service Corps

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

CDR (b)(6); (b)(7)(C) RN
Investigator
ICE Health Service Corps

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

SUBJECT:

Mortality Review – Report of Findings
Jeffrey (Roxsana) HERNANDEZ, A206 418 141

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Mortality Review - Jeffry (Roxsana) HERNANDEZ, A206 418 141

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Executive Summary:

On May 9, 2018, U.S. Customs and Border Protection (CBP) apprehended Ms. Jeffry (Roxsana) HERNANDEZ, a 33-year-old Honduran transgender female, at the San Ysidro, California (CA), port of entry. On May 11, 2018, while in CBP custody, a medical doctor (MD) evaluated Ms. HERNANDEZ for untreated human immunodeficiency virus (HIV), headache, and cough. The MD diagnosed Ms. HERNANDEZ with a reported history of HIV with weight loss, cough, headache, tachycardia (rapid heart rate), and rule out sepsis (infection throughout the body). The MD ordered a respiratory mask to be placed on Ms. HERNANDEZ, and to transport her to Scripps Emergency Department (ED) in Chula Vista, CA, to rule out active infection. On this same day, the ED MD evaluated Ms. HERNANDEZ, diagnosed her with bronchitis (inflammation of the airways which can cause cough and fever), prescribed Tylenol (acetaminophen) for fever, Z-Pack (azithromycin, an antibiotic) and albuterol inhaler (opens airways) for bronchitis, and documented Ms. HERNANDEZ was cleared for travel and incarceration.

On May 13, 2018, U.S. Immigration and Customs Enforcement (ICE) assumed custody of Ms. HERNANDEZ and transferred her on May 16, 2018, to Cibola County Correctional Center (CCCC) in Milan, New Mexico (NM), a designated transgender facility.

On May 17, 2018, a CCCC registered nurse (RN) completed Ms. HERNANDEZ's intake screening, documented her weight as 89 pounds, noting a history of untreated HIV, and persistent cough with weight loss over the previous several weeks. The RN identified Ms. HERNANDEZ's heart rate was elevated at 136 (normal is 60 – 100), blood pressure was decreased at 81/61 (normal is 90/60 – 120/80), and she had a fever of 100.8 (normal is 97.8 to 99.1). The RN placed Ms. HERNANDEZ on medical observation pending the MD's evaluation. On this same date, the MD evaluated Ms. HERNANDEZ and referred her to Cibola General Hospital (CGH) ED in Milan, NM, by CCCC vehicle transport. The CGH ED MD diagnosed Ms. HERNANDEZ with septic shock, anemia, dehydration, HIV, lymphadenopathy (enlarged lymph nodes), nodular pulmonary disease, and thrombocytopenia (low platelet levels), and arranged for Ms. HERNANDEZ's transfer to Lovelace Medical Center (LMC) in Albuquerque, NM, by air transport.

At LMC, Ms. HERNANDEZ was admitted as an inpatient and, in addition to the above conditions, she was diagnosed with: acquired immune deficiency syndrome (AIDS), acute respiratory distress syndrome (ARDS), splenomegaly (enlarged spleen), herpes simplex virus (HSV), syphilis, Multicentric Castleman's Disease (a rare disease causing overgrowth of cells in multiple lymph nodes; signs and symptoms are often nonspecific, and are mild in some people, but can be life threatening in others. Symptoms may include enlarged lymph nodes in multiple regions, fever, weight loss, nausea, rash, and/or enlarged liver and spleen), and malnutrition. Ms. HERNANDEZ's condition progressively deteriorated requiring intubation and mechanical ventilation (machine used to assist or replace spontaneous breathing).

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On May 24, 2018, Ms. HERNANDEZ went into cardiac arrest and was successfully resuscitated. Despite treatment efforts, Ms. HERNANDEZ experienced five more cardiac arrest events. On May 25, 2018, Ms. HERNANDEZ was pronounced dead at 3:32 a.m. An autopsy is currently pending with the NM Office of the Medical Investigator (OMI) to determine the manner and cause of death. On June 8, 2018, the NM OMI released a preliminary cause of death as consistent with untreated HIV and without signs of abuse or injury. An addendum will be issued as soon as the information becomes available.

Mortality Finding:

A mortality review committee (MRC) determined that Ms. HERNANDEZ's medical care at CCCC was provided within the safe limits of practice and did not directly or indirectly contribute to her death.

Based on the overall findings of this review, Ms. HERNANDEZ arrived at CCCC in a seriously ill state. The CCCC staff identified her presenting condition and transferred her to a higher level of treatment facility, before her condition deteriorated any further.

Mortality Review Detailed Report:

On May 25, 2018, ICE Health Service Corps (IHSC) received notification of the death of ICE detainee Jeffry (Roxsana) HERNANDEZ, A206 418 141. Ms. HERNANDEZ, a 33-year-old Honduran transgender female, was in ICE custody from May 13 to May 25, 2018, and assigned to CCCC on the date of her death.

The IHSC Assistant Director requested a mortality review to learn from Ms. HERNANDEZ's death by reviewing the care provided and the circumstances leading up to her death. The goal of the mortality review is to determine the appropriateness of clinical care; ascertain whether changes to policies, procedures, or practices are warranted; and identify issues that require further study.

The following report is based on the findings of the MRC, which convened on March 13, 2019. The review was based on the following information: 1) Ms. HERNANDEZ's CCCC medical records, emergency medical services (EMS) and community hospital records; 2) incident and notification reports; 3) ICE ENFORCE Alien Removal Module (EARM) and ICE ENFORCE Alien Detention Module (EADM) database records; 4) Ms. HERNANDEZ's CCCC detention file; 5) Ms. HERNANDEZ's death certificate and autopsy report; 6) an on-site review and staff interviews conducted by fact-finder, CDR (b)(6); (b)(7)(C) at CCCC on June 19, 2018; and 7) applicable CCCC and ICE detention standards.

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ICE detention standards used for this review: ICE Performance-Based National Detention Standards (PBNDS), 2011 (revised December 2016). Below is a summary of health care delivery/program strengths, weaknesses, and recommendations found during this review:

Strengths

During this review, it was clear that CCCC staff are earnest and dedicated professionals. Strengths identified during this investigation were: 1) medical prescreening of new arrivals; 2) adherence to current clinical practice guidelines; 3) policy addressing critical vital signs; 4) medical facility, staffing, detainee population, and mission were all congruent; 5) and, most importantly, CCCC medical staff were receptive to this review process and looked forward to receiving constructive feedback.

Weaknesses

1. Continuity of care.

- The CBP's *Assessment for Transport, Escort, and Detention* form provided to ICE, did not reflect any of Ms. HERNANDEZ's known medical conditions, or the medications prescribed during her visit to Scripps ED on May 11, 2018.
- The medical transfer summaries received by CCCC did not reflect Ms. HERNANDEZ's current medical conditions, or the medications prescribed during her visit to Scripps ED on May 11, 2018.

2. Medical housing.

- CCCC staff placed Ms. HERNANDEZ in medical housing without obtaining a physician's order for admission.

Applicable standards of care for this finding:

- PBNDS 2011: 4.3, Medical Care; section V.F. *Facilities*; (3) *Medical Housing*.
- CCCC Policy: G-03, *Infirmity Care*.
- CCCC Policy: A-13, *Clinical Protocol*.

3. Reporting of abnormal vital signs.

- CCCC staff recorded abnormal vital signs during the intake screening process but did not notify the physician.

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Applicable standards of care for this finding:

- CCCC Policy: A-06, *Critical Vital Signs*.

Recommendations

- Forward these findings to the IHSC Deputy Assistant Director (DAD) of Health Care Compliance (HCC).
- The IHSC DAD of HCC will share these findings through appropriate communication channels to ICE, the CCCC administrator and health authority for review and any action(s) deemed appropriate.
- ICE should consider sharing relevant findings with CBP.

End of report.

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