

July 14, 2021

SENT VIA E-MAIL

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**Re: FOIA Request Related to Release of Hospitalized Detainees
from ICE Custody Prior to Death**

Dear Freedom of Information Officer:

The American Civil Liberties Union (“ACLU”) submits this Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, request for production of records (the “Request”). The ACLU also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). The justification for the fee waiver and expedited processing are set out in detail following the Request.

I. Request for Information

The ACLU seeks any and all records that were prepared, received, transmitted, collected, and/or maintained by Immigration and Customs Enforcement (“ICE”) or the Department of Homeland Security Office of Inspector General (“DHS OIG”) that describe, refer, or relate to the release of hospitalized detainees from custody prior to their death; any records related to



release of individual detainees once hospitalized; and any records related to the death of such detainees after their release from custody, including any communications or investigations. Unless otherwise noted, we request the records specified below from January 1, 2019 to the present.

For purposes of this request, the term “communications” means any transmittal of information from one person or entity to another by any means, including letters, correspondence, notes, memoranda, records, reports, papers, facsimiles, electronic mail (whether to, from, copied or blind copied), electronic mail generated from a hand held personal device including a Blackberry or iPhone, instant messaging, electronic mail generated from business or personal email accounts, internet relay chat, news group, group or collaboration servers, electronic bulletin boards, electronic discussion boards, dictation tapes, video recordings, audio recordings, digital recordings, memoranda, telegrams, telecopies and telexes, teleconference, collaboration servers (including share point servers), web-based or software virtual meetings including Microsoft Teams, Zoom, Web-X and any other meeting software and share point servers, and oral contact such as face-to-face discussions or meetings, telephone conversations, and voice mail messages.

For purposes of this request, the term “documents” has the same scope used in Rule 34(a)(1) of the Federal Rules of Civil Procedure and shall encompass every writing or record of every type and description and every tangible thing that is or has been in the possession, custody, or control of ICE and its employees, to which they have access, or of which they have knowledge, including, but not limited to, newspaper articles, magazine articles, news articles, correspondence, letters, contracts, files, electronic mail, memoranda, stenographic notes, handwritten notes, drafts, studies, publications, books, pamphlets, catalogs, purchase orders, receipts, advertisements, direct mail solicitations, point-of-sale and point-of-purchase materials, notebooks, diaries, models, devices, pictures, photographs, films, audiotapes, videotapes, computer records, voice recordings, maps, reports, surveys, agendas, minutes, data compilations, and statistical compilations, regardless of whether a particular document is privileged or confidential, and regardless of the form of storage (including, but not limited to, paper, microfiche, magnetic tape, magnetic disk (hard disk or floppy disk), CD-ROM, DVD, optical disk, or electronic storage device).

For purposes of this request, “data compilations” has the same scope used in Rule 34(a)(1)(A) of the Federal Rules of Civil Procedure.

For purposes of this request, the term “DHS” means Department of Homeland Security, and any components, subcomponents, offices, or personnel therein.



For purposes of this request, the term “ICE” means Immigration and Customs Enforcement, and any components, subcomponents, offices, or personnel therein.

For purposes of this request, “IHSC” means the U.S. Immigration and Customs Enforcement Health Services Corps.

For purposes of this request, “ICE OPR” means the Immigration and Customs Enforcement Office of Professional Responsibility and any components and offices therein including the Office of Detention Oversight.

For purposes of this request, “DHS OIG” means the Department of Homeland Security Office of Inspector General and any component and offices therein.

For purposes of this request, the term “immigration detention facility” means Service Processing Centers, Contract Detention Facilities, Family Residential Facilities, Intergovernmental Service Agreement (IGSA) Facilities, Dedicated Intergovernmental Service Agreement (DIGSA) Facilities, Intergovernmental Agreement (IGA) Facilities, and any other facilities where individuals may be held in ICE custody for 72 hours or more.

For purposes of this request, “detainee” means any person detained or formerly detained in an immigration detention facility or holding facility.

For purposes of this request, “SEN” means the Significant Event Notification system utilized by ICE.

Specific Records Requested:

1. Any and all documents, without limitation to date, including any communications, investigatory reports, and any and all exhibits, appendices, or attachments thereto, relating to the hospitalization, death, decision to release from custody, or release from custody of the following individuals.

Name	Country of Origin	Approximate Date of Death	ICE Detention Facility Prior to Hospitalization and Death	Location at Death
a. Teka Gulema	Ethiopia	January 18, 2016	Etowah County Detention Center, Alabama	Riverview Medical Center, Gadsden, AL



b. Johana Medina Leon	El Salvador	May 23-June 1, 2019	Otero County Processing Center, New Mexico	Del Sol Medical Center, El Paso, TX
c. Jose Ibarra Bucio	Mexico	March 21, 2019	Adelanto ICE Processing Center, California	Loma Linda University Medical Center, Loma Linda, CA
d. Martin Vargas Arellano	Mexico	March 6, 2021	Adelanto ICE Processing Center, California	St. Jude Medical Center, Fullerton, CA

2. Any and all DHS OIG reports of investigation that are identified in any of the records responsive to Request #1. This includes any and all exhibits, appendices, or attachments to the DHS OIG reports of investigation.
3. Any and all ICE OPR reports of investigation that are identified in any of the records responsive to Request #1. This includes any and all exhibits, appendices, or attachments to the DHS OPR reports of investigation.
4. Any and all documents and communications, including ICE and IHSC directives, policies, procedures, protocols, and trainings, regarding the release of detainees from custody who are hospitalized or transferred from detention for off-site medical care. This includes all versions of the documents that were in effect during the request period, as well as any updates, amendments, and attachments thereto.
5. Any and all documents and communications, including databases, spreadsheets, lists, and other data compilations, that identify detainees who were hospitalized or transferred from detention for off-site medical care, the date of hospitalization, date of discharge from hospital (if any), date of return to detention (if any), date of release from custody (if any), detention facility, and/or medical condition/reason for hospitalization or offsite medical care.
6. Any and all documents, communications, and other records, including spreadsheets, emails, significant incident reports (SIRs), significant event notification reports (SEN), investigatory reports, and associated documentation, regarding detainees who are hospitalized or transferred from detention for off-site medical care and subsequently

released from ICE custody while hospitalized or while receiving off-site medical care.

7. Any and all documents, communications, and other records, including emails, spreadsheets, significant incident reports (SIRs), significant event notification reports (SEN), investigatory reports, and associated documents, regarding the death of detainees who were hospitalized or transferred from detention for off-site medical care, were released from ICE custody, and subsequently died while hospitalized.
8. Any and all documents, communications, and other records, including databases, spreadsheets, lists, and other data compilations, that identify detainees who were hospitalized or transferred from detention for off-site medical care due to COVID-19, and were subsequently released from custody while hospitalized, dates of hospitalization, detention facility, medical condition/reason for hospitalization or treatment, name and location of hospital, date of return to detention (if any), date of release from custody or issuance of order of recognizance (if any), and/or reason for release from custody.
9. Any and all documents, communications, and other records, including ICE and IHSC directives, policies, procedures, protocols, and trainings, regarding the release of detainees from custody who are hospitalized or transferred from detention for off-site medical care, including on orders of recognizance, due to COVID-19 infection,
10. Any and all documents, communications, and other records, including bills, invoices, charges, or payment, related to the hospitalization or off-site medical treatment of detainees who were hospitalized or transferred for off-site medical treatment and were subsequently released from custody while hospitalized.

Please construe this as an ongoing FOIA request, so that any records that come within the possession of the agency prior to your final response to this FOIA Request should also be considered within the Request's scope.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the ACLU requests that responsive electronic records be provided electronically in their native file format, if possible, with all metadata and load files. Alternatively, the ACLU requests that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files. We request that you produce responsive materials in their entirety, including all



attachments, appendices, enclosures, and/or exhibits. However, to the extent that a response to this request would require you to provide multiple copies of identical material, the request is limited so that only one copy of the identical material is requested. We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. Please do not compress images or downsample the resolution, as this interferes with their legibility. To facilitate a speedy response, we ask that records responsive to this request be produced on a rolling basis. The ACLU will accept records and other information that have been redacted pursuant to the Health Insurance and Portability Accountability Act or other statutes or regulations protecting the privacy of individual detainees.



In the event you determine that materials contain information that falls within the statutory exemptions to mandatory disclosure, we request that such information be reviewed for possible discretionary disclosure. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979). We also request that, in accordance with 5 U.S.C. § 552(b), any and all reasonably segregable portions of otherwise exempt materials be produced. To the extent the request is denied, we expect to receive notice in writing, including a description of the information withheld, the reasons for denial, and any exemptions relied upon.

II. Fee Waiver Request

The ACLU requests that any fees associated responding to its FOIA request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k). Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), fees should be waived or reduced if disclosure is (1) in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Disclosure in this case meets both of these tests. The ACLU also requests a waiver or reduction of fees on the grounds that the ACLU qualifies as a “representative[] of the news media” and the records are not sought for commercial use. See 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(d)(1).

1. Disclosure is in the public interest as it is likely to contribute significantly to the public’s understanding of the operations and activities of government.

The detention and treatment of ICE detainees, particularly the hospitalization and deaths of ICE detainees, is of great concern to the public. Reports of mistreatment and death of immigrant detainees have prompted active media and congressional interest and concern.¹ On multiple occasions, members

¹ See, e.g. Kendall Taggart, Hamed Aleaziz, Jason Leopold, *More Than 40 Immigrants Have Died in ICE Custody in the Past Four Years. Here are Thousands of Records About What Happened*, BuzzFeed News, Oct. 29, 2020, <https://www.buzzfeednews.com/article/kendalltaggart/here-are->



of Congress have called attention to hospitalizations and deaths of immigrants detained by ICE.² The House Committee on Oversight and Reform recently initiated an investigation into the use of the government’s use of for-profit contractors to detain immigrants, conducted oversight inspections of dozens of detention facilities, and reviewed internal DHS reports examining the death of detainees. The Committee’s Report concluded that immigrants in detention have faced “negative health outcomes and even death as a result of inadequate medical care, poor conditions, understaffing, and delayed emergency care. At times, facility staff have falsified records to cover up these problems.”³ The Committee further observed that these records “reveal[ed] a widespread failure to provide necessary medical care to detainees with serious and chronic medical conditions, along with critical medical staff shortages,” and noted that ICE has failed to release investigative reports of detainee deaths as required under law.⁴

ICE is required to report all in-custody deaths to the public.⁵ In addition, Congress has required ICE to publicly release investigative reports of all in-custody deaths of immigrant detainees within 90 days of the person’s death since

[thousands-of-documents-about-immigrants-who-died](#); Monsy Alvarado, et al., *Deaths in Custody. Sexual Violence. Hunger Strikes. What We Uncovered inside ICE Facilities Across the U.S.*, USA Today, Dec. 19, 2019, <https://www.usatoday.com/in-depth/news/nation/2019/12/19/ice-asylum-under-trump-exclusive-look-us-immigration-detention/4381404002/1>.

² See, e.g. Letter from Rep. Jason Crow, et al., to Hon. Alejandro Mayorkas, Jun. 9, 2021, <https://www.warren.senate.gov/imo/media/doc/06.09.21%20Letter%20to%20DHS%20and%20ICE%20re%20protection%20of%20immigrants%20released%20due%20to%20COVID-19.pdf>; Senate Comm. Judiciary, *Feinstein Calls for Hearing on Death of ICE Detainee, Conditions at Detention Facilities*, May 8, 2020, <https://www.judiciary.senate.gov/press/dem/releases/feinstein-calls-for-hearing-on-death-of-ice-detainee-conditions-at-detention-facilities>; Brian Epstein, et al., *Lawmaker Calls for Investigation After Deaths of Migrants Who Fell Ill in Detention Centers*, ABC News, Feb. 13, 2019, <https://abcnews.go.com/US/lawmaker-calls-investigation-deaths-migrants-fell-ill-detention/story?id=61047107>; Letter from Rep. Adam Smith, et al., to Ronald Vitiello, Nov. 28, 2018, https://adamsmith.house.gov/_cache/files/5/7/571d0cf2-a59d-4747-8162-c45014a65fd5/0F6391FA1F40DDB16E30ED926E644D43.final-letter-to-ice-on-death-of-mr.-amar-at-nwdc.pdf.

³ Staff of H. Comm. on Oversight and Reform and Subcomm. on Civil Rights and Civil Liberties, *The Trump Administration’s Mistreatment of Detained Immigrants: Deaths and Deficient Medical Care by For-Profit Detention Contractors 1-4* (2020), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-09-24.%20Staff%20Report%20on%20ICE%20Contractors.pdf> [hereinafter “H. Comm. Oversight Detention Report”].

⁴ *Id.*; see also Geneva Sands, *Immigrants in U.S. Custody Died After ‘Inadequate’ Medical Care, Congressional Investigation Finds*, CNN.com, Sept. 24, 2020, <https://www.cnn.com/2020/09/24/politics/immigrants-ice-inadequate-medical-care/index.html>; Hamed Aleaziz, *A Congressional Oversight Committee Found that ICE Detainees Died After Receiving Poor Medical Care*, BuzzFeed News, Sept. 24, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/ice-detainees-medical-care-congressional-report>.

⁵ ICE, *Directive: Notification and Reporting of Detainee Deaths*, Oct. 1, 2012, https://www.ice.gov/doclib/dro/pdf/notification_and_reporting_of_detainee_deaths.pdf.



2018, although the agency has failed to meet do so.⁶ Last year, Immigration and Customs Enforcement (“ICE”) reported that 21 people died in its custody, the highest annual death toll in immigration detention in fifteen years.⁷ But as the media has noted on multiple occasions, an unknown number of people released from ICE custody on their deathbeds are missing from this list, allowing the agency to avoid reporting their deaths to the public, avoid investigation, and avoid medical costs for released detainees.⁸

The requested records will contribute substantially to the public’s understanding of ICE’s role in this matter of great public concern. For example, ICE has reported that nine detainees have died while in custody as a result of COVID-19 since the start of the pandemic, but has declined to publicly report the number of detainees hospitalized due to the virus, or the number of detainees who were hospitalized for COVID-19, but who died after release from custody while hospitalized.⁹ This omission may be instructive: as the *New York Times* recently reported, the official release of hospitalized prisoners from custody has led to an undercount and underreporting of COVID-19 deaths in prison.¹⁰ In a recent investigation into ICE’s management of COVID-19 in detention, the GAO noted that 209 immigrant detainees required hospitalization as a result of COVID-19, but did not provide information as to the number of detainees who were released from custody in the hospital, or the number of detainees who died after release from custody.¹¹

The records related to the four hospitalized immigrant detainees who died shortly after release by ICE named in Requests #1-3 are also of particular interest to the public. In March 2021, ICE hospitalized Martin Vargas Arellano, a 55-year-old man, after he

⁶ House Committee on Appropriations, Dep’t of Homeland Security Appropriations Bill, 2018, Rep. No. 115-239, www.congress.gov/115/crpt/hrpt239/CRPT-115hrpt239.pdf; H. Comm. Oversight Detention Report at 4.

⁷ Catherine Schoichet, *The Death Toll in ICE Custody Is the Highest It’s Been in 15 Years*, CNN.com, Sept. 30, 2020, <https://www.cnn.com/2020/09/30/us/ice-deaths-detention-2020/index.html>; Adolfo Flores and Hamed Aleaziz, *The Number of Immigrants Who Have Died in ICE Custody Is the Highest Since 2006*, BuzzFeed News, Aug. 7, 2020, <https://www.buzzfeednews.com/article/adolfoflores/immigrants-ice-custody-death-toll>.

⁸ Catalina Villegas, *‘ICE Does This to Avoid Liability’: Families, Lawyer Question Releases of Detainees Near Death*, Spectrum News, May 16, 2021, <https://spectrumnews1.com/ca/la-west/immigration/2021/05/16/families--advocates-question-ice-releases-of-detainees-near-death>; Dan Glaun, *How ICE Data Undercounts COVID-19 Victims*, PBS Frontline, Aug. 11, 2020, <https://www.pbs.org/wgbh/frontline/article/how-ice-data-undercounts-covid-19-victims/>; Amy Taxin and Krista Larson, *Questions Arise After U.S. Frees Asylum-Seeker on Life Support*, Associated Press, Nov. 30, 2017, <https://apnews.com/article/immigration-health-brazil-united-states-africa-7c272f12e314453f86c20a6ec69c88fd>.

⁹ ICE, *COVID-19 ICE Detainee Statistics by Facility*, <https://www.ice.gov/coronavirus#detStat> (last visited Jul. 8, 2021).

¹⁰ Maura Turcotte et al., *The Real Toll from Prison Covid Cases May Be Higher Than Reported*, NY Times, Jul. 7, 2021, <https://www.nytimes.com/2021/07/07/us/inmates-incarcerated-covid-deaths.html> (noting large number of unreported COVID-19 deaths because hospitalized prisoners were officially released from custody before they died).

¹¹ U.S. Government Accountability Office, *Immigration Detention: ICE Efforts to Address Covid-19 in Detention Facilities* 22 (June 2021), <https://www.gao.gov/assets/gao-21-414.pdf>.



contracted COVID-19 at an ICE detention facility in Adelanto, California. Although his counsel had on several occasions requested Mr. Vargas Arellano's release in prior months due to his medical vulnerability to the virus, ICE had refused to release him from custody. It was not only until Mr. Vargas contracted COVID-19 and was hospitalized that ICE released him from custody, shortly before his death in the hospital. Because Mr. Vargas Arellano was not formally in ICE's custody at the time of his death, ICE avoided mandatory reporting and investigation requirements for the death. Mr. Vargas Arellano's family and counsel learned of his death weeks later only after filing a missing person's report.¹²

Mr. Vargas Arellano's case is not an isolated incident. Less than two years before, Jose Ibarra Bucio, a 27-year-old man, suffered a brain hemorrhage while detained at the same Adelanto, California detention center, and fell into a coma. ICE transferred Mr. Ibarra Bucio to a local hospital, where he was placed in an intensive care unit, and soon after released him from custody on an order of recognizance. Mr. Ibarra Bucio never awoke from his coma, and died six weeks later. ICE did not publicly report his death because he was not formally in custody at the time of his death.¹³

Likewise, ICE released Johana Medina Leon, a 25-year-old transgender asylum seeker from El Salvador, from custody the same day that she was hospitalized. Leon had fallen ill in immigration detention at an Otero County, New Mexico facility, after she was repeatedly denied medical care. Although she had been eligible for release on parole for several months, ICE only released her from custody on the same day she was hospitalized, shortly before her death.

¹² Alene Tchekmedyan and Andrea Castillo, *ICE Released a Sick Detainee from Adelanto Immigration Facility. He Died Three Days Later*, LA Times, Mar. 20, 2021, <https://www.latimes.com/california/story/2021-03-20/adelanto-detainee-death>; Joe Nelson, *Detainee Who Pleaded for Release from ICE Immigration Center in Adelanto Dies from COVID-19*, The San Bernardino Sun, Mar. 22, 2021, <https://www.sbsun.com/2021/03/22/detainee-who-pleaded-for-release-from-ice-immigration-center-in-adelanto-dies-from-covid-19/>; Norma Riberiro, *Man Dies After Contracting COVID-19 While in ICE Custody, Lawsuit Says*, NBC Los Angeles, Mar. 23, 2021, <https://www.nbclosangeles.com/news/local/man-dies-after-contracting-covid-19-while-in-ice-custody-lawsuit-says/2556682/>; Francisco Castro, *ICE Center Accused of Releasing Critically Ill Detainee So He Doesn't Die in the Facility*, San Fernando Valley Sun, Mar. 24, 2021, <https://sanfernandosun.com/2021/03/24/ice-center-accused-of-releasing-critically-ill-detainee-so-he-doesnt-die-in-the-facility/>.

¹³ Paloma Esquivel, *An Immigration Detainee Fell into a Coma and Died at 27. His Family Wants to Know Why*, LA Times, Apr. 10, 2019, <https://www.latimes.com/local/lanow/la-me-ln-adelanto-detainee-death-20190410-story.html>; Associated Press, *Family Wants Answers After Immigrant Dies*, Apr. 10, 2019, <https://www.citynews1130.com/2019/04/10/the-latest-family-wants-answers-after-immigrant-dies/>; Garret Bergthold, *Family Wants Answers in Death After Detention*, Victorville Daily Press, Apr. 10, 2019, <https://www.vvdailynews.com/news/20190410/family-wants-answers-in-death-after-detention>; Voice of America News, *Family Seeks Answers in Immigrant's Death After Detention*, Apr. 10, 2019, <https://www.voanews.com/usa/immigration/family-seeks-answers-immigrants-death-after-detention>; Jovana Lara, *Family Seeking Answers After Man, 27, Dies in ICE Custody in Adelanto*, ABC7 News, Apr. 10, 2019, <https://abc7.com/amp/5242925/>; Roxana Kopetman, *ICE Set a 27-Year-Old Detainee in a Coma Free, Weeks Before He Died*, Orange County Register, Apr. 11, 2019, <https://www.ocregister.com/2019/04/10/ice-released-detainee-while-he-was-in-a-coma-weeks-before-his-death/>.



Because she was not in ICE custody at the time of her death, ICE did not issue a public report or investigatory information regarding the circumstances of her medical care, hospitalization, or death.¹⁴

ICE also released Teka Gulema, an immigrant from Ethiopia, from custody at the Etowah County Detention Center in Gadsden, Alabama, shortly before his death. Mr. Gulema became paralyzed from the neck down as a result of an infection that he had contracted at the detention facility, and was transferred to a nearby hospital, where he remained in ICE custody for approximately one year. Weeks before his death, ICE formally released Mr. Gulema from custody, although he remained immobile and confined to his hospital bed. Because Mr. Gulema was not formally in ICE's custody at the time of his death, ICE was not required to publicly report or investigate the causes of his death.¹⁵

Given the substantial attention to this issue by legislators, the media, and advocacy groups, the requested records will contribute significantly to the public's understanding of the treatment of detained immigrants, and ICE's decisions to release hospitalized detainees on their deathbed.

2. Disclosure is not primarily in the commercial interest of the ACLU.

Second, the ACLU is not filing this request to further a commercial interest. The ACLU is a 501(c)(3) nonprofit organization and therefore has no commercial interest. The ACLU intends to make any relevant information obtained through this FOIA available to the public. The ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone,

¹⁴ Robert Moore, *Transgender Woman Migrant Who Had Been in ICE Custody Dies after Falling Ill*, Washington Post, June 2, 2019, https://www.washingtonpost.com/immigration/transgender-woman-migrant-who-had-been-in-ice-custody-dies-after-falling-ill/2019/06/02/d194528a-85a6-11e9-98c1-e945ae5db8fb_story.html; Ben Kesslen, *Transgender Asylum-Seeker After Six Weeks in Custody*, NBC News, June 3, 2019, <https://www.nbcnews.com/news/us-news/transgender-asylum-seeker-dies-after-six-weeks-ice-custody-n1012956>; Adolfo Flores, *A Transgender Woman Died After Being Held for Weeks in ICE Custody*, Buzz Feed News, Jun. 3, 2019, <https://www.buzzfeednews.com/article/adolfoflores/transgender-woman-dies-ice-custody-asylum>; Lucy Diavolo, *Transgender Woman Johana Medina Leon Died Shortly After Being Paroled from ICE Custody*, Teen Vogue, June 3, 2019, <https://www.teenvogue.com/story/transgender-woman-johana-medina-leon-died-ice-custody>; Daniel Borunda, *Transgender Asylum Seeker from El Salvador Held by ICE Dies at El Paso Hospital*, El Paso Times, June 3, 2019, <https://www.elpasotimes.com/story/news/immigration/2019/06/03/transgender-migrant-johana-medina-leon-dies-el-paso-hospital/1332236001/>; Sam Levin, *Trans Woman Who Died After Illness in U.S. Custody Had Asked to Be Deported, Family Says*, The Guardian, Jun. 12, 2019, <https://www.theguardian.com/us-news/2019/jun/12/trans-woman-death-us-custody-ice-deportation>.

¹⁵ William Thornton, *'One Who Could Have Been You:' Group Protests Former Detainee's Death*, AL.com, Feb. 28, 2016, https://www.al.com/news/anniston-gadsden/2016/02/one_who_could_have_been_you_gr.html; Complaint from CIVIC to John Roth, Inspector General, DHS, et al. (Mar. 31, 2016), http://www.endisolation.org/blog/wp-content/uploads/2016/02/Complaint-Etowah-Medical_1.pdf.

including tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee.



The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU website also includes many features on information obtained through FOIA requests. For example, the ACLU recently published a report, *Behind Closed Doors: Abuse and Retaliation Against Hunger Strikers in U.S. Immigration Detention*, which contains commentary about the ACLU’s FOIA request, analysis of FOIA documents, and links to the documents themselves.¹⁶ ACLU’s “Predator Drones FOIA” webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU’s FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves. The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the ACLU plans to disseminate the information disclosed as a result of this Request to the public at no cost.

3. The ACLU also qualifies for a fee waiver because it is representative of the news media and the records are not sought for commercial use.

The ACLU is also entitled to a waiver of search fees on the grounds that the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The ACLU meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see supra*; *see also Nat’l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).

¹⁶ ACLU, *Report: Behind Closed Doors: Abuse & Retaliation Against Hunger Strikers in U.S. Immigration Detention*, <https://www.aclu.org/report/report-behind-closed-doors-abuse-retaliation-against-hunger-strikers-us-immigration-detention> (last visited Jul. 13, 2021).



Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU's work and are among its primary activities. For example, the ACLU regularly publishes ACLU Magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 950,000 households. The ACLU also publishes regular updates and alerts via email to approximately 4 million subscribers (both ACLU members and nonmembers). These updates are additionally broadcast to 4.9 million social media followers (members and nonmembers). The magazine, email, and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news, and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests. Similarly, ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

The ACLU also regularly publishes books, "know your rights" materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties. The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See* <https://www.aclu.org/multimedia>.

Underscoring this point, courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU's are "representatives of the news media" as well. *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for purposes of the FOIA); *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a "public interest law firm," a news media requester).

As a representative of the news media, the ACLU plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use. On account of these factors, fees associated with responding to FOIA requests are regularly waived for the

ACLU as a “representative of the news media.” A fee waiver would fulfill Congress’s legislative intent in amending FOIA. Additionally, on account of these factors, the ACLU has not been charged fees associated with responding to FOIA requests on numerous occasions.

In sum, because disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the requester, and because the ACLU is a representative of the news media, the ACLU is entitled to a total waiver of fees associated with this Request and should, in no event, be required to pay more than reasonable standard charges for document duplication. In the event that you decide not to waive the fees, please provide me with prior notice so that we can discuss arrangements.



III. Expedited Processing Request

The ACLU requests expedited processing of this Request pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. 5.5(e)(1)(ii).

1. The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). As detailed *supra*, the ACLU has the ability and intention to widely disseminate the requested information through a variety of sources, including reports, newsletters, news briefings, right-to-know handbooks, and other materials, to the public at no cost. Indeed, obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”). Moreover, as mentioned *supra*, the ACLU intends to distribute the information obtained through this FOIA request via the ACLU website and/or means available to us.

2. The records sought are urgently needed to inform the public about actual or alleged government activity.



The requested records are also urgently needed to inform the public about actual or alleged government activity. See 5 U.S.C. § 552(a)(6)(E)(v)(II).

Deaths in ICE custody are a matter of widespread media and public interest, and the requested records will inform the public concern this activity by ICE. As mentioned *supra*, the deaths of ICE detainees—including those released from custody shortly before their deaths—have been a significant topic of news media coverage, and continue to receive ongoing public, media, and congressional attention. Members of Congress have expressed serious concerns about medical care and conditions of confinement in detention recently.¹⁷ Thus, the urgency to inform the public goes beyond the general public interest in government transparency—it responds to ongoing serious concerns from Congress and the public, and will answer specific questions that have very recently been raised regarding ICE’s treatment of people in detention, decisions to release people from custody prior to death, and full accountability and investigation of deaths caused by poor medical care or conditions of confinement in detention.

Given the foregoing, the ACLU has satisfied the requirements for expedited processing of this Request.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi) and 6 C.F.R. § 5.5(d)(3).

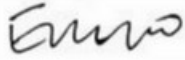
Thank you for your prompt attention to this Request. We look forward to your reply to this Request within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I) and 6 C.F.R. § 5.5(e)(4). Please furnish all responsive records to:

Eunice Cho
ACLU National Prison Project
915 15th St. NW, 7th Floor
Washington, DC 20005
echo@aclu.org

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny a waiver of fees. Please call me at (202) 548-6616 if you have any questions or wish to obtain further information about the nature of the records in which we are interested.

¹⁷ See *supra* notes 2-4.

Respectfully,



Eunice Cho
American Civil Liberties Union
National Prison Project
915 15th St. NW, 7th Floor
Washington, DC 20005
echo@aclu.org

