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17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 AMERICAN CIVIL LIBERTIES  
20 UNION FOUNDATION OF  
21 SOUTHERN CALIFORNIA,

22 *Plaintiff,*

23 v.

24 UNITED STATES IMMIGRATION  
25 AND CUSTOMS ENFORCEMENT,  
26 UNITED STATES DEPARTMENT  
27 OF HOMELAND SECURITY,

28 *Defendants.*

Case No. 2:22-CV-04760

**COMPLAINT**

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## INTRODUCTION

1  
2       1. This is a Freedom of Information Action (“FOIA”) case seeking public  
3 transparency into the United States Immigration and Customs Enforcement’s  
4 (“ICE”) practice of releasing detained people from custody prior to their imminent  
5 death.

6       2. For years, media reports have documented multiple occasions in which  
7 ICE has released detained immigrants from custody on their death beds. ICE,  
8 however, has not reported or disclosed the deaths of these individuals. This practice  
9 is consistent with reports finding that ICE has a “culture of secrecy” that contributes  
10 to a failure to report and disclose deaths and detention conditions leading to those  
11 deaths.<sup>1</sup>

12       3. ICE claims that the agency takes “very seriously the health, safety and  
13 welfare of those in our care,” and that “any death that happens in ICE custody is a  
14 cause for concern.” See <https://www.ice.gov/detain/detainee-death-reporting>.  
15 However, ICE has not accounted for the deaths of detained immigrants who pass  
16 away shortly after their release from custody, as a result of a fatal illnesses or  
17 medical conditions developed while detained by ICE.

18       4. As reported in the news media, ICE’s practices raise questions of  
19 significant public concern regarding its failure to account and take responsibility for  
20 deaths of detained immigrants, including those who fall ill in custody and are  
21 released from custody upon their imminent death. See, e.g., Andrea Castillo and Jie  
22 Jenny Zou, *ICE Rushed to Release a Sick Woman, Avoiding Responsibility for Her*  
23 *Death. She Isn’t Alone*, Los Angeles Times (May 13, 2022), available at  
24 <https://www.latimes.com/world-nation/story/2022-05-13/ice-immigration-detention->

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26 <sup>1</sup> Nina Bernstein, *Officials Hid Truth of Immigrant Deaths in Jail*, The New York  
27 Times, Jan. 9, 2010, <https://www.nytimes.com/2010/01/10/us/10detain.html>  
28 (describing evidence obtained through FOIA requests showing officials “used their  
role as overseers to cover up evidence of mistreatment, deflect scrutiny,” and  
“prepare exculpatory public statements after gathering facts that pointed to  
substandard care or abuse”).

1 deaths-sick-detainees.

2 5. ICE’s failure to fully report and account for the deaths of detained  
3 immigrants has taken on heightened importance both for the public and the families  
4 of former ICE detainees. In 2020, ICE reported its highest annual death toll in  
5 immigration detention in fifteen years. *See, e.g.,* Catherine E. Shoichet, *The Death*  
6 *Toll in ICE Custody Is the Highest It’s Been in 15 Years*, CNN (Sep. 20, 2020),  
7 available at [https://www.cnn.com/2020/09/30/us/ice-deaths-detention-](https://www.cnn.com/2020/09/30/us/ice-deaths-detention-2020/index.html)  
8 [2020/index.html](https://www.cnn.com/2020/09/30/us/ice-deaths-detention-2020/index.html). However, it is likely that this publicly-reported number  
9 undercounts the true number of detained immigrants who died as a result of illness  
10 contracted while in ICE detention. Dan Glaun, *How ICE Data Undercounts*  
11 *COVID-19 Victims*, PBS FRONTLINE (Aug. 11, 2020), available at  
12 [https://www.pbs.org/wgbh/frontline/article/how-ice-data-undercounts-covid-19-](https://www.pbs.org/wgbh/frontline/article/how-ice-data-undercounts-covid-19-victims/)  
13 [victims/](https://www.pbs.org/wgbh/frontline/article/how-ice-data-undercounts-covid-19-victims/).

14 6. In addition to information regarding ICE’s policies, procedures and  
15 practice of releasing detainees on their death beds, this FOIA request also seeks the  
16 medical records of four detainees who suffered illnesses while in ICE custody, who  
17 died shortly after they were suddenly and inexplicably released from ICE custody:

- 18 (a) Martin Vargas Arellano, a 55-year-old with diabetes, hypertension,  
19 gout, and hepatitis C, was detained at an ICE facility in Adelanto,  
20 California in 2020. He contracted COVID-19 and suffered a stroke in  
21 ICE detention and was released from custody while hospitalized three  
22 days before his death. A federal judge has already noted that ICE’s  
23 communications regarding his death appeared to “actively conceal”  
24 information and raised “significant concerns regarding the  
25 Government’s actions and lack of candor.”<sup>2</sup>

26  
27 <sup>2</sup> Order, *Roman v. Wolf*, ED CV 20-00768 TJH, Dkt. 1031, (C.D. Cal. Mar. 20,  
28 2021). In that case, the federal district court earlier held that ICE violated detainees’  
constitutional rights at the Adelanto facility based on “detailed factual findings” of

- 1 (b) Jose Ibarra Bucio, a 27-year-old man was also detained at the ICE  
2 facility in Adelanto, California, where he suffered a brain hemorrhage  
3 while detained and fell into a coma in ICE detention. He was transferred  
4 to a local hospital and was formally released from ICE's custody two  
5 weeks later. He died four weeks after his release from custody, when his  
6 family removed him from life support.<sup>3</sup>
- 7 (c) Johana Medina Leon, 25-year-old transgender asylum seeker detained at  
8 an ICE facility in Otero County, New Mexico in 2019. While in custody  
9 she complained of health issues for a month and tested positive for HIV.  
10 After seven weeks in custody, she complained of chest pains and was  
11 taken to the hospital, where ICE released her from custody. She died  
12 four days later of pneumonia.<sup>4</sup>
- 13 (d) Teka Gulema, an Ethiopian man detained at an ICE facility in Gadsden,  
14 Alabama between 2012 and 2015, where he was paralyzed following a  
15 bacterial infection and transferred to a hospital, but remained in ICE  
16 custody for a year. But when he fell into a coma in the hospital, he was  
17 released from custody, and died weeks later.<sup>5</sup>

18  
19 the facility and staff taking inadequate precautions to protect detainees from the  
20 coronavirus. *Roman v. Wolf*, No. 20-55436, 2020 WL 5683233, at \*4 (9th Cir. Sept.  
21 23, 2020).

22 <sup>3</sup> Amy Taxin, *Family Seeks Answers in Immigrant's Death after Detention*, AP  
23 News, Apr. 10, 2019, <https://apnews.com/article/immigration-us-news-ap-top-news-caribbean-california-8775303f79ee4d44a5959c34a8f3d99d>.

24 <sup>4</sup> Adolfo Flores, *A Transgender Woman Died After Being Held For Weeks In ICE  
25 Custody*, BuzzFeed News, June 3, 2019,  
26 <https://www.buzzfeednews.com/article/adolfoflores/transgender-woman-dies-ice-custody-asylum>; Sam Levin, *Trans Woman Who Died after Illness in US Custody  
27 Had Asked to Be Deported, family says*, The Guardian, June 12, 2019,  
28 <https://www.theguardian.com/us-news/2019/jun/12/trans-woman-death-us-custody-ice-deportation>.

<sup>5</sup> Amy Yurkanin, *No Natural Light, No Healthy Food, Detained Immigrants in the  
South Face Harsh Conditions*, New Orleans Advocate, Nov. 24, 2016,  
[https://www.nola.com/news/crime\\_police/article\\_1e6b877a-2528-53b7-b75b-ce155189c194.html](https://www.nola.com/news/crime_police/article_1e6b877a-2528-53b7-b75b-ce155189c194.html); William Thornton, *"One Who Could Have Been You": Group  
Protests Former Detainee's Death*, Advance Local, Feb. 28, 2016 (updated Jan. 13,  
2019), <https://www.al.com/news/anniston->



1 SoCal advocates to advance the rights of immigrants, with a focus on the health and  
2 safety of detained noncitizens. On multiple occasions, ACLU SoCal has publicly  
3 raised its concerns about the health, safety and other rights of immigrants in  
4 immigration detention, including ICE's concealment of the tragic death of Martin  
5 Vargas Arellano in 2020.

6 11. Defendant ICE is a component of DHS and an agency of the U.S.  
7 government within the meaning of 5 U.S.C. § 551, 5 U.S.C. § 552(f), and 5 U.S.C. §  
8 702. ICE has a field office in Los Angeles, and has possession, custody, and control  
9 of the records that the ACLU seeks.

10 12. Defendant DHS is an agency of the U.S. government within the  
11 meaning of 5 U.S.C. § 551, 5 U.S.C. § 552(f), and 5 U.S.C. § 702. DHS has  
12 possession, custody, and control of the records that the ACLU seeks, including  
13 through its component office ICE.

#### 14 **STATUTORY FRAMEWORK**

15 13. The Freedom of Information Act, 5 U.S.C. § 552, mandates disclosure  
16 of records held by a federal agency in response to a request for such records by a  
17 member of the public, unless those records fall within one of nine narrow statutory  
18 exemptions.

19 14. The basic purpose of FOIA is to enable the public to hold the  
20 government accountable for its actions, through transparency and public scrutiny of  
21 governmental operations and activities. By providing access to government  
22 information, FOIA helps the public better understand the government, thereby  
23 enabling a vibrant and functioning democracy.

24 15. Any member of the public may make a request under FOIA for records  
25 to an agency of the United States. An agency that receives a FOIA request must  
26 notify the requestor within twenty business days after the receipt of the request. 5  
27 U.S.C. § 552(a)(6)(A)(i). In its response, the agency must inform the requestor  
28 whether or not it intends to comply with the request, provide reasons for its

1 determination, and inform the requestor of his or her right to appeal the  
2 determination. *Id.*

3 16. FOIA requires an agency to make an adequate search for responsive  
4 records that is “reasonably calculated to uncover all relevant documents.”  
5 *Transgender L. Ctr. v. Immigr. & Customs Enft*, 33 F.4th 1186, 1194 (9th Cir.  
6 2022) (quoting *Hamdan v. Dep’t of Just.*, 797 F.3d 759, 770 (9th Cir. 2015)).  
7 “[A]gencies must demonstrate adequacy ... ‘beyond a material doubt.’” *Id.*

8 17. FOIA requires an agency to timely disclose all records responsive to a  
9 FOIA request that do not fall within one of nine narrowly construed statutory  
10 exemptions. 5 U.S.C. §§ 552(a)(3)(A), 552(b)(1)-(9).

11 18. A FOIA requestor is deemed to have exhausted his or her administrative  
12 remedies if the agency fails to comply with the statutory time limits for responding  
13 to a request. 5 U.S.C. § 552(a)(6)(C)(i). At that point, the requestor may  
14 immediately file suit in federal court to obtain the requested documents. *Kelly v.*  
15 *U.S. Census Bureau*, 540 F. App’x 749, 750 (9th Cir. 2013) *as amended on denial*  
16 *of reh’g* (noting that “person is deemed to exhaust administrative remedies if the  
17 agency fails to respond to a request under applicable time limits”).

18 19. A district court has jurisdiction to enjoin the agency from withholding  
19 records, to order production of records that are subject to disclosure, and to grant a  
20 public interest fee waiver of any costs associated with the production of such  
21 records. 5 U.S.C. §§ 552(a)(4)(B), 552(a)(4)(A)(iii).

22 20. Documents shall be furnished without charge or at a reduced charge if  
23 disclosure of the information is in the public interest because it “is likely to  
24 contribute significantly to public understanding of the operations or activities of the  
25 government” and is “not primarily in the commercial interest of the requester.” 5  
26 U.S.C. § 552(a)(4)(A)(iii). Requests for fee waivers are to be “liberally construed in  
27 favor of waivers for noncommercial requesters.” *Envtl. Prot. Info. Ctr. v. U.S.*  
28 *Forest Serv.*, 432 F.3d 945, 947 (9th Cir. 2005) (citations omitted).



1           21. A requestor may also seek a waiver of search and review fees on the  
2 grounds that the requestor is a “representative of the news media” and the records  
3 are not sought for a commercial purpose. See 5 U.S.C. § 552(a)(4)(A)(ii). A  
4 representative of the news media is “any person or entity that gathers information of  
5 potential interest to a segment of the public, uses its editorial skills to turn the raw  
6 materials into a distinct work, and distributes that work to an audience.” *Id.*

7           22. A FOIA requestor who has been denied records or a waiver of fees  
8 associated with the search and production of records may appeal such denials to the  
9 agency. The agency must make a determination on the appeal within twenty  
10 business days of receipt of the appeal. 5 U.S.C. § 552(a)(6)(A)(ii).

11           23. FOIA also requires an agency to produce records on an expedited basis  
12 when there is a “compelling need” for expedition. 5 U.S.C. § 552(a)(6)(E)(i). A  
13 compelling need is established if a person “primarily engaged in disseminating  
14 information” shows an “urgency to inform the public concerning actual or alleged  
15 Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); accord 28 C.F.R. §  
16 16.5(e)(1)(ii) (DOJ regulations); 6 C.F.R. § 5.5(e)(1)(ii) (DHS regulations).

17           24. A FOIA requestor may also be entitled to expedited processing on the  
18 grounds that the records sought relate to a “(i) Circumstances in which the lack of  
19 expedited processing could reasonably be expected to pose an imminent threat to the  
20 life or physical safety of an individual; (ii) An urgency to inform the public about an  
21 actual or alleged federal government activity, if made by a person who is primarily  
22 engaged in disseminating information; (iii) The loss of substantial due process  
23 rights; or (iv) A matter of widespread and exceptional media interest in which there  
24 exist possible questions about the government's integrity which affect public  
25 confidence.” 6 C.F.R. § 5.5(e)(1)(i), (ii), (iii), (iv) (DHS regulations).

## 26                           **FACTUAL AND PROCEDURAL BACKGROUND**

### 27   **Background Facts**

28           25. To date, the COVID-19 pandemic, including the disease’s resurgences

1 in the form of the Delta and Omicron variants, has killed more than 1,016,293  
2 people in the United States.<sup>6</sup>

3 26. Defendants hold thousands of immigrants in detention facilities across  
4 the United States.<sup>7</sup> Individuals detained in those facilities are particularly at risk of  
5 contracting and falling ill, or dying from, the coronavirus. As a recent DHS  
6 Inspector General report found, in “congregate environments” like ICE facilities, the  
7 coronavirus “can spread easily,” and some detention facilities have “not consistently  
8 manage[d] medical sick calls” or conducted adequate testing.<sup>8</sup> For example, the  
9 New York Times reported that in June 2020, ICE detention facilities “had an  
10 average infection rate five times that of prisons and 20 times that of the general  
11 population.”<sup>9</sup> In September 2021 the New York Times reported that ICE centers  
12 “are reporting major surges in coronavirus infections among detainees” as public  
13 health officials noted that “increasingly crowded facilities can be fertile ground for  
14 outbreaks.”<sup>10</sup>

15 27. In 2020, during the peak of the first wave of the coronavirus, ICE  
16 reported its highest annual death toll in immigration detention in fifteen years. In the  
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20 <sup>6</sup> Ctrs. for Disease Control and Prevention, COVID Data Tracker,  
21 <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last updated July 11,  
22 2022).

23 <sup>7</sup> U.S. Immigrations & Customs Enf’t, Detention Management (Detention FY 21  
24 YTD), <https://www.ice.gov/detention-management#tab2> (last updated Sept. 16,  
25 2021).

26 <sup>8</sup> See Dep’t of Homeland Sec., Office of Inspector General, ICE’s Management of  
27 COVID-19 in Its Detention Facilities Provides Lessons Learned for Future  
28 Pandemic Responses, (Sept. 7, 2021),

<https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-58-Sep21.pdf>.

29 <sup>9</sup> Isabelle Niu and Emily Rhyne, *4 Takeaways From Our Investigation Into ICE’s*  
30 *Mishandling of Covid-19*, The New York Times, Apr. 25, 2021,  
31 [https://www.nytimes.com/2021/04/25/video/immigration-detention-covid-  
32 takeaways.html](https://www.nytimes.com/2021/04/25/video/immigration-detention-covid-takeaways.html).

33 <sup>10</sup> Maura Turcotte, *Virus Cases Are Surging at Crowded Immigration Detention*  
34 *Centers in the U.S.*, The New York Times, July 6, 2021 (updated Sept. 6, 2021),  
35 <https://www.nytimes.com/2021/07/06/us/covid-immigration-detention.html>.

1 few years prior to 2020, though, dozens of individuals were also reported as dying  
2 while in ICE custody.<sup>11</sup>

3 28. The number of total deaths of detainees is likely much higher than  
4 reported by ICE. For years, media reports have noted that on multiple occasions ICE  
5 has released individuals from custody on their death beds. The deaths of these  
6 individuals are not reported by ICE.<sup>12</sup> This practice is consistent with reports finding  
7 that ICE has a “culture of secrecy” that contributes to a failure to report and disclose  
8 deaths and detention conditions leading to those deaths.<sup>13</sup>

9 29. ICE’s practice is widespread and not limited to particular detention  
10 facilities. Four cases of ICE’s practice of releasing detainees on their death beds,  
11 spanning from facilities in Alabama to California, show the serious nature of the  
12 problem:

- 13 (a) Martin Vargas Arellano, a 55-year-old with diabetes, hypertension,  
14 gout, and hepatitis C, was detained at an ICE facility in Adelanto,  
15 California in 2020. He repeatedly asked to be released from detention  
16 because his health conditions placed him at serious risk of life-  
17 threatening illness or death should he contract COVID-19. Mr. Vargas  
18 Arellano, however, contracted COVID-19 in March 2021, suffered a

19 <sup>11</sup> Kendall Taggart et al., *More Than 40 Immigrants Have Died in ICE Custody In*  
20 *The Past Four Years. Here Are Thousands of Records About What Happened*,  
21 BuzzFeed News, Oct. 29, 2020,  
<https://www.buzzfeednews.com/article/kendalltaggart/here-are-thousands-of-documents-about-immigrants-who-died>.

22 <sup>12</sup> E.g., Dan Glaun, *How ICE Data Undercounts COVID-19 Victims*, Frontline, Aug.  
23 11, 2020, <https://www.pbs.org/wgbh/frontline/article/how-ice-data-undercounts-covid-19-victims/> (“This has been a problem, with ICE hospitalizing people,  
24 releasing them, and then they die”); Amy Taxin and Krista Larson, *Questions arise*  
25 *after US frees asylum-seeker on life support*, AP News, Nov. 30, 2017,  
<https://apnews.com/article/immigration-health-brazil-united-states-africa-7c272f12e314453f86c20a6ec69c88fd> (“It isn’t the first time immigrant advocates  
26 have raised concerns about the release of ill detainees.”).

27 <sup>13</sup> Nina Bernstein, *Officials Hid Truth of Immigrant Deaths in Jail*, The New York  
28 Times, Jan. 9, 2010, <https://www.nytimes.com/2010/01/10/us/10detain.html>  
(describing evidence obtained through FOIA requests showing officials “used their  
role as overseers to cover up evidence of mistreatment, deflect scrutiny,” and  
“prepare exculpatory public statements after gathering facts that pointed to  
substandard care or abuse”).

1 stroke in ICE detention, and was admitted to a local hospital, where he  
2 remained in ICE custody. ICE formally released Mr. Vargas Arellano  
3 from its custody three days before his death at the hospital. ICE did not  
4 inform his family or attorney of his hospitalization or death.<sup>14</sup> His  
5 attorney pieced together that he had passed away ten days after the fact  
6 by filing a missing person's report and calling the coroner's office.<sup>15</sup>  
7 According to a federal district court judge overseeing a class-action in  
8 which Mr. Vargas Arellano was a party, the Government's statement  
9 that Mr. Vargas Arellano had been released from detention appeared to  
10 "actively conceal" from the court, his attorneys, and his family his  
11 progressive illness and death and raised "significant concerns regarding  
12 the Government's actions and lack of candor."<sup>16</sup>

13 (b) Jose Ibarra Bucio, a 27-year-old, was also detained in Adelanto,  
14 California. In 2019, he suffered a brain hemorrhage while detained and  
15 fell into a coma. He was transferred to a local hospital and was formally  
16 released from ICE's custody two weeks later. He died four weeks after  
17 his release from custody, when his family decided to take him off life  
18 support.<sup>17</sup>

19 (c) Johana Medina Leon was a 25-year-old transgender asylum seeker held  
20 at an immigration detention facility in Otero County, New Mexico in  
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22 <sup>14</sup> See Joe Nelson, *Detainee Who Pleaded for Release from ICE Immigration Center*  
23 *in Adelanto Dies from COVID-19*, The 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/>.

24 <sup>15</sup> *Id.*

25 <sup>16</sup> Order, *Roman v. Wolf*, ED CV 20-00768 TJH, Dkt. 1031, (C.D. Cal. Mar. 20,  
26 2021). In that case, the federal district court earlier held that ICE violated detainees'  
27 constitutional rights at the Adelanto facility based on "detailed factual findings" of  
28 the facility and staff taking inadequate precautions to protect detainees from the  
coronavirus. *Roman v. Wolf*, No. 20-55436, 2020 WL 5683233, at \*4 (9th Cir. Sept.  
23, 2020).

<sup>17</sup> Amy Taxin, *Family Seeks Answers in Immigrant's Death after Detention*, AP  
News, Apr. 10, 2019, <https://apnews.com/article/immigration-us-news-ap-top-news-caribbean-california-8775303f79ee4d44a5959c34a8f3d99d>.

1 2019. While in custody she complained of health issues for over a  
2 month and tested positive for HIV. She was routinely denied medical  
3 care, including the provision of basic equipment such as an IV-drip so  
4 she could treat herself using her nursing skills. After seven weeks in  
5 custody, she complained of chest pains and was taken to the hospital,  
6 where ICE released her from custody. She died four days later of  
7 pneumonia.<sup>18</sup>

8 (d) Teka Gulema was an Ethiopian man detained at an ICE facility in  
9 Gadsden, Alabama between 2012 and 2015. While in custody, he was  
10 paralyzed following a bacterial infection and transferred to a hospital,  
11 where he remained under ICE custody for a year. But when he fell into a  
12 coma in the hospital, he was released from custody, and died weeks  
13 later.<sup>19</sup>

14 30. ICE's underreporting of detainees who would have died under ICE's  
15 custody but-for their twelfth-hour release has dire consequences. ICE is required to  
16 report all in-custody deaths to the public and release investigatory reports of all in-  
17 custody detainee deaths within 90 days of the person's death.<sup>20</sup> By releasing

18 \_\_\_\_\_  
19 <sup>18</sup> Adolfo Flores, *A Transgender Woman Died After Being Held For Weeks In ICE*  
20 *Custody*, BuzzFeed News, June 3, 2019,  
21 <https://www.buzzfeednews.com/article/adolfoflores/transgender-woman-dies-ice-custody-asylum>; Sam Levin, *Trans Woman Who Died After Illness in US Custody Had Asked to Be Deported, Family Says*, The Guardian, June 12, 2019,  
22 <https://www.theguardian.com/us-news/2019/jun/12/trans-woman-death-us-custody-ice-deportation>.

23 <sup>19</sup> Amy Yurkanin, *No Natural Light, No Healthy Food, Detained Immigrants in the*  
24 *South Face Harsh Conditions*, New Orleans Advocate, Nov. 24, 2016,  
25 [https://www.nola.com/news/crime\\_police/article\\_1e6b877a-2528-53b7-b75b-ce155189c194.html](https://www.nola.com/news/crime_police/article_1e6b877a-2528-53b7-b75b-ce155189c194.html); William Thornton, *"One Who Could Have Been You": Group*  
26 *Protests Former Detainee's Death*, Advance Local, Feb. 28, 2016 (updated Jan. 13,  
27 2019), [https://www.al.com/news/anniston-gadsden/2016/02/one\\_who\\_could\\_have\\_been\\_you\\_gr.html](https://www.al.com/news/anniston-gadsden/2016/02/one_who_could_have_been_you_gr.html); Complaint from CIVIC  
28 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](http://www.endisolation.org/blog/wp-content/uploads/2016/02/Complaint-Etowah-Medical_1.pdf).

<sup>20</sup> ICE, *Directive: Notification and Reporting of Detainee Deaths*, Oct. 1, 2012,  
[https://www.ice.gov/doclib/dro/pdf/notification\\_and\\_reporting\\_of\\_detainee\\_deaths](https://www.ice.gov/doclib/dro/pdf/notification_and_reporting_of_detainee_deaths).

1 detainees at the last minute, ICE avoids reporting their deaths to the public,  
2 investigating the circumstances of their deaths, and paying for their medical costs.<sup>21</sup>  
3 This practice reinforces ICE’s culture of secrecy and denies families and the public  
4 at large their rights to know what passes for medical care in ICE facilities.

5 31. ICE investigations into detainee deaths and the information ICE  
6 maintains on detainee health prior to death is critical to understand how ICE  
7 operates and to keep ICE accountable. Prior investigations into detainee deaths—  
8 including investigations at the Adelanto Processing Center from where Mr. Ibarra  
9 Bucio and Mr. Vargas Arellano were released prior to their deaths—revealed that  
10 guards “falsified records to hide apparent dereliction of duty” and committed “other  
11 failures that point to serious lack of care.”<sup>22</sup> A report published jointly by the ACLU  
12 and other immigrant rights groups analyzed records obtained through FOIA requests  
13 for deaths in immigration detention between December 2015 and April 2017 and  
14 found that “substandard medical care contributed or led to” a majority of the deaths  
15 reported during that time. The report further found that the “healthcare and  
16 oversight failures” identified in the report “point to larger, systemic deficits in  
17 immigration detention facility health care” that must be addressed by Congress,  
18 ICE, and state and local governments.<sup>23</sup>

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21 pdf; Staff Report, *The Trump Administration’s Mistreatment of Detained*  
22 *Immigrants: Deaths and Deficient Medical Care by For-Profit Detention*  
23 *Contractors*, Comm. on Oversight and Reform, U.S. House of Representatives, Sept.  
24 2020, at 4 (“Staff Report”).

25 <sup>21</sup> Catalina Villegas, *‘ICE Does This to Avoid Liability’: Families, Lawyer Question*  
26 *Releases of Detainees Near Death*, Spectrum News, May 16, 2021,  
27 [https://spectrumnews1.com/ca/la-west/immigration/2021/05/16/families--advocates-](https://spectrumnews1.com/ca/la-west/immigration/2021/05/16/families--advocates-question-ice-releases-of-detainees-near-death)  
28 [question-ice-releases-of-detainees-near-death](https://spectrumnews1.com/ca/la-west/immigration/2021/05/16/families--advocates-question-ice-releases-of-detainees-near-death); see Dan Glaun, *How ICE Data*  
*Undercounts COVID-19 Victims*, *supra* note 7.

<sup>22</sup> Kendall Taggart et al., *More Than 40 Immigrants Have Died in ICE Custody In*  
*The Past Four Years. Here Are Thousands Of Records About What Happened*,  
*supra* note 6.

<sup>23</sup> Human Rights Watch et. al., *Code Red: The Fatal Consequences of Dangerously*  
*Substandard Medical Care in Immigration Detention*, at 1-2 (June 2018), available  
at [https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-](https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration)  
[dangerously-substandard-medical-care-immigration](https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration).



1 decision to release from custody, or release from custody of the  
2 following individuals.

Name	Country of Origin	Approximate Date of Death	ICE Detention Facility Prior to Hospitalization and Death	Location at Death
Teka Gulema	Ethiopia	January 18, 2016	Etowah County Detention Center, Alabama	Riverview Medical Center, Gadsden, AL
Johana Medina Leon <sup>26</sup>	El Salvador	May 23-June 1, 2019	Otero County Processing Center, New Mexico	Del Sol Medical Center, El Paso, TX
Jose Ibarra Bucio	Mexico	March 21, 2019	Adelanto ICE Processing Center, California	Loma Linda University Medical Center, Loma Linda, CA
Martin Vargas Arellano <sup>27</sup>	Mexico	March 6, 2021	Adelanto ICE Processing Center, California	St. Judge Medical Center, Fullerton, CA

15 (2) Any and all DHS OIG reports of investigation that are identified in any  
16 of the records responsive to Request #1. This includes any and all  
17 exhibits, appendices, or attachments to the DHS OIG reports of  
18 investigation.

19 (3) Any and all ICE OPR reports of investigation that are identified in any  
20 of the records responsive to Request #1. This includes any and all  
21

22 <sup>26</sup> Upon information and belief, ICE has produced documents related to Johana  
23 Medina Leon and her death under FOIA to other Requestors. *See Los Angeles Times*  
24 *Communications LLC v. U.S. Dep't of Homeland Security*, No. 2:20-cv-10911-FLA-  
25 MRW (C.D. Cal.); Andrea Castillo and Jie Jenny Zou, *L.A. Times Files Lawsuit*  
26 *Seeking Records on Abuse Claims at U.S. Immigration Detention Centers*, L.A.  
27 *Times*, Dec. 1, 2020, <https://www.latimes.com/politics/story/2020-12-01/la-times-sues-for-federal-records-on-abuse-claims-ice-centers>; Andrea Castillo and Jie Jenny Zou, *ICE Rushed to Release a Sick Woman, Avoiding Responsibility for Her Death. She Isn't Alone*, L.A. *Times*, May 13, 2022, <https://www.latimes.com/world-nation/story/2022-05-13/ice-immigration-detention-deaths-sick-detainees>.

28 <sup>27</sup> Upon information and belief, ICE has produced some documents under FOIA  
related to Martin Vargas Arellano to other Requestors. *Martin Vargas v. U.S. ICE et al.*, No. 5:22-cv-287-JWH-SP (C.D. Cal.).



1 exhibits, appendices, or attachments to the DHS OPR reports of  
2 investigation.

- 3 (4) Any and all documents and communications, including ICE and IHSC  
4 directives, policies, procedures, protocols, or trainings that contain  
5 guidance, instructions, or standards about the release from custody of (a)  
6 hospitalized detainees; or (b) detainees who at the time of release were  
7 patients in the care of external healthcare providers or facilities.

8 Detainees specified in (a) and (b) above shall include those being treated  
9 for COVID-19 during their hospitalization or treatment at external  
10 healthcare providers or facilities.

- 11 (5) Spreadsheets, emails, documents, communications, databases, lists, and  
12 other data compilations in the possession of ICE Leadership, ICE  
13 Enforcement and Removal Operations, ICE Health Service Corps, and  
14 ICE Office of Professional Responsibility that identify detainees who  
15 were released from custody while (a) hospitalized (including for  
16 COVID-19 treatment); (b) in the full-time care of external healthcare  
17 providers or facilities (including for COVID-19 treatment), or (c)  
18 released from custody immediately prior to transfer to an emergency  
19 room, hospital, or external care facility. Requested materials include, but  
20 are not limited to, dates of hospitalization of detainees, dates of hospital  
21 or external care facility discharge, name of treated detainees' detention  
22 facilities, and reasons for detainees' hospitalization or external medical  
23 care. These materials should further include Medical Transfer Summary  
24 documents from DHS's eHR System and Alien Medical Records  
25 System, and any versions of the Significant Detainee Illness Spreadsheet  
26 that identify detainees who were released from custody while (a)  
27 hospitalized (including for COVID-19 treatment); (b) in the care of  
28 external healthcare providers or facilities (including for COVID-19

1 treatment); or (c) released from custody immediately prior to transfer to  
2 an emergency room, hospital, or external care facility.

3 (6) Spreadsheets, emails, significant incident reports (SIRs), significant  
4 event notification reports (SENs), or documents created by DHS OIG or  
5 ICE OPR that mention the release from custody of (a) hospitalized  
6 detainees; (b) detainees who at the time of release were patients in the  
7 care of external healthcare providers or facilities; or (c) detainees  
8 released from custody immediately prior to transfer to an emergency  
9 room, hospital, or external care facility.

10 (7) Spreadsheets, emails, SIRs, SENs, or documents created by DHS OIG  
11 or ICE OPR that mention the death of any detainee who had been  
12 previously released from custody while (a) hospitalized; or (b) a patient  
13 in the care of an external healthcare provider or facility; or (c) released  
14 from custody immediately prior to transfer to an emergency room,  
15 hospital, or external care facility.

16 (8) Any and all documents, communications, and other records, including  
17 databases, spreadsheets, lists, and other data compilations, that identify  
18 detainees who were hospitalized or transferred from detention for off-  
19 site medical care due to COVID- 19, and were subsequently released  
20 from custody while hospitalized, or detainees who were released from  
21 custody immediately prior to transfer to an emergency room, hospital, or  
22 external care facility to receive treatment for COVID-19. Requested  
23 information includes, but is not limited to, dates of hospitalization,  
24 detention facility, medical condition/reason for hospitalization or  
25 treatment, name and location of hospital, date of return to detention (if  
26 any), date of release from custody or issuance of order of recognizance  
27 (if any), and/or reason for release from custody.

28

1 (9) Bills, invoices, charges, or records of payment that reflect payments  
2 made for healthcare for any detainee who was released from custody  
3 while (a) hospitalized; or (b) a patient in the care of an external  
4 healthcare provider or facility, and communications about such bills,  
5 invoices, charges, or records of payment.

6 36. The Request sought all responsive records “from January 1, 2016 to the  
7 present.”

8 37. The Request sought a fee waiver or reduction of all costs pursuant to 5  
9 U.S.C. § 552(a)(4)(A)(iii), citing the fact that the “requested records relate directly  
10 to the operations or activities of the government that potentially impact rights and  
11 freedoms,” and “will contribute substantially to the public’s understanding of ICE’s  
12 role in this matter of great public concern,” namely “the treatment of detained  
13 immigrants, and ICE’s decisions to release hospitalized detainees on their  
14 deathbeds.”

15 38. The Request also sought expedited processing, citing the urgent need to  
16 inform the public about ICE’s treatment of people in detention, ICE’s decisions to  
17 release people from custody prior to death, and the ACLU So Cal’s activities as an  
18 organization “primarily engaged in disseminating information” within the meaning  
19 of FOIA.

### 20 **Administrative Exhaustion**

21 39. On May 16, 2021, ICE acknowledged receipt of the Request and  
22 assigned it a tracking number, 2021-ICFO-38388 (Exh. B). ICE granted ACLU  
23 SoCal’s request for a fee waiver, stating that it met the six-factor test set forth in  
24 DHS FOIA regulations. ICE denied ACLU SoCal’s request for expedited  
25 processing, stating that it failed to meet either of the standards set forth in 6 C.F.R.  
26 §5.5(e)(1).

27 40. On May 16, 2022 DHS OIG acknowledged receipt of the Request and  
28 assigned it a tracking number, 2022-IGFO-00158 (Exh. C). DHS OIG granted

1 ACLU SoCal’s request for a fee waiver, stating that it “has met the statutory  
2 standard” set forth in 5 U.S.C. § 552(a)(4)(A)(iii). *Id.* DHS OIG also granted the  
3 ACLU’s request for expedited processing, stating that the Request “does establish  
4 the requirements under 6 C.F.R. § 5.5(e)(1) and 6 C.F.R. § 5.5 (e)(3).” *Id.* ACLU  
5 SoCal is conferring with DHS OIG regarding the parameters of its release of  
6 documents, but it has yet to produce any documents responsive to the Request.

7 41. To date, Defendant DHS has failed to respond to the Request.

8 42. To date, each of ICE, DHS, and DHS OIG have failed to produce a  
9 single document. Each day, Defendants are further in breach of their requirement to  
10 respond to the Request. Immigrants detained in ICE facilities, their families, and the  
11 general public have an urgent need for this information.

## 12 **CLAIMS FOR RELIEF**

### 13 **First Claim**

#### 14 **Violation of FOIA, 5 U.S.C. § 552**

#### 15 **Wrongful Withholding of Non-Exempt Responsive Records**

#### 16 **(All Defendants)**

17 43. ACLU SoCal properly requested records within the possession, custody,  
18 and control of Defendants.

19 44. Defendants are agencies and components thereof subject to FOIA, and  
20 they must therefore release in response to a FOIA request any non-exempt records  
21 and provide a lawful reason for withholding any materials.

22 45. Defendants are wrongfully withholding non-exempt agency records  
23 requested by the ACLU SoCal by failing to produce non-exempt records responsive  
24 to its FOIA requests.

25 46. Defendants are wrongfully withholding non-exempt agency records  
26 requested by the ACLU SoCal by failing to segregate exempt information in  
27 otherwise non-exempt records responsive to the Request.

28

1 47. Defendants' failure to provide all non-exempt responsive records  
2 violates FOIA and applicable regulations.

3 48. Because Defendants failed to comply with the applicable time-limit  
4 provisions of FOIA, the ACLU SoCal has constructively exhausted its  
5 administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

6 49. ACLU SoCal is therefore entitled to declaratory and injunctive relief  
7 requiring Defendants to promptly produce all non-exempt records responsive to its  
8 FOIA requests and provide indexes justifying the withholding of any responsive  
9 records withheld under claim of exemption.

10 **Second Claim**

11 **Violation of FOIA, 5 U.S.C. § 552**

12 **Failure to Conduct Adequate Searches for Responsive Records**

13 **(All Defendants)**

14 50. ACLU SoCal properly requested records within the possession, custody,  
15 and control of Defendants.

16 51. Defendants are agencies subject to and within the meaning of FOIA, and  
17 they must therefore make reasonable efforts to search for requested records.

18 52. Defendants have failed to promptly review agency records for the  
19 purpose of locating those records that are responsive to the Request.

20 53. Defendants' failure to conduct adequate searches for responsive records  
21 violates FOIA and applicable regulations.

22 54. Because Defendants failed to comply with the applicable time-limit  
23 provisions of FOIA, the ACLU SoCal has constructively exhausted its  
24 administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

25 55. The ACLU SoCal is therefore entitled to injunctive and declaratory  
26 relief requiring Defendants to promptly make reasonable efforts to search for  
27 records responsive to the Request.

28

**PRAYER FOR RELIEF**

56. WHEREFORE, ACLU SoCal respectfully requests the Court to:

- (a) Declare unlawful the Defendants’ failure to comply with FOIA;
- (b) Declare that ACLU SoCal is entitled to disclosure of the requested records;
- (c) Order Defendants to immediately process the Request and to disclose, in their entirety, unredacted versions of all records responsive to the Request that are not specifically exempt from disclosure under FOIA, including any non-identical copies of any such records;
- (d) Enjoin Defendants from charging ACLU SoCal search, review, or duplication fees of the processing of the requests;
- (e) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to the Request;
- (f) Retain jurisdiction of this action to ensure that no agency records are wrongfully withheld;
- (g) Award ACLU SoCal its reasonable attorney’s fees and litigation costs incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (h) Grant such other relief as the Court may deem just and proper.

Date: July 12, 2022

Respectfully submitted,

HOQ LAW

/s/ Laboni A. Hoq\*  
Laboni A. Hoq

ACLU FOUNDATION OF  
SOUTHERN CALIFORNIA

/s/ Michael Kaufman  
Michael Kaufman

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AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

*/s/ Eunice Cho*  
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Eunice Cho

*/s/ Kyle Virgien*  
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Kyle Virgien

*Attorneys for Plaintiffs American  
Civil Liberties Union of Southern  
California*

\* Filer attests that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing