

# **Exhibit A**

1 Hon. Patrick J. Walsh (Ret.)  
Special Master  
2 Signature Resolution  
633 W. 5<sup>th</sup> Street, Ste. 1000  
3 Los Angeles, CA 90071  
judgewalsh@signatureresolution.com  
4 (323) 395-4970

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UNITED STATES DISTRICT COURT

9

CENTRAL DISTRICT OF CALIFORNIA

10

WESTERN DIVISION

11 KELVIN HERNANDEZ ROMAN, et al., ) ED CV 20-00768 TJH(PVC)  
12 )  
Petitioners-Plaintiffs, ) SPECIAL MASTER'S REPORT AND  
13 ) RECOMMENDATION FOLLOWING THE  
v. ) INVESTIGATION INTO THE DEATH OF  
14 ) MARTIN VARGAS ARELLANO  
CHAD T. WOLF, et al., )  
15 )  
Respondents-Defendants.)  
16

17 This Report and Recommendation is submitted to the Honorable  
18 Terry J. Hatter, Jr., following the Special Master's investigation  
19 into the death of Mr. Martin Vargas Arellano. For the reasons set  
20 forth below, it is recommended that the government be required to:

21 1. Report to the Special Master and Plaintiffs/Petitioners'  
22 counsel any time a detainee at Adelanto who has previously tested  
23 positive for COVID is confined to the infirmary, brought to the  
24 hospital, or dies of any cause. Further, upon request from the  
25 Special Master, submit the detainee's medical records to the Special  
26 Master and Plaintiffs/Petitioners' counsel for review.

27 2. Review the medical records of any detainee who has previously  
28 tested positive for COVID and is subsequently hospitalized or confined

1 to the infirmary to determine if he or she is being treated for COVID  
2 or for complications stemming from COVID. If any of these records  
3 indicate that at least one of the reasons the detainee is hospitalized  
4 or in the infirmary is for treatment of COVID or complications  
5 stemming from COVID--like shortness of breath or COVID-pneumonia--the  
6 government must report that fact to Plaintiffs/Petitioners' counsel  
7 and the Special Master and list that detainee as being hospitalized  
8 for COVID on the daily status reports.

9 3. Pay Mr. Vargas' immigration lawyer Ms. Margaret Hellerstein's  
10 legal fees from March 5, 2021, when the government released Mr. Vargas  
11 without telling her, until March 18, 2021, when she found out from the  
12 coroner that Mr. Vargas had died 10 days earlier.

13 I.

14 SUMMARY OF FACTS

15 In April 2019, Martin Vargas Arellano was placed in ICE detention  
16 at Adelanto. He was 53 years old at the time and suffered from  
17 schizophrenia as well as various physical ailments, including diabetes  
18 melitus. Several times thereafter, Mr. Vargas sought release from  
19 custody but ICE opposed his motions on the ground that he was a danger  
20 to the community.<sup>1</sup>

21 On November 29, 2020, Mr. Vargas was examined by a member of the  
22 Wellpath staff. Apparently, this staff member was positive for COVID-  
23 19, though he or she was not aware of it at the time.<sup>2</sup>

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25 <sup>1</sup> In their letter briefs, both sides spent time discussing the  
26 propriety of Mr. Vargas' detention. This issue is not being addressed  
27 in this Report and Recommendation because it is not relevant to the  
28 investigation into Mr. Vargas' death.

<sup>2</sup> Wellpath provides medical services at Adelanto.

1 On December 10, 2020, Mr. Vargas tested positive for COVID. It  
2 is assumed that he contracted COVID from the Wellpath medical provider  
3 who examined him on November 29, 2020.

4 On December 11, 2020, Mr. Vargas experienced shortness of breath,  
5 burning lungs, fever, dry cough, and loss of taste and smell. He was  
6 taken to the emergency room at a nearby hospital and, the following  
7 day, transferred to a different hospital where he could be better  
8 cared for. There, he was diagnosed with COVID-19 pneumonia and  
9 hospitalized. As a result, in its daily census report, ICE began  
10 reporting to the Court that Mr. Vargas was hospitalized for COVID.

11 On December 25, 2020, Mr. Vargas was released from the hospital.  
12 The doctor who discharged him included in the discharge diagnosis  
13 "COVID-19" and a "suspected COVID-19 virus infection." (ECF No. 1042-  
14 6 at page 13, Medical Records from St. Mary's Medical Center.) The  
15 doctor also noted: "Patient[']s chest x-ray showed interval  
16 development of ill-defined opacities in the periphery of both upper  
17 lobes, this is concerning for COVID 19 pneumonia . . . ." (*Id.*)

18 Mr. Vargas was placed in the infirmary upon his return to  
19 Adelanto. A Wellpath doctor caring for Mr. Vargas at Adelanto  
20 described his condition as "slowly improving though with extreme  
21 fatigue." (ECF No. 1042-2 at page 584, Infirmary Records.) On  
22 December 28, 2020, that same doctor noted Mr. Vargas "still felt short  
23 winded on and off." (ECF No. 1042-2 at page 541, Infirmary Records.)

24 On December 30, 2020, Mr. Vargas reported to a Wellpath nurse  
25 that he was feeling weak. She explained to him that recovery from  
26 COVID can be long and slow and counseled him to be patient. The next  
27 day, December 31, 2020, Wellpath Regional Medical Director Dr. Richard  
28 Medrano "deemed" Mr. Vargas "recovered" from COVID. (Exh. 16 to

1 Bansal Decl., Email from Richard Medrano to GEO Staff.) This  
2 designation was not meant to signal that Mr. Vargas had actually  
3 recovered from COVID. Rather, the term “deemed recovered” was “meant  
4 as a tool to determine when detainees [are] no longer infectious”  
5 under CDC criteria. (Assistant Field Office Director and Officer in  
6 Charge at Adelanto Gabriel Valdez Decl. at ¶ 25.) But the government  
7 misinterpreted this designation and, from January 1, 2021 on, stopped  
8 reporting to the Court that Mr. Vargas was being confined to the  
9 infirmary or hospitalized for COVID and/or complications stemming from  
10 COVID.

11 On January 4, 2021, Mr. Vargas was admitted to the infirmary  
12 complaining of shortness of breath. He was given oxygen. On January  
13 27, 2021, he was hospitalized for COVID, again. The admitting doctor  
14 noted: “Patient was recently diagnosed with COVID 6 weeks ago and was  
15 admitted for 3 weeks for COVID [pneumonia]. . . . Mild diffuse  
16 groundglass airspace disease suggestive of COVID-19 pneumonia,  
17 decreasing in severity compared with prior [admission].” (ECF Doc.  
18 No. 1042-3 at 474, Medical Records from Saint Mary’s for January 26,  
19 2021.)

20 On February 4, 2021, Mr. Vargas was released from the hospital  
21 and brought back to Adelanto where he was confined to the infirmary.  
22 On February 17, he was taken back to the hospital, complaining of  
23 shortness of breath. (ECF Doc. No. 1042-3 at 16, Medical Records from  
24 Victor Valley Global Medical Center, February 17, 2021.) The  
25 admitting doctor noted:

26 A 55-year-old-male with history of COVID-19 presenting with  
27 [shortness of breath]. Differential diagnosis includes but is  
28

1 not limited to the following: COVID-19 pneumonia, pulmonary  
2 embolism.

3 (*Id.*)

4 Unfortunately, Mr. Vargas' condition continued to deteriorate  
5 after he was admitted to the hospital. The medical records and  
6 reports from the hospital at the time showed that his condition was  
7 becoming grave.

8 Concerned with this development, on February 19, 2021, Wellpath  
9 Medical Director Dr. Alex Ramos working at Adelanto notified ICE Field  
10 Medical Coordinator Nicole Knight-Glass that Mr. Vargas was "at great  
11 risk of pulmonary embolism and [that there was a] possibility of  
12 sudden death" due to multiple ailments, including ongoing weakness and  
13 chest pain in the wake of COVID-19 infection. (Exh. 14 to Bansal  
14 Decl., Email from Dr. Alex Ramos to Ms. Nicole Knight-Glass.) Dr.  
15 Ramos urged Ms. Knight-Glass to evaluate whether Mr. Vargas should be  
16 released from ICE detention. In response to Dr. Ramos' inquiry, ICE  
17 initiated a plan to release Mr. Vargas and, beginning on February 21,  
18 2021, sought the necessary approvals to accomplish this.

19 In furtherance of this process, Sergio Guzman, Mr. Vargas'  
20 deportation officer, contacted Mr. Vargas' immigration counsel, Ms.  
21 Margaret Hellerstein, to inform her that Mr. Vargas was going to be  
22 released from detention. He asked her to arrange for placement for  
23 Mr. Vargas. Officer Guzman did not tell Ms. Hellerstein that the  
24 impetus in releasing Mr. Vargas was that he was gravely ill. Ms.  
25 Hellerstein assumed that Mr. Vargas was being released because the  
26 government had had a change of heart regarding his requests to be  
27 released. Over the course of the next several weeks, Ms. Hellerstein  
28 made arrangements for housing for Mr. Vargas and for transportation

1 from Adelanto to the facility where he would be staying once he was  
2 released.

3 At the same time ICE was working with Ms. Hellerstein on Mr.  
4 Vargas' release, it was also attempting to locate Mr. Vargas' family  
5 so that it could coordinate Mr. Vargas' release through his family  
6 instead of Ms. Hellerstein.<sup>3</sup>

7 On February 26, 2021, Mr. Vargas suffered a stroke, which caused  
8 brain death. He was sedated and placed on a ventilator. In the wake  
9 of his stroke, ICE understood that Mr. Vargas' condition was dire and,  
10 on March 4, 2021, began "the necessary paperwork for a death  
11 notification." (Exh. 28 to Bansal Decl. at 4, Email from James Scott  
12 to Art Cortez (and others).) The following day, on March 5, 2021,  
13 Assistant Field Office Director and Officer in Charge at Adelanto,  
14 Gabriel Valdez, sent an email to the hospital along with an "Order of  
15 Release," purportedly "releasing" Mr. Vargas on his own recognizance.<sup>4</sup>  
16 The Order listed Mr. Vargas' release address as the address of the  
17 facility Ms. Hellerstein had arranged for him to live in once he was  
18 released. This facility, however, was not equipped to provide  
19 services for a patient who was comatose and brain dead.

20 Despite the fact that ICE's long-standing practice and policy was  
21 to notify Ms. Hellerstein, ICE did not notify her. It also did not  
22 notify Mr. Vargas' children, who by this time had expressed an

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23  
24 <sup>3</sup> The government has not explained why it searched for an  
25 alternative to releasing Mr. Vargas to the care facility through his  
26 lawyer. Plaintiffs/Petitioners' suspect that it was so that ICE would  
27 not have to inform Ms. Hellerstein that Mr. Vargas had been released  
28 or died.

27 <sup>4</sup> The government has not explained when and how Mr. Vargas  
28 stopped being a danger to the community and qualified for release on  
his own recognizance.

1 interest in keeping abreast of Mr. Vargas' condition. No one at the  
2 hospital noticed Officer Valdez's email and the attached release  
3 order.

4 On March 8, 2021, Mr. Vargas passed away due to complications  
5 brought on by COVID. That same day, ICE reported to the Court through  
6 its weekly census that Mr. Vargas had been released.

7 On March 9, 2021, ICE learned that Mr. Vargas had died the day  
8 before. ICE did not inform Ms. Hellerstein or Mr. Vargas' family. As  
9 a result, Ms. Hellerstein continued to work on facilitating Mr.  
10 Vargas' release and arranging for his transportation.

11 Class counsel Jessica Bansal learned that Mr. Vargas had been  
12 released when she reviewed the March 8, 2021, weekly status report.  
13 On March 15, 2021, she emailed Ms. Hellerstein to congratulate her on  
14 securing his release. Ms. Hellerstein was confused because she did  
15 not know that Mr. Vargas had been released. She was worried that Mr.  
16 Vargas was wandering around the city alone, which was especially  
17 problematic because he suffered from schizophrenia and had no money or  
18 support.

19 Ms. Hellerstein called Officer Guzman to find out where Mr.  
20 Vargas was. (Hellerstein Depo. at 67-69, 86-89.) He did not tell her  
21 that Mr. Vargas had died the week before, something Officer Guzman had  
22 known since March 9th. Instead, he led her to believe that Mr. Vargas  
23 had been released to the street but that he did not know the details  
24 concerning the release. (Guzman Depo. at 59-63; 91-92.) He explained  
25 that "higher-ups" were responsible for releasing Mr. Vargas. (Guzman  
26 Depo. at 59-92.) Officer Guzman provided Ms. Hellerstein with the  
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28



1 address of the Immigration Court in Los Angeles and advised her that  
2 she should go there to find out what had happened to Mr. Vargas.<sup>5</sup>

3 The following day, March 16, 2021, Ms. Hellerstein sent an email  
4 to Officer Guzman, again seeking information about Mr. Vargas'  
5 whereabouts. Before responding, Officer Guzman showed the email to  
6 his supervisor, who told him not to respond and not to talk to Ms.  
7 Hellerstein about Mr. Vargas. (Guzman Depo. at 67.)

8 In the days that followed, Ms. Hellertein employed a network of  
9 attorneys and contacts to help her find Mr. Vargas. (Hellerstein  
10 Decl. at para. 23.) She called police stations, hospitals, and  
11 shelters and posted a notice on social media. (Hellerstein Decl. at  
12 para. 23.) She filed a missing person's report with the Sheriff's  
13 Department. (Hellerstein Decl. at para. 24.) And she contacted the  
14 Mexican Consulate. (Hellerstein Decl. at para. 26.) On March 18,  
15 2021, Ms. Hellerstein called the county coroner, who informed her that  
16 Mr. Vargas had died in the hospital ten days earlier.

17 II.

18 DISCUSSION

19 1. It is highly likely, that Mr. Vargas contracted COVID-19  
20 from Wellpath medical staff at Adelanto.

21 2. Wellpath's decision that Mr. Vargas was "deemed recovered"  
22 on December 31, 2020, did not mean that he had recovered from COVID.  
23 The term "deemed recovered" was "meant as a tool to determine when  
24 detainees [are] no longer infectious" under CDC criteria. (Assistant  
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26 <sup>5</sup> Officer Guzman has offered several justifications for  
27 misleading Ms. Hellerstein, including: (1) he was no longer  
28 responsible for Mr. Vargas since Mr. Vargas had been "released"; and  
(2) he was not sure what he could or should tell Ms. Hellerstein and  
needed to check with his supervisor.

1 Field Office Director and Officer in Charge at Adelanto Gabriel Valdez  
2 Decl. at ¶ 25.) Mr. Vargas never recovered from COVID-19. His visits  
3 to the infirmary in January 2021 and his hospitalizations in January,  
4 February, and March were all due to complications brought on by COVID-  
5 19. The medical staff at Adelanto and the doctors in the hospitals  
6 were all treating him for complications stemming from COVID, including  
7 shortness of breath brought on by COVID and COVID-related pneumonia,  
8 as reflected in the medical charts. As such, ICE should have been  
9 reporting these hospital visits and infirmary stays as COVID-related  
10 to the Court, counsel, and the Special Master. Its failure to do so  
11 violated this Court's order that it report detainees being  
12 hospitalized for COVID. By not informing the Court, the Special  
13 Master, and Plaintiffs/Petitioners' counsel that Mr. Vargas was  
14 hospitalized for COVID, all three were kept in the dark. This  
15 completely frustrated the purpose of the Court's intervention in this  
16 case and the appointment of a Special Master.

17 3. The only practical effect of the government's "release" of  
18 Mr. Vargas' from detention on March 5, 2021--while he was comatose and  
19 near death--was that he was moved off the "books" at ICE, Adelanto,  
20 and Wellpath and deposited on the hospital's "books." Because ICE  
21 released him to the hospital, all three were relieved of their  
22 obligations to report his death. Further, this seems to have been the  
23 sole purpose of the release.

24 4. The evidence supporting this finding includes the fact the  
25 release was triggered by a request from Wellpath's medical director,  
26 Dr. Ramos, and was precipitated by Dr. Ramos' realization that Mr.  
27 Vargas was about to die. It is further evidenced by the fact that ICE  
28 violated its own policies and procedures by releasing Mr. Vargas

1 without telling his lawyer and, in fact, trying to go around his  
2 lawyer by releasing him to family. It is further evidenced by the  
3 fact that when Ms. Hellerstein asked Deportation Officer Guzman what  
4 had happened to Mr. Vargas a week after he had died, Officer Guzman  
5 intentionally concealed what had happened. This conduct was ratified  
6 by his supervisor, who learned of Officer Guzman's interactions with  
7 Ms. Hellerstein and instructed him not to respond to Ms. Hellerstein's  
8 email looking for information about Mr. Vargas and not to talk with  
9 her about Mr. Vargas either. The government's argument that there was  
10 nothing untoward about Mr. Vargas' release or its conduct following  
11 his release is rejected. So, too, is its claim that ICE was actually  
12 trying to help Mr. Vargas by "releasing" him while he lay unconscious  
13 in a hospital bed three days before he died.

14 4. Officer Guzman (or someone else working for ICE) should have  
15 followed long-standing policies and practices and notified Ms.  
16 Hellerstein on March 5, 2021, that ICE was releasing Mr. Vargas to a  
17 hospital because he was about to die. Officer Guzman (or someone at  
18 ICE) should also have told her on March 9, 2021, that Mr. Vargas had  
19 died. Finally, Officer Guzman should not have intentionally misled  
20 Ms. Hellerstein when he spoke to her on March 15, 2021, and told her  
21 that he did not know the details of Mr. Vargas' release and did not  
22 know where he was. Officer Guzman's explanations for why he misled  
23 Ms. Hellerstein, i.e., that Mr. Vargas' file had been transferred to  
24 another officer and that he was not sure what he could say, are  
25 rejected. Those are not valid justifications for officers of the  
26 United States government to intentionally mislead someone. What is  
27 even more disconcerting about his explanation is the fact that he  
28 understood that he did not have to seek authorization from his

1 supervisor to mislead Ms. Hellerstein about what had happened to Mr.  
2 Vargas but, if he wanted to tell her the truth, he had to get  
3 permission from his supervisor. Even giving Officer Guzman the  
4 benefit of the doubt and accepting that he truly believed that he was  
5 prohibited from telling Ms. Hellerstein the truth, he should not have  
6 misled her. He should have simply informed her: "I'm not allowed to  
7 discuss this matter with you. Here's my supervisor's phone number.  
8 Why don't you call him and he will explain to you what happened to Mr.  
9 Vargas?" His failure to tell Ms. Hellerstein what happened or direct  
10 her to his supervisor caused her to spend needless time and energy in  
11 a frantic search to locate Mr. Vargas, only to learn days later that  
12 he had died a week before she had spoken to Mr. Guzman.

13 7. The government makes much of the fact that it did not  
14 violate any federal laws or regulations in connection with its  
15 treatment of Mr. Vargas or Ms. Hellerstein. That is likely true but  
16 that fact does not excuse or justify the callousness it exhibited  
17 here.

18 III.

19 CONCLUSION

20 For the reasons set forth above, the Special Master recommends  
21 that the Court enter an order accepting and adopting this Report and  
22 Recommendation and ordering the government to:

23 1. Report to the Special Master and Plaintiffs/Petitioners'  
24 counsel any time a detainee at Adelanto who has previously tested  
25 positive for COVID dies, is confined to the infirmary, or brought to  
26 the hospital for any reason. Further, upon request from the Special  
27 Master, submit the detainee's medical records to the Special Master  
28 and Plaintiffs/Petitioners' counsel for review.

