

Exhibit C



VIA ELECTRONIC MAIL

November 16, 2021

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, D.C. 20536-5900
Email: GILDFOIAAppeals@ice.dhs.gov

RE: FREEDOM OF INFORMATION ACT APPEAL
ICE FOIA Case Number 2021-ICFO-36730
Re: Martin Vargas Arellano

To Whom It May Concern:

I am hereby appealing the refusal to provide records for the following request:

- all ICE records regarding medical treatment and COVID, pertaining to Martin Vargas Arellano DOB: 6/8/1965 COB: Mexico.

This request has been made by Martin Vargas, the son of Martin Vargas Arellano, who is now deceased.

Mr. Vargas appeals the categorical denial of his Freedom of Information Act request. On September 22, 2021, ICE denied his request claiming an exemption under 5 U.S.C. § 552(b)(7)(A) "due to the open status of ongoing law enforcement investigations" and citing the pending litigation in *Roman v. Wolf*, No. 5:20-cv-00768-TJH-PVC being heard in the United States District Court for the Central District of California. *See* Attached Exhibit. This was the sole basis of the denial.

The existence of pending civil litigation in *Roman v. Wolf*, is not a valid basis for failing to comply with the Freedom of Information Act. ICE's denial is unlawful for at least three reasons.

First, ICE has not established that the records sought have been “compiled for law enforcement purposes” as is required under exemption 7. 5 U.S.C. § 552(b)(7). To demonstrate that documents were compiled for law enforcement purposes, a law enforcement agency must establish “a rational nexus between [the withholding] and one of the agency’s law enforcement duties” and a “connection between an individual or incident and a possible security risk or violation of federal law.” *Campbell v. U.S. Dep’t of Just.*, 164 F.3d 20, 32 (D.C. Cir. 1998), *as amended* (Mar. 3, 1999) (internal citation and quotation marks omitted). Additionally, “records documenting only government surveillance or oversight of the performance of duties of its employees do not qualify” as documents compiled for law enforcement purposes. *Bartko v. United States Dep’t of Just.*, 898 F.3d 51, 64 (D.C. Cir. 2018) (internal citation and quotation marks omitted). The only records sought here are related to Mr. Vargas’ medical treatment while in detention. Such records are compiled for purposes of medical and administrative processing and as part of the agency’s own monitoring and oversight over its facility. ICE has not established a connection between the medical and COVID related records sought and “a possible security risk or violation of federal law.” *Campbell*, 164 F.3d at 32.

Second, exemption 7(A) is facially inapplicable because *Roman v. Wolf* is not a pending or prospective enforcement proceeding. Exemption 7(A) protects from disclosure records or information “compiled for law enforcement purposes”, the release of which could reasonably be expected to “interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). Specifically, to apply this exemption, an agency must show that “disclosure (1) could reasonably be expected to interfere with (2) *enforcement proceedings* that are (3) pending or reasonably anticipated. *CREW v. U.S. Dep’t of Just.*, 746 F.3d 1082, 1096 (D.C. Cir. 2014) (citation and internal quotation marks omitted) (emphasis added). *Roman v. Wolf* is a class-action lawsuit brought by noncitizens detained at the Adelanto ICE Processing Center. Plaintiffs in that case raised a constitutional challenge to their conditions of detention during the COVID-19 pandemic. The Plaintiffs in *Roman v. Wolf* are not challenging their removal orders. Because *Roman v. Wolf* is not an enforcement proceeding, exemption 7(A) is inapplicable.

Third, even assuming arguendo that *Roman v. Wolf* were an enforcement proceeding under 7(A), ICE’s denial is inadequate because the agency has not explained how any disclosure “could reasonably be expected to interfere with [] enforcement proceedings.” *CREW*, 746 F.3d at 1096. “[T]o prevail under Exemption 7(A), the government must show, by more than conclusory statement, how the particular kinds of investigatory records requested would interfere with a pending enforcement proceeding.” *North v. Walsh*, 881 F.2d 1088, 1097 (D.C. Cir. 1989). In its letter withholding all records responsive to Mr. Vargas’ FOIA request, ICE provided nothing more than a conclusory statement and did not sufficiently identify, as is required, “distinct categories of documents in order to demonstrate how disclosure of that category of document would interfere with enforcement proceedings.” *Shannahan v. I.R.S.*, 637 F. Supp. 2d 902, 920 (W.D. Wash. 2009).

As such, ICE’s categorical withholding under FOIA Exemption 7(A) is unlawful and this appeal should be sustained.

Thank you very much for your attention to this matter and I look forward to your response to this appeal within twenty working days, as FOIA requires. *See* 5 U.S.C. § 552(a)(6)(A)(ii).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Stacy Tolchin', is written over a faint rectangular stamp.

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Office of Information Governance and Privacy

U.S. Department of Homeland Security
500 12th St., SW
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U.S. Immigration
and Customs
Enforcement

September 22, 2021

Stacy Tolchin
Law Offices of Stacy Tolchin
634 S. Spring St., Ste. 500A
Los Angeles, CA 90014

RE: ICE FOIA Case Number 2021-ICFO-36730

Dear Ms. Tolchin:

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated April 2, 2021. You have requested:

- all ICE records regarding medical treatment and COVID, pertaining to Martin Vargas Arellano DOB: 6/8/1965 COB: Mexico.

Due to the open status of ongoing law enforcement investigations, ICE has determined that the information you are requesting is withholdable in its entirety pursuant to Title 5 U.S.C. § 552 (b)(7)(A). FOIA Exemption 7(A) protects from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. ICE has determined that the information you are seeking relates to ongoing law enforcement investigations. Therefore, ICE is withholding all records, documents, and/or other material, which if disclosed prior to completion, could reasonably be expected to interfere with law enforcement proceedings and final agency actions related to those proceedings. Please be advised that once all pending matters are resolved and FOIA Exemption 7(A) is no longer applicable, there may be other exemptions which could protect certain information from disclosure, such as FOIA Exemptions 6, 7(C), 7(D), 7(E) and/or 7(F).

Specifically, The ICE Office of Enforcement and Removal Operations (ERO) determined that any responsive records should be withheld due to the pending litigation, *Roman v. Wolf*, Case No. 5:20-cv-00768-TJH-PVC being heard in the United States District Court for the Central District of California, as the information contained may adversely affect the outcome of this case.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. You may submit your appeal electronically at GILDFOIAAppeals@ice.dhs.gov or via regular mail to:

Office of Information Governance and Privacy

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



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Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of FOIA allow DHS to charge for processing fees, up to \$25, unless you seek a waiver of fees. In this instance, because the cost is below the \$25 minimum, there is no charge.

If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office and refer to FOIA case number **2021-ICFO-36730**. You may send an e-mail to ice-foia@ice.dhs.gov, call toll free (866) 633-1182, or you may contact our FOIA Public Liaison, Fernando Pineiro, in the same manner. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in black ink that reads "Matthias Headland".

Matthias Headland
Supervisory Paralegal Specialist