



March 13th, 2023

Sent via e-mail to ICE-FOIA@dhs.gov

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

**RE: Freedom of Information Act Request
Melvin Ariel Calero Mendoza**

DOB: 9/29/86

DOB according to ICE's records: 9/29/83

Case #240-868-263

Dear FOIA Officers,

University of Denver Sturm College of Law's Immigration Law and Policy Clinic ("The Clinic") submits this letter as a request for records¹ under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, et seq. And Privacy Act of 1974, 5 U.S.C. § 552a. The Clinic represents Melvin Ariel Calero Mendoza's sister, Adilia Calero Mendoza, in matters relating to the investigation of Mr. Calero Mendoza's death at the Aurora GEO Detention facility while in ICE Custody. Adilia Calero is Mr. Calero Mendoza's personal representative in this matter.

The Clinic requests the following records related to the death of Melvin Ariel Calero Mendoza² ("Mr. Calero Mendoza") who passed away on October 13, 2022, when in the custody of U.S. Immigration and Customs Enforcement ("ICE") while detained in Aurora,

¹ The term "records" as used herein includes, but is not limited to, communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

² See <https://www.ice.gov/news/releases/nicaraguan-man-ice-custody-passes-away-colorado-hospital>.

Colorado.

The Clinic seeks disclosure of any and all responsive records, including all electronic documents and communications in the custody of ICE, the Department of Homeland Security (“DHS”), and any other subcomponents or subcontractors (collectively the “DHS”), as described in the specific requests listed below.

I. Records Requested

On April 13, 2022, U.S. Customs and Border Protection apprehended Mr. Calero Mendoza and placed him into the custody of Immigration and Customs Enforcement (ICE). On April 15, 2022, ICE transferred Mr. Calero Mendoza to the Tarrant County Detention Facility (“TCDF”) in Estancia, New Mexico. On May 2, 2022, ICE transferred him to the Aurora Contract Detention Facility (“Aurora facility”), which is owned and operated by GEO Group, Inc. (“GEO”) and located in Aurora, Colorado. After six months of detention, on October 13, 2022, he died while in ICE custody.

The Clinic requests **all medical records in DHS’ possession pertaining to Mr. Calero Mendoza**, including but not limited to the following:

1. Any and all medical and mental health records from when Mr. Calero Mendoza entered DHS custody on April 13, 2022, until October 13, 2022, including but not limited to medical, dental and mental health intake screening conducted at the TCDF and Aurora facility, indications of preexisting conditions, any and all kite requests seeking medical assistance (both paper and electronically filed), records/notes/observations from any medical/mental health appointments, diagnoses, and medication(s) provided and/or prescribed; records of injuries and actions taken.
2. A copy of the death certificate for Mr. Calero Mendoza.

II. Expedited Processing is Merited.

The Clinic requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e)(1).

ICE policy requires transparency when a person passes away while in the agency’s custody³. It calls for ICE to release information to the public that “timely, accurately, appropriately, and with sufficient detail” depicts the circumstances relating to the person’s death. *Id.* A “compelling need” to produce these records exists and each basis for granting a request for expedited processing is satisfied. *Id.*

³ ICE Directive 11003.5, Notification, Review, and Reporting Requirements for Detainee Deaths (Oct. 25, 2021), <https://www.ice.gov/doclib/detention/directive11003-5.pdf>. 6 ICE Office of Professional Responsibility, External Reviews and Anal

First, unanswered questions about what happened to Mr. Calero Mendoza contribute to the immense stress and intense grief of his family members. The Clinic represents Mr. Calero Mendoza's personal representative, Adilia Calero Mendoza -- his sister, who maintains close contact with his other surviving family members including his young children, mother, father, and other siblings. The requested records are an essential aspect of advising and orienting Ms. Mendoza and her family during their attempts to seek closure and an understanding about what happened to their loved one as well as protect their legal rights, as they will be unable to explore the possibility of a legal remedy to their loss without access to the medical records and knowing exactly what happened in the detention center and what care he received.

The Clinic requested these medical records directly via counsel for the GEO Group, owner of the Aurora Facility, on February 27, 2023. The Aurora Facility denied this request. This denial was inconsistent with GEO's standard practice regarding medical records of detained people.⁴ It is also inconsistent with GEO and ICE's obligations under the 2011 PBNDS, revised in 2016, binding at Aurora through their incorporation into the contract.⁵

The denial was also improper under Colorado law, namely the patient's bill of rights found in 6 CCR 1011-1, which guarantees people who receive care from a licensed Colorado provider or health facility access to their records.

The Aurora Facility's illegal and improper denial of the initial request for medical records has left The Clinic with no alternative route to request records in a timely and expedited fashion other than via this FOIA request.

Second, the records requested relate to the death of a person within ICE custody at the Aurora facility and expedited processing is required because they could be an "imminent threat to the life or physical safety" of those who continue to be detained in the same space and by the same custodians. 6 C.F.R. § 5.5(e)(1)(i). On December 4, 2017, Kamyar Samimi passed away while in ICE custody at the Aurora facility. Despite an initial report from ICE that there was no fault involved, a supplementary investigation revealed that medical staff members made medically unjustifiable decisions in their administration of care. An internal ICE review concluded that staff in the Aurora facility committed numerous violations of ICE detention standards.⁶ Subsequently, the DHS Office of Inspector General ("OIG") investigated four ICE detention facilities across the country, including the Aurora facility. In a 2019 report, the OIG found

⁴ The Clinic regularly receives medical records -- i.e. information regarding detainees, per the language of 8 CFR 236.6 -- for other clients within the Aurora Facility.

⁵ Standard 4.3 BB. 2 states, "Upon his/her request, while in detention, a detainee or his/her designated representative shall receive information from their medical records." In the alternative, the standard instructs that upon release or transfer, a detailed medical summary shall be provided.

⁶ ICE Office of Professional Responsibility, External Reviews and Analysis Unit Detainee Death Review: Kamyar Samimi (May 2018), https://bento.cdn.pbs.org/hostedbento-prod/filer_public/RMPBS%20PDFs/RMPBS%20News/2018-ICFO-47347.pdf; U.S. House of Representatives Committee on Oversight and Reform and Subcommittee on Civil Rights and Civil Liberties Report (Sep. 2020), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-09-24.%20Staff%20Report%20on%20ICE%20Contractors.pdf> ("During Mr. Samimi's last hours, he was placed on suicide watch. He exhibited seizure symptoms and vomited and urinated on himself, but multiple calls to the on-call physician, who is required to be available 24 hours per day, were never answered.").

that the Aurora facility does not meet ICE's own detention standards.⁷ Yet, over three years later, ICE and GEO have not meaningfully addressed any of the violations reported in the OIG investigation. Therefore, this request requires expedited processing to mitigate the likelihood of substantial harm and/or death to persons detained within the Aurora facility by gaining a better understanding of what happened to Mr. Calero Mendoza.

Third, the death of Mr. Calero Mendoza is “a matter of widespread” interest that implicates “the government’s integrity” and “affect[s] public confidence.” 6 C.F.R. § 5.5(e)(1)(iv). Mr. Calero Mendoza’s death is not an isolated event. The Aurora facility has a lengthy history of providing inadequate medical care for persons detained ICE custody⁸. Three people held at the Aurora facility died while in ICE custody.⁹ As discussed above, the last time someone passed away at the Aurora facility, it was found that medical staff members’ actions were unjustifiable and did not follow the appropriate standard of care. Further fracturing public confidence is the OIG report that indicated the Aurora facility was in violation of binding ICE detention standards. ICE has yet to mitigate those violations and continues to act with impunity. Public confidence in the care provided within the facility is shaken. A robust response to this request will allow for further transparency regarding the conditions of confinement and medical care offered to persons within the Aurora facility.

The Clinic meets the requirements of 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e)(1). Expedited processing is warranted.

I hereby certify under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing statements in support of expedited processing are true and correct to the best of my knowledge and understanding.

⁷ DHS Office of Inspector General Report, Concerns about Detainee Treatment and Care at Four Detention Facilities

(Jun. 3, 2019), (describing the inappropriate segregation practices in the Aurora facility, identifying “serious issues with the administrative and disciplinary segregation” used, describing the lack of outdoor space or opportunity for recreation provided, and lack of contact visitation with loved ones).

⁸ American Immigration Council (AIC) Complaint, RE: Failure to provide adequate medical and mental health care to individuals detained in the Denver Contract Detention Facility (Jun. 4, 2018), https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf; AIC Complaint (2019), SUPPLEMENT— Failure to provide adequate medical and mental health care to individuals detained in the Denver Contract Detention Facility (Jun. 11, 2019), https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_supplement_failure_to_provide_adequate_medical_and_mental_health_care.pdf; ACLU of Colorado Report, Cashing in on Cruelty: Stories of death, abuse and neglect at the GEO immigration detention facility in Aurora (Sep. 17, 2019), https://www.aclu-co.org/sites/default/files/ACLU_CO_Cashing_In_On_Cruelty_09-17-19.pdf; AIC/RMIAN/IJI Complaint (2022), Re: Violations of ICE COVID-19 Guidance, PBNDS 2011, and Rehabilitation Act of 1973 at the Denver Contract Detention Facility (Feb. 11, 2022), https://www.americanimmigrationcouncil.org/sites/default/files/research/complaint_against_ice_medical_neglect_people_sick_covid_19_colorado_facility_complaint1.pdf.

⁹ See <https://www.ice.gov/news/releases/nicaraguan-man-ice-custody-passes-away-colorado-hospital>.

III. The Clinic is Entitled to a Timely Response.

The Clinic appreciates your prompt attention to this request. In accordance with DHS regulations, we seek to receive a decision on our request for expedited processing within 10 calendar days. See 6 C.F.R. § 5.5(e)(4). We also anticipate a written response to our FOIA request within 20 business days. 5 U.S.C. § 552(a)(6)(A)(i).

The Clinic requests that they be contacted regarding any applicable fees associated with this request greater than \$25.00. The Clinic reserves the right to appeal a decision to deny a waiver of fees, withhold any records, or deny expedition of this request. If this request is denied in whole or in part, The Clinic asks that any deletions or omissions be justified by reference to specific FOIA exemptions. The Clinic expects the release of all segregable portions of otherwise exempt material.

This request will remain as an ongoing FOIA request until such a time as DHS conducts a fulsome search. Therefore, any records that come within the possession of DHS prior to the final response to this FOIA request are within the scope of this request. The Clinic certifies that the foregoing is true and correct to the best of its knowledge and belief. See 6 C.F.R. § 5.5(e)(3).

Please direct all communications and responses to this request to:

Elizabeth Jordan
Visiting Assistant Professor
Director, Immigration Law & Policy Clinic
University of Denver Sturm College of Law
2255 East Evans Avenue, Suite 335
Denver, CO 80210
303-871-6368
ejordan@law.du.edu

Thank you for your prompt attention to this matter.

Sincerely,

Elizabeth Jordan, Director, Immigration Law & Policy Clinic

Jenny Granston, Student Attorney

Sydney Johnson, Student Attorney

From: [ICE-FOIA](#)
To: [Jordan, Elizabeth](#)
Subject: [EXTERNAL] RE: FOIA Request - Medical Records A#240-868-263
Date: Thursday, May 25, 2023 6:55:32 AM
Attachments: [image001.png](#)

[External Email From]: **ICE-FOIA@ice.dhs.gov**

This request is currently pending the search for responsive documents.

Sincerely,

ICE FOIA Office
Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

From: Jordan, Elizabeth <ejordan@law.du.edu>
Sent: Wednesday, May 24, 2023 12:49 PM
To: ICE-FOIA <ice-foia@ice.dhs.gov>
Subject: RE: FOIA Request - Medical Records A#240-868-263

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Hello,

I'm writing to request an estimated date of production for this request. This has been pending well over 30 days at this point and we have provided all necessary consents to the release of these records.

Many thanks
Liz.

Elizabeth Jordan

Visiting Assistant Professor
Director, Immigration Law & Policy Clinic
University of Denver Sturm College of Law
2255 East Evans Avenue, Suite 335
Denver, CO 80210
303-871-6368
ejordan@law.du.edu
pronouns: she, her, hers



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From: Granston, Jenny <jgranston23@law.du.edu>
Sent: Saturday, April 15, 2023 7:56 AM
To: Johnson, Sydney <smjohnson24@law.du.edu>; Jordan, Elizabeth <ejordan@law.du.edu>
Subject: Fwd: FOIA Request - Medical Records A#240-868-263

From: ICE-FOIA <ICE-FOIA@ice.dhs.gov>
Sent: Saturday, April 15, 2023 6:14:08 AM
To: Granston, Jenny <jgranston23@law.du.edu>
Subject: [EXTERNAL] RE: FOIA Request - Medical Records A#240-868-263

[External Email From]: ICE-FOIA@ice.dhs.gov

Good Day,

In regard to 2023-ICFO-13655, we have queried the appropriate component of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. We will process your request as expeditiously as possible. Upon completion of the processing, all documents that can be released will be made available to you as soon as possible. We sincerely apologize for the delay you are experiencing and appreciate your continued patience.

Sincerely,

ICE FOIA

From: Granston, Jenny <jgranston23@law.du.edu>
Sent: Thursday, April 13, 2023 2:28 PM
To: ICE-FOIA <ICE-FOIA@ice.dhs.gov>
Cc: Johnson, Sydney <smjohnson24@law.du.edu>; Jordan, Elizabeth <ejordan@law.du.edu>
Subject: Re: FOIA Request - Medical Records A#240-868-263

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Hello,

Pursuant to 5 USC 552(a)(6)(E)(ii)(I), ICE must make a determination in regard to a request for expedited FOIA processing within ten calendar days. Under 5 USC 552(a)(6)(E)(iii), agency failure to deny or affirm such requests in a timely manner are subject to judicial review.

It has now been thirteen days since the foregoing expedited FOIA request was filed. We would now request immediate response to avoid future litigation.

Thank you,

Jenny Granston
She/Her/Ella
J.D. Candidate 2023 | University of Denver Sturm College of Law
T. 303.443.9634 | jgranston23@law.du.edu

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From: Granston, Jenny <jgranston23@law.du.edu>
Sent: Friday, March 31, 2023 3:44 PM
To: ICE-FOIA <ICE-FOIA@ice.dhs.gov>
Cc: Johnson, Sydney <smjohnson24@law.du.edu>; Jordan, Elizabeth <ejordan@law.du.edu>
Subject: Re: FOIA Request - Medical Records A#240-868-263

Hello,

We are requesting records that pertain to a third party-individual, Mr. Calero Mendoza, but the third-party individual is deceased and therefore cannot sign the document you have attached.

Per 22 CFR 171.11 (n)(3), A third-party requester who is the legal representative of another person covered under the PA, and submits all requirements under subpart C of this part, will be treated as a first-party requester. A third-party requester may receive greater access to requested information by submitting information about the subject of the request that is set

forth in paragraph (n)(1) of this section and providing proof that the third party is deceased.
22 CFR 171.11 (n)(3)(i).

This matter should be considered a first party request by the University of Denver Sturm College of Law Immigration Law and Policy Clinic as the legal representative of Ms. Adilia Calero Mendoza, Mr. Calero Mendoza's sister and personal representative. See 22 CFR 171.11 (n)(1) and (3).

We have attached a release from Ms. Lucía Soletto Mendoza, Mr. Calero Mendoza's mother, certifying that Ms. Adilia Calero Mendoza is Mr. Melvin Calero Mendoza's sister and designating her as the personal representative. In addition, we have attached a general authorization to disclose health information signed by Ms. Lucía Soletto Mendoza, who is the appropriate requestor for these records as his heir. CRS 15-11-103. We have also attached a news-clipping proving that Mr. Calero Mendoza is in fact deceased, and the third-party request concern does not apply.

Please confirm that these attachments are sufficient proof that this request should be considered a first party request by the University of Denver Sturm College of Law Immigration Law and Policy Clinic under 22 CFR 171.11 (n)(1).

We are also re-attaching our request under FOIA for Mr. Calero Mendoza's medical records from his time in detention. Per the statute, we look forward to a response from you within the expedited processing time frames.

Jenny Granston
She/Her/Ella
J.D. Candidate 2023 | University of Denver Sturm College of Law
T. 303.443.9634 | jgranston23@law.du.edu

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From: ICE-FOIA <ICE-FOIA@ice.dhs.gov>
Sent: Tuesday, March 14, 2023 4:57 AM
To: Granston, Jenny <jgranston23@law.du.edu>
Subject: [EXTERNAL] RE: FOIA Request - Medical Records A#240-868-263

[External Email From]: ICE-FOIA@ice.dhs.gov

Good day,

After reviewing the request, it was determined you are requesting records pertaining to a third-party individual. Please be advised that DHS regulations require, in the case of third-party information requests, a statement from the individual verifying his or her identity and certifying that individual's agreement that records concerning him or her may be accessed, analyzed, and released to a third party. See 6 C.F.R. § 5.21(f). Because you have not provided this documentation, your request is not a proper FOIA request, and we are unable to accept your request. Please resubmit the request with the attached third-party consent form.

Did you know?...Some records (such as entry/exit records, apprehensions at the border or point of entry, and travel records) to include I-94 records, are only available from Customs and Border Protection (CBP). – please contact them directly (see CBP FOIA and/or I-94 records); for A-file (Alien file) requests, or records regarding applications/petitions for relief, benefits, Asylees, credible fear and removal orders (these records reside in the A-file) please contact USCIS: go to USCIS FOIA for more information. For visa records, go to US DOS and Travel.State.Gov for assistance. For information regarding immigration court proceedings, contact the local Office of Chief Counsel (OCC).

Sincerely,

ICE FOIA Office
Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

From: Granston, Jenny <jgranston23@law.du.edu>
Sent: Monday, March 13, 2023 7:44 PM
To: ICE-FOIA@dhs.gov
Cc: Jordan, Elizabeth <ejordan@law.du.edu>; Johnson, Sydney <smjohnson24@law.du.edu>
Subject: FOIA Request - Medical Records A#240-868-263

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Hello,

Please find attached a FOIA request for Melvin Claero Mendoza's (#240-868-263) medical records.

Thank you,

Jenny Granston

She/Her/Ella

J.D. Candidate 2023 | University of Denver Sturm College of Law

T. 303.443.9634 | jgranston23@law.du.edu

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