



April 13, 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.

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

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.

and providing proof that the third party is deceased.” 22 CFR 171.11 (n)(3)(i). We have attached proof of his death through the ICE Detained Person Death Report attached in the email body, as well as a news article. We have also attached a notarized and certified letter from Ms. Soletto Mendoza, Mr. Calero Mendoza’s mother, designating Ms. Adilia Calero Mendoza as personal representative.

This request is 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).

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, 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 documents related and **pertaining to the Detainee Death Review Report of Mr. Calero Mendoza’s Death performed by the Office of Professional Responsibility (OPR), External Reviews and Analysis Unit (ERAU), and/or the Office of Detention Oversight (ODO)**, including but not limited to the following:

1. The official Detainee Death Review Report, released ~six months after Mr. Calero Mendoza’s death, produced by any of the following departments: the Office of Professional Responsibility (OPR), External Reviews and Analysis Unit (ERAU), and/or the Office of Detention Oversight (ODO).
2. Any and all documentation cited by or relied upon the proceeding offices in creation of the report, 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

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

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.

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.*

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.

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.⁴ 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

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

⁴ 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

that the Aurora facility does not meet ICE's own detention standards.⁵ 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 custody⁶. Three people held at the Aurora facility died while in ICE custody.⁷ 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.

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.”).

⁵ 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).

⁶ 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, PBND 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.

⁷ See <https://www.ice.gov/news/releases/nicaraguan-man-ice-custody-passes-away-colorado-hospital>.

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.

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. 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: RE: [EXTERNAL] ICE FOIA 2023-ICFO-22448
Date: Monday, July 24, 2023 3:52:46 PM
Attachments: [image001.png](#)

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

Good morning,

In regards to your request, it is currently in the queue to be processed by an analyst. Requests are processed on a first in, first out basis and timing can vary greatly depending on the volume of responsive documents received. Thank you for your continued patience.

Sincerely,
ICE/FOIA

From: Jordan, Elizabeth <ejordan@law.du.edu>
Sent: Monday, July 17, 2023 2:42 PM
To: ICE-FOIA <ICE-FOIA@ice.dhs.gov>
Subject: RE: [EXTERNAL] ICE FOIA 2023-ICFO-22448

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Do you have an estimated date of production?

Elizabeth Jordan

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



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From: ICE-FOIA <ICE-FOIA@ice.dhs.gov>
Sent: Friday, July 14, 2023 9:26 AM
To: Jordan, Elizabeth <ejordan@law.du.edu>
Subject: RE: [EXTERNAL] ICE FOIA 2023-ICFO-22448

[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: Monday, July 10, 2023 3:42 PM
To: ICE-FOIA <ICE-FOIA@ice.dhs.gov>
Subject: RE: [EXTERNAL] ICE FOIA 2023-ICFO-22448

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Hello,

Do you have an update on this? It is now over a month since the estimated completion date provided in the email below and well past the time for completion provided in the FOIA statute. This is a single document.

Thank you,
Elizabeth Jordan.

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



Sturm College of Law
UNIVERSITY OF DENVER

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From: ICE-FOIA <ICE-FOIA@ice.dhs.gov>

Sent: Wednesday, May 17, 2023 1:48 PM

To: Jordan, Elizabeth <ejordan@law.du.edu>

Subject: RE: [EXTERNAL] ICE FOIA 2023-ICFO-22448

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

This request is currently in queue to be processed. Requests are processed in the order they are received. As of today, the estimated completion date is 6/1/2023.

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 17, 2023 3:35 PM

To: ICE-FOIA <ice-foia@ice.dhs.gov>

Subject: RE: [EXTERNAL] ICE FOIA 2023-ICFO-22448

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Hello,

Can you please provide an estimated date of production for the single document we are seeking in this request? As a reminder, we are seeking the Detainee Death Review document produced by ICE headquarters in the death of Melvin Ariel CALERO MENDOZA, date of death 10/13/22 in ICE custody in Aurora, CO. On information and belief, this document has been complete for more than two weeks and is only available by FOIA. We'd greatly appreciate an estimated date of production for this document.

Thank you,

Elizabeth Jordan

Visiting Assistant Professor
Director, Immigration Law & Policy Clinic
University of Denver Sturm College of Law
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From: ice-foia@ice.dhs.gov <noreply@securerelease.us>

Sent: Tuesday, April 25, 2023 1:40 PM

To: Jordan, Elizabeth <ejordan@law.du.edu>

Subject: [EXTERNAL] ICE FOIA 2023-ICFO-22448

[External Email From]: securereleasesupportteam@deloitte.com

04/25/2023

Elizabeth Jordan
2255 E Evans Ave

Denver, Colorado 80210

RE: ICE FOIA Case Number 2023-ICFO-22448

Dear Requester:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated 4/13/2023, and to your request for expedited treatment. Your request was received in this office on 4/13/2023. Specifically, you requested records pertaining to the Detainee Death Review Report of Melvin Ariel Calero Mendoza.

Your request for expedited treatment is hereby denied.

Under the DHS FOIA regulations, expedited processing of a FOIA request is warranted if the request involves “circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual,” 6 C.F.R. § 5.5(e)(1)(i), or “an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information,” 6 C.F.R. § 5.5(e)(1)(ii). Requesters seeking expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct. 6 C.F.R. § 5.5(e)(3).

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE’s goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10- day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester, you will be charged 10 cents per page for duplication; the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

If you deem the decision to deny expedited treatment of your request an adverse determination, you have the right to appeal. 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 § 5.5(e)(2). You may submit your appeal electronically at GILDFOIAAppeals@ice.dhs.gov or via regular mail to:

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

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

ICE has queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

If you have any questions, please contact the FOIA office or Fernando Pineiro Jr., FOIA Public Liaison at 500 12th St. SW Stop 5009 Washington, DC 20536-5009 or (866) 633-1182. 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.

Your request has been assigned tracking number **2023-ICFO-22448**. Please use this number in future correspondence.

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

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