

April 28, 2023

Sent via e-mail to [GILDFOIAAppeals@ice.dhs.gov](mailto:GILDFOIAAppeals@ice.dhs.gov)

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

**ICE FOIA Case Number 2023-ICFO-22448**

DOB: 9/29/86

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

**II. FOIA Office erred when it denied Expedited Processing for Mr. Melvin Ariel Calero Mendoza's Detainee Death Report.**

The Clinic appeals FOIA ICE's decision to deny expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. §5.5(e)(1).

*First*, the detainee death report for Mr. Melvin Ariel Calero Mendoza should have already been completed within 180 days of his death, or on April 11<sup>th</sup>, 2023. Therefore, FOIA ICE's reason for denial due to "numerous documents that will necessitate a thorough and wide-ranging search" is incorrect. The report should have already been completed per ICE policy over two weeks ago. *Id.* No later than 180 days following a detainee death, absent exceptional circumstances, OPR should complete the OPR Detainee Death Review and provide it to the Deputy Director of ICE, EAD for ERO, AD for CM, OPLA, DHS, CRCL, and OIDO. *Id.* at 7(b). This report will not require a wide-ranging search. Furthermore, ICE should not be granted *additional* time when the report is already late.

*Second*, there is an urgent need to inform the public, but most importantly the family, about what happened to Mr. Calero Mendoza in ICE custody, which is a federal government activity. 6 C.F.R. §5.5(e)(1)(i). Mr. Calero Mendoza's family has received virtually no answers from ICE or GEO about what happened to their otherwise healthy and young family member. The Clinic represents Mr. Calero Mendoza's personal representative, Ms. 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 family is devastated to lose their loved one so unexpectedly, and there is an urgency for them to attempt to seek closure and an understanding about what happened to their loved one as well as protect their legal rights. They will be unable to explore the possibility of a legal remedy to their loss without knowing exactly what happened in the detention center and what care he received. Furthermore, there is an urgent need to inform the public of this death report, as it is the public who pays to keep those detained. The public has a right to know what happened to Mr. Calero Mendoza.

*Finally*, the report should also fall under affirmative disclosure of U.S.C. 552(a)(2)(D) and should be posted expeditiously on the ICE FOIA site, given the intense media and congressional interest in this case based on what few circumstances about his death are known.

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. Posting of the report will not require an extensive and wide-ranging search.

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.

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

Sydney Johnson, Student Attorney

Jenny Granston, Student Attorney

*Office of the Principal Legal Advisor*

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



**U.S. Immigration  
and Customs  
Enforcement**

May 24, 2023

Ms. Elizabeth Jordan  
Visiting Assistant Professor  
Director, Immigration Law and Policy Clinic  
2255 East Evans Ave, Sute 335  
Denver, CO 80210

**RE: 2023-ICAP-00284, 2023-ICFO-22448**

Dear Ms. Jordan:

This is in response to your letter, dated May 1, 2023, appealing the U.S. Immigration and Customs Enforcement's (ICE) denial of expedited processing of your Freedom of Information Act (FOIA) request, ICE FOIA case number 2023-ICFO-22448.

In your request dated April 13, 2023, you stated that you represent Adilia Calero Mendoza in matters relating to the death investigation of her brother, detainee Melvin Ariel Calero Mendoza. You indicated that Mr. Mendoza died on October 13, 2022 while in ICE custody at Aurora, CO. Accordingly, your request sought:

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 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.

In your request, you raised three conditions to rationalize expedited processing, the decedent's grieving family, potential imminent threat of life or physical safety to others detained at Aurora, CO and a claim that the decedent's death is a matter of widespread interest which presumably implicates the government's integrity and affects public confidence.

By letter dated April 25, 2023, the ICE FOIA Office acknowledged receipt of your FOIA request, provided notice of non-commercial requester fees, and denied your request for expedited processing. With respect to the latter, the ICE FOIA office stated:

[www.ice.gov](http://www.ice.gov)

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Your request for expedited processing is denied because you do not qualify for either category under 6 C.F.R. § 5.5(e)(1). You have not established that lack of expedited treatment in this case will pose an imminent threat to the life or physical safety of an individual. While you may be primarily engaged in the dissemination of information, you have not detailed with specificity why you feel there is an urgency to inform the public about the information you have requested. Qualifying urgency would need to exceed the public's right to know about government activity generally. You also did not offer sufficient supporting evidence of public interest that is any greater than the public's general interest in the information you have requested. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

You have appealed the denial of expedited treatment of your FOIA request. In your appeal, you first stated that expedited processing is warranted because the "detainee death report for Mr. Melvin Ariel Calero Mendoza should have already been completed." In fact, the death report is publicly posted in the ICE FOIA library at: <https://www.ice.gov/doclib/foia/reports/ddrMendozaMelvinArielCalero.pdf> Secondly, you noted that there is an urgent need to alert the public and the decedent's family of the circumstances that caused Mr. Mendoza's death. Your letter expresses an urgent need to inform the public is because the public "pays to keep detainees in ICE custody". You further stated it was urgent to inform the family of the details of Mr. Mendoza's death to facilitate grieving and closure. Finally, you referenced the affirmative disclosure requirements for information that has media and congressional interest.

On appeal, ICE employs a *de novo* review of the denial of expedited treatment of your FOIA request. As a requester, you bear the burden under the FOIA of showing that your request satisfies the requirements for expedited treatment.

The DHS FOIA Regulations at 6 C.F.R. § 5.5(e) provide the following four situations in which expedited processing is warranted:

- (i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information;
- (iii) The loss of substantial due process rights; or
- (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

The first situation in which processing on an expedited basis is appropriate requires a showing of circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. You have not provided any specific evidence demonstrating that standard processing of the request would pose an imminent threat to the life or physical safety of any particular individual.

The second situation in which processing on an expedited basis is appropriate has two prongs. The first requirement is that there is an "urgency to inform the public about an actual or alleged federal government activity." The second requirement is that the requester "is primarily engaged in disseminating information." You have neither provided evidence suggesting that you represent an

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organization that is primarily engaged in disseminating information, nor have you demonstrated an urgency to inform the public about a federal government activity.

The “urgency to inform the public” prong determination hinges on three factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity. *Am. Civil Liberties Union v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 (D.D.C. 2004). The first two factors have not been satisfied. You have not demonstrated that the request concerns a matter of current exigency to the American public. While you suggested that there is a need for public transparency and information on detention conditions at the facility in Aurora, CO, you have failed to identify how non-expedited processing of your request would compromise a significant recognized interest. With regard to the third situation in which processing on an expedited basis is appropriate (“[t]he loss of substantial due process rights”), you have not made a showing of a loss of substantial due process rights.

With regard to the fourth situation in which processing on an expedited basis is appropriate, you stated without providing evidence that the request deals with a matter of widespread media interest. Likewise, you have not made a showing regarding the existence of possible questions about the government’s integrity which would affect public confidence.

Therefore, ICE affirms the decision of ICE FOIA to deny your request for expedited processing.

However, upon a complete review of the administrative record, ICE has determined that the ICE FOIA Office did not provide to you with a response to your FOIA request. We are therefore remanding your appeal to the ICE FOIA Office for the completion of processing, including tasking to the appropriate agency/office(s) to obtain any responsive documents. The ICE FOIA Office will respond directly to you.

Should you have any questions regarding this response, please contact ICE at [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov). In the subject line of the email please include the word “appeal,” your appeal number, which is **2023-ICAP-00284**, and the FOIA case number, which is **2023-ICFO-22448**.

Sincerely,



For: Christopher Lanks, Acting Chief,  
Government Information Law Division  
ICE Office of the Principal Legal Advisor  
Department of Homeland Security