EXHIBIT 1

April 29, 2020

VIA FOIA ONLINE

U.S. Customs and Border Protection
FOIA Appeals
Policy and Litigation Branch
90 K Street NE
Washington, D.C. 20229
Via FOIAOnline

Re: Freedom of Information Act Appeal – Tracking No. CBP-2020-044668

Dear FOIA Appeals Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(6)(A), and Department of Homeland Security (DHS) regulations 6 C.F.R. § 5.8, American Oversight submits the following administrative appeal.

Background

On March 20, 2020, American Oversight submitted a FOIA request bearing the internal tracking number DHS-20-0639 to U.S. Customs and Border Protection (CBP). The request seeks, broadly speaking, copies of the "Healthcare and Security Compliance Analysis" reports—or equivalent internal procedural compliance analyses—completed by or for CBP Office of Professional Responsibility as part of the detainee death reviews for six specified individuals who died in custody. *See* Ex. A. By letter dated March 23, 2020, CBP acknowledged the request and assigned it tracking number CBP-2020-044668.

By email dated March 25, 2020, CBP denied American Oversight's FOIA request in full. *See* Ex. B. The messages stated, in full, "CBP-2020-044668 has been processed with the following final disposition: Full Denial Based on Exemptions." *Id.*

CBP's determination to fully deny the request due to exemptions is an adverse determination under DHS regulations. *See* 6 C.F.R. § 5.6(d). Pursuant to the requirements of 6 C.F.R. § 5.8, American Oversight submits this administrative appeal of:

(1) CBP's Failure to Provide an Adequate Administrative Determination
(2) CBP's Failure to Conduct an Adequate Search for Records
(3) CBP's Denial of American Oversight's Request for Records

Appeal of CBP's Failure to Provide an Adequate Administrative Determination

As an initial matter, CBP's bare response constitutes an inadequate administrative determination as it provides no detail whatsoever on the agency's search (or lack thereof), on any applicable exemptions, or any other reasoning for denying American Oversight's request. American Oversight thus cannot fairly appeal CBP's response in a fully adequate manner, and American Oversight reserves the right to challenge search deficiencies and withholdings not described in CBP's bare response.

Appeal of CBP's Failure to Conduct an Adequate Search for Records

Two days after acknowledging American Oversight's request, CBP denied the request in full, "[b]ased on [e]xemptions," without providing any additional explanation. *See* Ex. B. The vague language of CBP's response, in combination with the absence of any description of the search, indicates that CBP almost certainly did not conduct an adequate search, and likely did not conduct any search at all. FOIA requires that an agency's search be "reasonably calculated to uncover all relevant documents." *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (citations omitted). CBP's failure to conduct an adequate search (or a search at all) amounts to an improper withholding under—and violation of—FOIA. *Rodriguez v. U.S. Dep't of Defense*, 236 F. Supp. 3d 26, 34 (D.D.C. 2017) ("It is axiomatic that an inadequate search for records constitutes an improper withholding under FOIA.") (internal quotations omitted).

Appeal of CBP's Denial of American Oversight's Request for Records

(1) CBP's Unsupported Assertion of Exemptions Is Insufficient Grounds to Deny a Request.

DHS regulations provide that a denial of a request must include "[a] brief statement of the reasons for the denial, including any FOIA exemption applied by the component in denying the request." 6 C.F.R § 5.6(e)(2); *see Am. Civil Liberties Union v. U.S. Dep't of Def.*, 628 F.3d 612, 619 (D.C. Cir. 2011) (in showing the applicability of claimed exemptions on summary judgment, an agency's explanation must, *inter alia*, "describe[] the justifications for withholding the information with specific detail," and "demonstrate[]that the information withheld logically falls within the claimed exemption") (internal citations omitted). By baldly asserting that it denied American Oversight's request based on "[e]xemptions," CBP has failed to even articulate which FOIA exemptions it purportedly relied upon, let alone provide describe its justifications in specific detail.

Moreover, the records requested are likely subject to disclosure and likely are not properly exempt under the FOIA. Indeed, other DHS components have released a "Healthcare and Security Compliance Analysis" report related to an individual who died in custody (the requested documents here) to American Oversight in the past. Ex. C.

(2) CBP Failed to Provide an Estimate of the Volume of Material Withheld.

FOIA requires that an agency denying a records request "make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest

DHS-(CBP)-20-0639

protected by the exemption . . . pursuant to which the denial is made." 5 U.S.C. § 552(a)(6)(F); *see* 6 C.F.R. § 5.6(e)(3) (requiring agency denying FOIA request to provide "[a]n estimate of the volume of any records or information withheld," unless doing so "is otherwise indicated by deletions marked on records that are disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption").[1]

CBP's correspondence does not provide an estimate of the volume of material it has withheld under its exemption claim. Because the component does not articulate any specific exemptions, it does not provide any explanation as to how providing an estimate of volume would harm an interest protected by a relevant exemption.

(3) CBP Failed to Reasonably Segregate Non-Exempt Portions of Responsive Records.

FOIA requires agencies to release any reasonably segregable, non-exempt information contained in responsive records. *See* 5 U.S.C. § 552(b) ("Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection."). To the extent that portions of the responsive records are covered by any applicable exemption, CBP must review the responsive records and produce any reasonably segregable, non-exempt information. CBP's response provides no basis to believe that the component reviewed each responsive document to determine whether non-exempt portions of any records were segregable and could be disclosed.

Conclusion

Thank you for your consideration of this appeal. As provided in 5 U.S.C. § 552(a)(6)(A)(ii), we look forward to your determination on our appeal within twenty working days.

For questions regarding any part of this appeal or the underlying request for records, please contact

[1] In addition to requiring a statement of reasons and estimate of volume, DHS regulations require that a denial include: the name and title or position of the person responsible for the denial; a statement that the denial may be appealed under 6 C.F.R. § 5.8(a), and a description of the requirements set forth therein; and a statement notifying the requester of the assistance available from the agency's FOIA Public Liaison and the dispute resolution services offered by Office of Government Information Services. 6 C.F.R. § 5.6(e). CBP's one-sentence denial also failed to meet these requirements.

Mehreen Rasheed at foia@americanoversight.org or (202) 848-1320.

Sincerely,

Austin R. Evers
Executive Director
American Oversight

EXHIBIT A

March 20, 2020

VIA ELECTRONIC MAIL & ONLINE PORTAL

The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, DC 20528-0655
foia@hq.dhs.gov

FOIA Officer
U.S. Customs and Border Protection
90 K Street NW, 9th Floor
FOIA Division
Washington, DC 20229-1181
Via FOIAOnline

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Homeland Security (DHS), 6 C.F.R. Part 5, American Oversight makes the following request for records.

The continued deaths of people held in the custody of DHS components remain an issue of significant public concern. On March 8, 2020, a Guatemalan detainee who had passed her initial "credible fear" screening died in Immigration and Customs Enforcement (ICE) custody at a Texas hospital of yet-unknown causes a month after receiving gallbladder surgery.[1] A few weeks earlier on February 21, a Mexican citizen was found dead in his cell at Northeast Ohio Correctional Center, apparently of self-inflicted strangulation.[2] Eight individuals in total have been confirmed as dying in ICE custody since October 2019, already equaling the total number of deaths in fiscal year 2019.[3] On May 20, 2019, 16-year-old Guatemalan boy Carlos Gregorio Hernandez Vasquez died in

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[1] Hamed Aleaziz, *Another Immigrant Has Died in ICE Custody. She's the Eight Since October*, BUZZFEED (March 8, 2020, 8:46 PM), https://www.buzzfeednews.com/article/hamedaleaziz/immigrant-died-ice-custody-healthcare-hospital-asylum.
[2] *ICE Detainee from Mexico Passes Away in Ohio,* Feb. 21, 2020, https://www.ice.gov/news/releases/ice-detainee-mexico-passes-away-ohio#wcm-survey-target-id.
[3] *See* Aleaziz *supra*, note 1.

Customs and Border Protection (CBP) custody in his cell at a Border Patrol station in Weslaco, Texas.[4] CBP officials chose to keep Carlos in their custody for six days, twice the federal limit of 72 hours,[5] despite his flu diagnosis and high fever. Video evidence obtained by ProPublica shows that Carlos's cellmate found him lying dead in a pool of his own blood, contradicting CBP's claim that Border Patrol agents had discovered his condition during routine monitoring.[6] In response to media scrutiny of Carlos's death, the House Oversight and Reform Committee opened an investigation into the medical treatment of immigrant detainees, issuing letters to Acting DHS Secretary Chad Wolf[7] and Acting Director of ICE Matthew Albence[8] requesting documentation pertaining to all detainee deaths in custody since January 20, 2017.

To the extent that the public has been informed of the context for deaths in DHS custody, there are few available internal reviews detailing whether responsible agency officials adhered to prescribed procedures in the events leading to each detainee's death. Accordingly, it is in the public interest to understand how DHS has investigated deaths occurring in its custody. American Oversight seeks records with the potential to shed light on the treatment of vulnerable detainees and whether or to what extent DHS officials are upholding the standards of care prescribed by federal law and agency guidance.

Requested Records

American Oversight requests that DHS & CBP produce the following within twenty business days:

> Copies of the "Healthcare and Security Compliance Analysis" reports—or equivalent internal procedural compliance analysis—completed by or for CBP Office of Professional Responsibility as part of the detainee death reviews for each of the following individuals who died in custody:
>
> a. Travis James Eckstein
> b. Carlos Hernandez-Vasquez
> c. Wilmer Josue Ramirez Vasquez
> d. Nikki Enriquez
> e. Claudine Ann Luera

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[4] Robert Moore, et al., *Inside the Cell Where a Sick 16 Year-Old Boy Died in Border Patrol Care*, PROPUBLICA (Dec. 5, 2019, 1:30 PM), https://www.propublica.org/article/inside-the-cell-where-a-sick-16-year-old-boy-died-in-border-patrol-care.
[5] 8 U.S.C. § 1232 (b)(3).
[6] *See* Moore *supra*, note 4.
[7] Ltr. From Committee on House Oversight and Reform to Chad Wolf, Acting Sec., U.S. Department of Homeland Security, Dec. 23, 2019, https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-12-23.CBM%20to%20Wolf%20re%20Death%20in%20Custody.pdf.
[8] Ltr. From Committee on House Oversight and Reform to Ronald Vitiello, Acting Dir., U.S. Immigration and Customs Enforcement, Dec. 23, 2019, https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-12-23.JR%20to%20ICE%20re%20Whistleblower%20Complaints.pdf.

f. Melissa Ramirez

American Oversight expects that this request for a small volume of readily-identifiable documents will be assigned to the Simple track and processed expeditiously.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government."[9] This request relates directly to the work of DHS and its components, including some of the most important responsibilities of the Department—the safety and care of the individuals it has detained and deprived of liberty. This request seeks records that would shed light on how DHS is treating people it has detained, and how the Department responds when the life and safety of detainees is threatened. These are matters of significant public and congressional concern,[10] and the requested records will provide the public with information necessary to hold DHS accountable for its actions and policies. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.[11] As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.[12]

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[9] 5 U.S.C. § 552(a)(4)(A)(iii).
[10] *See supra* note 7; *supra* note 8.
[11] *See* 5 U.S.C. § 552(a)(4)(A)(iii).
[12] American Oversight currently has approximately 15,400 page likes on Facebook and 102,100 followers on Twitter. American Oversight, FACEBOOK, https://www.facebook.com/weareoversight/ (last visited March 4, 2020); American Oversight (@weareoversight), TWITTER, https://twitter.com/weareoversight (last visited March 4, 2020).

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.[13] Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;[14] posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;[15] posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;[16] posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;[17] and posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.[18]

Accordingly, American Oversight qualifies for a fee waiver.

__Guidance Regarding the Search & Processing of Requested Records__

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.

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[13] *News*, AMERICAN OVERSIGHT, https://www.americanoversight.org/blog.
[14] *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents.
[15] *See generally Audit the Wall*, AMERICAN OVERSIGHT, https://www.americanoversight.org/investigation/audit-the-wall; *see, e.g.*, *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT, https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall.
[16] *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business.
[17] *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT, https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia.
[18] *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, https://www.americanoversight.org/sessions-letter.

- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.

- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.[19] It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.[20]

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,[21] and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.

- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are

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[19] *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); *cf. Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

[20] *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

[21] Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, "Managing Government Records Directive," M-12-18 (Aug. 24, 2012), https://www.archives.gov/files/records-mgmt/m-12-18.pdf.

subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Dan McGrath at foia@americanoversight.org or 202.897.4213. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

Austin R. Evers
Executive Director
American Oversight

EXHIBIT B

From: no-reply@foiaonline.gov <no-reply@foiaonline.gov>
Sent: Wednesday, March 25, 2020 1:29 PM
To: FOIA <foia@americanoversight.org>
Subject: [Ext]Final Disposition, Request CBP-2020-044668

CBP-2020-044668 has been processed with the following final disposition: Full Denial Based on Exemptions.

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EXHIBIT C

DETAINEE DEATH REVIEW
Jeffry HERNANDEZ, A#206418141
Healthcare and Security Compliance Analysis
Cibola County Correctional Center, Milan, New Mexico

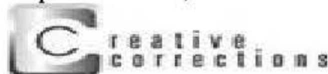
As requested by the ICE Office of Professional Responsibility (OPR), External Reviews and Analysis Unit (ERAU), Creative Corrections participated in a review of the death of detainee Jeffry HERNANDEZ. A site visit was conducted June 26 through 27, 2018 by ERAU personnel (b)(6); (b)(7)(C) Management and Program Analyst and team leader; (b)(6); (b)(7)(C) Management and Program Analyst; Creative Corrections contract personnel (b)(6); (b)(7)(C) Security Subject Matter Expert; and (b)(6); (b)(7)(C) Registered Nurse, Healthcare Subject Matter Expert. In addition, telephone interviews were conducted between August 22, 2018 and September 18, 2018 by Mr. (b)(6); and Creative Corrections Program Manager (b)(6); (b)(7)(C) Contractor participation was requested to determine compliance with the ICE 2011 Performance Based National Detention Standards (PBNDS), 2016 revisions, governing medical care and security operations.

This report was prepared collaboratively by Ms. (b)(6); Ms. (b)(6); (b)(7)(C) and Ms. (b)(6); (b)(7)(C) Included is a case synopsis, description of the Cibola County Correctional Facility (CCCC) and its medical services, a narrative summary of events, and conclusions. The information and findings herein are based on analysis of detainee HERNANDEZ's detention file and medical record, tour of the intake and medical areas, interviews of CCCC and ERO personnel, and review of hospital and air transport records, facility policies, video surveillance footage, and available incident related documentation.

SYNOPSIS

Jeffry HERNANDEZ, a 33 year-old transgender woman, entered the United States at the San Ysidro Port of Entry requesting asylum on May 9, 2018, one week before she was admitted to CCCC. On May 11, 2018 while still in the custody of U.S. Customs and Border Protection (CBP), she was examined by a physician following screening by a CBP officer. The physician documented she was human immunodeficiency virus (HIV) positive, emaciated, and ill appearing with a productive cough. She was sent to a hospital the same day where cleared for tuberculosis (TB) and given medications for bronchitis. Available evidence indicates ERO did not receive documentation of the physician's examination, the hospital report, or medications.

HERNANDEZ remained in CBP custody until May 14, 2018 while ICE Enforcement and Removal Operations (ERO) arranged for her transport and ultimate detention at CCCC, a facility



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designated for housing transgender detainees. She was in ERO custody for 56 hours before she was admitted to CCCC, an estimated 24 of which were in two detention facilities, six in the San Luis Regional Detention Center and 18 in the El Paso Service Processing Center. The remaining time in ERO custody prior to HERNANDEZ's admission to CCCC was spent in transit. HERNANDEZ was not medically screened at either the San Luis or El Paso facilities because her stay at both facilities was brief and her transfer was imminent.

During medical intake screening at CCCC, HERNANDEZ reported she was HIV positive and never treated. She also reported significant weight loss in the past month and a half. Vital signs were abnormal, she had a persistent cough, and appeared very malnourished and dehydrated. A physician was notified and the detainee was examined on an expedited basis. The physician diagnosed untreated HIV, dehydration, starvation, and fever with cough. She ordered HERNANDEZ's transport to the local hospital for intravenous fluids to treat dehydration and to rule out an infection secondary to HIV and pneumonia.

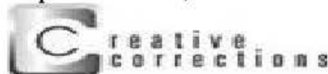
Following evaluation and diagnostic testing, the emergency department physician determined that detainee HERNANDEZ's condition required care beyond the hospital's scope. She was transferred by air to a hospital in Albuquerque, New Mexico and admitted to the intensive care unit (ICU). She remained in the ICU for eight days, during which she received intravenous antibiotics, medication to increase her blood pressure, abdominal and neck CT scans, multiple blood tests, and chest x-rays. HERNANDEZ's condition began to deteriorate following thoracentesis to remove excess fluid between the lungs and chest wall on the seventh day of her hospitalization, following which she was intubated and placed on a ventilator. She experienced multiple episodes of cardiac arrest over the course of the five hours preceding her death. Resuscitative efforts failed following a final episode and at 3:32 a.m. on May 25, 2018, death was pronounced.

The reported preliminary cause of death was cardiac arrest. The death certificate and autopsy report are not available as of the date of this report.

MEDICAL SERVICES

CCCC is scheduled for its first American Correctional Association accreditation audit in October 2018. CCCC is not accredited by the National Commission on Correctional Health Care.

Healthcare services are provided seven days per week 24 hours per day by contractor Correct Care Solutions (CCS) based in Nashville, Tennessee. Although the staffing plan allocates 31.8 positions, 32.5 positions were filled at the time of the site visit. They included the following: Health Services Administrator (HSA); two physicians; one full time nurse practitioner (NP); three part time NPs; one dentist; Director of Nursing (DON); 12 full time registered nurses



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(RN); one part time RN, three full time licensed practical nurses (LPN); one part-time LPN; two licensed mental health counselors (LMHC); one pharmacy technician; and four medical record clerks. Services provided under independent contract include tele-psychiatry 20 hours per week; pharmacy, radiology and laboratory. The HSA reported that due to difficulty hiring LPNs in the area, RNs fill five LPN positions. The reviewer confirmed the credentials of medical staff involved in detainee HERNANDEZ's care were current and primary-source verified.

FACILITY DESCRIPTION

CCCC was built by Cibola County and purchased in 1998 by contractor CoreCivic, formerly Corrections Corporation of America. The facility houses male and transgender ICE detainees, Cibola County inmates, and United States Marshal Service detainees. The facility capacity is 1204. On May 25, 2018, the date of detainee HERNANDEZ's death, the facility population was 953, including 309 ICE detainees.

There are three perimeter fences surrounding the facility. Razor wire is along the top of the outer perimeter fence and between the two fences furthest from CCCC buildings. Visitors seeking entry to the secure perimeter are processed in a small building and pass through a metal detector, and personal items are searched by way of an X-ray machine. Visitors are then issued identification badges and move within the facility under escort. Video surveillance cameras are used throughout the facility to monitor and record events.

SUMMARY OF EVENTS

May 9, 2018
ERO's Detainee Death Notice documents HERNANDEZ applied for admission to the US at the San Ysidro Port of Entry.

May 11, 2018
(b)(6); (b)(7)(C) completed an ICE Health Services Corps (IHSC) In-Processing Health Screening Form, entering "no" for all questions. The form includes a handwritten note stating, "HIV Positive/No Meds".

> **Note**: (b)(6); (b)(7)(C) title is not identified on the form, but multiple forms provided to reviewers identify him as a CBP officer.

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A printed CBP San Ysidro SIGMA EVENT report modified by (b)(6); (b)(7)(C) this date includes a handwritten note stating, "HIV Positive No meds/Fever chills".

(b)(6); (b)(7)(C) MD documented completion of a physical examination on a Mission Medical Support New Patient Comprehensive Exam form. He wrote that the detainee's chief complaints were HIV, a headache, and cough. HERNANDEZ reported she was diagnosed with HIV five months earlier and over the past month, lost 40 pounds and had recurring vomiting and diarrhea. Recorded vital signs were as follows: elevated temperature of 99.5, elevated pulse of 134, respirations 18, blood pressure 112/70, and pulse oxygen 99 percent. The examination findings were that HERNANDEZ was emaciated and ill appearing with a productive cough. Doctor (b)(6); (b)(7)(C) assessment and plan identified HIV, weight loss, cough, headache and tachycardia[1] and directed transfer to the emergency room for chest X-ray and evaluation to rule out active infection[2] and sepsis. He also directed that HERNANDEZ wear a mask, and noted that she was not medically cleared for transport and detention.

A report from Scripps Mercy Hospital, Chula Vista, CA documents a positive finding for bronchitis, a normal chest X-ray, and that there was no clinical evidence of tuberculosis. The report, also dated May 11, 2018, includes instructions for Tylenol[3] for fever, Z-Pack[4], and an Albuterol inhaler[5]. Detainee HERNANDEZ was cleared for travel and incarceration.

> **Note**: Reviewers are not familiar with CBP processes; therefore, no explanation for the two-day delay in medical screening and tuberculosis clearance can be offered.

> **Note**: It is unknown whether the medications listed on the hospital report were dispensed or given to HERNANDEZ.

May 12, 2018

By email timed 4:30 p.m., ICE/ERO San Diego requested transfer of 19 detainees, including HERNANDEZ, to CCCC under the streamlined transfer process. The email was written by (b)(6); (b)(7)(C) (title unknown) and was directed to two email groups and multiple persons with ICE email addresses. (b)(6); (b)(7)(C) Supervisory Detention and Deportation Officer (SDDO), ICE Albuquerque, replied at 7:21 p.m. stating bed space at CCCC was approved.

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[1] Tachycardia is a heart rate that that exceeds the normal resting rate. Normal pulse rate for an adult is 60 to 100 beats per minute.

[2] Chest X-rays identify lung infections such as TB, pneumonia, and bronchitis.

[3] Tylenol is a brand name for acetaminophen.

[4] Z-Pack is an antibiotic.

[5] An albulterol inhaler is a bronchodilator to relax muscles in the lung.

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May 13, 2018
By email timed 8:21 a.m. to ICE Air Charter Operations, (b)(6); (b)(7)(C) requested 19 seats for 19 transgender females. He wrote that they were apprehended at the San Ysidro Port of Entry and were to be transferred directly from there to the El Paso, Texas Area of Responsibility, noting, "…arrangements have been made with the receiving office to have a complete medical evaluation upon arrival. Therefore they will not need certain medications at the time of transport; i.e., HIV medication." May 22, 2018 was the flight date referenced by (b)(6); (b)(7)(C) corrected to May 15, 2018 by subsequent email.

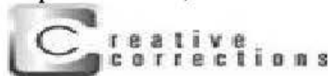
> **Note**: As detailed below, the first complete medical evaluation of HERNANDEZ after she was picked up at San Ysidro was at CCCC, 56 hours after she entered ERO custody. She passed through the San Luis Regional Detention Center and El Paso Service Processing Center (EPSPC) before being transferred to CCCC.

May 14, 2018
By email timed 10:34 a.m., Gary Gates, ICE Air Charter Operations, approved transport from the Phoenix-Mesa Gateway Airport to the El Paso Airport on May 15, 2018.

According to Byoung Park, SDDO assigned to the ERO San Diego Field Office, LaSalle Corrections transportation officers for the San Luis Regional Detention Center (SLRDC) picked up HERNANDEZ and 18 other transgender detainees at the San Ysidro Point of Entry at approximately 12:00 p.m. Their transport was requested by email the day before. The detainees arrived at SLRDC at 6:00 p.m. and according to Assistant Field Office Director (AFOD) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) were placed in a holding cell. He reported that because their departure was imminent, the detainees were not medically screened. Asked whether ERO was aware of any medical information received from CBP when HERNANDEZ's custody was transferred, both AFOD (b)(6); (b)(7)(C) and SDDO (b)(6); (b)(7)(C) stated they assume the CBP officer (b)(6); (b)(7)(C) s screening was received, but knew of nothing further.

May 15, 2018
A LaSalle Corrections Transport Trip Log lists HERNANDEZ among other detainees who departed SLRDC on a bus bound for the Phoenix-Mesa Gateway Airport at 12:00 a.m. The bus arrived at 4:00 a.m. and according SDDO (b)(6); (b)(7)(C) and AFOD (b)(6); (b)(7)(C) the detainees boarded a flight to El Paso. The time of flight departure is unknown, although according to (b)(6); (b)(7)(C) SDDO assigned to the ERO El Paso, the flight arrived in El Paso at 2:48 p.m. He said the passengers were met by ICE personnel and then turned over to contractor Global Precision Systems for transport by bus to the EPSPC.

ICE form G-391 documents the bus arrived at EPSPC at 3:15 p.m. According to SDDO (b)(6); (b)(7)(C) HERNANDEZ was placed in a housing unit with other transgender detainees pending



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transfer to CCCC the next day. He stated that if HERNANDEZ did not voice a medical concern and none were observed by officers involved in her transport or movement into EPSPC, no medical screening would have taken place. He confirmed with EPSPC healthcare personnel that they had no record of her; therefore, no medical concerns were brought to their attention.

May 16, 2018
ICE form G-391documents a total of 29 detainees were processed for transport to "ICE CAP" in Albuquerque, New Mexico between 8:30 and 9:45 a.m. The time of arrival at ICE CAP was 2:30 p.m. According to SDDO Ramirez, ICE CAP refers to the ERO sub-office in Albuquerque where there is a "meet and greet" with officers assuming custody for transport to designated detention facilities. He said that HERNANDEZ and the other detainees were turned over to the custody of CCCC transport officers. The time of departure for CCCC was not documented.

Per CCCC video surveillance footage, a Transcor[6] bus carrying 28 detainees arrived at the facility's sallyport gate at **7:59 p.m.** At **8:10 p.m.**, nine detainees were removed from the bus and escorted into the facility. At **8:13 p.m.**, 19 more detainees were removed from the bus. Booking Officer (b)(6); (b)(7)(C) informed the review team that the detainees in the second group were transgender and included HERNANDEZ.

> **Note**: The EADM shows HERNANDEZ was booked into CCCC approximately nine hours before video evidence shows she arrived.

The detainees were escorted into the facility at **8:43 p.m.** after restraints were removed. Form I-216, Record of Persons Transferred, documents all 19 transgender detainees were classified low custody by ERO. CCCC's intake area has seven holding cells, a property room, a shower room and three medical examination rooms. The video shows the detainees were taken to holding cells once inside the facility. Five at a time, the detainees were then escorted to the property room where they were provided with facility uniforms, shoes, linens, a hygiene kit and an identification card. During tour of the intake area, a property officer informed reviewers that arriving detainees' personal property is inventoried and then laundered by detainee workers before being placed in storage. HERNANDEZ's property included a jacket, shirt and underwear and one pair each of socks, shoes and pants. She signed a receipt for the items and forms acknowledging receipt of facility property, the right of CCCC to inspect non-privileged mail and to monitor non-attorney telephone calls, and receipts for the National ICE Detainee Handbook and the facility handbook.

> **Note**: With the exception of the handbook receipt, all forms were in English.

[6] Transcor America LLC is a subsidiary of CoreCivic and provides transportation services.

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Officer (b)(6); (b)(7)(C) was questioned about completion of the admission process. He described HERNANDEZ as quiet and said she seemed scared. He acknowledged he does not speak Spanish but asserted he is able to communicate through hand gestures and using the few Spanish words he has learned. He stated that although Spanish speaking officers are available in the intake area, he did not ask for assistance or use the language line to communicate. Officer (b)(6); (b)(7)(C) recalled HERNANDEZ answered no when asked if she had any medical problems, and offered his observation that it "seemed like she had the common cold and looked like she was under the weather." He said the detainee "seemed to understand when he asked her other yes or no questions, answering no to each one. HERNANDEZ was able to stand and walk on her own and did not lean on the table or counters for support.

May 17, 2018

Video surveillance footage from the intake area shows the 19 transgender detainees were escorted to the medical waiting area at **2:23 a.m.** They all placed blankets on the floor and laid down. At **4:08 a.m.**, the detainees were provided with a beverage. Detainee HERNANDEZ got up to take the beverage and then sat in a chair to drink it. At **4:11 a.m.**, she went to the waiting area bathroom, returning in a minute and laying on the floor again. At **6:00 a.m.**, breakfast was served and detainee HERNANDEZ stood and walked to the door to retrieve a tray. She then sat on the floor and appears to have eaten the entire contents before returning the tray to staff at **6:14 a.m.**

Vital signs of detainees awaiting medical screening were taken by dental assistant (b)(6); (b)(7)(C) this date. She reported she started this process at 6:00 a.m., although based on the video evidence, detainee HERNANDEZ was not called out of the waiting room until **7:26 a.m.** With the exception of normal respirations of 16 breaths per minute, her vital signs were abnormal, as follows: temperature and pulse elevated at 100.8 and 136, respectively; blood pressure low at 81/6; and pulse oxygen 92%[7]. She was five feet three inches tall and weighed 89 pounds. During interview Ms. (b)(6); stated the detainee looked ill so she put her paperwork aside so she would be the first one screened when the RN arrived.

At **7:35 a.m.** RN (b)(6); (b)(7)(C) conducted the intake screening. He signed and stamped two Medical Summary of Federal Prisoner/Alien in Transit forms to document his review, one reflecting HERNANDEZ departed from SLRDC on May 15, 2018; the second reflecting departure from EPC on May 16, 2018. The SLRDC form provides no information on TB

[7] Normal vital signs for an adult are as follows: temperature 98.6, pulse 60 to 100 beats per minute, blood pressure 90/60 to 120/80, and respirations 12 to 18 breaths per minute. Normal pulse oxygen, which indicates the saturation of oxygen in the blood, is between 95 and 100 percent.

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clearance; the EPC form has a checkmark indicating a purified protein derivative (PPD)[8] was completed, but does not provide a date. The section for documenting current medical problems is blank on both forms. In the Medication Required for Care En Route section, the following printed information appears: "*DETAINEE IN ICE CUSTODY LESS THAN 72 HOURS* DETAINEE TRANSFER MEETS REQUIREMENTS PER JPATS[9] CABIN CREW POLICIES & PROCEDURES MANUAL 'Medical Regulations, Section D 4.(a), page 33, regarding TB clearance." RN (b)(6); (b)(7)(C) also signed the afore-described IHSC In-Processing Health Screening form completed on May 11, 2018 by CBP Officer (b)(6); (b)(7)(C) with all negative findings except for a handwritten note documenting, "HIV positive/NO MEDS". Neither of the transfer forms were signed and dated by SLRDC and EPC personnel.

> **Note**: The New Patient Comprehensive Exam form completed by Dr. (b)(6); (b)(7)(C) and report of Scripps Mercy Hospital, both dated May 11, 2018, were not received by CCCC. As discussed above, the hospital report documents a chest X-ray was negative, there was no clinical evidence of TB, and a positive finding for bronchitis. The report also includes directions for Tylenol for fever, an antibiotic, and albuterol inhaler. No medications were received with HERNANDEZ.

RN (b)(6); (b)(7)(C) documented HERNANDEZ speaks Spanish and that Ms. (b)(6); (b)(7)(C) served as interpreter for screening. Ms. (b)(6); (b)(7)(C) co-signed the screening, Consent for Treatment, CCS Intake Education Information, and CCS Health Services Notice forms confirming she provided interpretation assistance. Detainee HERNANDEZ identified as transgender female and reported she was HIV positive and had Hepatitis A[10].

> **Note**: Following one of two entries documenting that detainee HERNANDEZ reported Hepatitis A, "[Patient] denies this" is written. As discussed below, she denied having Hepatitis A during physical examination by the physician.

RN (b)(6); (b)(7)(C) noted HERNANDEZ's current symptoms included cough, loss of appetite, and weight loss, writing, "[Patient] states loosing [*sic*] a lot of [weight] in the last month and a half." She reported she was not taking any medications.

> **Note**: It is unknown whether the medications listed on the Scripps Medical Center report were ever given to HERNANDEZ.

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[8] A PPD skin test determines exposure to tuberculosis. Once planted, 48 to 72 hours must elapse before results may be read.
[9] JPATS is the Justice Prisoner Alien Transportation System.
[10] Hepatitis A is a virus affecting the liver that is transmitted through food and water.

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The mental health and suicide risk screening questions were answered in the negative, as were Prison Rape Elimination Act (PREA) questions with the exception of detainee HERNANDEZ's self-identification as transgender.

On a CCS Immunization, Tuberculosis, and Syphilis Testing Record, RN (b)(6); (b)(7)(C) documented he planted a PPD to test HERNANDEZ for TB.

> **Note**: Asked about the TB test during interview, RN (b)(6); (b)(7)(C) said he had no knowledge of the chest X-ray performed at Scripps Medical Center because the report was not provided to CCCC. He also noted HERNANDEZ appeared sick, had a cough, and experienced significant weight loss, symptoms of possible TB. As for the check mark appearing on the EPC transfer summary indicating a PPD test was completed, HERNANDEZ was not held there long enough for it to be read; therefore, RN (b)(6); (b)(7)(C) action was appropriate.

RN (b)(6); (b)(7)(C) completed a Medical/Psychiatric Alert form, noting that there was obvious shaking in HERNANDEZ's hands and arms, her temperature was elevated, she complained of feeling weak, and reported significant weight loss in the past month. During interview, RN (b)(6); (b)(7)(C) commented the detainee appeared very malnourished and dehydrated, and that he referred her to the physician. RN (b)(6); consulted with RN (b)(6); (b)(7)(C), (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) HSA concerning providing HERNANDEZ with fluids and electrolytes. She was given Ensure[11] and Pedialyte[12] and returned to the waiting area where the video shows she again laid on the floor. This occurred at **8:08 a.m.**

At **8:56 a.m.** Dr. (b)(6); (b)(7)(C) and another medical staff person are seen on video entering the waiting room and assisting detainee HERNANDEZ to her feet. During interview, (b)(6); (b)(7)(C) said HSA (b)(6); (b)(7)(C) had called before she arrived for work and notified her of HERNANDEZ's condition. She also asked if the detainee could be given something for the elevated temperature and cough. Dr. (b)(6); (b)(7)(C) stated she told her no because she did not want to mask any symptoms and said she would be arriving at CCCC soon. She instructed them to push fluids. When she arrived, she went immediately to the waiting room. The video shows Dr. (b)(6); (b)(7)(C) and the other medical staff person escorting HERNANDEZ out of the waiting room at **8:58 a.m.**

An addition to the vital signs section of the intake screening form timed **9:00 a.m.** documents the detainee's temperature was 102.0. The entry is not signed or initialed. HSA (b)(6); (b)(7)(C) informed the review team that it was decided the detainee would be placed in a medical isolation room pending evaluation by the physician, not for housing but for comfort. CCCC has two medical

[11] Ensure is a milk protein concentrate containing vitamins and minerals.

[12] Pedialyte reduces dehydration and restores fluids and minerals lost due to diarrhea and vomiting.

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isolation rooms, both equipped with negative pressure for respiratory isolation. There is a video surveillance camera in the cell. Video shows HERNANDEZ entering Isolation Room 1 at **9:06 a.m.** after it was cleaned and fresh linens were placed on the bed. She laid on the bed and medical staff placed several blankets over her.

At **9:42 a.m.**, detainee HERNANDEZ was escorted out of the isolation room and into an examination room by Dr. (b)(6); (b)(7)(C) In a medical record entry timed **10:00 a.m.** Dr. (b)(6); (b)(7)(C) documented completion of HERNANDEZ's medical/dental/mental health examination. She did not use an interpreter because she reported during interview that she is fluent in Spanish. Vital signs were taken and all were abnormal, as follows: temperature 102, pulse 128, respirations 20 breaths, blood pressure 81/61, and pulse oxygen 92 percent. Dr. (b)(6); (b)(7)(C) noted detainee HERNANDEZ identified as transgender but had not taken hormones. The detainee reported significant weight loss during the last four to six months and that she had not been treated for HIV. She also reported she was not taking any medications and had no prior surgeries or hospitalizations; also, that she has difficulty sleeping and a history of depression. The physical examination found HERNANDEZ was emaciated with increased amount of white phlyem[13], dry mucous membranes in mouth, multiple cavities, normal lymph nodes, coarse breath sounds in lungs, tachycardia, normal bowel sounds, poor skin turgor, and muscle wasting. Dr. (b)(6); (b)(7)(C) assessment was dehydration, starvation, untreated HIV, fever, and cough. The treatment plan was to rule out infection secondary to HIV and pneumonia, obtain a chest x-ray, and transport to the local emergency department for intravenous (IV) fluids. A mask was placed on HERNANDEZ to protect her from environmental viruses/bacteria; also, to protect staff as her TB status was unknown by CCCC. Orders were written for the following laboratory tests to be completed at the hospital: complete blood count (CBC)[14]; rapid plasma reagin (RPR) with reflex[15]; comprehensive metabolic panel (CMP)[16]; thyroid stimulating hormone (TSH)[17]; hepatitis panel[18]; urinalysis for sexually transmitted diseases; HIV confirmation test with viral load[19]; and chest X-ray.

Dr. (b)(6); (b)(7)(C) was asked about this encounter during interview. Consistent with her documentation, Dr. (b)(6); (b)(7)(C) commented HERNANDEZ looked starved, tired and weak; that the

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[13] Phylem is mucus excreted in abnormally large quantities.

[14] A CBC measures the levels of red blood cells, white blood cells, platelet (clotting cells) levels, hemoglobin (oxygen transport cells) and hematocrit (ratio of red blood cells to the total blood volume).

[15] An RPR detects syphilis.

[16] A CMP is a group of blood tests that provide an overall picture of the body's chemical balance and metabolism.

[17] TSH determines thyroid-stimulating hormone levels.

[18] A hepatitis panel finds markers of hepatitis infection.

[19] An HIV confirmation test with viral load measures the amount of HIV ribonucleic acid (RNA) in blood. RNA is the genetic material that makes up certain viruses.

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muscles in her face were wasted; and that she appeared to have suffered from long term protein and calorie malnutrition. Her breathing sounded "rough" and her mouth and eyes were dry. Dr. (b)(6); (b)(7)(C) said that despite these observations, HERNANDEZ was alert and "making sense." The detainee told her she had been diagnosed with HIV at a clinic in Honduras. She reported that she managed to escape and was hiding from Honduran gangs who had prostituted her. She decided to join the caravan to the U.S. rather that returning to the Honduran clinic for HIV treatment because the gangs were looking for her and she believed they might be waiting there.

Dr. (b)(6); (b)(7)(C)s order for HERNANDEZ's transfer to CGH specifies she was to be transported by facility vehicle. Asked about this decision, Dr. (b)(6); (b)(7)(C) said that after due consideration, she decided in favor of transport by facility vehicle rather than an ambulance based on the following:

- Though the detainee was very sick, she did not require medical supervision by emergency services personnel or life sustaining equipment during transport.
- She believed the detainee would arrive at the hospital more quickly if taken by facility vehicle.
- Cibola County is a small, rural county with only one ambulance. Having determined HERNANDEZ could safely be transported in a facility vehicle, Dr. (b)(6); (b)(7)(C) did not want to tie up the ambulance in case it was needed for a patient with more acute urgent care needs.

(b)(6); (b)(7)(C) told the review team that acting under the assumption that the detainee would be going to the hospital, she notified security of the possible transport while Dr. (b)(6); (b)(7)(C) was conducting the physical examination. (b)(6); (b)(7)(C) prepared the necessary paperwork and copies of HERNANDEZ's medical record for the officers to take to the hospital.

The video shows that at **10:09 a.m.**, detainee HERNANDEZ returned to Isolation Room 1 wearing a paper mask and laid down. At **10:52 a.m.**, she walked out of the room and sat in a wheelchair at the doorway. She was then wheeled off the medical unit and out through the Fire Exit.

Video from the vehicle sallyport camera shows that at **10:59 a.m.**, a van entered and backed up to the intake exterior door. At **11:07 a.m.**, a supervisor is seen verifying HERNANDEZ's identity to authorize her transfer to the hospital, and at **11:08 a.m.**, she was placed in the van. The view of the vehicle from the sallyport camera was partially obscured but escorting staff verified she was able to enter the van unassisted. At **11:13 a.m.**, the van entered the vehicle sallyport and following search, exited at **11:20 a.m.** en route to Cibola General Hospital (CGH).

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Officer (b)(6); (b)(7)(C) was assigned to escort HERNANDEZ to the hospital. He recalled on interview that she was taken outside in a wheelchair and when he asked if she could walk to the van, she said yes. Officer (b)(6); (b)(7)(C) the second transport officer, stated on interview that when detainee HERNANDEZ entered the van she just wanted to lay down and was told she could. Officer (b)(6); (b)(7)(said the detainee spoke no English. Both officers reported that upon arrival at the hospital, HERNANDEZ was able to walk from the vehicle to the Emergency Department. An entry in the hospital logbook documents the time of arrival was **11:44 a.m.** According to Officer (b)(6); detainee HERNANDEZ was able to walk to the ER but did so slowly. Officer (b)(6); reported she was alert and talking and that hospital staff placed her in a curtained area where she drank some water.

In a memorandum prepared by HSA (b)(6); (b)(7)(C) following HERNANDEZ's death, she wrote CGH personnel reported at **2:30 p.m.** that the detainee was on IV fluids and antibiotics. She wrote that the hospital suspected sepsis and that the decision to admit HERNANDEZ was pending laboratory and radiology results.

The CGH record documents detainee HERNANDEZ was evaluated and the following actions were taken:

- Detainee HERNANDEZ was evaluated;
- Intravenous (IV) fluids were initiated;
- An electrocardiograph[20] (EKG) was done;
- Laboratory and radiology diagnostic tests were ordered;
- Acetaminophen was given to reduce temperature;
- Famotidine was given to reduce stomach acid;
- HERNANDEZ was catheterized as she was unable to void;
- IV antibiotics azithromycin and ceftriaxone were given; and,
- Vital signs were closely monitored and documented within the following ranges: temperature 104.9 to 101.1; pulse 92 to173; respirations 9 to 36; blood pressure 80/52 to 102/65; and pulse oxygen 88 to 100 percent.

Based on physical examination findings, abnormal chest and abdominal x-rays, and abnormal blood tests, the Emergency Department physician's initial diagnoses included: septic shock[21]; dehydration; HIV infection; nodular pulmonary disease[22]; lymphadenopathy[23]; anemia[24]; and

[20] An EKG measures the heart's electrical impulses.
[21] Septic shock is a life threatening condition resulting from an infection throughout the body which can lead to organ failure and produces changes in temperature, blood pressure, heart rate, white blood cell count, and breathing.
[22] Nodular pulmonary disease is small masses in the lungs.
[23] Lymphadenopathy is enlarged lymph nodes.

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thrombocytopenia[25]. Rapid HIV test was reactive confirming her HIV status. The ED physician determined detainee HERNANDEZ required a higher level of care than available at CGH and made arrangements to transfer her by air ambulance to Lovelace Medical Center (LMC) in Albuquerque, NM. Detainee HERNANDEZ's condition was listed as poor.

Dr. (b)(6); (b)(7)(C) said during interview that she was informed by CGH staff when it was determined the detainee was "way beyond" their ability to care for and that they were sending her to LMC. She indicated that the preferred option, University of New Mexico Hospital, had no beds. Dr. (b)(6); commented that by the time the detainee arrived at CCCC, the actions taken were "too little, too late"; possibly by as much as six months.

Per the hospital logbook, at **6:40 p.m.** Sergeant (b)(6); and Officer (b)(6); (b)(7)(C) assumed vigil duty at CGH. Sergeant (b)(6); (b)(7)(C) stated on interview that when she arrived, discussions about moving HERNANDEZ to LMC were underway. She reported one nurse explained the transfer details to the detainee in Spanish, then nursing staff prepared her for transfer.

The report of PHI Air Medical documents transport by air was decided upon because the trip would take approximately 35 minutes versus more than four hours by ground. HSA (b)(6); (b)(7)(C)'s memorandum states the attending physician at CGH decided ground transportation was not appropriate, noting HERNANDEZ's blood pressure was low. Sergeant (b)(6); (b)(7)(C) informed the review team that she was chosen to ride in the helicopter based on her body weight relative to Officer (b)(6); (b)(7)(C) Sergeant (b)(6); reported that the detainee was taken by stretcher to the helipad, and that she was placed in front next to the pilot. Sergeant (b)(6); (b)(7)(C) sat in the back with two nurses, one of whom spoke Spanish. A logbook entry documents the group boarded the helicopter at **9:18 p.m.**

Per the PHI report, detainee HERNANDEZ was provided eye and ear protection when placed on the helicopter. The time of departure was **9:38 p.m.** per the PHI report and logbook entry. HERNANDEZ remained awake and alert and even smiling during transport. Her vital signs were monitored and documented as follows: pulse and pulse oxygen were within normal limits at 77 to 79 and 95 to 100 percent, respectively. HERNANDEZ's respirations were elevated at 20, and her blood pressure remained low as follows: 105/70; 101/76; 106/69; and 99/69.

> **Note**: The line on the form where temperature was recorded is not legible.

The hospital logbook documents the helicopter landed in Albuquerque at **10:05 p.m.** Sergeant (b)(6); (b)(7)(C) told the review team that the helicopter was met on the Heart Hospital helipad by an

[24] Anemia is a decreased number of blood cells.

[25] Thrombocytopenia is a low level of platelets, the cells that help the blood clot.

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ambulance, and the two nurses accompanied the detainee in back. Sergeant (b)(6); (b)(7)(C) sat in front with the driver. Per the report of Superior Ambulance Service, the trip to from the helipad to LMC took three minutes and was completed without incident.

An entry to the hospital logbook documents the ambulance arrived at LMC at **10:14 p.m.** and HERNANDEZ was taken through the emergency room to the intensive care unit (ICU) where she was placed in a negative pressure room. Per Sergeant (b)(6); (b)(7)(C) the detainee was alert and talking and asked for food. She was told no until testing was completed. At **10:50 p.m.**, Officer (b)(6); (b)(7)(C) who drove the facility vehicle from CHG, arrived at LMC.

Detainee HERNANDEZ remained at LMC until her death on May 25, 2018[26]. The following information is based on officers' log entries, information reported during interviews, and entries in the medical record summarizing updates received by CCCC health care personnel. In addition, the afore-referenced summary memorandum prepared by HSA (b)(6); (b)(7)(C) following the detainee's death is referenced when it provides information not included in medical record entries.

May 18, 2018

In a **12:45 p.m.** progress note, Dr. (b)(6); (b)(7)(C) wrote that the ICU nurse reported HERNANDEZ was in isolation because her low blood counts made her vulnerable to opportunistic infections; also, because her TB status was unknown. Sputum samples were being collected to test for TB.

> **Note**: As discussed above, a Scripps Medical Center report documents a chest X-ray completed while HERNANDEZ was in CBP custody was negative for TB and that there was no evidence of active infection.

The ICU nurse also reported that the physician's treatment plan included consulting with infectious disease specialists and administering broad spectrum antibiotics[27], and that laboratory test results were awaited. HERNANDEZ's hydration status was improved but her HIV status remained guarded. HSA (b)(6); (b)(7)(C) summary memorandum adds that the detainee was on IV fluids and Levophed for stabilization of blood pressure; also, that a computed tomography scan (CT) of the abdomen would be done to rule out an abscess.

Officers' logbook entries document nurses conducted routine checks, and that the CT scan was completed at **1:45 p.m.** At **2:38 p.m.**, Sergeant (b)(6); (b)(7)(C) resumed vigil duty and stated on interview that it seemed HERNANDEZ was doing a little better. She had brushed her hair and was talking

[26] The LMC medical record was not provided to reviewers.

[27] Broad spectrum antibiotics are piperacillin/tazobactam and vancomycin.

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more. She seemed comfortable and staff said she had slept most of the night, although the sergeant heard medical staff say she had a fever.

HSA (b)(6); (b)(7)(C) memorandum documents an update was received at **9:30 p.m.** The detainee's vital signs were stable and she was reportedly hungry and able to eat and take fluids.

May 19, 2018
Entries to the hospital log document no unusual incidents this date. A visit by a chaplain was logged at **10:16 a.m.**, and at **3:48 p.m.**, the detainee was taken for CT scan.

In her memorandum, HSA (b)(6); wrote that the first update for the day was provided at **5:30 p.m.** She wrote HERNANDEZ was oriented and stable with a good appetite, but her fever spiked at 104 during the day. She was receiving IV fluids, antibiotics, and blood pressure medication. A CT scan of the neck was performed due to enlarged lymph nodes with results expected the next day.

Dr. (b)(6); (b)(7)(C) documented in a **10:45 p.m.** progress note that the LMC nurse reported HERNANDEZ was feeling better and eating well. A chest X-ray was negative for TB and the third and final sputum test was to be done the next day. HSA Baca's summary memorandum covers this update as well, adding that the abdominal CT showed an enlarged spleen and peritoneal[28] lymph nodes. She noted Dr. (b)(6); (b)(7)(C) reported the concern was T-cell[29] lymphoma[30] and that the detainee would probably need fine needle biopsies. The detainee's CD4 count was 189[31].

May 20, 2018
HSA (b)(6); memorandum documents that Dr. (b)(6); received a morning update at **8:40 a.m.** HERNANDEZ remained stable and there was no change in her condition.

A hospital logbook entry documents that at **11:25 a.m.**, the doctor stated HERNANDEZ may need surgery the following day. The detainee ate lunch and watched television after **1:00 p.m.** In the afternoon, the detainee slept and later ate dinner.

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28 Peritoneal refers to the serous membrane lining of the walls of the abdomen and pelvic cavities.

29 T-cell is a type of lymphocyte/white blood cell in the immune system to fight infection.

30 Lymphoma is a type of blood cancer.

31 HIV infection advances to AIDS when there are less than 200 CD4 T-cells per millimeter of blood.

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HSA (b)(6); (b)(7)(C) documented an evening update timed **10:30 p.m.** in her memorandum. She wrote the detainee was afebrile[32] and no longer on medication to maintain her blood pressure. A needle biopsy was planned for Monday.

May 21, 2018
Officers' log entries document that HERNANDEZ was taken for pre-operative preparation at **1:35 p.m.** and to the operating room at **2:09 p.m.** HSA (b)(6); (b)(7)(C)'s memorandum documents a **3:45 p.m.** update indicating HERNANDEZ had axillary lymph node removal for biopsy and was stable. Sputum smears for TB were negative.

The hospital log documents that at **3:38 p.m.**, Warden (b)(6); (b)(7)(C) conducted a routine administrative visit. At **3:58 p.m.**, the detainee was returned to the ICU from the recovery room. At **7:49 p.m.**, the vigil officer wrote that the detainee was awake and watching television. She fell asleep at **10:45 p.m.**

May 22, 2018
HSA (b)(6); (b)(7)(C)'s memorandum documents a **9:40 a.m.** update indicating HERNANDEZ was stable following axillary lymph node removal. Her fever spiked at 102.2 the night before and she was receiving Bactrim[33] once a day and a penicillin[34] injection weekly. The detainee's blood pressure was lower and being maintained with IV fluids. She remained in the ICU.

The hospital logbook documents that at **2:25 p.m.**, HERNANDEZ was taken for a lumbar puncture procedure[35] which began at **3:00 p.m.** and was completed at **3:27 p.m.** The detainee returned to her room in the ICU at **3:41 p.m.** Throughout the evening, the detainee watched TV or slept.

Dr. (b)(6); (b)(7)(C) documented in a progress note timed **5:45 p.m.** that detainee HERNANDEZ spiked a fever that afternoon and was receiving antibiotics; also, that she had no appetite but was drinking Ensure and that biopsy results were still pending.

> **Note**: Completion of the lumbar puncture at 3:00 p.m. was not addressed in the 5:45 p.m. update given to Dr. (b)(6); (b)(7)(C)

[32] Afebrile means normal temperature.
[33] Bactrim is an antibiotic.
[34] Penicillin is an antibiotic.
[35] A lumbar puncture is a medical procedure in which a needle is inserted into the spinal canal, most commonly to collect cerebrospinal fluid.

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May 23, 2018
Officers' log entries document HERNANDEZ ate breakfast, after which a nurse commented her heart rate was, "a little high due to eating." A **12:05 p.m.** entry documents the detainee still had a high fever but, "Still manages to smile and be thankful for having the nurses watch over her." At **2:00 p.m.**, the officer logged that that the detainee would be getting a blood transfusion and at **4:45 p.m.**, that the detainee had a CT scan.

At **7:38 p.m.**, Sergeant (b)(6); (b)(7)(took over vigil duty. She recalled on interview that HERNANDEZ was sitting up and that it was her impression that the detainee was doing a lot better. A **9:32 p.m.** log entry documents a chest X-Ray was completed.

Dr. (b)(6); (b)(7)(C) documented in a progress note timed **10:30 p.m.** that an ICU nurse reported HERNANDEZ had had a high fever all day and a pulse exceeding 150. She remained on oral antibiotics but IV antibiotics may be resumed the next day. The biopsy results were not back; blood cultures showed no growth so far; and lumbar puncture was negative. In her memorandum, HSA (b)(6); (b)(7)(C) wrote that they were unable to get an earlier report and summarized the information documented by Dr. (b)(6); (b)(7)(C)

> **Note**: A blood transfusion and CT scan documented in officers' logbook entries were not addressed in the 10:30 p.m. update given to Dr. (b)(6); (b)(7)(C)

May 24, 2018
In a progress note timed **11:00 a.m.**, Dr. (b)(6); (b)(7)(C) documented an update provided to her by an ICU nurse. She wrote that HSA (b)(6); (b)(7)(C) was present during the conversation. Dr. (b)(6); (b)(7)(C) progress note and the HSA's memorandum document the following laboratory test and chest X-ray results:

- Blood culture showed no growth;
- RPR[36] positive;
- Malaria negative;
- Toxoplasmosis[37] negative;
- Negative for parasites;
- Urine culture and lumbar puncture both negative;
- Chest x-ray showed small bilateral plural effusion[38].

Dr. (b)(6); (b)(7)(C) documented the detainee's condition was serious with guarded prognosis due to HIV status, poor nutritional status for two years, fever of unknown origin, pleural effusion, and

[36] RPR is a test for syphilis.
[37] Toxoplasmosis is an infectious disease caused by the one-celled protozoan parasite.
[38] Bilateral plural effusion is characterized by an abnormal amount of fluid around the lungs.

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lymphadenopathy suspicious for T-cell lymphoma. HSA (b)(6); (b)(7)(C)s memorandum documents that HERNANDEZ's highest heart rate the night before was 150 with a temperature of 104.5, and that Tylenol and a cooling blanket were used to bring down her temperature. HSA (b)(6); (b)(7)(C) wrote that the detainee's condition at the time of the update was critical.

Officer (b)(6); (b)(7)(C) was assigned to vigil duty on the day shift. She documented in the logbook that at **1:10 p.m.**, detainee HERNANDEZ told the nurse she felt congested and was having difficulty breathing. At **1:24 p.m.**, a breathing treatment was administered and at **1:30 p.m.**, an X-Ray was taken. At **1:34 p.m.**, an ultrasound was completed and at **3:22 p.m.**, the detainee was taken to radiology to have fluid removed from her lungs. During interview, Officer (b)(6); (b)(7) stated a very large amount of fluid was removed from the detainee's lungs, and that HERNANDEZ was "very tough" throughout the procedure.

In her memorandum, HSA (b)(6); (b)(7)(C) wrote that at approximately 3:00 p.m., a thoracentesis[39] removed 1600 cc of fluid, 700 cc from one side of the chest and 900 cc from the other. By **4:00 p.m.** the detainee's pulse oxygen started falling, dropping to 74 percent, and she developed tachypnea[40], supra ventricular tachycardia[41], and an elevated blood pressure.

A **5:00 p.m.** entry to the logbook documents HERNANDEZ was coughing up a large amount of mucus. Officer (b)(6); (b)(7)(stated during interview that she kept handing her napkins, commenting the detainee was wearing a breathing mask and tube but had difficulty breathing while she was coughing. She laid on her side and kept coughing, and Officer (b)(6); (b)(7)(C) observed she looked "scared." At one point, Officer (b)(6); (b)(7)(C) left to get more napkins and when she returned, the detainee could not hold back a cough and expelled mucus on her. Officer (b)(6); (b)(7)(left the area and washed her face.

> **Note**: Officer (b)(6); (b)(7)(C) was informed by reviewers that the institution's Exposure Control Plan provides information on counseling and blood testing if she has concerns about possible HIV exposure.

Officer (b)(6); (b)(7)(C) was also on vigil at this time. On interview, he stated that the detainee's condition worsened after the procedure where they drained her lung. He concurred that the detainee was coughing a lot and had a lot of phlegm. At **5:35 p.m.**, Officer (b)(6); (b)(7)(C) logged, "Detainee having a hard time breathing and coughing a lot of mucus." At **5:40 p.m.**, she logged that HERNANDEZ had a high heart rate and was having a hard time breathing. A **5:55 p.m.**

[39] Thoracentesis is a procedure to remove the fluid between the lung and chest wall.
[40] Tachypnea is very rapid respirations.
[41] Tachycardia is an abnormally rapid heartbeat.

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entry documents the process of intubation[42] was started with eight medical staff assisting. Officer (b)(6); logged that the process was completed at **6:35 p.m.**, noting that medical staff had difficulty intubating the detainee because she "had a difficult airway." A **6:40 p.m.** entry documents a chest X-Ray was taken and at **7:07 p.m.**, HERNANDEZ was sedated.

> **Note**: HSA (b)(6); 's memorandum documents the decision to intubate was not made until 7:45 p.m., approximately two hours after the time Officer (b)(6); documented the process was started. Specifically, she wrote, "At approximately 1945 the decision was made to intubate, sedated, and place the patient on a ventilator. Patient also had a central line[43] placed."

During interview of Sergeant (b)(6); she said that when she arrived for her shift at **7:40 p.m.** and observed the detainee's condition, she thought, "What happened?" She stated HERNANDEZ was hooked up to medical equipment and was not responsive. Sergeant (b)(6); documented in the logbook that the head nurse told her HERNANDEZ "is paralyzed due to condition and is on life support in critical condition." The nurse told the sergeant that the detainee could code during the night.

HSA (b)(6); documented that at **10:10 p.m.** detainee HERNANDEZ developed bradycardia[44] and pulseless electrical activity (PEA)[45]. Hospital staff was present and immediately started chest compressions, multiple doses of epinephrine[46] were administered, and the detainee was revived by 10:16 p.m. Detainee HERNANDEZ then developed supraventricular tachycardia (SVT)[47] and Adenosine[48] was administered but not effective. Metoprolol was also given to lower the detainee's blood pressure.

May 25, 2018

A logbook entry documents that at **12:48 a.m.**, detainee HERNANDEZ coded again. Hospital staff performed cardiopulmonary resuscitation (CPR), used the automated external defibrillator (AED) and gave the detainee medications. At **1:07 a.m.**, detainee Hernandez coded again. At **1:18 a.m.**, the officer documented in the logbook that the nurse stated the detainee was stable.

[42] Intubation is placement of a flexible plastic tube into the trachea to maintain an open airway to facilitate ventilation of the lungs.
[43] Placement of a central line refers to the placement of a catheter into a large vein for fluid replacement and intravenous medication administration.
[44] Bradycardia is an abnormally slow heartbeat.
[45] PEA means there is electrical activity, but the heart does not contract.
[46] Epinephrine constricts blood vessels, which increases blood pressure and increases heart rate.
[47] SVT is an abnormally rapid heart rate.
[48] Adenosine is used to convert SVT to normal.

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However, at **1:23 a.m.**, the detainee again coded. Hospital staff started but discontinued chest compressions at **1:27 a.m.**, performing rescue breaths only.

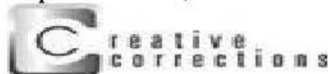
At **1:33 a.m.**, LMC Nurse Practitioner (NP) (b)(6); (b)(7)(C) stated he wanted to stop all procedures. Officer (b)(6); (b)(7)(C) stated during interview that NP (b)(6); (b)(7)(C) asked the officers for a contact number for ICE or CCCC as he needed direction regarding continued resuscitation efforts. LPN (b)(6); (b)(7)(C) documented in the CCCC medical record that NP Edwards called at 1:30 a.m. to report that detainee HERNANDEZ had been coding every five minutes, had poor brain function, and that all means of treatment were exhausted. The NP stated that because the detainee had no known family, he was looking for direction from the responsible party. LPN (b)(6); (b)(7)(C) told the NP she would relay the message to the HSA and ICE Field Medical Coordinator (FMC) (b)(6); (b)(7)(C) She documented the notifications were made within 12 minutes. HSA (b)(6); (b)(7)(C) informed the review team that the FMC called the NP and gave direction to continue resuscitation efforts because the detainee did not have a Do Not Resuscitate order on file.

Log entries document that HERNANDEZ coded at **1:44 a.m.**, **2:22 a.m.**, **3:02 a.m.**, **and 3:04 a.m**. Each time, CPR was performed until the detainee regained a pulse. At **3:29 a.m.**, HERNANDEZ coded again. At **3:32 a.m.**, death was pronounced. LPN (b)(6); (b)(7)(C) documented notification of the detainee's death by FMC (b)(6); (b)(7)(C) and Commander (b)(6); (b)(7)(C) shift supervisor.

> **Note**: HSA (b)(6); (b)(7)(C) memorandum documents death at 3:32 a.m. was pronounced by two hospital physicians. The names were not provided.

At **5:47 a.m.**, hospital security staff arrived to move HERNANDEZ's body to the morgue on the ground floor of the hospital. CCCC vigil officers observed the body being placed in the morgue and then returned to CCCC. Both Sergeant (b)(6); (b)(7)(C) and Officer (b)(6); stated they were provided with information on the employee assistance program (EAP) hotline. (b)(6); (b)(7)(C) stated the EAP number is posted in medical and she ensured healthcare staff knew the service is available. During interview of Dr. (b)(6); (b)(7)(C) she shared that the staff were taking HERNANDEZ's death very hard because she was so sweet and nice.

On the day of the detainee's death, Warden (b)(6); assigned Facility Investigator (b)(6); (b)(7)(C) to review events from HERNANDEZ's intake through her departure for CGH to assess staff compliance with policies and procedures. Investigator (b)(6); (b)(7)(C) shared during interview he started as CCCC's investigator a year ago following a 30 year career in law enforcement, 27 years with the New Mexico State Police and three years as police chief in Grants, NM, a nearby community. He said he watched all pertinent video and noted HERNANDEZ waited a long time in both the intake and medical waiting areas. He nonetheless concluded policies and procedures



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were followed. He documented his findings in a two page report submitted to the warden on May 29, 2018.

HSA (b)(6); (b)(7)(C) stated a mortality review was conducted and the report was sent to CCS headquarters. She stated the report could not be shared with the review team, but reported participating staff included the warden, associate warden, physician, HSA, DON, quality improvement RN, and infectious disease RN.

According to HSA (b)(6); (b)(7)(C) the preliminary cause of death was cardiac arrest. The death certificate and autopsy report were not available at the time of the site visit.

CONCLUSIONS

Medical

Two days after HERNANDEZ requested asylum at the San Ysidro Port of Entry, a CBP officer completed an in-processing medical screening form, identifying her as HIV positive and without medications. A physical examination completed by a physician the same day noted her HIV status, weight loss, cough, headache, and elevated heart rate. She was sent to a hospital to rule out sepsis and active infection. The hospital report documents a chest X-ray was normal and there was no clinical evidence of TB; however, HERNANDEZ was found to have bronchitis. Hospital instructions included Tylenol for fever, antibiotics, and an inhaler. Reviewers do not know whether the medications were provided and given by CBP.

ERO accepted custody of HERNANDEZ three days after she was examined at the hospital, May 14, 2018. She arrived at CCCC approximately 56 hours later. During that time, she did not come into contact with medical professionals because she was in transit between multiple locations pending her ultimate arrival at CCCC; also, because she reportedly did not report and officers did not observe any medical conditions of concern. Medical transfer summaries from SLRDC and EPSPC provide no medical information, including TB clearance, documenting in pre-printed format only that HERNANDEZ was in ERO custody less than 72 hours. Based on reported information and documentation, the May 11, 2018 physical examination report referencing a productive cough and Scripps hospital report documenting TB clearance and diagnosis of bronchitis, with medications, were not available to SLRDC, EPSPC, and CCCC. ERO personnel reported that if the documentation and/or medications was provided by CBP when custody was transferred to ERO, it would have accompanied HERNANDEZ during each step of the transportation process. ERO personnel also reported that if any transportation, SLRDC, or EPSPC officers became aware of any medical concerns during the 56 hours

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HERNANDEZ was in ERO custody, notification of healthcare professionals would have been expected.

Detainee HERNANDEZ's medical screening at CCCC was initiated approximately 11 hours after video shows her exiting the transport vehicle with 18 other transgender detainees. When vital signs were found abnormal, she was appropriately given priority for full screening by an RN. Interpretation assistance was used and documented. The RN informed the DON and HSA of the vital signs and that HERNANDEZ reported she was HIV positive, had a persistent cough, significant weight loss over several weeks, and appeared malnourished and dehydrated. In turn, the HSA notified the physician. Upon reporting to the facility, the physician promptly examined HERNANDEZ and diagnosed untreated HIV, dehydration, starvation, and fever with a cough. The physician ordered detainee HERNANDEZ's transport to the local hospital by facility vehicle for IV fluids and to rule out infection secondary to HIV and pneumonia. The physical examination was started approximately an hour and a half after the intake screening and the detainee was moved to the facility vehicle for transport approximately 50 minutes thereafter. This demonstrates that CCCC staff acted with due haste once HERNANDEZ was seen by medical professionals.

Following the detainee's transport to CGH, then to LMC, the physician and HSA proactively kept abreast of her condition, diagnostic testing, and treatment. The physician documented the updates she received in the medical record; the HSA did not but included them in a summary memorandum prepared after HERNANDEZ's death.

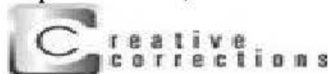
CCCC health care staff were notified of EAP services, and a mortality review involving key medical and security personnel was reportedly conducted.

Compliance Findings

The reviewer identified no deficiencies in the ICE 2011 PBNDS, Medical Care, revised 2016.

Area of Note

During the 56 hours HERNANDEZ was in transit between the San Ysidro Port of Entry and CCCC, she was held in two detention facilities for a total of approximately 24 hours; SLRDC for six and EPSPC for approximately 18. Because the Medical Care standard is specific to facilities holding detainees more than 72 hours, its requirements do not apply in this case. Evaluating compliance with ERO directives or contract requirements governing transportation of detainees in transit to their ultimate destination is beyond the scope of this analysis; however, ERO personnel informed reviewers that officers are expected to report medical concerns or complaints to health care professionals. Absent documentation of any concerns, it appears none were voiced



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by the detainee or observed by officers. However, it is noteworthy and of concern that HERNANDEZ was immunocompromised and ill when SLRDC transportation officers assumed custody on behalf of ERO and by the time she reached CCCC, was so ill that a physician ordered her immediate transport to the emergency room. It is unknown whether medications for bronchitis were started while HERNANDEZ remained in CBP custody but if they were, they are unlikely to have run their course and were not provided to the SLRDC officers who assumed custody at San Ysidro.

Because CCCC did not have documentation of TB clearance and because HERNANDEZ's symptoms upon arrival were suggestive of the disease, she was tested at the hospital and was again confirmed negative. Although she did not have TB, that fact was not known during the 56 hours spent in ERO custody before she arrived at CCCC. Whether or not noted by transportation officers and staff at SLRDC and EPSPC, there can be no question that HERNANDEZ's productive cough continued while she was in transit. Whereas Scripps Mercy Hospital cleared her for travel and incarceration, it is possible her bronchitis may have been determined non-contagious. However, had she had TB, the officers and detainees with whom she came in contact would have been exposed to the highly communicable and dangerous disease.

Reviewers recommend implementation of basic medical screening procedures, including TB symptom screening, by transport officers and personnel at facilities holding detainees in transit.

Safety and Security

Video shows detainee HERNANDEZ exited a bus with 18 other transgender detainees at 8:13 p.m. on May 16, 2018. She entered the facility 30 minutes later and over the course of the next five and half hours, security processing for HERNANDEZ and the other detainees was completed. Translation services were not used during security processing, despite the fact that all staff acknowledged detainee HERNANDEZ spoke no English. In addition, with exception of the handbook receipt, the forms she signed acknowledging understanding of information provided were in English.

In preparation for the medical intake screening, health care staff took the detainee's vital signs five hours after she was moved to the medical waiting area. When it was determined she should be moved to an isolation cell for her comfort pending physical examination, security personnel assisted. After the examination, security staff facilitaed the detainee's transport to the local hospital in a facility vehicle. There were no identified delays. Later, she was airlifted by helicopter to a hospital in Albuquerque. Vigil officers appropriately documented events at both hospitals in a logbook.

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A review of staff's actions was completed by the facility investigator. The review included analysis of pertinent video surveillance footage.

Compliance Findings

The reviewer identified no deficiencies in the ICE 2011 PBNDS, revised 2016 governing safety and security.

Area of Concern

Security personnel did not use interpretation assistance to complete the intake process and with one exception, all forms signed by the detainee were in English. Because admission processing includes conveyance of information and signing of documents acknowledging understanding, reviewers recommend reinforcement of the expectation to use language interpretation assistance; also, translation of acknowledgment of understanding statements in languages most commonly spoken by ICE detainees.

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