



June 27, 2007

U.S. Department of Homeland Security
Privacy Office
Mail Stop 0550
245 Murray Lane, S.W.
Washington, DC 20528-0550

Health Resources and Services Administration
Office of Communications
FOIA Requester Service Center
5600 Fishers Ln., Room 14-18
Rockville, MD 20857

AMERICAN CIVIL
LIBERTIES UNION FOUNDATION

PLEASE RESPOND TO:
NATIONAL PRISON PROJECT
915 15TH STREET, NW
7TH FLOOR
WASHINGTON, DC 20005-2112
T/202.393.4930
F/202.393.4931
WWW.ACLU.ORG

U.S. Public Health Service
Freedom of Information Office
5600 Fishers Ln., Room 17A-46
Rockville, MD 20857

ELIZABETH ALEXANDER
DIRECTOR
ATTORNEY AT LAW

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
NADINE STROSSEN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

Re: FOIA Request Related to Deaths in Immigration Detention

Dear Freedom of Information Officers:

This letter constitutes a request (Request) pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). The Request is submitted on behalf of the National Prison Project (NPP) of the American Civil Liberties Union (ACLU). NPP is also requesting expedited processing for this request, pursuant to 5 U.S.C. § 552(a)(6)(E) and agency regulations, and a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). The request is simultaneously being filed with the U.S. Department of Homeland Security, the Health Resources and Services Administration, and the U.S. Public Health Service.

BACKGROUND

Recent news reports indicate that individuals detained by U.S. Immigration and Customs Enforcement (ICE) have died as a result of grossly inadequate medical care. Until recently, it was unknown how many individuals had died in ICE custody. Such deaths are not publicly reported and no government agency appears to be charged with the task of tracking and investigating such deaths. One attempt by the ACLU to account for in-custody deaths identified 20 deaths since 2004; this list was generated through a review of publicly available documents and correspondence with immigrants' rights advocates around the

country. However, according to a figure recently released by ICE to The New York Times, the number of immigrant detainee deaths since 2004 is actually 64.¹

The circumstances surrounding many of these deaths are highly disturbing and demand further investigation and oversight. In one account, a Korean woman detained at a privately-run facility in Albuquerque, New Mexico complained for weeks about her need for medical attention.² Despite her deteriorating health, the woman received little attention until she was transferred to a local hospital where she died.³ In February 2007, a detainee held in Hackensack, New Jersey, was denied powerful prescription medication despite experiencing crippling pain; according to other detainees, the man's severe distress was common knowledge at the jail, and he committed suicide after five agonizing days.⁴

Just yesterday, The New York Times published a front page story describing two other in-custody deaths.⁵ Sandra Kenley, a lawful permanent resident of more than 30 years, died in December 2005 after being detained in two Virginia regional jails for approximately seven weeks. Prior to being taken into custody, Ms. Kenley notified airport immigration inspectors of her serious medical conditions, which included a scheduled surgery to treat her fibroid tumor and uterine bleeding. She complained until her death of continued hemorrhaging and the jails' refusal to provide her with necessary prescription medications.

One year later, while detained in yet another Virginia regional jail, Abdoullai Sall died approximately ten weeks after entering immigration custody. Throughout his detention, Sall complained to jail officials that he was not receiving the proper medication for his serious medical condition, and attempts by his immigration attorney to notify the jail of his client's worsening health were largely ignored.

Recent press attention to deaths in detention reveals just how little information is available about this problem. According to the ICE Detention Standards, when an immigrant detainee dies in custody, the Assistant District Director for Detention and Removal Operations (DRO) is supposed to notify the District Director, the Assistant Regional Director for DRO, and the Director of Field Operations at ICE Headquarters.⁶ A local representative of the U.S. Public Health Service is to receive medical reports within 48 hours of the death, and both the family of the deceased and consular officials are to be notified about the death.⁷

The Department of Homeland Security's Office of Inspector General (OIG) publicly released a report in January 2007 detailing a series of problems with the

¹ Nina Bernstein, *New Scrutiny as Immigrants Die in Custody*, N.Y. Times, June 26, 2007.

² Barbara Ferry, *Crackdown's Fallout*, The New Mexican, May 20, 2007.

³ *Id.*

⁴ Nina Bernstein, *One Immigrant Family's Hopes Lead to a Jail Cell Suicide*, N.Y. Times, Feb. 23, 2007.

⁵ Bernstein, *supra* note 1.

⁶ INS Detention Standard, Terminal Illness, Advance Directives, and Death (Sept. 20, 2000), 6-7.

⁷ *Id.*

treatment of immigrant detainees at five facilities.⁸ One problem highlighted by the OIG was that four of the five facilities reviewed showed serious problems with the delivery of adequate health services. Although the report made a general reference to one suicide death at the Passaic County Jail,⁹ it made no mention of at least three other deaths that occurred at the San Diego Correctional Facility. The OIG also releases semiannual reports to Congress that contain sporadic and vague references to investigations into in-custody deaths. Such reports provide little useful information to assure the public that meaningful investigations are conducted into each death, and that steps are taken to guarantee that detainees receive necessary medical services before it is too late.¹⁰

Over the last ten years, the United States has dramatically increased the use of detention for individuals in civil immigration proceedings. In 1997, the number of immigrants detained in the custody of U.S. Immigration and Naturalization Service on a given day was approximately 13,000.¹¹ Just ten years later, ICE has funding to detain 27,500 individuals at any given time.¹² As the nation considers comprehensive immigration reform legislation, it is likely that ICE will receive funding to detain many thousands more. This issue will only grow in importance over the coming years, and it is essential that the federal government—which is ultimately responsible for the health and welfare of individuals detained pursuant to its authority—do more to ensure that immigrant detainees do not suffer and die unnecessarily.

RECORDS REQUESTED

Please disclose:

1. A complete list of individuals who have died while detained in ICE custody since January 1, 2004. For each death listed, please include:
 - a. Complete name;
 - b. Alien number;
 - c. Date on which detention began;
 - d. Date of death;
 - e. List of all facilities where the detainee was housed along with dates of detention; and

⁸ Department of Homeland Security, Office of Inspector General, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities*, OIG-07-07 (Dec. 2006).

⁹ *Id.* at 29.

¹⁰ The OIG recently began a “special review” of two in-custody deaths, and is considering the ICE Detention Standards that pertain to in-custody deaths and medical care. The ACLU hopes that the results of the OIG review are made public, and that the OIG make recommendations to ensure that preventable deaths are reduced and that all deaths are properly investigated by an independent government body.

¹¹ U.S. Department of Justice, Office of the Federal Detention Trustee, *Detention Needs Assessment and Baseline Report: A Compendium of Federal Detention Statistics*, at <http://www.usdoj.gov/ofdt/>.

¹² U.S. Immigration and Customs Enforcement, *ICE Accomplishments in Fiscal Year 2006* (May 15, 2007), at <http://www.ice.gov/pi/news/factsheets/2006accomplishments.htm>.

- f. Location at time of death.
2. For each individual whose death is included in (1), all records:
 - a. Pertaining to the cause of death;
 - b. Pertaining to requests for medical help by anyone, including the deceased, his/her family members, and fellow detainees;
 - c. Pertaining to Treatment Authorization Requests (TARs) submitted to the Division of Immigration Health Services (DIHS), including any DIHS responses to those TARs;
 - d. Pertaining to reports of investigations into the circumstances surrounding the death, including all after-action reports and critical incident reports;
 - e. Pertaining to whether any of the detainees who died were diagnosed with terminal illnesses while in immigration detention or beforehand;
 - f. Pertaining to whether any of the detainees who died were taken to outside hospitals for treatment, and if so, the names of those hospitals and the dates of treatment;
 - g. Pertaining to whether and how ICE notified families of the deaths of detained family members;
 - h. Pertaining to whether and how ICE notified consular officials of the deaths of detained persons;
 - i. Pertaining to whether and how state, county, local officials and review boards were notified of the deaths.
3. All records, including written and electronic correspondence, pertaining to deaths in ICE custody.
4. All records, including policies, procedures, or guidelines provided to or maintained by Contract Detention Facilities, Service Processing Centers, and Intergovernmental Service Agreement facilities relating to deaths in detention, including memoranda and training materials.
5. All records identifying the manner by which your agency or any of its components track deaths in detention.
6. All records, including written and electronic correspondence, generated in response to requests for information from the Washington Post and The New York Times about immigrant detainee medical care and deaths, and in reaction to those articles. This request pertains specifically to records generated in preparation for and in response to two articles: (a) Darryl Fears, *Illegal Immigrants Received Poor Care in Jail, Lawyers Say*, Washington Post, June 13, 2007; and (b) Nina Bernstein, *New Scrutiny as Immigrants Die in Custody*, N.Y. Times, June 26, 2007.

THE REQUESTOR

The ACLU is a nationwide, nonprofit, nonpartisan organization dedicated to protecting human rights and civil rights in the U.S. It is the largest civil liberties organization in the country, with offices in 50 states and over 500,000 members. The ACLU is specifically dedicated to holding the U.S. government accountable

to universal human rights principles in addition to rights guaranteed by the U.S. Constitution.

Furthermore, the ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee through its public education department. The ACLU also disseminates information through its heavily subscribed website, <http://www.aclu.org>. The website addresses civil liberties issues in depth, provides features on civil liberties issues in the news, and contains hundreds of documents that relate to the issues addressed by the ACLU. The website includes features on information obtained through the FOIA. See, e.g., http://www.aclu.org/patriot_foia/index.html. The ACLU also publishes an electronic newsletter, which is distributed to subscribers by e-mail.

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Accordingly, the ACLU is an organization whose “main professional activity or occupation is information dissemination.” 6 C.F.R. § 5.5(d)(3). The ACLU is also a “representative of the news media” for purposes of 45 C.F.R. § 5.5. Finally, the ACLU meets the criterion laid out in *National Sec. Archive v. U.S. Dep’t of Defense*, where a representative of the news media is defined as an entity that “gathers information of potential interest to a segment of the public” and “uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.” *National Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381,1387 (D.C. Cir. 1989).

EXPEDITED PROCESSING

We request Track 1 expedited treatment for this FOIA request. This request qualifies for expedited treatment pursuant 5 U.S.C. § 552(a)(6)(E) and applicable regulations.

As demonstrated above, there is a “compelling need” for expedited processing sought by the ACLU. 5 U.S.C. § 552(a)(6)(E)(i)(I). The lack of expedited disclosure of records related to these deaths in detention could “reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” 5 U.S.C. § 552(a)(6)(E)(v)(I); 6 C.F.R. § 5.5(d)(1)(i).

Moreover, there exists a clear “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). See also 6 C.F.R. § 5.5(d)(1)(ii) (expedited processing is warranted where there is “[a]n urgency to inform the public about an actual or alleged federal government activity.”).

The ACLU is therefore entitled to expedited processing of this request.

FEE WAIVER

The ACLU requests a total waiver of fees on the grounds that disclosure of the requested records is in the public interest and because disclosure “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s].” 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 45 C.F.R. § 5.45. This Request aims at furthering public understanding of government conduct, and specifically to help the public determine whether civil detainees in the custody of Immigration and Customs Enforcement are treated in a manner than comports with our nation’s values. On account of these factors, the ACLU has not been charged fees associated with responding to FOIA requests on numerous occasions.¹³

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In any event, as discussed *supra*, the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. Accordingly, should fees be assessed for the processing of this Request, such fees should be “limited to reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II).

The ACLU is therefore entitled to a total waiver of fees associated with this request and should, in no event, be required to pay more than reasonable standard charges for document duplication alone.

* * *

Thank you for your consideration of this request. If this request is denied in whole or part, the ACLU asks that you justify all deletions by reference to specific exemptions of the FOIA. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny expedited processing or a waiver of fees. We look forward to your reply to the request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I).

¹³ The following are recent examples of requests for which agencies did not charge the ACLU fees associated with responding to a FOIA request: (1) The Department of State did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in April 2005; (2) The National Institute of Standards and Technology did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in April 2005; (3) The Office of Science and Technology Policy in the Executive Office of the President did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2003; (4) The Federal Bureau of Investigation did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002; (5) The Office of Intelligence Policy and Review did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002; (6) and The Office of Information and Privacy in the Department of Justice did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

Notwithstanding your decision on the matter of expedited processing, we look forward to your reply to the records request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).¹⁴

Please respond to Tom Jawetz, Immigration Detention Staff Attorney, ACLU National Prison Project, 915 15th St. NW, 7th Floor, Washington, DC 20005, telephone: (202) 548-6610, email: tjawetz@npp-aclu.org. Also, please notify us in advance if the costs for photocopying the documents exceed \$100. We eagerly await your response, and thank you for your assistance.

* * *

Under penalty of perjury, I certify, to the best of my knowledge and belief, that the above information is true and correct.

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Tom Jawetz
Immigration Detention Staff Attorney
ACLU National Prison Project
915 15th Street, NW
7th Floor
Washington, DC 20005
Tel: (202) 548-6610
Fax: (202) 393-4931

¹⁴ Pursuant to the Department of Health and Human Services regulations, a reply by HRSA and PHS is due within ten working days after this request has been received. 45 C.F.R. § 5.35(b)(1).