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15 * *Pro hac vice admission application forthcoming*

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 TRANSGENDER LAW CENTER, and)
14 JOLENE K. YOUNGERS, as personal)
15 administrator for the wrongful death estate)
16 of Roxsana Hernandez,)

16 *Plaintiffs,*)

17 v.)

18 UNITED STATES IMMIGRATION AND)
19 CUSTOMS ENFORCEMENT; UNITED)
20 STATES DEPARTMENT OF HOMELAND)
21 SECURITY; OFFICE FOR CIVIL RIGHTS)
22 AND CIVIL LIBERTIES – UNITED)
23 STATES DEPARTMENT OF HOMELAND)
24 SECURITY,)

23 *Defendants.*)
24)
25)
26)

Civil Action No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

PRELIMINARY STATEMENT

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3 1. Roxsana Hernandez¹ (hereinafter “Roxsana”) was a 33-year-old woman, who died
4 in U.S. Immigration and Customs Enforcement (hereinafter “ICE”) custody on May 25, 2018, two
5 weeks after entering the United States. As a woman of transgender² experience, Roxsana fled the
6 persecution she faced in her home country of Honduras and in Mexico during her journey to the
7 United States.

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9 2. On May 9, 2018, Roxsana entered into the U.S. and was taken into U.S. Customs
10 and Border Protection (hereinafter “CBP”) custody with several other transgender asylum seekers.

11 3. During the week that followed, Roxsana’s health deteriorated rapidly. She
12 frequently coughed and spat up bloody phlegm, vomited, and suffered from diarrhea, persistent
13 fever, and severe weight loss.

14 4. Roxsana and the other transgender women were transported to a variety of holding,
15 processing, and detention centers before arriving at Cibola Detention center the evening of May 16,
16 2018.

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20 ¹ Roxsana Hernandez’s legal name was “Roy Alexander Hernandez Rodriguez” AKA “Jeffrey Hernandez.” However,
21 she assumed the name of “Roxsana” and feminine titles and pronouns to better reflect her true gender. As such, this
22 complaint, likewise, uses feminine titles and pronouns in reference to Roxsana.

23 ² “Transgender” is an adjective that refers to a person whose gender does not correspond with the sex assigned at birth.
24 For example, a transgender woman has the persistent internal sense that she is a woman despite being assigned the sex
25 of “male” at birth. Prevailing medical and social science literature and research indicates that supporting transgender
26 people to live authentically in accordance with their gender identity is critical to improving health and quality of life
27 outcomes and to alleviate the symptoms of Gender Dysphoria, a diagnosis recognized by the American Psychiatric
28 Association’s Diagnostic and Statistical Manual of Mental Disorders, 5th edition, that many transgender people live
with. *See, e.g.,* Cecilia Dhejne et al., *Mental Health and Gender Dysphoria: A review of the literature*, 28 International
Review of Psychiatry 44 (2016) (finding that access to transition-related care results in reduction of dysphoria and
improved psychological health outcomes); Annelou de Vries et al., *Young Adult Psychological Outcome After Puberty
Suppression and Gender Reassignment*, 134 Pediatrics 696 (2014). Transgender people face pervasive and
disproportionately high rates of violence and abuse globally. *See, e.g.,* Sandy E. James et al., National Center for
Transgender Equality, *The Report of the 2015 Transgender Survey (2016)*, available at
<https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF> (finding transgender people in
the U.S. face disproportionately high rates of violence and discrimination, economic and housing insecurity, and
criminalization).

1 13. Venue is proper within this District under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§
2 1391(b)(1), (b)(2), and (e)(1) as Plaintiff, the Transgender Law Center, maintains its principal place
3 of business, in Oakland, California.

4 PARTIES

5 14. Plaintiff TRANSGENDER LAW CENTER (“TLC”) is a 501(c)(3) organization
6 with its headquarters in Oakland, California. TLC is the largest national organization led by and
7 for transgender and gender non-conforming people advocating for the self-determination of all
8 people utilizing legal, policy, and organizing strategies to keep transgender and gender
9 nonconforming people alive, thriving, and fighting for liberation. TLC has been involved with
10 migrant justice work through its programs, including the Black LGBTQIA+ Migrant Project and
11 formerly, through its Trans Immigrant Defense Effort (“TIDE”).⁴ TLC staff travelled to the U.S.—
12 Mexico border during Spring of 2018 to support the transgender asylum seekers when Roxsana and
13 several other transgender women who sought asylum awaited entry to the U.S. from Tijuana. After
14 Roxsana’s untimely death, TLC staff visited her family in Honduras and were retained, along with
15 the Law Office of R. Andrew Free, to represent Roxsana’s three surviving siblings in an
16 investigation into potential wrongdoing against ICE, its contractors, and the hospitals and providers
17 who failed to adequately treat Roxsana. TLC recently organized a Congressional Briefing in
18 Washington, DC to educate Members of Congress on issues facing LGBT migrants.

19 15. In January and February of this year, Transgender Law Center submitted two
20 requests pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, to each
21 defendant on behalf of itself, three of Roxsana’s surviving siblings, and the estate of Roxsana

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26 ⁴ See, e.g., Anna Castro, *Congressional Briefing: Centering LGBTQ Migrants* (May 16, 2019),
27 <https://transgenderlawcenter.org/archives/14538> (last visited May 30, 2019); Transgender Law Center, *Advocates Brief*
28 *Congress on Trans Migrant Experience, Rally for #JusticeforRoxsana* (May 23, 2019),
<https://transgenderlawcenter.org/archives/14553> (last visited May 30, 2019).

1 Hernandez. *See* FOIA Requests annexed hereto as **Exhibits A & B**. The information requested
2 from, and withheld by, Defendants, is critical to understanding what happened to Roxsana during
3 the final two weeks of her life.⁵

4 16. As such, TLC has an interest in the circumstances surrounding Roxsana’s death both
5 because of its mission to advance the rights of transgender people, including those who are
6 migrants, and, because TLC is retained counsel for the wrongful death suit. Further, TLC staff
7 regularly speak at law schools and conferences around the country regarding issues connected to
8 LGBT migration and asylum, and TLC authors resources connected to these issues that are
9 disseminated nationwide.

10
11 17. Plaintiff, JOLENE K. YOUNGERS is the appointed personal representative of
12 Roxsana’s wrongful death estate. *See* Order Appointing Jolene K. Youngers as Personal
13 Representative of Roxsana Hernandez’s Wrongful Death Estate annexed hereto as **Exhibit C**. The
14 authorization and releases executed by Ms. Youngers in that capacity allowed Plaintiffs to make
15 the FOIA requests from defendants. *See* **Exhibits A & B**.

16
17 18. Plaintiffs have constructively exhausted all non-futile administrative remedies.

18 19. Defendant U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (“ICE”) is
19 an executive agency component of the U.S. Department of Homeland Security and an “agency”
20 within the meaning of 5 U.S.C. § 552(f)(1).

21
22 20. Defendant OFFICE OF CIVIL RIGHTS AND CIVIL LIBERTIES (“CRCL”), is an
23 executive agency component of the U.S. Department of Homeland Security and an “agency” within
24 the meaning of 5 U.S.C. § 552(f)(1).

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28 ⁵ During the summer of 2018, Plaintiffs submitted a FOIA request to CBP. The agency responded with limited records, and Plaintiffs are currently exhausting administrative remedies on that request.

1 cleared her as likely negative for Tuberculosis, permitting her detention. Neither CBP nor ICE
2 provided the critical HIV treatment Roxsana needed either.

3 28. ICE failed to document Roxsana’s visit to the Scripps Emergency Department—and
4 the medical advice provided by physicians there—in its “detainee death report.” *See* ICE detainee
5 death report, attached hereto as **Exhibit D**.

6
7 29. Instead, ICE took custody of Roxsana and denied her any meaningful medical care
8 for almost another week. When she finally received treatment, her illness was significantly more
9 advanced, impeding meaningful, effective intervention by infectious disease clinicians and other
10 specialists. She died days later.

11 30. During that critical week, ICE and its contractors shuffled Roxsana to several
12 different facilities along with other transgender asylum seekers with little food, water, or sleep and
13 sporadic restroom access.

14
15 31. ICE transported Roxsana from San Ysidro, California to a processing center in San
16 Luis, Arizona, then to El Paso, Texas, and finally to Cibola detention center.

17 32. Throughout her journey, Roxsana came into contact with many ICE and CBP
18 officials and contractors charged with her custody, transportation, care, and safekeeping.

19 33. All of these officials and contractors were subject to federal government policies
20 and procedures, contracts, and corporate policies governing the health care of individuals in ICE
21 transport and temporary custody.

22
23 34. However, none of the officials Roxsana encountered after leaving San Ysidro and
24 before arriving in Cibola, New Mexico followed these binding, non-discretionary policies requiring
25 them to seek immediate medical aid on her behalf.

26 35. In fact, despite Roxsana’s obvious signs of medical distress, including being
27 despondent on the ground at one point, and multiple pleas from other asylum seekers for medical
28

1 attention to several different officials they encountered, no medical care—other than the cursory
2 visit to Scripps—was provided until the morning after they arrived at Cibola Detention Center in
3 rural New Mexico (hereinafter “Cibola”) on May 17, 2018.

4 36. At this point, Roxsana was so weak she needed the assistance of others to walk and
5 sit because she could not support her own weight. These events were reported by multiple other
6 asylum seekers detained with Roxsana.

7
8 37. When Roxsana finally saw a nurse at Cibola the morning of May 17, she was
9 tachycardic (exhibiting an abnormally rapid heart rate), dehydrated, and malnourished, weighing a
10 mere eighty-nine pounds.

11 38. She had a fever, dangerously low blood pressure, and sepsis, (a serious condition
12 resulting from the presence of harmful microorganisms in the blood or other tissues and the body’s
13 response to their presence, potentially leading to the malfunctioning of various organs, shock, and
14 death) as noted in her medical records.

15
16 39. Roxsana was taken to Cibola General Hospital’s Emergency Room. Later that day
17 she was airlifted to Lovelace Medical Center in Albuquerque, New Mexico because she was too
18 fragile to be transported by ground.

19 40. Roxsana was subsequently transported and admitted to the intensive care unit at
20 Lovelace. Despite several medical interventions including intravenous antibiotics and fluids, she
21 died during the early morning of May 25, 2018.

22
23 **B. Significant Public Interest and Outcry About Roxsana’s Untimely Death**

24 41. Roxsana’s death drew significant media attention and caused public outcry. Since
25 her death was made public, at least 1,336 news articles have referenced her story in America and
26 across the globe.

1 42. On August 27, 2018, a coalition of migrant justice activists protested Roxsana's
2 death, demanded accountability from ICE, and shut down an intersection in Albuquerque, New
3 Mexico.⁷

4 43. On November 26, 2018, TLC and the Law Office of R. Andrew Free held a press
5 conference announcing the filing of an administrative wrongful death claim notice against Cibola
6 County, New Mexico, and discussing the initial findings of an independent, preliminary autopsy.⁸

7 44. Since the press conference alone, TLC has noted over a thousand news articles that
8 discuss Roxsana's death.

9 45. In response TLC continues to receive multiple requests for interviews on the
10 subject.

11 46. The news articles cover a variety of aspects surrounding Roxsana's death, including
12 findings of the independent preliminary autopsy,⁹ the New Mexico Office of the Medical
13 Investigator's ("OMI") failure to release its own autopsy report until almost a year after her death;¹⁰
14 ICE's failure to timely issue a detainee death review within 90 days of her death as required by
15 Congress;¹¹ and the poor conditions in immigration detention, including lack of adequate food and
16 water and access to the bathroom, among other apparent injustices by government actors.¹²

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20 ⁷Arielle Lucier, *Queer and Trans Migrants Shut Down Intersection in Albuquerque for Three Hours*, (Aug. 27, 2018),
21 <https://transgenderlawcenter.org/archives/14348> (last visited May 30, 2019).

22 ⁸ Transgender Law Center, *Justice for Roxsana: Announcing Legal Action To Hold Government Accountable for
23 Transgender Asylum-Seeker's Death* (Nov. 26, 2018), <https://transgenderlawcenter.org/archives/14407> (last visited
24 May 30, 2019).

25 ⁹ CBS News, *Transgender ICE Detainee Was Beaten Before Death, An Autopsy Finds* (Nov. 29, 2019, updated Dec.
26 12, 2018), <https://www.10tv.com/article/transgender-ice-detainee-was-beaten-death-autopsy-finds> (last visited May
27 30, 2019).

28 ¹⁰ *See, e.g.*, Associated Press, *3 U.S. Senators Request Reports on Death of Transgender Migrant in ICE Custody*. (Dec.
6, 2018), <https://ktla.com/2018/12/06/3-u-s-senators-request-reports-on-death-of-transgender-migrant-in-ice-custody>
(last visited May 30, 2019).

¹¹ *See, e.g.*, National Immigrant Justice Center, *ICE Releases Sham Immigrant Death Reports As it Dodges
Accountability and Flouts Congressional Requirements* (Dec. 19, 2018), [https://immigrantjustice.org/press-
releases/ice-releases-sham-immigrant-death-reports-it-dodges-accountability-and-flouts](https://immigrantjustice.org/press-releases/ice-releases-sham-immigrant-death-reports-it-dodges-accountability-and-flouts) (last visited May 30, 2019).

¹² *See, e.g.*, Kate Sosin, *ICE Is Refusing To Release A Legally Mandated Review Of Roxsana Hernandez's Death*,
INTO (Nov. 28, 2018), [https://www.intomore.com/impact/ice-is-refusing-to-release-a-legally-mandated-
review-of-roxsana-hernandezs-death](https://www.intomore.com/impact/ice-is-refusing-to-release-a-legally-mandated-review-of-roxsana-hernandezs-death) (last visited May 30, 2019).

1 47. Since OMI released its autopsy report, news articles have discussed its findings
2 including that Roxsana died from HIV related complications, and that ICE failed to provide her
3 with antiretroviral treatment as mandated by its own detention standards.¹³

4 48. Unfortunately, Roxsana's life was not the only one lost because of severely
5 inadequate medical care in ICE and CBP detention facilities.

6 49. According to a report by Human Rights Watch, more people died in ICE detention
7 in fiscal year 2017 than any since 2009, due to "dangerously inadequate" care.¹⁴

8 50. The report identifies three systemic failures in the provision medical care from these
9 deaths, namely (1) unreasonable delays in the provision of care, (2) poor practitioner and nursing
10 care, and (3) botched emergency responses.¹⁵

11 51. A recent report by the Department of Homeland Security Office of Inspector
12 General found that ICE maintains abysmal oversight of detention facilities without meaningful
13 ability to correct violations, even when they present serious health risks.¹⁶

14 52. Given ICE's widely reported atrocities it is unsurprising that Roxsana's death is
15 discussed in several of the aforementioned news articles as one horrifying example of a larger
16 systemic breakdown.

17 53. This context is also the reason that Roxsana's case is a significant part of a broader
18 effort to prevent additional deaths under ICE's watch.

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¹³ See, e.g., Tim Fitzsimons, *Transgender ICE Detainee Died from AIDS*, NBC News (April 17, 2019),
24 <https://www.msn.com/en-us/news/us/transgender-ice-detainee-died-from-aids/ar-BBW2nYM> (last visited May 30,
2019).

25 ¹⁴ Human Rights Watch, *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care In*
26 *Immigration Detention* (Jan. 20, 2108), [https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-](https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration)
27 [dangerously-substandard-medical-care-immigration](https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration) (last visited May 30, 2019).

28 ¹⁵ *Id.*

¹⁶ Department of Homeland Security Office of Inspector General, *ICE Does Not Fully Use Contracting Tools To Hold*
Detention Facility Contractors Accountable For Failing To Meet Performance Standards, OIG 19-18 (Jan. 29, 2019),
available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf> (last visited May 30,
2019).

C. Defendants' Unlawful Withholdings in Response to Plaintiffs' FOIA Requests

54. Despite the public outcry, Defendants have failed entirely to search for and release agency records about the death of Roxsana.

55. First, ICE violated a congressionally-mandated deadline to publish Roxsana's detainee death review until almost four months after it was required to be released under law.¹⁷

56. After initially claiming that its public announcement of her death *was* the congressionally required detainee death review, and under tremendous public pressure, ICE published a host of death "reviews," including one regarding Roxsana, that bear no resemblance to any detainee death review ICE has ever released. *See Exhibit D.*

57. Notably, despite including a section entitled "Medical History" that includes several specific medical conditions Roxsana experienced as well as the medical treatment she received during her last days, ICE's two page detainee death review completely omits any mention of the cursory visit to Scripps Medical Center on May 11, 2018, two weeks before Roxsana's death, where she was not provided necessary treatment despite exhibiting signs of serious illness. *See Exhibit D.*

58. On January 29, 2019, Plaintiffs submitted a FOIA request to Defendant ICE for, *inter alia*, any and all documents within its possession pertaining to Roxsana including several search terms. *See ICE FOIA Request*, attached hereto as **Exhibit A**.

59. On April 19, 2019, Plaintiffs received an acknowledgment letter from ICE, almost three months after the request was submitted, and assigned it tracking number 2019-HQFO-00384. *See DHS Acknowledgement* attached hereto as **Exhibit E**. To date Plaintiffs have not received any records responsive to their requests.

¹⁷ *See, e.g.*, Kate Sosin, ICE is refusing to Release A Legally Mandated Review of Roxsana Hernandez's Death, INTO (Nov. 28, 2018), *available at* <https://www.intomore.com/impact/ice-is-refusing-to-release-a-legally-mandated-review-of-roxsana-hernandezs-death> (last visited May 30, 2019).

1 68. Plaintiffs re-allege and incorporate by reference all allegations in the foregoing
2 paragraphs.

3 69. Plaintiffs have a legal right under FOIA to timely search and release of responsive,
4 non-exempt agency records responsive to their February 5, 2019 FOIA request. *See Exhibit B.*

5 70. No legal basis exists for Defendants DHS and DHS Office of Civil Rights and Civil
6 Liberties' failure to search for and release responsive agency records in compliance with FOIA's
7 time limits.

8 71. Defendants' failure to make reasonable and timely efforts to search for and release
9 responsive agency records constitutes an unlawful withholding under the Act that this Court can
10 and should remedy through declaration and injunction.

11 72. Because Defendants have failed to comply with the Act's time limits, plaintiffs have
12 constructively exhausted their administrative remedies.

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14
15 **REQUEST FOR RELIEF**

16 Wherefore, Plaintiffs respectfully request that this Court:

- 17
- 18 1. Enter judgment in favor of Plaintiffs and against all Defendants.
 - 19 2. Order Defendants to process Plaintiffs' FOIA request expeditiously in accordance
20 with 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e).
 - 21 3. Declare Defendants' withholdings under the FOIA unlawful and enjoin these
22 unlawful withholdings.
 - 23 4. Order Defendants to conduct a prompt and adequate search for all responsive
24 records, determine which, if any portions of such records are exempt, and require Defendants to
25 release the remaining portions of these agency records.
 - 26 5. Award Plaintiffs' reasonable costs and attorney's fees pursuant to 5 U.S.C. §
27 552(a)(4)(E) and/or 28 U.S.C. § 2412(d)(1)(A).
- 28

EXHIBIT A



January 29, 2019

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
F: (202) 732-4265
ICE-FOIA@dhs.gov

Cc: Privacy Office, U.S. Department of Homeland Security
245 Murray Lane SW STOP-0655
Washington, DC. 20528-0655
F: (202) 343-4011

Re: FOIA all records pertaining to Roy Alexander Hernandez AKA Jeffrey Hernandez aka Roxsana Hernandez A#206418141

Dear FOIA Officer,

Pursuant to The Freedom of Information Act (FOIA), 5 U.S.C. § 552 *seq et*, and 5 U.S.C. § 552a *et seq.*, I write to request copies of the following records any and all records in the possession of Immigration Customs Enforcement (“ICE”) pertaining to Jeffrey Hernandez Rodriguez aka Roy Alexander Hernandez Rodriguez aka Roxsana Hernandez (hereinafter “Ms. Hernandez”) DOB: February 18, 1985, A#206418141 including but not limited to:

- 1) Any and all records within possession of the Office Immigration and Customs Enforcement (“ICE”) or Customs and Border Protection (“CBP”) of investigations, inspections, audits and reports, from pertaining to A# that “206418141” or “206 418 141” or “206-418-141” beginning from May 9, 2018 when she was taken into ICE custody through the present.
- 2) Any and all investigations, inspections, reports, audits and communications pertaining to the death of A# that “206418141” or “206 418 141” or “206-418-141” or “and surrounding circumstances from May 9th, 2018 through the present.
- 3) Any and all records within possession of the Office Immigration and Customs Enforcement (“ICE”) or Customs and Border Protection (“CBP”) of investigations, inspections, audits and reports, from pertaining to Ms. Hernandez beginning from May 9, 2018 when she was taken into ICE custody through the present.
- 4) Any and all investigations, inspections, reports, audits and communications pertaining to the death of Ms. Hernandez and surrounding circumstances from May 9th, 2018 through the present.
- 5) A complete copy of the government’s file for A# “206418141” or “206 418 141” or “206-418-141”.
- 6) any and all records in the possession of ICE pertaining to Ms. Hernandez, generated from May 9, 2018 through the present including but not limited to:

- a) Any and all communications, memorandums, emails, and all other electronic communications, responses to media inquiries, notes, reports and database entries.
- 7) any and all records in the possession of ICE that include “206418141” or “206 418 141” or “206-418-141” generated from May 9, 2018 through the present including but not limited to:
 - a) Any and all communications, memorandums, emails, and all other electronic communications, responses to media inquiries, notes, reports and database entries
- 8) any and all records in the possession of ICE that include “Roy Alexander Hernandez Rodriguez” or “Roy Alexander Rodriguez” or “Jeffry Hernandez” or “Jeffrey Hernandez Rodriguez” or “Roxsana Hernandez” or generated from May 9, 2018 through the present including but not limited to:
 - a) Any and all communications, memorandums, emails, and all other electronic communications, responses to media inquiries, notes, reports and database entries
- 9) any and all records in the possession of ICE pertaining to Ms. Hernandez, generated from November 26, 2018 through the present including but not limited to:
 - a) Any and all communications, memorandums, emails, and all other electronic communications, responses to media inquiries, notes, reports and database entries.
- 10) any and all records in the possession of ICE pertaining to “Dr. Kris Sperry” or “Kris Sperry” or “Dr. Sperry” generated from November 26, 2018 through the present including but not limited to:
 - a) Any and all communications, memorandums, emails, and all other electronic communications, responses to media inquiries, notes, reports and database entries.
- 11) any and all requests for records in the possession of ICE that pertain to “Roxsana Hernandez” or “Roxana Hernandez” or “Roy Alexander Hernandez Rodriguez” or “Jeffry Hernandez” or “Jeffrey Hernandez Rodriguez” generated from November 26, 2018 through the present including but not limited to:
 - a) Any and all requests received by ICE pursuant to 5 U.S.C. § 552 *et seq.*, or any other legal authority authorizing the release of records to the public.
- 12) any and all requests for records in the possession of ICE that pertain to “Dr. Kris Sperry” or “Kris Sperry” or “Dr. Sperry” generated from November 26, 2018 through the present including but not limited to:
 - a) Any and all requests received by ICE pursuant to 5 U.S.C. § 552 *et seq.*, or any other legal authority authorizing the release of records to the public.

Please note that this request is ongoing and encompasses any new materials generated by your office that falls within the ambit of this request.

Ms. Hernandez is deceased. See copy of death certificate, attached. Please also find the attached Order Granting Petition For Appointment As Personal Representative Of The Wrongful Death Estate of Roxsana Hernandez, attached as well as an executed release by Ms. Youngers pursuant to 45 CFR §164.500-534.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$25. However, pursuant to 6 C.F.R. § 5.11(k) I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest. The Transgender Law Center is a non-profit organization that largely serves people with few financial

resources. This information is not being sought for commercial purposes. Please send the requested records in electronic format by CD to:

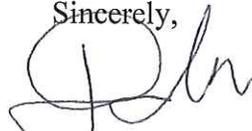
Transgender Law Center
Attn: Dale Melchert
594 Dean Street
Suite 11
Brooklyn, NY 11238

Pursuant to 5 U.S.C.A. § 552(6)(A) I expect a response within 20 days of this request. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption that justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

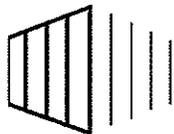
Thank you for considering my request. If you have any questions or concerns you may reach me at 510.587.9696 ext. 354 or dale@transgenderlawcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dale Melchert', written over a faint, circular stamp or watermark.

Dale Melchert, Esq.
Staff Attorney

EXHIBIT B



LAW OFFICE OF
R. ANDREW FREE
Immigration. Civil Rights. Workplace Justice.

Transgender
Law Center



Making Authentic Lives Possible

SUBMITTED VIA EMAIL TO FOIA@HQ.DHS.GOV

February 5, 2019

The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655
Phone: 202-343-1743 or 866-431-0486
Fax: 202-343-4011
E-mail: foia@hq.dhs.gov

Re: Records request investigations of death of Roxsana Hernandez A# 206418141

Dear FOIA Officer,

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, and 6 C.F.R. Ch. I, Pt. 5, I am requesting an opportunity to obtain copies of the following records:

- Any and all records within possession of the Office of Civil Rights and Civil Liberties (“CRCL”) pertaining to A#“206418141” or “206 418 141” or “206-418-141” or “Jeffrey Hernandez” or “Jeffrey Hernandez” also known as “Roy Alexander Hernandez Rodriguez” also known as “Roxsana Hernandez (hereinafter “Ms. Hernandez”)” DOB: February 18, 1985, from May 8, 2018 through the present.
- This includes but is not limited to:
 - Any and all investigations, inspections, audits and reports, from May 9, 2018 through the present pertaining to Ms. Hernandez beginning May 9, 2018 when she was in ICE custody through the present.
 - Any and all investigations, inspections, reports, audits and communications pertaining to the death of Ms. Hernandez and surrounding circumstances from May 9, 2018 through the present.
 - The detainee death review or any other reports or memoranda pertaining to the death of Ms. Hernandez.

Please note that this request is ongoing and encompasses any new materials generated by your office that falls within the ambit of this request.

Ms. Hernandez is deceased. See copy of death certificate, attached. Please also find the attached Order Granting Petition For Appointment As Personal Representative Of The Wrongful Death

Estate of Roxsana Hernandez, attached as well as an executed release by Ms. Youngers pursuant to 45 CFR §164.500-534.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$25. However, pursuant to 6 C.F.R. § 5.11(k) I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest. The Transgender Law Center is a non-profit organization that largely serves people with few financial resources. This information is not being sought for commercial purposes. Please send the requested records in electronic format by CD to:

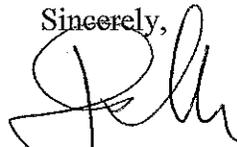
Transgender Law Center
Attn: Dale Melchert
594 Dean Street
Suite 11
Brooklyn, NY 11238

Pursuant to 5 U.S.C.A. § 552(6)(A) I expect a response within 20 days of this request. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption that justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request. If you have any questions or concerns you may reach me at 510.587.9696 ext. 354 or dale@transgenderlawcenter.org.

Sincerely,



Dale Melchert, Esq.
Staff Attorney

EXHIBIT C

FILED
1st JUDICIAL DISTRICT COURT
Santa Fe County
1/15/2019 3:03 PM
STEPHEN T. PACHECO
CLERK OF THE COURT
Jennifer Romero

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

In the Matter of the Wrongful Death Action
on Behalf of the Survivors of Roxsana Hernandez,
Deceased.

No. D-101-CV-2019-00075
Judge: Raymond Z. Ortiz

**ORDER GRANTING PETITION FOR THE APPOINTMENT OF PERSONAL
REPRESENTATIVE FOR THE WRONGFUL DEATH ESTATE OF
ROXSANA HERNANDEZ**

THIS MATTER having come before the Court on the Petition of Joleen K. Youngers, Esq. seeking appointment as Personal Representative for the Wrongful Death Estate of Roxana Hernandez.

IT IS HEREBY ORDERED THAT the Petition is GRANTED and Joleen K. Youngers is appointed to serve as Personal Representative for the Wrongful Death Estate of Roxsana Hernandez for purposes of evaluating and prosecuting a wrongful death claim.


DISTRICT COURT JUDGE 4DPL

Respectfully submitted,

Joleen K. Youngers
Almanzar & Youngers, PA
228 Griffin Street
Santa Fe, NM 87501
t: 505.820.0108
jyoungers@ay-law.com

EXHIBIT D



U.S. Immigration and Customs Enforcement
Enforcement and Removal Operations

**U.S. Immigration and Customs Enforcement (ICE)
Detainee Death Report: HERNANDEZ, Jeffry (aka HERNANDEZ, Roxana)**

General Demographic/Background Information

- **Date of Birth:** February 18, 1985
- **Date of Death:** May 25, 2018
- **Age:** 33
- **Sex:** Male
- **Gender:** Transgender woman
- **Country of Citizenship:** Honduras
- **Marital Status:** Single
- **Children:** None reported

Immigration History

- On October 6, 2005, Ms. HERNANDEZ was encountered entering the United States illegally, was apprehended, and granted a Voluntary Return to Mexico.
- On April 25, 2009, Ms. HERNANDEZ was encountered by U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) officers during the routine performance of Criminal Alien Program (CAP) duties. Ms. HERNANDEZ had been arrested by the Dallas Police Department for Prostitution. Due to Ms. HERNANDEZ'S immigration status, ICE placed a detainer on her and on May 13, 2009, she was transported to the Dallas Field Office for identification and a background check. Ms. HERNANDEZ requested and was granted a Voluntary Return (witnessed on May 20, 2009).
- On January 23, 2014, Ms. HERNANDEZ was encountered by a Border Patrol Agent in Laredo, Texas and arrested for unlawful entry into the U.S.
- On March 7, 2014, Ms. HERNANDEZ was apprehended upon release from the Houston Federal Detention Center (federal prison). She was issued an I-200 (Warrant for Arrest of Alien) and an I-286 (Notice of Custody Determination) to remain in ICE custody pending removal and was removed via Expedited Removal on March 11, 2014.
- On May 9, 2018, Ms. HERNANDEZ applied for admission to the United States from Mexico at the San Ysidro Port of Entry. At this time, she was in the custody of U.S. Customs and Border Protection (CBP).
- On May 14, 2018, ICE ERO took custody of Ms. HERNANDEZ and booked her into the San Luis Regional Detention Center (SLRDC), San Luis, Arizona.
- On May 15, 2018, ERO transferred Ms. HERNANDEZ from SLRDC to the El Paso Processing Center (EPC), El Paso, Texas.
- On May 16, 2018, ERO transferred Ms. HERNANDEZ from EPC to the Cibola County Correctional Center (CCCC).

Criminal History

- On April 8, 2006, Ms. HERNANDEZ was convicted of larceny (NCIC – 2399).
- On July 11, 2008, Ms. HERNANDEZ was convicted of prostitution (NCIC – 4004).
- On May 12, 2009, Ms. HERNANDEZ was convicted of prostitution (NCIC – 4004).
- On January 27, 2014, Ms. HERNANDEZ was convicted of Entry Without Inspection under 8 U.S.C. § 1325(a)(1) and sentenced to 45 days confinement.



U.S. Immigration and Customs Enforcement
Enforcement and Removal Operations

Medical History

- **On May 17, 2018**, a registered nurse (RN) completed Ms. HERNANDEZ's intake screening. The RN noted a history of human immunodeficiency virus (HIV) without treatment and Hepatitis A. Ms. HERNANDEZ reported a persistent cough and weight loss. The RN referred Ms. HERNANDEZ to a medical provider for further evaluation. The physician (MD) evaluated Ms. HERNANDEZ and diagnosed untreated HIV, dehydration, starvation, and fever with cough. The MD ordered ground transport to Cibola General Hospital (CGH) for further evaluation and treatment. The CGH emergency department (ED) MD ordered multiple laboratory and radiology diagnostic studies. Ms. HERNANDEZ was diagnosed with septic shock, anemia, dehydration, HIV infection, lymphadenopathy, nodular pulmonary disease, and thrombocytopenia. The ED MD ordered air ambulance transportation to the Lovelace Medical Center (LMC) in Albuquerque, NM.
- **On May 18, 2018**, LMC reported Ms. HERNANDEZ was stable and admitted to an intensive care unit (ICU) for tuberculosis (TB) isolation. Ms. HERNANDEZ developed an appetite, and was provided with meals and oral fluids, which she tolerated well. Further diagnostic studies were begun.
- **On May 19, 2018**, LMC reported Ms. HERNANDEZ remained stable, but had developed a fever of 104.0. A computed tomography (CT) scan showed an enlarged spleen, which was concerning for T-cell lymphoma. The CD4 count (or T-cell count; a primary indicator of HIV progression) was 189 (a reading below 200 is serious in that the ability to fight HIV and associated infections is significantly decreased).
- **On May 22, 2018**, LMC reported Ms. HERNANDEZ had run a fever up to 102.0 most of the day and had lost her appetite. Her IV antibiotic therapy was evaluated and a new antibiotic therapy protocol was prescribed.
- **On May 23, 2018**, LMC reported Ms. HERNANDEZ had run a fever most of the day and was tachycardic (rapid heart rate).
- **On May 24, 2018**, LMC reported Ms. HERNANDEZ was in critical condition. A chest x-ray revealed small, bilateral pleural effusions (excess fluid surrounding the lung, causing difficulty breathing). LMC performed a thoracentesis (procedure to remove the pleural effusions). LMC intubated Ms. HERNANDEZ and placed her on a mechanical ventilator. Later in the evening, Ms. HERNANDEZ developed bradycardia (slow heart rate), which changed to pulseless electrical activity (when the heart shows a rhythm on a cardiac monitor, but the heart is not pumping blood). Cardiopulmonary resuscitation (CPR) began immediately and Ms. HERNANDEZ was revived. Ms. HERNANDEZ then developed supraventricular tachycardia (rapid heart rate originating outside the heart's ventricles) that was not responsive to treatment.

Synopsis of Death

- **On May 25, 2018**, at 1:30 a.m., LMC reported Ms. HERNANDEZ was experiencing cardiopulmonary arrest every few minutes, and had minimal brain activity. At 3:32 a.m., LMC reported Ms. HERNANDEZ had been pronounced dead.
- As of December 7, 2018, the autopsy is still pending.

EXHIBIT E



**Homeland
Security**

Privacy Office, Mail Stop 0655

April 19, 2019

SENT VIA E-MAIL TO: dale@transgenderlawcenter.org

Dale Melchert, Esq.
Transgender Law Center
P.O. Box 70976
Oakland, CA 94612

Re: **2019-HQFO-00384**

Dear Mr. Melchert:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated February 5, 2019, and to your request for a waiver of all assessable FOIA fees. Our office received your request on February 5, 2019. Specifically, you requested any and all records within possession of the Office of Civil Rights and Civil Liberties ("CRCL") pertaining to A#"206418141" or "206 418 141" or "206-418-141" or "Jeffry Hernandez" or "Jeffrey Hernandez" also known as "Roy Alexander Hernandez Rodriguez" also known as "Roxsana Hernandez" (hereinafter "Ms. Hernandez") DOB: February 18, 1985, including but not limited to: (a) any and all investigations, inspections, audits and reports, pertaining to Ms. Hernandez while in ICE custody; (b) any and all investigations, inspections, reports, 'audits and communications pertaining to the death of Ms. Hernandez and surrounding circumstances; and (c) the detainee death review or any other reports or memoranda pertaining to the death of Ms. Hernandez (Date Range for Record Search: From 5/8/2018 To 2/5/2019).

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. Part 5 § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances under 6 C.F.R. Part 5 § 5.5(c). As your request seeks a voluminous amount of separate and distinct records, DHS will invoke a 10-day extension for your request pursuant 6 C.F.R. Part 5 § 5.5(c). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

You have requested a fee waiver. The DHS FOIA regulations at 6 C.F.R. Part 5 § 5.11(k) set forth six factors DHS must evaluate to determine whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations

or activities of the government,” (2) Whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons, (4) Whether the contribution to public understanding of government operations or activities will be “significant,” (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure, and (6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Upon review of the subject matter of your request, and an evaluation of the six factors identified above, DHS has determined that it will conditionally grant your request for a fee waiver. The fee waiver determination will be based upon a sampling of the responsive documents received from the various DHS program offices as a result of the searches conducted in response to your FOIA request. DHS will, pursuant to DHS FOIA regulations applicable to non-commercial requesters, provide two hours of search time and process the first 100 pages at no charge to you. If upon review of these documents, DHS determines that the disclosure of the information contained in those documents does not meet the factors permitting DHS to waive the fees, then DHS will at that time either deny your request for a fee waiver entirely, or will allow for a percentage reduction in the amount of the fees corresponding to the amount of relevant material found that meets the factors allowing for a fee waiver. In either case, DHS will promptly notify you of its final decision regarding your request for a fee waiver and provide you with the responsive records as required by applicable law.

In the event that your fee waiver is denied, and you determine that you still want the records, provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester you will be charged for any search time and duplication beyond the free two hours and 100 pages mentioned in the previous paragraph. You will be charged 10 cents per page for duplication and search time at the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. In the event that your fee waiver is denied, we will construe the submission of your request as an agreement to pay up to \$25.00. This office will contact you before accruing any additional fees.

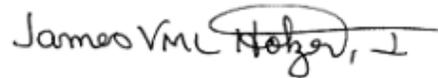
We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the analysts in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2019-HQFO-00384**. Please refer to this identifier in any future correspondence. The status of your FOIA request is now available online and can be accessed at: <https://www.dhs.gov/foia-status>, by using this FOIA request number. Status information is updated daily. Alternatively, you can download the DHS eFOIA Mobile App, the free app is available for all Apple and Android devices. With the DHS eFOIA Mobile

App, you can submit FOIA requests or check the status of requests, access all of the content on the FOIA website, and receive updates anyplace, anytime.

If you have any questions, or would like to discuss this matter, please feel free to contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

A handwritten signature in black ink that reads "James VML Holzer, J." The signature is written in a cursive style with a large, looping initial "J" at the end.

James Holzer
FOIA Program Specialist