



Via Electronic and U.S. Postal Service Delivery

January 17, 2019

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FOIA Office
U.S. Customs and Border Protection
90 K Street, N.W., 9th Floor
STOP-1181
Washington, D.C. 20229

Re: Freedom of Information Act Records Request

Dear FOIA Officer,

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552 et seq., and the U.S. Department of Homeland Security (“DHS”) FOIA regulations beginning at 6 C.F.R. Part 5, Democracy Forward Foundation (“Democracy Forward”) and the Center for American Progress (“CAP” and collectively “Requesters”) make this request for records.

I. Background

On December 8, 2018, Jakelin Amei Rosmery Caal Maquin, a 7-year-old girl from Guatemala, died while in the custody of U.S. Customs and Border Protection agents.¹ On December 24, 2018, Felipe Gómez Alonzo, an 8-year-old boy who was also from Guatemala, died while in the custody

¹ Nick Miroff and Robert Moore, *7-Year-Old Migrant Girl Taken Into Border Patrol Custody Dies of Dehydration, Exhaustion*, Wash. Post (Dec. 13, 2018), https://www.washingtonpost.com/world/national-security/7-year-old-migrant-girl-taken-into-border-patrol-custody-dies-of-dehydration-exhaustion/2018/12/13/8909e356-ff03-11e8-862a-b6a6f3ce8199_story.html?utm_term=.bd3b5050fbbb; John Stanton, *Border Patrol Told A Congressional Delegation It Can't Meet With Agents Who Detained A 7-Year-Old*, BuzzFeed News (Dec. 17, 2018), <https://www.buzzfeednews.com/article/johnstanton/border-patrol-congress-guatemalan-girl>.

of CBP agents.² Reports that a second child had died in CBP custody only weeks after the first tragedy were met with widespread condemnation and calls for a thorough investigation into the circumstances of the deaths.³

Unsurprisingly, news of these deaths prompted calls for investigations from the families of the deceased children, the government of Guatemala, and leaders in Congress, and investigations appear to have been initiated by, or complaints have been opened with, CBP's Office of Professional Responsibility, DHS's Inspector General, and DHS's Office of Civil Rights and Civil Liberties.⁴

Members of Congress have also signaled their intent to conduct oversight hearings and investigations into this matter and have taken steps to put the Department on notice of the record preservation obligations it owes to Congress.⁵ In response, DHS and CBP have been less than candid and cooperative in their responses to Congress. Of note, CBP Commissioner Kevin McAleenan failed to publicly disclose the December 8, 2018 death of Jakelin Amei Rosmery Caal Maquin when he testified before the Senate Judiciary Committee on December 11.⁶ And members of the Congressional Hispanic Caucus were reportedly told they would not be permitted to speak with the CBP agents who maintained custody over Jakelin Amei Rosmery Caal Maquin during their planned visit to the CBP facility where she was detained.⁷

Candor and cooperation from the Department are critical here because many of the facts necessary to understand why and how these children died—and what degree of culpability CBP bears for their deaths—are not yet publicly known. Such important details must include, at least: information about the children's health at the point of their arrests; the conditions of their confinement; the quality and kind of medical screenings and treatment they received from CBP officials at each point while they were in CBP custody; whether language access issues created barriers to effective communication between the children, their guardians, and CBP officials; and any other records that would shed important light on the nature of CBP's conduct throughout the duration of their respective periods of confinement, including any and all video footage pertaining to the locations where both children were held during their periods of transport and confinement. Further, it is essential to understand what CBP knew before the arrival of these children about the conditions of confinement in the facilities where they would be detained and the availability of appropriate medical screenings and treatment.

² Miriam Jordan, *'A Breaking Point': Second Child's Death Prompts New Procedures for Border Agency*, N.Y. Times (Dec. 26, 2018), <https://www.nytimes.com/2018/12/26/us/felipe-alonzo-gomez-customs-border-patrol.html>.

³ Miroff and Moore, *supra* note 1.

⁴ See, e.g., Jordan, *supra* note 2; see also Press Release, U.S. Rep. Jerrold Nadler, *Top House Democrats Call for Preservation of Records Related to Child Deaths in CBP Custody and Announce Plans for Oversight Hearings in 116th Congress* (Dec. 27, 2018), <https://nadler.house.gov/press-release/top-house-democrats-call-preservation-records-related-child-deaths-cbp-custody-and>.

⁵ See Nadler Press Release, *supra* note 4.

⁶ Anne Flaherty and Wil Cruz, *Border Patrol Head Didn't Tell Congress About Jakelin Caal Maquin To Avoid 'Politicizing' Girl's Death*, ABC News (Dec. 16, 2018), <https://abcnews.go.com/US/border-patrol-head-congress-jakelin-caal-maquin-avoid/story?id=59849324>.

⁷ See John Stanton, *Border Patrol Told A Congressional Delegation It Can't Meet With Agents Who Detained A 7-Year-Old*, BuzzFeed News (Dec. 17, 2018), <https://www.buzzfeednews.com/article/johnstanton/border-patrol-congress-guatemalan-girl>.

Specifically with respect to Felipe Gómez Alonzo, who was first taken by Border Patrol agents to the Gerald Champion Regional Medical Center (GCRMC) in Alamogordo, New Mexico, before he was discharged to Border Patrol custody and eventually readmitted to the New Mexico hospital where he ultimately died, it is further important that DHS and CBP provide the following: records pertaining to instructions or guidance provided to CBP officials by GCRMC staff regarding post-discharge care; records provided to CBP describing the health status of Felipe Gómez Alonzo upon his discharge from GCRMC; and any records provided to GCRMC staff describing steps CBP would take post-discharge to provide continued care, or describing the conditions of confinement to which Felipe would be returned post-discharge.

II. Records Requested

In order to understand and explain to the public why and how these children died—and what degree of culpability CBP bears for their deaths—Requesters request that DHS and CBP produce the following within twenty (20) working days:⁸

1. All video or audio recordings documenting CBP interactions with Jakelin Amei Rosmery Caal Maquin and Felipe Gómez Alonzo at the point of arrest, inspection, processing, or transport, whether obtained through the Centralized Video Surveillance System (“CAVSS”) or another means;
2. All video surveillance footage from cameras stationed at any of the various CBP facilities in which the children were detained or held, even temporarily, while in CBP custody;
3. All medical records, including any notes, charts, or discharge summaries detailing medical treatment or health screenings provided to Jakelin Amei Rosmery Caal Maquin or Felipe Gómez Alonzo while they were in CBP custody and retained by CBP;
4. All medical records concerning Jakelin Amei Rosmery Caal Maquin or Felipe Gómez Alonzo, including discharge paperwork and post-discharge care instructions, provided by hospital staff to CBP officials;
5. All records provided to hospital staff by CBP officials describing or making assurances concerning the post-discharge care that would be made available to Jakelin Amei Rosmery Caal Maquin or Felipe Gómez Alonzo;
6. All records provided to hospital staff by CBP officials describing the locations and conditions to which Jakelin Amei Rosmery Caal Maquin or Felipe Gómez Alonzo would return;

⁸ At the time of this request, we understand and acknowledge that due to a lapse in appropriations only certain “exempt” DHS employees may continue carrying out their duties. We note, however, that the lapse in appropriations does not operate to extend the twenty (20) working days within which the Department is required to respond to this request. *See* U.S. Dep’t Justice, OIP Guidance: Calculating FOIA Response Times After the Government Shutdown (Oct. 29, 2013), <https://www.justice.gov/oip/blog/calculating-foia-response-times-after-government-shutdown> (advising that, “consistent with the spirit of openness in administering the FOIA, agencies should count as part of their response times for FOIA requests and appeals the . . . days when the government was closed,” excluding weekends and legal public holidays).

7. Autopsy reports for Jakelin Amei Rosmery Caal Maquin and Felipe Gómez Alonzo;
8. All forms generated in the course of the arrest, detention, transfer, or medical treatment of Jakelin Amei Rosmery Caal Maquin or Felipe Gómez Alonzo;
9. All memos or reports containing post-incident assessments of CBP conduct related to Jakelin Amei Rosmery Caal Maquin or Felipe Gómez Alonzo;
10. All records created on or after January 20, 2017 related to health emergencies involving minor children that occurred within 72 hours of their entry into CBP custody;
11. All records created on or after January 20, 2017 related to incidents, practices, guidance, complaints, or problems regarding medical treatment, health screenings, food, water, welfare checks, overcrowding, temperature, and all other conditions of confinement or transport for undocumented persons apprehended and/or detained at or near the Antelope Wells port of entry and/or Camp Bounds;
12. All records created on or after January 20, 2017 related to prior incidents, practices, guidance, complaints, or problems regarding medical treatment, health screenings, food, water, welfare checks, overcrowding, temperature, and all other conditions of confinement or transport for undocumented persons apprehended at or near the Paso del Norte port of entry and/or detained at the El Paso Border Station and/or Alamogordo Station; and
13. All records created on or after January 20, 2017 related to services for persons whose first language is Q'eqchi', Chuj, or another Mayan language, including translation and medical care, and/or related to health problems involving persons whose first language is Q'eqchi', Chuj, or another Mayan language.

For Requests Nos. 1-9, please search for records created between December 1, 2018 and the date on which the search is completed. For Requests Nos. 10-13, please search for records created between January 20, 2017 and the date on which the search is completed.

III. Format of Production

Please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions. In searching for responsive recordings, however, please exclude publicly available materials such as new clips that mention otherwise responsive search terms.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by specific exception or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in

their entirety, we request that you release any material that can reasonably be segregated. *See* 5 U.S.C. § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what portions of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

To the extent that the records are readily reproducible in an electronic format, we would prefer to receive the records in that format. However, if certain records are not available in that format, we are willing to accept the best available copy of each such record.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

IV. Request for Fee Waiver

Requesters request a waiver of document search, review, and duplication fees because the disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. §5.11(k)(1)(i). Requesters further request a waiver of search fees on the ground that each qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 6 C.F.R. § 5.11(k)(1)(ii).

The disclosure of requested records is “likely to contribute significantly to public understanding of the operations or activities of the government” because, as discussed above, there is great public interest in the information sought through this request. 5 U.S.C. § 552(a)(4)(A)(iii). Given the ongoing and widespread media attention, the records sought will contribute significantly to public understanding of the issue, of which is of profound public importance. Further, Requesters are nonprofit organizations organized under Internal Revenue Code § 501(c)(3) and dedicated to, among other things, promoting policy engagement and civic education. As nonprofit organizations, they do not have a commercial interest in the records. Moreover, the records obtained from this request will be made available to the public in some fashion on a *pro bono* basis.

Requesters also request a waiver of search fees because each is a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Requesters each meet the definition of “representative of the news media” because each gathers information, exercises editorial discretion in selecting and organizing documents, and “distributes the resulting work to the public.” *Nat’l Sec. Archives v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Each Requester is, therefore, a “representative of the news media” for the same reasons each is “primarily engaged in disseminating information.” 5 U.S.C. §§ 552(a)(4)(A)(ii)(II), 552(a)(6)(E)(v)(II).

If the request for a waiver is denied, Requesters are willing to pay all reasonable fees incurred for searching and duplicating records in responding to this request, up to \$100. If the costs of responding to this request should exceed that amount, please contact us before incurring costs exceeding that amount.

V. Conclusion

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles to releasing fully the requested records within the 20-day period, please contact Jeffrey Dubner at foia@democracyforward.org.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

/s/ Jeffrey Dubner

Jeffrey Dubner
Senior Counsel
Democracy Forward Foundation

/s/ Tom Jawetz

Tom Jawetz
Vice President of Immigration Policy
Center for American Progress