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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.*)

Civil Action No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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PRELIMINARY STATEMENT

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.

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

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 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**.

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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).

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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
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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.
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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.
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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.
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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.
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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).

1 **C. Defendants’ Unlawful Withholdings in Response to Plaintiffs’ FOIA Requests**

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

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

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

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

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

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

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27 ¹⁷ *See, e.g.*, Kate Sosin, ICE is refusing to Release A Legally Mandated Review of Roxsana Hernandez’s Death, INTO
28 (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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15 **REQUEST FOR RELIEF**

16 Wherefore, Plaintiffs respectfully request that this Court:

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- 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

