

Hon. Patrick J. Walsh (Ret.)
Special Master
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

KELVIN HERNANDEZ ROMAN, et al.,) ED CV 20-00768 TJH(PVC)
)
Petitioners-Plaintiffs,) SPECIAL MASTER'S REPORT AND
) RECOMMENDATION FOLLOWING THE
v.) INVESTIGATION INTO THE DEATH OF
) MARTIN VARGAS ARELLANO
CHAD T. WOLF, et al.,)
)
Respondents-Defendants.)

This Report and Recommendation is submitted to the Honorable Terry J. Hatter, Jr., following the Special Master's investigation into the death of Mr. Martin Vargas Arellano. For the reasons set forth below, it is recommended that the government be required to:

1. Report to the Special Master and Plaintiffs/Petitioners' counsel any time a detainee at Adelanto who has previously tested positive for COVID is confined to the infirmary, brought to the hospital, or dies of any cause. Further, upon request from the Special Master, submit the detainee's medical records to the Special Master and Plaintiffs/Petitioners' counsel for review.

2. Review the medical records of any detainee who has previously tested positive for COVID and is subsequently hospitalized or confined

1 to the infirmary to determine if he or she is being treated for COVID
2 or for complications stemming from COVID. If any of these records
3 indicate that at least one of the reasons the detainee is hospitalized
4 or in the infirmary is for treatment of COVID or complications
5 stemming from COVID--like shortness of breath or COVID-pneumonia--the
6 government must report that fact to Plaintiffs/Petitioners' counsel
7 and the Special Master and list that detainee as being hospitalized
8 for COVID on the daily status reports.

9 3. Pay Mr. Vargas' immigration lawyer Ms. Margaret Hellerstein's
10 legal fees from March 5, 2021, when the government released Mr. Vargas
11 without telling her, until March 18, 2021, when she found out from the
12 coroner that Mr. Vargas had died 10 days earlier.

13 I.

14 SUMMARY OF FACTS

15 In April 2019, Martin Vargas Arellano was placed in ICE detention
16 at Adelanto. He was 53 years old at the time and suffered from
17 schizophrenia as well as various physical ailments, including diabetes
18 melitus. Several times thereafter, Mr. Vargas sought release from
19 custody but ICE opposed his motions on the ground that he was a danger
20 to the community.¹

21 On November 29, 2020, Mr. Vargas was examined by a member of the
22 Wellpath staff. Apparently, this staff member was positive for COVID-
23 19, though he or she was not aware of it at the time.²

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25 ¹ In their letter briefs, both sides spent time discussing the
26 propriety of Mr. Vargas' detention. This issue is not being addressed
27 in this Report and Recommendation because it is not relevant to the
28 investigation into Mr. Vargas' death.

² Wellpath provides medical services at Adelanto.

1 On December 10, 2020, Mr. Vargas tested positive for COVID. It
2 is assumed that he contracted COVID from the Wellpath medical provider
3 who examined him on November 29, 2020.

4 On December 11, 2020, Mr. Vargas experienced shortness of breath,
5 burning lungs, fever, dry cough, and loss of taste and smell. He was
6 taken to the emergency room at a nearby hospital and, the following
7 day, transferred to a different hospital where he could be better
8 cared for. There, he was diagnosed with COVID-19 pneumonia and
9 hospitalized. As a result, in its daily census report, ICE began
10 reporting to the Court that Mr. Vargas was hospitalized for COVID.

11 On December 25, 2020, Mr. Vargas was released from the hospital.
12 The doctor who discharged him included in the discharge diagnosis
13 "COVID-19" and a "suspected COVID-19 virus infection." (ECF No. 1042-
14 6 at page 13, Medical Records from St. Mary's Medical Center.) The
15 doctor also noted: "Patient[']s chest x-ray showed interval
16 development of ill-defined opacities in the periphery of both upper
17 lobes, this is concerning for COVID 19 pneumonia" (*Id.*)

18 Mr. Vargas was placed in the infirmary upon his return to
19 Adelanto. A Wellpath doctor caring for Mr. Vargas at Adelanto
20 described his condition as "slowly improving though with extreme
21 fatigue." (ECF No. 1042-2 at page 584, Infirmary Records.) On
22 December 28, 2020, that same doctor noted Mr. Vargas "still felt short
23 winded on and off." (ECF No. 1042-2 at page 541, Infirmary Records.)

24 On December 30, 2020, Mr. Vargas reported to a Wellpath nurse
25 that he was feeling weak. She explained to him that recovery from
26 COVID can be long and slow and counseled him to be patient. The next
27 day, December 31, 2020, Wellpath Regional Medical Director Dr. Richard
28 Medrano "deemed" Mr. Vargas "recovered" from COVID. (Exh. 16 to

1 Bansal Decl., Email from Richard Medrano to GEO Staff.) This
2 designation was not meant to signal that Mr. Vargas had actually
3 recovered from COVID. Rather, the term “deemed recovered” was “meant
4 as a tool to determine when detainees [are] no longer infectious”
5 under CDC criteria. (Assistant Field Office Director and Officer in
6 Charge at Adelanto Gabriel Valdez Decl. at ¶ 25.) But the government
7 misinterpreted this designation and, from January 1, 2021 on, stopped
8 reporting to the Court that Mr. Vargas was being confined to the
9 infirmary or hospitalized for COVID and/or complications stemming from
10 COVID.

11 On January 4, 2021, Mr. Vargas was admitted to the infirmary
12 complaining of shortness of breath. He was given oxygen. On January
13 27, 2021, he was hospitalized for COVID, again. The admitting doctor
14 noted: “Patient was recently diagnosed with COVID 6 weeks ago and was
15 admitted for 3 weeks for COVID [pneumonia]. . . . Mild diffuse
16 groundglass airspace disease suggestive of COVID-19 pneumonia,
17 decreasing in severity compared with prior [admission].” (ECF Doc.
18 No. 1042-3 at 474, Medical Records from Saint Mary’s for January 26,
19 2021.)

20 On February 4, 2021, Mr. Vargas was released from the hospital
21 and brought back to Adelanto where he was confined to the infirmary.
22 On February 17, he was taken back to the hospital, complaining of
23 shortness of breath. (ECF Doc. No. 1042-3 at 16, Medical Records from
24 Victor Valley Global Medical Center, February 17, 2021.) The
25 admitting doctor noted:

26 A 55-year-old-male with history of COVID-19 presenting with
27 [shortness of breath]. Differential diagnosis includes but is
28

1 not limited to the following: COVID-19 pneumonia, pulmonary
2 embolism.

3 (*Id.*)

4 Unfortunately, Mr. Vargas' condition continued to deteriorate
5 after he was admitted to the hospital. The medical records and
6 reports from the hospital at the time showed that his condition was
7 becoming grave.

8 Concerned with this development, on February 19, 2021, Wellpath
9 Medical Director Dr. Alex Ramos working at Adelanto notified ICE Field
10 Medical Coordinator Nicole Knight-Glass that Mr. Vargas was "at great
11 risk of pulmonary embolism and [that there was a] possibility of
12 sudden death" due to multiple ailments, including ongoing weakness and
13 chest pain in the wake of COVID-19 infection. (Exh. 14 to Bansal
14 Decl., Email from Dr. Alex Ramos to Ms. Nicole Knight-Glass.) Dr.
15 Ramos urged Ms. Knight-Glass to evaluate whether Mr. Vargas should be
16 released from ICE detention. In response to Dr. Ramos' inquiry, ICE
17 initiated a plan to release Mr. Vargas and, beginning on February 21,
18 2021, sought the necessary approvals to accomplish this.

19 In furtherance of this process, Sergio Guzman, Mr. Vargas'
20 deportation officer, contacted Mr. Vargas' immigration counsel, Ms.
21 Margaret Hellerstein, to inform her that Mr. Vargas was going to be
22 released from detention. He asked her to arrange for placement for
23 Mr. Vargas. Officer Guzman did not tell Ms. Hellerstein that the
24 impetus in releasing Mr. Vargas was that he was gravely ill. Ms.
25 Hellerstein assumed that Mr. Vargas was being released because the
26 government had had a change of heart regarding his requests to be
27 released. Over the course of the next several weeks, Ms. Hellerstein
28 made arrangements for housing for Mr. Vargas and for transportation

1 from Adelanto to the facility where he would be staying once he was
2 released.

3 At the same time ICE was working with Ms. Hellerstein on Mr.
4 Vargas' release, it was also attempting to locate Mr. Vargas' family
5 so that it could coordinate Mr. Vargas' release through his family
6 instead of Ms. Hellerstein.³

7 On February 26, 2021, Mr. Vargas suffered a stroke, which caused
8 brain death. He was sedated and placed on a ventilator. In the wake
9 of his stroke, ICE understood that Mr. Vargas' condition was dire and,
10 on March 4, 2021, began "the necessary paperwork for a death
11 notification." (Exh. 28 to Bansal Decl. at 4, Email from James Scott
12 to Art Cortez (and others).) The following day, on March 5, 2021,
13 Assistant Field Office Director and Officer in Charge at Adelanto,
14 Gabriel Valdez, sent an email to the hospital along with an "Order of
15 Release," purportedly "releasing" Mr. Vargas on his own recognizance.⁴
16 The Order listed Mr. Vargas' release address as the address of the
17 facility Ms. Hellerstein had arranged for him to live in once he was
18 released. This facility, however, was not equipped to provide
19 services for a patient who was comatose and brain dead.

20 Despite the fact that ICE's long-standing practice and policy was
21 to notify Ms. Hellerstein, ICE did not notify her. It also did not
22 notify Mr. Vargas' children, who by this time had expressed an

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24 ³ The government has not explained why it searched for an
25 alternative to releasing Mr. Vargas to the care facility through his
26 lawyer. Plaintiffs/Petitioners' suspect that it was so that ICE would
27 not have to inform Ms. Hellerstein that Mr. Vargas had been released
28 or died.

27 ⁴ The government has not explained when and how Mr. Vargas
28 stopped being a danger to the community and qualified for release on
his own recognizance.

1 interest in keeping abreast of Mr. Vargas' condition. No one at the
2 hospital noticed Officer Valdez's email and the attached release
3 order.

4 On March 8, 2021, Mr. Vargas passed away due to complications
5 brought on by COVID. That same day, ICE reported to the Court through
6 its weekly census that Mr. Vargas had been released.

7 On March 9, 2021, ICE learned that Mr. Vargas had died the day
8 before. ICE did not inform Ms. Hellerstein or Mr. Vargas' family. As
9 a result, Ms. Hellerstein continued to work on facilitating Mr.
10 Vargas' release and arranging for his transportation.

11 Class counsel Jessica Bansal learned that Mr. Vargas had been
12 released when she reviewed the March 8, 2021, weekly status report.
13 On March 15, 2021, she emailed Ms. Hellerstein to congratulate her on
14 securing his release. Ms. Hellerstein was confused because she did
15 not know that Mr. Vargas had been released. She was worried that Mr.
16 Vargas was wandering around the city alone, which was especially
17 problematic because he suffered from schizophrenia and had no money or
18 support.

19 Ms. Hellerstein called Officer Guzman to find out where Mr.
20 Vargas was. (Hellerstein Depo. at 67-69, 86-89.) He did not tell her
21 that Mr. Vargas had died the week before, something Officer Guzman had
22 known since March 9th. Instead, he led her to believe that Mr. Vargas
23 had been released to the street but that he did not know the details
24 concerning the release. (Guzman Depo. at 59-63; 91-92.) He explained
25 that "higher-ups" were responsible for releasing Mr. Vargas. (Guzman
26 Depo. at 59-92.) Officer Guzman provided Ms. Hellerstein with the
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28

1 address of the Immigration Court in Los Angeles and advised her that
2 she should go there to find out what had happened to Mr. Vargas.⁵

3 The following day, March 16, 2021, Ms. Hellerstein sent an email
4 to Officer Guzman, again seeking information about Mr. Vargas'
5 whereabouts. Before responding, Officer Guzman showed the email to
6 his supervisor, who told him not to respond and not to talk to Ms.
7 Hellerstein about Mr. Vargas. (Guzman Depo. at 67.)

8 In the days that followed, Ms. Hellertein employed a network of
9 attorneys and contacts to help her find Mr. Vargas. (Hellerstein
10 Decl. at para. 23.) She called police stations, hospitals, and
11 shelters and posted a notice on social media. (Hellerstein Decl. at
12 para. 23.) She filed a missing person's report with the Sheriff's
13 Department. (Hellerstein Decl. at para. 24.) And she contacted the
14 Mexican Consulate. (Hellerstein Decl. at para. 26.) On March 18,
15 2021, Ms. Hellerstein called the county coroner, who informed her that
16 Mr. Vargas had died in the hospital ten days earlier.

17 II.

18 DISCUSSION

19 1. It is highly likely, that Mr. Vargas contracted COVID-19
20 from Wellpath medical staff at Adelanto.

21 2. Wellpath's decision that Mr. Vargas was "deemed recovered"
22 on December 31, 2020, did not mean that he had recovered from COVID.
23 The term "deemed recovered" was "meant as a tool to determine when
24 detainees [are] no longer infectious" under CDC criteria. (Assistant
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26 ⁵ Officer Guzman has offered several justifications for
27 misleading Ms. Hellerstein, including: (1) he was no longer
28 responsible for Mr. Vargas since Mr. Vargas had been "released"; and
(2) he was not sure what he could or should tell Ms. Hellerstein and
needed to check with his supervisor.

1 Field Office Director and Officer in Charge at Adelanto Gabriel Valdez
2 Decl. at ¶ 25.) Mr. Vargas never recovered from COVID-19. His visits
3 to the infirmary in January 2021 and his hospitalizations in January,
4 February, and March were all due to complications brought on by COVID-
5 19. The medical staff at Adelanto and the doctors in the hospitals
6 were all treating him for complications stemming from COVID, including
7 shortness of breath brought on by COVID and COVID-related pneumonia,
8 as reflected in the medical charts. As such, ICE should have been
9 reporting these hospital visits and infirmary stays as COVID-related
10 to the Court, counsel, and the Special Master. Its failure to do so
11 violated this Court's order that it report detainees being
12 hospitalized for COVID. By not informing the Court, the Special
13 Master, and Plaintiffs/Petitioners' counsel that Mr. Vargas was
14 hospitalized for COVID, all three were kept in the dark. This
15 completely frustrated the purpose of the Court's intervention in this
16 case and the appointment of a Special Master.

17 3. The only practical effect of the government's "release" of
18 Mr. Vargas' from detention on March 5, 2021--while he was comatose and
19 near death--was that he was moved off the "books" at ICE, Adelanto,
20 and Wellpath and deposited on the hospital's "books." Because ICE
21 released him to the hospital, all three were relieved of their
22 obligations to report his death. Further, this seems to have been the
23 sole purpose of the release.

24 4. The evidence supporting this finding includes the fact the
25 release was triggered by a request from Wellpath's medical director,
26 Dr. Ramos, and was precipitated by Dr. Ramos' realization that Mr.
27 Vargas was about to die. It is further evidenced by the fact that ICE
28 violated its own policies and procedures by releasing Mr. Vargas

1 without telling his lawyer and, in fact, trying to go around his
2 lawyer by releasing him to family. It is further evidenced by the
3 fact that when Ms. Hellerstein asked Deportation Officer Guzman what
4 had happened to Mr. Vargas a week after he had died, Officer Guzman
5 intentionally concealed what had happened. This conduct was ratified
6 by his supervisor, who learned of Officer Guzman's interactions with
7 Ms. Hellerstein and instructed him not to respond to Ms. Hellerstein's
8 email looking for information about Mr. Vargas and not to talk with
9 her about Mr. Vargas either. The government's argument that there was
10 nothing untoward about Mr. Vargas' release or its conduct following
11 his release is rejected. So, too, is its claim that ICE was actually
12 trying to help Mr. Vargas by "releasing" him while he lay unconscious
13 in a hospital bed three days before he died.

14 4. Officer Guzman (or someone else working for ICE) should have
15 followed long-standing policies and practices and notified Ms.
16 Hellerstein on March 5, 2021, that ICE was releasing Mr. Vargas to a
17 hospital because he was about to die. Officer Guzman (or someone at
18 ICE) should also have told her on March 9, 2021, that Mr. Vargas had
19 died. Finally, Officer Guzman should not have intentionally misled
20 Ms. Hellerstein when he spoke to her on March 15, 2021, and told her
21 that he did not know the details of Mr. Vargas' release and did not
22 know where he was. Officer Guzman's explanations for why he misled
23 Ms. Hellerstein, i.e., that Mr. Vargas' file had been transferred to
24 another officer and that he was not sure what he could say, are
25 rejected. Those are not valid justifications for officers of the
26 United States government to intentionally mislead someone. What is
27 even more disconcerting about his explanation is the fact that he
28 understood that he did not have to seek authorization from his

1 supervisor to mislead Ms. Hellerstein about what had happened to Mr.
2 Vargas but, if he wanted to tell her the truth, he had to get
3 permission from his supervisor. Even giving Officer Guzman the
4 benefit of the doubt and accepting that he truly believed that he was
5 prohibited from telling Ms. Hellerstein the truth, he should not have
6 misled her. He should have simply informed her: "I'm not allowed to
7 discuss this matter with you. Here's my supervisor's phone number.
8 Why don't you call him and he will explain to you what happened to Mr.
9 Vargas?" His failure to tell Ms. Hellerstein what happened or direct
10 her to his supervisor caused her to spend needless time and energy in
11 a frantic search to locate Mr. Vargas, only to learn days later that
12 he had died a week before she had spoken to Mr. Guzman.

13 7. The government makes much of the fact that it did not
14 violate any federal laws or regulations in connection with its
15 treatment of Mr. Vargas or Ms. Hellerstein. That is likely true but
16 that fact does not excuse or justify the callousness it exhibited
17 here.

18 III.

19 CONCLUSION

20 For the reasons set forth above, the Special Master recommends
21 that the Court enter an order accepting and adopting this Report and
22 Recommendation and ordering the government to:

23 1. Report to the Special Master and Plaintiffs/Petitioners'
24 counsel any time a detainee at Adelanto who has previously tested
25 positive for COVID dies, is confined to the infirmary, or brought to
26 the hospital for any reason. Further, upon request from the Special
27 Master, submit the detainee's medical records to the Special Master
28 and Plaintiffs/Petitioners' counsel for review.

