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Transgender Law Center v. Ice: Ninth Circuit Rules ICE Failed to Meet FOIA Requirements After Death of Detainee

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CASE SUMMARY

TRANSGENDER LAW CENTER V. ICE: NINTH CIRCUIT RULES ICE FAILED TO MEET FOIA REQUIREMENTS AFTER DEATH OF DETAINEE

*KAYLA HUGHES**

INTRODUCTION

In *Transgender Law Center v. Immigrations and Customs Enforcement,*[1] the Ninth Circuit explored the acceptable boundaries of the requisite specificity and reviewability of responses to Freedom of Information Act ("FOIA") requests.[2] The FOIA is a statute that requires the disclosure upon request of previously unreleased information and documents controlled by the United States government.[3]

This lawsuit was filed by the Transgender Law Center ("TLC") on behalf of Roxsana Hernandez, an asylum-seeker who died in the custody of Immigrations and Customs Enforcement ("ICE").[4] The dispute began when TLC submitted two FOIA requests regarding the circumstances of Hernandez's death.[5] Due to a perceived lack of timeliness and inadequacy of the responses, TLC filed suit in the United States District Court for the Northern District of California seeking declaratory and injunctive relief.[6]

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[1] Transgender L. Ctr. v. Immigr. & Customs Enf't, 46 F.4th 771, 776 (9th Cir. 2022).

[2] *Id.*

[3] FOIA.GOV, *What is FOIA?*, https://www.foia.gov/about.html (last visited Dec. 10, 2022).

[4] *Transgender L. Ctr*., 46 F.4th at 776.

[5] *Id.*

[6] *Id.*

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I. BACKGROUND

A. FACTUAL BACKGROUND

On May 9, 2018, Hernandez presented herself at the San Ysidro Port of Entry to the United States, at the border between San Diego and Tijuana.[7] Hernandez was a transgender woman who had fled her home country, Honduras, due to the persecution she had suffered because of her gender identity.[8]

Upon presenting herself at the legal port of entry, officials from U.S. Customs and Borders Protection ("CBP") detained her.[9] She immediately experienced a rapid deterioration in health.[10] Within two days, she lost weight and became afflicted with a persistent fever and diarrhea, frequently vomiting and coughing up bloody phlegm.[11] By May 11, 2017, medical staff had examined her, and Hernandez had disclosed that her symptoms likely resulted from untreated HIV.[12] The medical staff recommended to U.S. Immigrations and Customs Enforcement (ICE) that Hernandez be given vital HIV treatment. ICE refused this recommendation.[13] Subsequently, ICE shuttled Hernandez between various holding, processing, and detention facilities for 5 more days.[14] During this period, ICE deprived Hernandez and the other women with whom she was held of food, water, sleep, and bathroom facilities.[15] On May 17, 2018, ICE finally took Hernandez to a local hospital and then airlifted her to an intensive care unit.[16]

On May 25, 2018, Hernandez died while still in custody of ICE officials.[17] An independent autopsy report revealed that in addition to the detrimental effects of untreated HIV, Hernandez endured physical assault and abuse while in custody.[18]

Hernandez's death sparked public outcry and demands for investigations regarding the medical care procedures used for detainees of CBP

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[7] *Id*.
[8] *Id.*
[9] *Id*. at 777.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*

https://digitalcommons.law.ggu.edu/ggulrev/vol53/iss1/2

and ICE.[19] After hearing her story, TLC agreed to represent Hernandez's estate in this case.

B. Procedural History

TLC and Jolene K. Youngers, the personal administrator for the wrongful death estate of Hernandez, joined as plaintiffs.[20] On January 29, 2019, the plaintiffs submitted an FOIA request to ICE, requesting all records relating to Hernandez.[21] After receiving no response, the plaintiffs submitted an identical request to the Department of Homeland Security ("DHS") Office for Civil Rights and Liberties (the "Civil Rights Office" or "CRO").[22] The agencies would later claim that the delay in response was "[d]ue to [a] lapse in appropriations . . . and [a] backlog of FOIA requests received by ICE."[23] Regardless, the plaintiffs did not receive a response from either organization.[24] Months later, TLC filed suit in the United States District Court for the Northern District of California seeking a declaratory judgement and injunctive relief.[25]

In response to the suit, ICE and the Civil Rights Office slowly began disclosing information.[26] However, TLC was not pleased by the pace or the adequacy of the release.[27] For example, the agencies refused to disclose the mortality review[28] or the root cause analysis.[29] TLC then submitted a third FOIA request.[30]

In total, TLC received 158 pages from the Civil Rights Office and 1,591 pages from ICE.[31] The documents from ICE included 5 pages and 1 excel spreadsheet regarding the mortality review.[32] DHS video surveil-

[19] *Id*. at 778.
[20] *Id.*
[21] *Id*. at 775.
[22] *Id.*
[23] *Id.* at 778, 787 n.1.
[24] *Id.* at 778.
[25] *Id.* at 776.
[26] *Id.* at 778.
[27] *Id.*
[28] *See* U.S. Immigration and Customs Enforcement, Notification, Review, and Reporting Requirements for Detainee Deaths 2 (Dec 2., 2020), https://www.ice.gov/doclib/detention/directive11003-5.pdf (defining a mortality review as an "evaluation of a deceased detainee's medical history and clinical care provided to the detainee to ascertain both cause of death, and whether changes to ICE policies, procedures, or practices are warranted; to provide recommendation for follow up actions; and to identify issues that require further study").
[29] A root cause analysis is a method of problem-solving used for identifying the root causes of faults or problems. *See, e.g.*, Jonathan Davis, Root Cause Analysis: Clear Explanation with Simple Examples, hippocmms (June 7, 2021), https://hippocmms.iofficecorp.com/blog/root-cause-analysis.
[30] *Transgender L. Ctr*., 46 F.4th at 778..
[31] *Id.*
[32] *Id.*

lance footage of Hernandez never surfaced.[33] The agencies redacted numerous documents and asserted that many other relevant documents were exempted from disclosure.[34]

After producing these documents, the agencies on August 31, 2020, filed a motion for summary judgement on the grounds that their production was complete and "adequate."[35] TLC filed a cross-motion for summary judgement, arguing that the agencies improperly denied expedited FOIA search requests, failed to conduct an adequate search, improperly applied the relevant FOIA exemptions, and furnished insufficient Vaughn indexes.[36] The district court granted TLC's request for a declaratory judgment that the agencies had failed to timely respond to their FOIA requests.[37] However, in all other respects, the district court ruled for the agencies, holding that they had "adequately complied with [TLC's] FOIA requests"; conducted an adequate search; "appropriately applied FOIA exemptions to the documents"; and provided adequate Vaughn indexes. TLC timely appealed.[38]

II. Analysis

On appeal, the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) evaluated many aspects of TLC's original FOIA claim to determine whether summary judgement for either side was appropriate.[39] The court considered the adequacy of the government's search; the sufficiency of the agencies' Vaughn indexes; withholdings and redactions under FOIA exemptions; segregability; duplicative and non-responsive designations; and expedited processing requests.[40]

A. Adequacy of the Government's Search

The Ninth Circuit first considered whether the district court erred in holding that the agencies' search was "adequate" and whether adequacy

[33] *Id.*

[34] *Id.*

[35] *Id.* (To determine adequacy, the trial court must assess whether the Government has met its burden of demonstrating that its search was "reasonably calculated to uncover all relevant documents." *Id*. at 779 (quoting *Hamdan v. Dep't of Just*., 797 F.3d 759, 770 (9th Cir. 2015)).

[36] *Transgender L. Ctr.*, 46 F.4th 771 at 781. (A Vaughn index is a submission that identifies what documents were withheld, the FOIA exemptions claimed, and detailed explanations of why each document falls within the claimed exemption. The index needs to describe why the information is being withheld with reasonably specific detail, demonstrate that that information logically fits within the exemption, and rule out any contrary evidence or evidence of bad faith. *Id.)*

[37] *Transgender L. Ctr.*, 46 F.4th 771 at 781.

[38] *Id.*

[39] *Id.*

[40] *Id.*

beyond a reasonable doubt was required.[41] This analysis required clarification of the burden agencies bear in demonstrating the adequacy of FOIA searches.[42] The Ninth Circuit also needed to decide whether the Government met its burden of demonstrating that its search was "reasonably calculated to uncover all relevant documents."[43] The agencies contended that the assessment only required the court to determine whether the search was "adequate."[44] However, TLC asserted that, in addition to showing adequacy, the agency had a burden of demonstrating adequacy "beyond a material doubt."[45] The Ninth Circuit agreed with TLC, holding that ICE and CBP did not appropriately respond to "'positive indications of overlooked materials' and did not hew to their duty to follow 'obvious leads.'"[46]

B. Adequacy of Proof Beyond Material Doubt

The Ninth Circuit showed that district courts in *every* circuit, including the Ninth Circuit, have used this standard and that no circuit has explicitly rejected it.[47] Although proof beyond a material doubt is a heavy burden, that heaviness reflects the purpose and policy of the FOIA, including transparency, public access, and an informed citizenry.[48] Requiring the Government to meet the "beyond material doubt" standard ensures that the "adequacy of an agency's search for requested documents is judged by a standard of reasonableness."[49]

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[41] *Id.*

[42] *Id*. at 779.

[43] Hamdan v. Dep't of Just., 797 F.3d 759, 770 (9th Cir. 2015).

[44] *Id.*

[45] *Id.*

[46] *Transgender L. Ctr*., 46 F.4th 771 at 779 (citing *Hamdan*, 797 F.3d at 771).

[47] *See, e.g.*, Informed Consent Action Network v. NIH, No. CV-20-01277-PHX-JJT, 2021 U.S. Dist. LEXIS 118185, slip. op. at *9 (D. Ariz. June 24, 2021); Our Children's Earth Found. v. Nat'l Marine Fisheries Serv., 85 F. Supp. 3d 1074, 1082 (N.D. Cal. 2015); S. Yuba River Citizens League v. Nat'l Marine Fisheries Serv., No. CIV. S-06-2845 LKK/JFM, 2008 U.S. Dist. LEXIS 107177, slip. op. at *35 (E.D. Cal. June 20, 2008) (emphasis added).

[48] See NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978) ("The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed."); *Hamdan*, 797 F.3d at 769– 70 ("Government transparency is critical to maintaining a functional democratic polity, where the people have the information needed to check public corruption, hold government leaders accountable, and elect leaders who will carry out their preferred policies. Consequently, FOIA was enacted to facilitate public access to [g]overnment documents by establish[ing] a judicially enforceable right to secure [government] information from possibly unwilling official hands." (alterations in original) (internal quotation marks omitted)).

[49] Miller v. U.S. Dep't of State, 779 F.2d 1378, 1383 (citing *Weisberg v. Dep't of Just*., 705 F.2d 1344, 1351 (D.C. Cir. 1983)).

> This approach properly places a concrete burden of proof on the Government, requiring an agency to show that it has undertaken all reasonable measures to uncover all relevant documents. This standard also gives teeth to the adequacy standard by preventing agencies from blithely asserting adequacy without backing up such an assertion.[50]

The Court concluded that under the FOIA, agencies bear the burden of demonstrating the adequacy of their searches beyond a material doubt.[51]

The court next explained that "[a]n agency can demonstrate the adequacy of its search through 'reasonably detailed, nonconclusory affidavits submitted in good faith.' "[52] The affidavits need not "set forth with meticulous documentation the details of an epic search for the requested records."[53] Further, searches "are presumed to be in good faith."[54] Ultimately, the adequacy of a search is judged "not by the fruits of the search, but by the appropriateness of the methods used to carry out the search."[55]

The Ninth Circuit then opined that summary judgement by the district court was inappropriate because TLC "provided the agencies with both 'well-defined requests' and 'positive indications of overlooked materials,' as well as 'leads that emerge[d] during [the agencies'] inquiry.' "[56] TLC provided thorough, detailed FOIA requests that clearly outlined exactly what was lacking.[57] They positively identified exactly what information was missing and provided leads as to where it might be found.[58] Additionally, TLC identified forty-eight custodian email accounts that the agencies refused to search.[59] Both parties agreed that all of this information was in the agencies' possession.[60]

Finally, the agencies failed to offer evidence supporting the diligence of their search, instead avoiding the issue by relying on their decision to redact. The agencies claimed that they had produced relevant documents in response to the search request and had redacted them only to protect non-public-facing information.[61] Thus, they contended that TLC could not argue that certain e-mails were not turned over because

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[50] *Transgender L. Ctr.*, 46 F.4th 771 at 780.

[51] *Id.*

[52] *Hamdan*, 797 F.3d at 770 (quoting Zemansky v. EPA, 767 F.2d 569, 571 (9th Cir. 1985)).

[53] Perry v. Block, 684 F.2d 121, 127 (D.C. Cir. 1982) (per curiam).

[54] *Hamdan*, 797 F.3d at 770 (citing Ground Saucer Watch, Inc. v. CIA, 692 F.2d 770, 771 (D.C. Cir. 1981) (per curiam)).

[55] Iturralde v. Comptroller of Currency, 315 F.3d 311, 315 (D.C. Cir. 2003).

[56] Campbell v. Dep't of Just., 164 F.3d 20, 28 (D.C. Cir. 1998).

[57] *Transgender L. Ctr.*, 46 F.4th 771 at 780.

[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] *Id.*

the relevant e-mail addresses had been redacted.[62] The court expressed its view that CBP and ICE were arguing that "in effect, 'we *may* have already done this search[,] but you'll never know.' "[63] Ultimately, the court rejected the agencies' argument because it "effectively eviscerate[d] the FOIA right."[64] An agency is not required "to account for documents which the requester has in some way identified if it has made a diligent search for those documents in the places in which they might be expected to be found."[65] In this case, the agencies made no representation as to the diligence of their search, instead seeking to avoid the matter by relying on their decision to redact. The court stated that "this circular approach f[e]ll short of the agencies' burden."[66] As a result, the court found that the agencies had not met their burden of demonstrating adequacy beyond a material doubt.[67]

C. Sufficiency of the Agencies' Vaughn Indexes

Next, the Ninth Circuit evaluated the adequacy of the produced Vaughn indexes.[68] The court found that the agencies provided Vaughn indexes that were vague and unnecessarily redacted. In one instance, the agencies devoted only half a page to the Vaughn index analysis.[69] Further, the Ninth Circuit agreed with TLC's contention that the Vaughn indexes were insufficient and riddled with "boilerplate or conclusory statements."[70] For example, the Civil Rights Office copy-and-pasted numerous generic descriptions but failed to explain in those instances how their conduct met the exemption.[71] The court concluded that "this high-level, summary approach resulted in an unacceptable lack of specificity and tailoring, thus undermining TLC's ability to contest the agencies' withholdings."[72] Although generally an agency may repeat language within a report if it is appropriate, the agency must still communicate as much information as possible without thwarting the exemption.[73] Here, the agencies failed to provide the required specificity.[74] For example, the

[62] *Id.* at 781.
[63] *Id.*
[64] *Id.*
[65] Lahr v. Nat'l Safety Bd., 569 F.3d 964, 987 (9th Cir. 2009) (quoting *Miller*, 779 F.3d at 1385).
[66] *Transgender L. Ctr.*, 46 F.4th 771 at 781.
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] *Id.*

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CRO redacted an email so severely that even the general occupation titles for the sender and recipient were missing.[75] This unsupported redaction prevented TLC from understanding why the exchange was exempted.[76] On this point, the Ninth Circuit remanded to the district court with instructions to direct the agencies to provide specific, nonconclusory Vaughn indexes.[77]

D. Sufficiency of Withholdings and Redactions under FOIA Exemptions 5, 6, and 7

The Ninth Circuit found the agencies' assertion that they were entitled to withhold and redact information under FOIA exemptions 5, 6, and 7 was not correct.[78] Withholding is permissible only if "the agency reasonably foresees that disclosure would harm an interest protected by an exemption"; and then only after (1) "consider[ing] whether partial disclosure of information is possible" and (2) taking "reasonable steps necessary to segregate and release nonexempt information."[79] The United States Supreme Court has "consistently stated that FOIA exemptions are to be narrowly construed."[80] The burden of proving that withheld documents fit into the exemptions falls on the agencies.[81] The Ninth Circuit noted that discussing this issue is tedious but necessary given the heavy implications of the FOIA.

Under Exemption 5, the Government need not disclose "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency . . . ."[82] This exemption allows any privileged information to be withheld. TLC barely raised an attorney-client privilege argument, so the court focused its analysis on the Government's invocation of the deliberative process privilege.[83] To properly assert this privilege, an agency must show that a document is both "(1) 'predecisional' or 'antecedent to the adoption of agency policy' and (2) 'deliberative,' meaning 'it must actually be related to the process by which policies are formulated.' "[84] A

[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id*. at 782.
[79] 5 U.S.C. § 552(a)(8)(A).
[80] Dep't of Just. v. Julian, 486 U.S. 1, 8 (1988).
[81] Dep't of State v. Ray, 502 U.S. 164, 173 (1991).
[82] 5 U.S.C. § 552(b)(5).
[83] *Transgender L. Ctr.*, 46 F.4th 771 at 781.
[84] Nat'l Wildlife Fed'n v. Forest Serv., 861 F.2d 1114, 1117 (9th Cir. 1988) (quoting Jordan v. Dep't of Just., 591 F.2d 753, 774 (D.C. Cir. 1978)). *See also* Fish & Wildlife Serv. v. Sierra Club, Inc., 141 S. Ct. 777, 786 (2021).

document is "predecisional" if it was prepared to help a policymaker make a decision.[85] A document is "deliberative" if disclosing the materials would expose an agency's decision-making process in a way that would discourage people within the agency to be open and candid while they come to their decisions.[86]

The district court treated all drafts as if they were covered by the deliberative process privilege.[87] However, simply designating a document as a "draft" does not automatically make it privileged.[88] Regardless, the agencies used this shield to withhold all drafts, even those that did not include a deliberative process or privileged information.[89] Thus, the Government failed to meet its burden of demonstrating "predecisional status and deliberation" for the documents it withheld.[90] On this point, the Ninth Circuit remanded to the district court with instructions to direct the release of the draft mortality review and the draft press statements.

Exemption 6 applies to "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."[91] The phrase " 'similar files' has a 'broad, rather than a narrow meaning.' "[92] The Ninth Circuit established a two-step test for balancing individual privacy rights against the public's right of access under Exemption 6, which begins with a threshold evaluation of whether the personal privacy interest at stake "is nontrivial."[93] "[G]overnment records containing information that applies to particular individuals satisf[ies] the threshold test of Exemption 6."[94] The agencies invoked this exemption in thousands of instances.[95] They even used it to shield email domains—such as @ice.dhs.gov[96]—with the explanation that email domains relate to a particular person.[97] However, email domains themselves are shared by all employees within a given department, so they do not satisfy the threshold test.[98] In addition, these email domains

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[85] *Id.*
[86] *Id.*
[87] *Transgender L. Ctr.*, 46 F.4th 771 at 781.
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] 5 U.S.C. § 552(b)(6).
[92] Forest Serv. Emps. for Env't Ethics v. Forest Serv., 524 F.3d 1021, 1024 (9th Cir. 2008).
[93] *See* Cameranesi v. Dep't of Def., 856 F.3d 626, 637 (9th Cir. 2017).
[94] *Forest Serv. Emps*., 524 F.3d at 1024.
[95] *Transgender L. Ctr.*, 46 F.4th 771 at 781.
[96] *Id.*
[97] *Id.*
[98] *Id.*

were particularly important because they would show which departments knew about and were involved in Hernandez's test.[99]

Finally, exemption 7(C) allows agencies to withhold "records or information compiled for law enforcement purposes, but only to the extent that the[ir] production . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy."[100] Again, the agencies used this exemption to excuse their redaction of email domains, and the district court agreed with them.[101] However, the Ninth Circuit found that the district court had erred and remanded the case with instructions to direct the release of the email domains.

E. Segregability

The Ninth Circuit found that the district court erred by failing to make specific findings on the issue of segregability required under prior case law.[102] The FOIA provides that any "reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection."[103] A district court errs when it grants summary judgment where the agency "did not provide [the plaintiff] or the district court with specific enough information to determine whether the [agency] had properly segregated and disclosed factual portions of those documents that the [agency] claimed were exempt under the deliberative process privilege."[104]

Here, the agencies redacted the draft detainee review entirely even though it held considerable factual information.[105] They also redacted the draft mortality review entirely, claiming it contained "information pertaining to medical care [and] interviews of detention facility personnel."[106] Additionally, they redacted numerous email messages.[107] Although the agencies carried the burden of establishing "that all reasonably segregable portions of a document have been segregated and disclosed," they did not explain how the segregability of the factual information applied to these documents.[108]

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[99] *Id.*

[100] 5 U.S.C. § 552(b)(7)(C).

[101] *Transgender L. Ctr.*, 46 F.4th 771 at 785.

[102] *Id*.

[103] 5 U.S.C. § 552(b).

[104] Pac. Fisheries, Inc. v. United States, 539 F.3d 1143, 1149 (9th Cir. 2008).

[105] *Transgender L. Ctr.*, 46 F.4th 771 at 785.

[106] *Id.*

[107] *Id.*

[108] *Pac. Fisheries, Inc.*, 539 F.3d 1143 at 1149.

F. Duplicative and Non-Responsive Designations

The Ninth Circuit found that such errors did not occur given that there is no binding precedent or statute requiring the court to make a finding on this point.[109] TLC alleged that the district court erred in failing to make a finding on the Government's withholding of information as "non-responsive" or "duplicative."[110] TLC also raised an issue of compliance regarding two unlawfully denied expedited processing requests submitted in 2020.[111] The district court found these claims to be moot.[112] Because the Ninth Circuit remanded due to the inadequacy of the agents' compliance, it vacated the mootness determination, with instructions that the district court reconsider the relevant issues.[113]

G. Expedited Processing Requests

At the trial stage, TLC raised the issue that the agencies unlawfully denied two expedited processing requests it submitted in January and August of 2020.[114] The district court held that it "need not decide whether the expedited requests are related to the requests at issue in this lawsuit or are new requests."[115] Because the agencies had "adequately complied" with TLC's initial FOIA requests, "the expedited processing requests themselves [were therefore] now moot."[116]

Because the Ninth Circuit chose to remand due to the inadequacy of the agencies' compliance, it vacated the mootness determination.[117] The Ninth Circuit suggested that the district court should reconsider this determination.[118]

III. Implications

The Ninth Circuit expressed its view that current caselaw and the further implications of this decision demand a careful document-by-document review, which can place more strain on district courts.[119] However, this is the exact reason that the Government must provide clear,

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[109] *Transgender L. Ctr.*, 46 F.4th 771 at 787.
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] *Id.*
[115] *Id*.
[116] *Id.*
[117] *Id.*
[118] *Id.*
[119] *Id.*

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precise, and easily reviewable explanations when it asserts such exemptions.[120]

This case confirmed that to defend themselves in an FOIA suit, government agencies must establish the adequacy of their searches beyond a material doubt.[121] Any exemptions to FOIA must be viewed as narrow in nature.[122] Thus, this case illuminated what constitutes "adequacy" by laying out exactly what must be disclosed in an FOIA request.[123]

Additionally, the Ninth Circuit recognized the importance of the FOIA by reversing and remanding a judgement in favor of ICE and CBP and ordering the district court to direct the release of withheld information.[124] This decision might give rise to another lawsuit on behalf of Hernandez to address the abuse and neglect she suffered while detained by ICE and CBP.

Finally, this case has already been cited as a precedent in a pending case.[125] In a decision considering cross-motions for summary judgement, the United States District Court of the Western District of Washington relied on *TLC*.[126] The Washington District Court concluded that the defendants had not met their burden to justify withholding requested materials under various FOIA exemptions.[127] The defendants in that case include the National Security Agency (NSA), the Central Intelligence Agency (CIA), the Defense Intelligence Agency (DIA), and the Department of Defense (DOD).

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[120] *Id.*

[121] *Id.* at 777.

[122] *Id.* at 782.

[123] *Id.* at 779.

[124] *Id.* at 781.

[125] *Kinnucan v. National Security Agency*, No. C20-1309 MJP, 2022 WL 16716224, slip. op. (W.D. Wash. Nov. 4, 2022).

[126] *Id.*

[127] *Id.*