

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Brigido ACOSTA LUIS)	
A 079 551 621)	
)	
Plaintiff,)	
)	
v.)	No. _____
)	
Jeh Johnson, Secretary, U.S. Department of)	
Homeland Security; Leon Rodriguez, Director,)	
U.S. Citizenship and Immigration Services;)	
Thomas S. Winkowski, Acting Director, U.S.)	
Immigration & Customs Enforcement,)	
)	
Defendants.)	
)	
)	
)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COMES Plaintiff Brigido Acosta Luis (“Plaintiff Acosta”), by and through undersigned counsel, in this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 522 *et seq.*, as amended, to order the production of agency records related to him which have been improperly withheld from him by the Defendants. This lawsuit also seeks injunctive relief to enforce the strict time requirements under FOIA.

JURISDICTION

1. This Court has jurisdiction pursuant to: 5 U.S.C. § 522 *et seq.* (Freedom of Information Act); 5 U.S.C. § 702 *et seq.* (Administrative Procedures Act); 28 U.S.C. §1331 (federal question jurisdiction); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

VENUE

2. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1)(B) in that the Defendants are officers of the United States and a substantial part of the events giving rise to the claim took place within the jurisdiction of the U.S. District Court for the Northern District of Illinois.

THE PARTIES

3. Plaintiff Acosta is a native and citizen of Mexico. His alien registration number is A 079 551 621. On September 12, 2002, the U.S. Customs and Border Protection (CBP) at the Dallas Airport cancelled his B-2 tourist visa and ordered him removed to Mexico under an expedited administrative order of removal pursuant to 8 U.S.C. § 1225(b)(1). Plaintiff Acosta subsequently returned to the United States and the 2002 expedited removal order was reinstated by the Chicago Enforcement and Removal Office of the U.S. Immigration and Customs Enforcement (ICE). Plaintiff Acosta was physically removed from the U.S. on November 19, 2013. He is married to U.S. citizen Maria Perez who resides in Schaumburg, Illinois with their two U.S. citizen children, a 14 year old daughter and a four year old son.
4. Defendant Jeh Johnson is sued in his official capacity as the Secretary of the U.S. Department of Homeland Security (DHS).¹ In his capacity, he has the responsibility for the administration and enforcement of the immigration laws pursuant to 8 U.S.C. § 1101 *et seq.*, including the creation and maintenance of alien registration files (known as “A-files”) for all noncitizens which it and the legacy Immigration and

¹ As of March 1, 2003, the DHS is the agency responsible for implementing and enforcing the Immigration and Nationality Act. *See* 6 U.S.C. § 271(b)(5); 6 U.S.C. § 557. The legacy INS was abolished on that date under the Homeland Security Act of 2002. *See* P.L. 107-296, title IV, subtitle C-F; 116 Stat. 2135, 2177-2212 (Nov. 25, 2002).

Naturalization Service (INS) have encountered. Defendant Johnson oversees the U.S. Citizenship and Immigration Services (USCIS), the ICE, and CBP, which are agencies within the DHS.

5. Defendant Leon Rodriguez is sued in his official capacity as the Director of the USCIS. The USCIS is an agency within the DHS which has the custody and control of alien registration files, primarily at the USCIS National Records Center located in Lee's Summit, Missouri. The USCIS is an agency within the meaning of 5 U.S.C. § 552(f)(1).
6. Defendant Thomas S. Winkowski is sued in his official capacity as the Acting Director of the U.S. Immigration & Customs Enforcement. ICE has a FOIA Office located in Washington, DC. ICE is an agency within the meaning of 5 U.S.C. § 552(f)(1).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

7. Plaintiff Acosta has exhausted all administrative remedies available to him.
8. On November 26, 2013, Plaintiff Acosta sent his request for records under the FOIA to the USCIS National Records Center (NRC) by certified return receipt mail. *See* Exhibit A.
9. On December 10, 2013, the NRC allegedly received Plaintiff Acosta's FOIA request. *See* Exhibit B. The certified return receipt card attached to the envelope in which Plaintiff Acosta's FOIA request was mailed, however, bears a stamp which states "RECEIVED DEC 2 2013 National Records Center," which evidences that the NRC received the request on December 2, 2013. *See* Exhibit A.
10. On April 3, 2014, the NRC issued its response to Plaintiff Acosta's FOIA request. The NRC identified 327 pages in response to his request. *See* Exhibit B. The NRC

- released 115 pages in their entirety and 43 pages in part, and it withheld 40 pages in full. *See id.* Of the remaining 129 pages of the 327 pages noted by the NRC, the NRC transferred pages relating to Plaintiff Acosta's FOIA request to the ICE FOIA Office in Washington, D.C. for its consideration and response. *See id.*
11. Plaintiff Acosta timely appealed the NRC's decision dated April 3, 2014 to the USCIS FOIA Appeals Office. *See Exhibit C.*
 12. The DHS decided Plaintiff Acosta's administrative FOIA appeal on August 5, 2014. *See Exhibit D.* The DHS released 5 pages in part of the 41 pages withheld in full.
 13. There is a material dispute regarding the number of pages withheld by the USCIS NRC in full. In its initial response dated April 3, 2014, the USCIS NRC stated that it withheld 40 pages in full. *See Exhibit B.* In the appeal decision, the DHS stated that 41 pages were initially withheld in full. *See Exhibit D.*
 14. As of this date, no response has been received regarding the pages that were transferred to by the NRC to the ICE FOIA Office. The lack of a response from the ICE FOIA Office is beyond the statutory 20 day period for a response and therefore constitutes the constructive denial of Plaintiff Acosta's FOIA request.

COUNT ONE

(Violation of 5 U.S.C. § 552(a)(6)(A) and 6 C.F.R. § 5.6(b))

15. Plaintiff Acosta re-alleges and incorporates by reference each and every allegation contained in paragraphs 3-14.
16. The failure to provide Plaintiff Acosta with the requested material, i.e. a copy of his alien registration file, within 20 days of his request violates 5 U.S.C. § 552(a)(6)(A) and 6 C.F.R. § 5.6(b).

COUNT TWO

(Violation of 5 U.S.C. § 552(a)(6)(B) and 6 C.F.R. § 5.5(c)(1))

17. Plaintiff Acosta re-alleges and incorporates by reference each and every allegation contained in paragraphs 3-14.
18. The Defendants' failure to notify Plaintiff Acosta of the "unusual circumstances" which prevents the agency from processing his request within the 20 day statutory limit and the Defendants' failure to notify him of the date by which processing of his request can be expected to be completed violates 6 C.F.R. § 5.5(c)(1).
19. Plaintiff Acosta alleges that Defendants cannot demonstrate "unusual circumstances" as defined in 5 U.S.C. § 552(a)(6)(B) to extend the 20 day statutory time limit in Plaintiff Acosta's case.

COUNT THREE

(Violation of 5 U.S.C. § 551 *et seq.* and 6 C.F.R. § 5.5(c)(1))

20. Plaintiff Acosta re-alleges and incorporates by reference each and every allegation contained in paragraphs 3-14.
21. The Defendants' failure to notify Plaintiff Acosta of the "unusual circumstances" which prevents the agency from processing his request within the 20 day statutory limit and the Defendants' failure to notify him of the date by which processing of his request can be expected to be completed violates 6 C.F.R. § 5.5(c)(1).

COUNT FOUR

(Declaratory and Injunctive Relief)

22. Plaintiff Acosta realleges and incorporates by reference each and every allegation contained in paragraphs 3-14.

23. An actual and substantial controversy has arisen between the parties, and that controversy continues to exist regarding respective rights and duties of the parties, including the power of the DHS to continue to withhold information about Plaintiff Acosta from him.
24. Declaratory relief is necessary in that Plaintiff Acosta contends that the Defendants are improperly withholding information from him in violation of federal law.

COUNT FIVE

(Violation of Administrative Procedures Act, 5 U.S.C. §§ 702, 704, and 706)

25. Plaintiff Acosta re-alleges and incorporates by reference each and every allegation contained in paragraphs 3-14.
26. Defendants' action in withholding the requested information was arbitrary and capricious under 5 U.S.C. §§ 551 *et seq.*, 5 U.S.C. § 555(b), § 702, § 704 and § 706, the Administrative Procedures Act.
27. Defendants have willfully and unreasonably delayed and refused to provide Plaintiff with the information requested under the FOIA.
28. Plaintiff Acosta has a right to a copy of the requested documents under 5 U.S.C. § 552(a)(3).
29. There is no legal basis for Defendants' failure to provide a copy of the requested material in a timely manner to Plaintiff Acosta.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Acosta respectfully prays that this Court:

1. Find that Defendants are in violation of the Freedom of Information Act by failing to comply with the time requirements set forth in 5 U.S.C. § 552(a)(6)(A), (B), and (C).

2. Find that the Defendants' failure to provide Plaintiff Acosta with the requested material within 20 days of his request violates 5 U.S.C. § 552(a)(6)(A) and 6 C.F.R. § 5.6(b).
3. Find that the Defendants' failure to provide notification of "unusual circumstances" which prevents the agency from processing Plaintiff Acosta's request within the 20 day statutory limit and the failure to notify him of the date by which processing of his request can be expected to be completed violates 6 C.F.R. § 5.5(c)(1).
4. Find that the agency action in this case was "arbitrary and capricious."
5. Order Defendants to provide Plaintiff Acosta with a complete copy of his A-file forthwith.
6. Award Plaintiff reasonable attorneys' fees and costs of court; and
7. Grant other such relief at law and in equity as this Court may deem just and proper.

Respectfully submitted,

Dated: 10/4/2014

By: /s/ Daniel W. Thomann
Attorney for Plaintiff Acosta
Maria Baldini-Potermin & Associates, P.C.
1 N. LaSalle, Suite 2150
Chicago, Illinois 60602
Tel: (312) 368-8200
Fax: (312) 368-9400
daniel@baldini-potermin.com

VERIFICATION

Under penalties of perjury as provided by law, the undersigned certifies that the foregoing factual allegations are true and correct, except for those matters stated to be on information and belief, for which he believes they are true and correct, and that the documents attached to this Complaint are true and accurate copies of the original documents to the best of my knowledge and belief.

Dated: 10/4/2014

/s/ Daniel W. Thomann

CERTIFICATE OF SERVICE

I, Daniel W. Thomann, an attorney, hereby certify that a copy of the foregoing Complaint for Declaratory and Injunctive Relief with attachments was served in accordance with Fed. R. Civ. P. 5(a):

Zachary T. Fardon, USA
219 S. Dearborn Street, Fifth Floor
Chicago, IL 60604

Jeh Johnson
Secretary, Department of Homeland Security
United States Department of Homeland Security
Washington, D.C. 20528

Leon Rodriguez
Director, U.S. Citizenship and Immigration Services
USCIS Headquarters Building
111 Massachusetts Avenue
Washington, DC 20001

Thomas S. Winkowski
Acting Director, U.S. Immigration & Customs Enforcement
500 12th Street, SW
Washington, DC 20536

by U.S. first class, certified return receipt mail on this 4th day of October 2014.

/s/ Daniel W. Thomann