

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
WASHINGTON, DC



JUAN SERPA-CANDERLARIA,
Plaintiff/Petitioner

Case: 1:21-cv-01322
Assigned To : Unassigned
Assign. Date : 5/12/2021
Description: FOIA/Privacy Act (I-DECK)

-vs-

Case Number: _____

FEDERAL BUREAU OF PRISONS,
Respondent/Defendant.

VERTIFIED COMPLAINT

_____ /

THE PARTIES:

COMPLAINT

1. Plaintiff Juan Serpa-Canderlaria is a citizen of Puerto Rico and now residing at Federal Correctional Institution located in Semter, Florida, serving term of imprisonment imposed by Federal Court's setting in Puerto Rico.

2. Defendant Department of Bureau of Prisons ("FBOP") is an agency of the United States.

3. The Federal Bureau of Prisons ("FBOP") is a component of the DOJ. The FBOP has possession, custody and control of the records Plaintiff seeks to have remove[d].

JURISDICTION AND VENUE

4. This action arises under the Privacy Act of 1974 (hereinafter "PA"), 5 U.S.C. §552a and 5 U.S.C. § 552.

5. This court has jurisdiction over the parties and subject matter pursuant to 5 U.S.C. §552(a)(4)(B) and 5 U.S.C. §552a(g)(1)(B).

6. Venue is proper in this district pursuant to 5 U.S.C. §552(a)(4)(B) and 5 U.S.C. §552a(g)(5).

STATEMENT OF FACTS

7. BACKGROUND

On February 4, 2021, during an annual classification review of Juan Serpa-Candelaria, U.S. Marshal Number 45343-069, defendant Bureau of Prisons ("BOP") knowingly relied upon inaccurate statements of fact in order to deny him a more favorable custody classification in violation of due process. In other words, at the February 4, 2021 annual classification review the Unit Team admittedly that information is false but its not their responsibility to have the records correct used to assign the plaintiff's greater security level status. This in itself violates due process because reliance on admittedly false information to deny prisoner consideration for lower security classification designation is arbitrary and capricious treatment violative of the Constitution.

Subsection (d) grants an individual the right to review and make a copy of his "record or any information pertaining to him which is contained in the prison file record system." Id. §552a(d)(1). If an individual takes issue with the accuracy of such record he may request amendment of a record pertaining to him." Id. §552a(d)(2). If the agency refuses his request,

he may "request a review of such refusal." Id. §552(d)(3). Following such review, if the agency still refuses to amend the record, the agency must permit the individual to file a concise statement setting forth the reasons for his disagreement with the refusal of the agency" and "notify the individual of the provisions for judicial review of the reviewing official's determination." Id. §552a(d)(3).

In order to maintain appropriate confidentiality of personal information, subsection (e)(2) provides that agencies "that maintain[] a system of record shall collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determination." Id. §552a(e)(2). "[P]rior to disseminating any record about an individual to any person other than an agency," agencies must under subsection (e)(6) "make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes." Id. §552a(e)(6).

8. Here, the plaintiff's claim[s] that BOP's knowingly relied upon false/fabricated information regarding his acts committed in relevant prior State offense occurred in Puerto Rico, Criminal Number CLA2021G0434, which he was sentenced to a sentence of five years consecutive with the case CSC2010G0159. In relevant part the plaintiff's Presentence Investigation Report [PSI] contain statement that plaintiff's was involved in a shooting with force.

9. In the Puerto Rico case the plaintiff was the victim of a assault w/ gun while driving home. The men who shot into

his care attempting to kill him, then followed him home in attempt to finish the job while he was standing in his front yard. In order to protect himself, his family and property he was force[d] into returning fire. The plaintiff's action were deemed self-defense and all charges against him was dismissed . The lower court's demonstrate[s] that, "plaintiff's fled the shorters and that the perpetrators pursued him to his home". The judge's acknoweledg[ed] that, "had the plaintiff's not defend himself and his family himself as well his family would not be with us today".

In reviewing the plaintiff's classification designation, the Bureau of Prisons ignored the fact[s] in this case by substitute, or falsifying records with their own version of the case which was adverse action toward the plaintiff's classification. Although, the records does not support BOP's assessment of the record that the plaintiff's was convicted of discharging a gun or using a gun in furtherance of a crime of violent. The BOP's intentionally fabricated the facts in order to determined or make classification designation status is a adverse decision that affect[s] the plaintiff's security status and to maintain such inaccuracies information in Plaintiff's central files violates due process clause. The plaintiff's was convicted of having a gun without a license (non-violent) offense under Federal statutes. Had the BOP's conduct inquiry in this matter as mandate[d] by subsection (e)(2) would had discovered that plaintiff's was victim in this incident.

COUNT I:

VIOLATION OF PRIVACY ACT

10. This Count realleges and incorporates by reference all of the preceding paragraphs.

11. Defendant has violated Privacy Act by knowingly relied upon false/inaccuracies information for purpose[s] of Classification-security designation status in violation of the due process clause.

12. Privacy Act §552(e)(5) requires agencies to ensure that any records used in "making any determination about any individual" are "maintain[ed] with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination." 5 U.S.C. §552a(e)(5). Section 552a(d) requires agencies to entertain requests for amendment of records that are not "accurate, relevant, timely, or complete." Id. §552a(d)(2). If an agency rejects a request for amendment, the subject of the contested record can bring suit in federal court and obtain de novo consideration of whether amendment is warranted. Id. §552a(g)(1)(A), (g)(2)(A). If the court so finds, it "may order the agency to amend the individual's records." Id. §552a(g)(2)(A); see generally *Doe v. United States*, 821 F.2d 694, 697, 261 U.S.App.D.C. 206 & n.8 (D.C.Cir.1987)(en banc). Moreover, the text of subsection (g)(1)(C) does not require that a "record", see 5 U.S.C. §552a(a)(4), be within a "system of records,"

13. The Plaintiff's claim[s] that the BOP's records that he was convict[ed] of discharging a gun or using a gun in furtherance of a crime of violent in false/fabricated information

in order to justify Unit Team greater severity classification designation status which now have adverse affect[s] of his administrative program[s] eligibilities to participant in RDAP residual drug programs, re-entry programs, federal fundings and less restrictive placement of confinement or imprisonment. See attachment A-E - completely copies of the Plaintiff's BOP's administrative exhaustion request[s] and its response gather from Bureau of Prisons.

14. In *Monrow v. Thigpen*, 932 F.2d 1437 (11th Cir.1991), the Court held that reliance on admittedly false information to deny a prisoner consideration for parole was arbitrary and capricious treatment violative of the Constitution.

15. Clearly, the Unit Team in this case admitted that it relied on facts that is false information because of its belief that BOP's is not judicial trubinal and can relied upon any information false or otherwise to make its determination[s] that certain inmate[s] would be threat if deem[ed] eligible for certain program[s]. Federal laws does not authorize federal officials to rely on knowingly false information in their determinations. *Thomas v. Sellers*, 691 F.2d [487] at 489 (11th Cir.1982)]. *Monroe*, 932 F.2d at 1442. *Thomas* and *Monroe* controls the disposition of the instant false information claim.

16. The Plaintiff maintain that the information utilized in the decision to deem[ed] him ineligible for less restrictive place of imprisonment, ineligible participant in RDAP, including benefit[s] under the recently passage of the First Step Act

on February 4, 2021 and prior to that particular date was false and that reliance on this information infringe on due process rights. Of specific importance, there is several admission by the plaintiff's that the information used when deciding his security classification designation was false, fabricated, incorrect or erroneous, including admission from the Unit Team itself that it had duty to relied upon any information[s] available to themselves and it is the plaintiff's responsibility to have such information remove[d], not Unit Team duty. The records support[s] fact that BOP's evidence which indicates that the defendants [BOP] knowingly used false or fabricated information raise reasonable claim[s] that information in his records is false and this claim[s] provide a basis for relief. Monroe, 932 F.2d at 1442; Jones v. Ray, 279 F.3d 944 (11th Cir.2001).

17. The record in this case establishes that the defendants knowingly rely on admittedly false or fabricated information contain[s] in prior state dismissed case in deciding the plaintiff's classification-security designatiion status, which have tremdously adverse affect[s] on his ability to participant in many avaiilable programs offered by the defendant, including RDAP, re-entry programs, camp eligibility, less-restrictive placement of imprisonment, federal funds etc,. Consequently, the Plaintiff is entitled to relief as a matter of law and entry of summary judgment in favor of the plaintiff on this claim is also warranted.

PRAYER FOR RELIEF

Plaintiff requests that this Court:

AA. Declare Defendant's failure to comply with PA to be unlawful;

BB. Enjoin Defendant from knowingly relie[d] upon false, fabricated, or incorrect information in order to determine[d] classification designation status in support greater severity classification status and otherwise order Defendant's to produce any evidence that show the Plaintiff's was convicted and sentence as principal for possession of firearm during commission crime of violent prohibit[s] him for qualifying for less restrictive placement of imprisonment, participate in RDAP or other re-entry programs;

CC. Grant Plaintiff an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. §552(a)(4)(E)(i) and 5 U.S.C.552a(g)(3)(B); and

DD. Grant Plaintiff such other and further relief that the Court deems proper.

Dated: 4-08-2021

BY: JUAN SERPA-CANDERLARIA



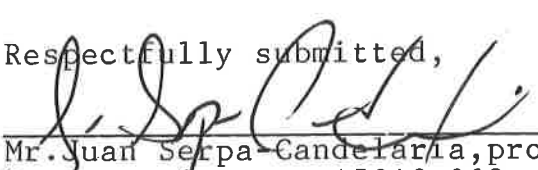
MR. JUAN SERPA-CANDERLARIA, PRO SE
FEDERAL CORRECTIONAL INSTITUTION

P.O. BOX 1031
COLEMAN, FLORIDA 33521-1031

CERTIFICATE OF SERVICE

I, Juan Serpa-Candelaria, Register Number 45343-069, Plaintiff, Pro Se, hereby certify that I have mail[ed] a Copy of the Verified Complaint and Affidavit in Support to the Clerk's Office for the United States District Court, District of Columbia, Washington, D.C. by depositing the same into Institution mail box via First-class postage prepaid on this 08 day of April, 2021.

Respectfully submitted,



Mr. Juan Serpa-Candelaria, prose
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Federal Correctional Institution
P.O.Box 1031
Coleman, Florida
33521-1031