

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

LUIS ALFREDO ANIBAL COCA

Plaintiff/Petitioner

V.

Case No. _____
Alien No. 094-059-906

**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;
U.S. DEPARTMENT OF JUSTICE**
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Defendants/ Respondents

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff/Petitioner, LUIS ALFREDO ANIBAL COCA by and through undersigned Counsel, files this Complaint for Habeas, Mandamus, Declaratory and Injunctive Relief and alleges as follows;

INTRODUCTION

Mr. Coca, a citizen and native of El Salvador, in county detention at Monroe County Jail, has an in absentia order from 2004 that he had no previous knowledge of and plans to file a Motion to Rescind In Absentia Order due to Lack of Notice. Upon filing such motion, a statutory stay of deportation is triggered but the motion needs to be filed with documentary evidence and the Plaintiff needs to supplement the motion with records that he has requested in a Freedom of Information request filed on June 21, 2021 to the Executive Office of Immigration Review (“EOIR”). To date, there has been no response from EOIR regarding the FOIA response and the 30 days expired on July 21, 2021. If the Plaintiff does not supplement the motion with the

documentary evidence, his filing of a motion to rescind and a stay of deportation will be in jeopardy and the Plaintiff will be in imminent danger of deportation.

PARTIES

1. LUIS ALFREDO ANIBAL COCA is presently detained at the Monroe County Jail, Key West, Florida.
2. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR) is a Department of the Executive Branch vested with the administrative authority to conduct immigration removal proceedings. EOIR is an agency within the meaning of 5 U.S.C. §552(f)(1).
3. U.S. DEPARTMENT OF JUSTICE (DOJ) is a Department of the Executive Branch of the United States government. DOJ is an agency within the meaning of 5 U.S.C. § 552(f)(1).

JURISDICTION

4. This action is brought against the defendants, and those acting under them, for refusing to comply with their federally mandated duties under the Freedom of Information Act (FOIA), 5 U.S.C. §552, and the Administrative Procedures Act (APA), 5 U.S.C. §§555(b), 801, *et seq.*
5. This Court has subject matter jurisdiction over this Petition under 28 U.S.C. § 1331 (federal question jurisdiction); the All Writs Act, 28 U.S.C. § 1651; the Freedom of Information Act, 5 U.S.C. §552, and the Administrative Procedure Act, 5 U.S.C. § 701.
6. FOIA is a “judicially enforceable right” of every person who properly files a FOIA request “to secure such information from possibly unwilling official hands”. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151 (1989).
7. Under the Administrative Procedure Act, a party may sue if “the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated

by the statute in question.” *Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla.*, 641 F.3d 1259, 1268 (11th Cir.2011). (internal quotation marks omitted). “In applying the zone of interests test, ... we first discern the interests arguably to be protected by the statutory provision at issue; we then inquire whether the plaintiff’s interests affected by the agency action in question are among them.” *Id.* at 1269 (internal quotation marks omitted). The zone of interests test “is not meant to be especially demanding.” *Clarke v. Sec. Indus. Ass’n*, 479 U.S. 388, 399, 107 S.Ct. 750, 757, 93 L.Ed.2d 757 (1987); *See also Kurapati v. U.S. Bureau of Citizenship & Immigration Services*, 775 F.3d 1255, 1262 (11th Cir. 2014). The Petitioner’s zone of interest lies in not having his U visa adjudication unreasonably delayed thereby keeping him detained in the custody of ICE.

VENUE

8. Venue properly lies in the Southern District of Florida because Petitioner resides at 1213 14 Street Apt 221 in Key West, Florida and is physically present and in the custody of Respondents within the district. Petitioner is detained in the custody of Respondents at Monroe County Sheriff’s Office , 5525 College Road, Key West, Florida 33040.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

9. Plaintiff has exhausted the applicable administrative remedies with respect to the FOIA of the EOIR, and there are no further administrative acts that Plaintiff can take to obtain the documents to which he is entitled. *See* 5 U.S.C.§552(a)(6)(C).

10. “[W]here Congress has not clearly required exhaustion, sound judicial discretion governs.” *Jones v. Zenk*, 495 F. Supp. 2d 1289, 1297 (N.D. Ga. 2007) (citing *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992)). As a matter of discretion, exhaustion of administrative remedies should therefore be waived “(1) where prejudice to the prisoner’s subsequent court action ‘may result, for example, from an unreasonable or indefinite timeframe for administrative action’;

(2) where the administrative agency may not have the authority ‘to grant effective relief’; or (3) ‘where the administrative body is shown to be biased or has otherwise predetermined the issue before it.’” *Jones*, 495 F. Supp. 2d at 1297 (citing *McCarthy*, 503 U.S. at 146-48). *See also Woodford v. Ngo*, 548 U.S. 81, 103 (2006) (Breyer, J. concurring) (noting “well-established exceptions to exhaustion” that include constitutional claims, futility, hardship to the petitioner, and where administrative remedies are inadequate or unavailable) (citations omitted)).

11. The Petitioner has exhausted his administrative remedies in trying to obtain a response on his request. There is no administrative remedy, or statutory or regulatory remedy for review under the INA, or the Code of Federal Regulations to address his particular circumstances, the agency’s failure to follow its own procedures and regulations.

12. In making its decision, the Court should consider the urgency of the need for immediate review. “Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

EQUAL ACCESS TO JUSTICE ACT ATTORNEYS’ FEES

13. Plaintiff seeks an award of his attorneys’ fees, costs, and expenses under the Equal Access to Justice, 28 U.S.C. § 2412. *See Khalid v. Gomez*, 2013 WL 2285132 (E.D.La. 2013).

STATEMENT OF FACTS

14. Plaintiff is a 42-year-old father of two U.S. Citizen children, who reside in Key West, Florida.

15. Plaintiff is currently and has been in Monroe County custody since June 16, 2021 but was advised that there was a hold on him that Immigration and Customs Enforcement (“ICE”) would take custody of him upon release from county custody.

16. Plaintiff was advised that there was a removal order against him from 2001 while in Monroe County custody.
17. Plaintiff was unaware until June 2021 of a 2004 *in absentia* removal order that was issued in June 2004, when he was detained by local law enforcement in Key West, Florida and informed of the removal order.
18. The *in absentia* removal order appears to stem from Plaintiff's first interaction with immigration officials occurred on September of 2001 after an arrest for aggravated battery in Monroe County, Florida, when Plaintiff was released from custody with a bond.
19. Plaintiff never received a notice from the court nor a subsequent removal order at the address where he resided and had informed the court as his residence.
20. Plaintiff was recently arrested in Monroe County, Florida on June 16, 2021.
21. The local sheriff department notified Plaintiff that there was a hold issued to transfer custody to the U.S. Department of Homeland Security, that the Plaintiff had a removal order which would subject Plaintiff to immediate deportation upon release from county custody.
22. Plaintiff hired undersigned counsel who determined that Plaintiff may or may not have been issued a Notice to Appear which may or may not meet statutory requirements, a notice of hearing may or may not have been sent, however the file must be reviewed to determine and to provide supporting evidence to any motion to reopen the Plaintiff's immigration case.
23. On June 29, 2021, Plaintiff filed a Freedom of Information Act (FOIA) request with the Executive Office for Immigration Review (EOIR).
24. On August 18, 2021, Plaintiff sent a letter advising the EOIR of its duties under the Freedom of Information Act and that there had not even been an acknowledgement to the first request sent on June 29, 2021.

25. The Plaintiff's EOIR FOIA request and subsequent letter have not been answered to date.
26. By law, a FOIA request must be answered within 20 days and with an additional 10 days allowed for unusual circumstances.
27. The deadline, including the "unusual circumstances" extension was July 30, 2021.
28. This delay while merely unreasonable for most applicants becomes extremely unreasonable here because Plaintiff faces an inability to file a motion in the immigration court and faces imminent removal from the United States.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION WRIT OF MANDAMUS

29. The allegations in paragraphs 1 through 28 are realleged and incorporated herein.
30. Under 28 U.S. Code § 1361, The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.
31. The plaintiff is entitled to mandamus relief to compel the EOIR to perform its statutory duty because the agency has not complied with the deadlines set by the Freedom of Information Act which mandates a response within twenty (20) days, with a maximum ten (10) day extension is "unusual circumstances" apply. Furthermore, pursuant to the Freedom of Information Act, the Defendant EOIR has thirty (30) days to respond to the instant complaint. 5 U.S.C. § 552(a)(4)(C).

SECOND CAUSE OF ACTION VIOLATION OF THE FREEDOM OF INFORMATION ACT

32. The allegations in paragraphs 1 through 28 are realleged and incorporated herein.
33. FOIA is a “judicially enforceable right” of every person who properly files a FOIA request “to secure such information from possible unwilling official hands.” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151 (1989)(citing *EPA v. Mink*, 410 U.S. 73, 80 (1973); *see also Renegotiation Bd. V. Bannercraft Clothing Co. Inc.*, 415 U.S. 1, 18 (1974)(describing FOIA as a “right”); *Rollins v. U.S. Dept. of Justice*, 1992 WL 12014526, at *3 (S.D. Tex. 06/30/1992)(“The Freedom of Information Act (‘FOIA’), 5 U.S.C.§552, generally provides that any person has a right, enforceable in court, of access to federal agency records, except to the extent that such records, or portions thereof, are protected from disclosure”).
34. When a FOIA request for information is made to a government agency, that agency has twenty (20) working days to respond to the request. 5 U.S.C.§552(a)(6)(A)(i). The agency may grant itself a ten (10) work day extension where an “unusual circumstance” exists, but the agency must notify the FOIA requestor by “written notice to the person making such request setting forth the unusual circumstances”. 5 U.S.C.§552(a)(6)(B)(i). Where an agency has failed to respond within the twenty (20) day working period, or if “unusual circumstances” apply, the person making the request is deemed to have exhausted his administrative remedies, and the requestor may file suit in the federal district court to enforce the Freedom of Information Act. *See* 5 U.S.C.§552(a)(6)(C)(i); 5 U.S.C.§552(a)(4)(B).
35. On complaint, the U.S. District Court may “enjoin the agency from withholding agency records and ...order the production of any agency records improperly withheld from complainant”...” and the burden is on the agency to sustain its action”. 5 U.S.C.§552(a)(4)(B).
36. The burden of proof beyond material doubt on every element of FOIA is always on the agency throughout every stage of FOIA litigation. *Id.*

37. Plaintiff was entitled to his response no later than July 30, 2021, however there has been no response to date.

**THIRD CAUSE OF ACTION
VIOLATION OF APA, AGENCY’S OWN REGULATIONS**

(Failure to Follow Agency’s Own Non-Discretionary Regulations)

38. Petitioner realleges and incorporates by reference paragraphs 1 through 28 of this complaint as if fully stated herein.

39. The actions of the defendants in the unreasonable delay in responding to the FOIA request is unlawful, and in violation of the APA, and the Federal Code of Regulations specifically 28 C.F.R.§ 16.5. AG Order No. 3517-2015, 80 FR 18106, Apr. 3, 2015.

40. Pursuant to 5 U.S.C. §§702, 706(1), the plaintiff is entitled to declaratory and injunctive relief to “compel agency action unlawfully withheld”.

41. Pursuant to 5 U.S.C. §§702, 706(1) The reviewing court shall compel agency action unlawfully withheld or unreasonably delayed;

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Compel Defendants to perform their non-discretionary duties and produce the records requested in the Plaintiff’s FOIA request.
- 3) Award petitioner costs and reasonable attorneys’ fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, other statute; and
- 4) Grant such further relief as the Court deems just and proper.

Respectfully submitted,

/s/Bonnie Smerdon

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