

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

GUILLERMO LINARES ALVAREZ,

*Plaintiff,*

v.

IMMIGRATION AND CUSTOMS  
ENFORCEMENT; U.S. DEPARTMENT  
OF HOMELAND SECURITY,

*Defendants.*

Civil Action No. \_\_\_\_\_

COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

**COMPLAINT**

**I. INTRODUCTION**

1. Plaintiff Guillermo Linares Alvarez (hereinafter “Plaintiff” or “Mr. Linares”) brings this action under the Freedom of Information Act (hereinafter “FOIA”), 5 U.S.C. § 552. Mr. Linares is currently detained by United States Immigration and Customs Enforcement (hereinafter “ICE”) and facing removal proceedings at the Varick Street Immigration Court in New York, NY.

2. Through a FOIA request submitted via counsel to Defendant Immigration and Customs Enforcement on December 17, 2021, Plaintiff sought the following records, which he believes are essential in preparing and mounting his defense from deportation: “records of interactions with ICE; ICE arrest records, detention center records; requests for detainer or notification forms; and investigation records.” Ex. A. ICE has yet to confirm receipt of the FOIA request or respond in any form.

3. On February 1, 2022, Plaintiff, through counsel, contacted ICE again regarding the pending request, provided proof of his pending removal proceedings, and asked for a prompt response to the request given his final merits hearing is scheduled for February 23, 2022. Ex. B.

4. ICE has violated the FOIA statute by failing to respond to Plaintiff's urgent request within the statutorily-prescribed time limit, which expired on January 19, 2022, failing to disclose the requested documents, and thereby unlawfully withholding the requested information. Plaintiff now asks the Court to order ICE to respond to the request immediately and to disclose all responsive records.

## **II. JURISDICTION & VENUE**

5. This Court has jurisdiction over this action pursuant to FOIA, 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action as a federal question under 28 U.S.C. § 1331.

6. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.

7. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e). Venue is proper because Plaintiff is facing removal proceedings at the Immigration Court at 201 Varick Street in New York, NY, within the Southern District of New York. He is in the custody of the New York Field Office of ICE at the Orange County Correctional Facility, in Goshen, NY, also within the Southern District. Further, his counsel has her principal place of business in this district. A substantial portion of the events giving rise to this action occurred in this district, and, upon information and belief, Defendants maintain records and information subject to the FOIA Request in this district.

## **III. PARTIES**

8. Plaintiff Guillermo Linares Alvarez, represented by counsel at The Bronx Defenders, is a detained respondent facing removal proceedings in New York, NY. He is detained at Orange County Jail, 110 Wells Farm Road, Goshen, NY 10924. He is the requestor, as noted in the FOIA

Request. *See* Exhibit A at 1 (“Our office is assisting Mr. Garcia Gonzalez with his request for his entire alien file.”).

9. Defendant United States Department of Homeland Security (hereinafter “DHS”) is a federal agency within the meaning of 5 U.S.C. § 552(f). DHS is the federal department responsible for enforcing federal immigration law, and that oversees the component agency from which the Plaintiff seeks records. DHS has possession of, and control over, the information Plaintiff seeks through the FOIA Request. DHS is headquartered at 245 Murray Lane, SW, Washington, D.C. 20528, and in New York at Jacob Javits Federal Building, 26 Federal Plaza, New York, NY 10278.

10. Defendant Immigration and Customs Enforcement is a federal agency within DHS that oversees immigration enforcement. ICE has possession of, and control over, the information Plaintiff seeks through the FOIA Request. ICE is headquartered at 500 12th St., SW, Washington, D.C. 20536, and in New York at Jacob Javits Federal Building, 26 Federal Plaza, 9th Floor, Suite 9-110, New York, NY 10278.

#### **IV. STATUTORY BACKGROUND**

11. The Freedom of Information Act, 5 U.S.C. § 552 (FOIA), requires all federal agencies to search for and disclose government records which are requested by a member of the public, subject to certain narrow exceptions. 5 U.S.C. § 552(a)(3)(A), (C); 5 U.S.C. § 552(b)(1)-(9).

12. Federal agencies must respond to FOIA requests within twenty business days after receipt, although the deadline may be extended an additional ten working days “[i]n certain circumstances.” 5 U.S.C. § 552(a)(6)(B)(i).

13. The agency’s written response must state whether it will comply with the FOIA request, indicate the reasons for that determination, and provide information regarding the process by which a requester may appeal an agency’s adverse determination. 5 U.S.C. § 552(a)(6)(A)(i).

14. All administrative remedies are deemed exhausted due to an agency's failure to comply with statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i).

15. Upon an agency's failure to meet its obligations, a district court may order the production of those records responsive to the FOIA request. 5 U.S.C. § 552(a)(4)(B).

## **V. FACTUAL BACKGROUND**

16. Plaintiff Mr. Linares was detained by ICE on November 8, 2021. Mr. Linares' removal proceedings, which were already pending at the time of his arrest, were administratively transferred to the detained docket at the Varick Street Immigration Court in New York, NY. On information and belief, he appeared before an Immigration Judge *pro se* before he had the opportunity to access current pro bono counsel through the New York Immigrant Family Unity Project.

17. Once represented by counsel, counsel on November 29, 2021 requested additional time to prepare applications for relief from removal and for trial. The Immigration Judge set a two-week deadline for pleadings, applications for relief and/or challenges to removability. On December 14, 2021, counsel appeared on behalf of Mr. Linares and informed the Immigration Court she had received neither the DHS charging document ("Notice to Appear") nor any evidence in support of removability from DHS and as such could not enter pleadings or proceed. The Immigration Judge adjourned the case for one week. On December 14, 2021, following the hearing, DHS provided a copy of the Notice to Appear via email but did not provide any evidence in support of the charges. On December 20, 2021, counsel appeared on behalf of Mr. Linares and filed a motion to terminate removal proceedings as DHS had not filed any evidence in support of the charges against him. The Immigration Judge set a deadline of December 27, 2021 for DHS to file evidence. DHS thereafter filed evidence with the Immigration Court. On January 3, 2022, the Immigration Judge

denied the motion to terminate and set a two-week deadline for Mr. Linares to submit applications for relief. On January 18, 2022, the Immigration Judge set a trial date on the merits of the applications for February 23, 2022.

18. On December 17, 2021, Plaintiff, through counsel, submitted a FOIA request to Immigration and Customs Enforcement in an effort to collect information essential to his defense in immigration court, namely his fear-based applications for removal. The request to ICE consisted of an emailed FOIA request with the following attachments: Form G-639 (USCIS FOIA request form); and G-28 (appearance of counsel). *See* Exhibit A. Plaintiff, through counsel, indicated on the FOIA request that Plaintiff had pending removal proceedings. *Id.*

19. FOIA requires that an agency timely disclose all records responsive to a FOIA request unless the items sought are enumerated in one of nine narrowly construed statutory exemptions. 5 U.S.C. § 552(a)(30)(A); 5 U.S.C. § 552(b)(1)-(9). FOIA's deadlines require Defendants to determine within 20 days (exception Saturdays, Sundays, and legal public holidays) after the receipt of a request whether to comply with such a request and "shall immediately notify the person making such request of such determination and the reasons therefor." 5 U.S.C. § 552(a)(6)(A)(i).

20. The statutory deadline by which ICE should have responded to the FOIA Request with responsive documents was January 19, 2022. At no time did ICE did not respond, nor did they invoke any sort of statutory based justification for an extension. January 19, 2022, passed without response.

21. On February 1, 2022, Plaintiff, through counsel, followed up on his initial FOIA request with ICE via email to inform the agency of his upcoming merits hearing date, scheduled for February 23, 2022. *See* Exhibit B. Counsel attached a copy of the Immigration Court's hearing notice to the email. *Id.*

22. To date, ICE has not provided an initial acknowledgement letter, substantive information about the request, or answered the request with responsive documents.

23. In Immigration Court, Mr. Linares made a motion for a continuance of his trial date on February 1, 2022, explaining that he was still awaiting key documents to be produced by ICE. This motion remains pending. The next court date on the merits of his applications for relief remains the trial date of February 23, 2022. In the meantime, Mr. Linares remains detained.

24. In an effort to secure the documents needed for his defense, Mr. Linares also made a motion in immigration court to subpoena the missing records from ICE on February 1, 2022. This motion also remains pending.

## **VI. EXHAUSTION**

25. A requester is deemed to have exhausted all available administrative remedies as a matter of law where an agency fails to comply with FOIA's statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i). Thereafter, a district court has jurisdiction to enjoin the agency from withholding records and to order production of records that are subject to disclosure under FOIA. 5 U.S.C. § 552(a)(4)(B).

26. Defendants have failed to respond, as well as failed to produce records or a substantive response to the request by the deadline established by the FOIA statute. As a result of Defendants' failure to comply with their FOIA obligations, Plaintiff has exhausted his administrative remedies with respect to the FOIA Request.

## **VII. CAUSES OF ACTION**

### **COUNT I VIOLATION OF THE FREEDOM OF INFORMATION ACT 5 U.S.C. 552(a)**

27. Plaintiff incorporates by reference the allegations contained in the foregoing paragraphs as if each such allegation was set forth herein in its entirety.

28. Defendants have violated 5 U.S.C. § 552(a)(3)(A) by failing to promptly release agency records in response to the FOIA Request.

29. Defendants have violated 5 U.S.C. § 552(a)(3)(C)-(D) by failing to make reasonable efforts to search for records responsive to the FOIA Request.

30. Defendants have violated 5 U.S.C. § 552(a)(6)(A)(i) by failing to make a determination regarding the FOIA Request within the governing statutory time limit.

31. Defendants have violated 5 U.S.C. § 522(a)(3)(B)-(D) by failing to conduct an adequate search of records responsive to the FOIA Request.

32. Injunctive relief is authorized under 5 U.S.C. § 552(a)(4)(B) because Defendants continue to improperly withhold agency records in violation of FOIA. Plaintiff will suffer irreparable injury from, and have no adequate remedy for, Defendants' illegal withholding of documents subject to his FOIA Request.

33. Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual and justiciable controversy exists regarding Defendants' improper withholding of agency records in violation of FOIA.

### **VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests the following relief:

- (a) For a judicial declaration confirming that Defendants' failure to disclose the records requested by Plaintiff is unlawful;

