

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

1			
2			
3			
4			
5	Maria del Sagrario Martinez Rodriguez,)	No.
6	Plaintiff,)	Agency # 219-101-664
7	v.)	
8	Jimmy Wolfrey, Senior Director,)	COMPLAINT FOR
9	FOIA Operations and Management;)	DECLARATORY AND
10	Alejandro Mayorkas, Secretary, United States)	INJUNCTIVE RELIEF
11	Department of Homeland Security;)	
	Defendants.)	

Through her undersigned attorney, Plaintiff Maria del Sagrario Martinez Rodriguez (“Ms. Martinez”), as and for her complaint, hereby alleges the following:

INTRODUCTION

1. Ms. Martinez is a native and citizen of Mexico who resides in Lynnwood, Washington. She is the beneficiary of an approved visa petition filed by her United States citizen daughter. Based on that approved petition, Ms. Martinez has filed an application for adjustment of status to permanent residence with the United States Citizenship and Immigration Services (“the USCIS”).

2. According to Department of Homeland Security (“DHS”) records, Ms. Martinez has had a number of encounters with the agency during which her fingerprints and photograph were taken. On April 5, 2022, pursuant to the Freedom of Information Act (“FOIA”), Ms. Martinez made a request to the DHS Office of Biometric Identity Management (“OBIM”) for records of each of her documented biometrics encounters. The DHS office responded to this request by providing a printout detailing seven alleged encounters. However, the response provided the photographs for only two of those encounters and redacted other significant information.

3. Ms. Martinez filed an appeal of the OBIM response, arguing that the office should

1 have provided her with the photographs and other information pertaining to the other five
2 encounters. In her appeal, she provided evidence that a photograph for at least one of those five
3 encounters exists. On February 6, 2023, a reviewing adjudicator agreed with her argument and
4 remanded to the OBIM, providing the office with 30 days to respond to the remand. However, the
5 OBIM did not respond to the remand, and its decision became final on March 14, 2023.

6 4. In this complaint, Ms. Martinez argues that Defendants have unlawfully withheld
7 agency records in violation of the Freedom of Information Act, and she asks that the Court order the
8 production of those records. She further requests that the Court order Defendants to pay the fees and
9 costs incurred by counsel in preparing and filing this action.

10
11 **JURISDICTION**

12 5. Jurisdiction over the subject matter of this civil action is conferred on this Court by
13 5 U.S.C. § 552(a)(4)(B), which grants the Court jurisdiction (1) to enjoin a government agency from
14 withholding records; and (2) to order the production of any agency records that have been improperly
15 withheld.

16
17 **VENUE**

18 6. Venue is properly in this district pursuant to 28 U.S.C. § 1391(e), because Defendants
19 are officers or employees of the United States government, Ms. Martinez resides in this district, and
20 no real property is involved in this action.

21
22 **STANDING**

23 7. Ms. Martinez has standing to bring this action. Defendants have improperly withheld
24 records from her agency file, and this Court has jurisdiction to redress that injury by ordering them
25 to produce those records. See Valley Forge Christian College v. Americans United for Separation
26 of Church and State, Inc., 454 U.S. 464, 472 (1982).

1 **PLAINTIFF**

2 8. Ms. Martinez is a 53-year-old native and citizen of Mexico who resides at 16817
3 Larch Way, Apartment D107, Lynnwood, Washington 98037. She is the beneficiary of an approved
4 immediate relative petition filed by her United States citizen daughter, and she has applied for
5 adjustment of status to permanent residence on the basis of that approved petition. On July 25, 2022,
6 she filed an appeal of the OBIM response to her request for agency records, and that appeal was
7 adjudicated on March 14, 2023.

8
9 **DEFENDANTS**

10 9. Defendant Jimmy Wolfrey is the Senior Director of FOIA Operations and
11 Management for the Department of Homeland Security. Defendant Wolfrey has been delegated the
12 duty to adjudicate FOIA requests for records from the DHS Office of Biometric Identity
13 Management. Defendant Wolfrey is sued herein in his official capacity.

14 10. Defendant Alejandro Mayorkas is the Secretary of the Department of Homeland
15 Security. As such, he is ultimately responsible for overseeing the adjudication of all FOIA requests
16 directed to the DHS. Defendant Mayorkas is sued herein in his official capacity.

17
18 **FACTS**

19 11. The Freedom of Information Act provides that, “upon any request for records which
20 (i) reasonably describes such records and (ii) is made in accordance with published rules . . .” an
21 agency “shall make the records promptly available to any person.” 8 U.S.C. § 552(a)(3)(A). These
22 disclosure requirements facilitate a goal of government transparency, which “is critical to
23 maintaining a functional democratic polity [and to] hold[ing] government leaders accountable.”
24 Hamdan v. U.S. Dep’t of Justice, 797 F.3d 759, 769 (9th Cir. 2015).

25 12. The Department of Homeland Security has promulgated regulations to implement the
26 Freedom of Information Act. 6 C.F.R. § 5.1 et seq. These regulations specify who can make FOIA

1 requests and how those requests are to be made. Id. When responding to FOIA requests, the agency
2 has a “duty to construe [those] requests liberally.” Mora-Villalpando v. U.S. Immigration and
3 Customs Enf’t, No. C18-0655 JLR, at *14 (W.D. Wash. Jul. 26, 2019), citing Yagman v. Pompeo,
4 868 F.3d 1075, 1080 (9th Cir. 2017).

5 13. The regulations also provide for an administrative appeal of a FOIA response. 6
6 C.F.R. § 5.8(a)(1). In an appeal, a requesting party may appeal the denial of part or all of the party’s
7 request. Id. The requesting party “may also appeal if he or she questions the adequacy of the
8 component's search for responsive records, or believes the component either misinterpreted the
9 request or did not address all aspects of the request (i.e., it issued an incomplete response).” Id.

10 14. The Office of Biometric Identity Management is a component of the DHS. It
11 “supplies the technology for matching, storing, and sharing biometric data. OBIM is the lead
12 designated provider of biometric identity services for [Homeland Security] and maintains the largest
13 biometric repository in the U.S. government.” United States v. Olivas-Perea, 297 F. Supp. 3d 1191,
14 1201 n.4 (D.N.M. 2017). Someone seeking their biometrics records may contact the OBIM
15 directly to request them. See <https://www.dhs.gov/foia-contact-information>.

16 15. Ms. Martinez is a native and citizen of Mexico who has resided in this country for
17 nearly 25 years. Her oldest daughter, who is over 21 years old and was born in the United States,
18 filed an immediate relative petition on her behalf in January 2019. The petition was approved by the
19 USCIS on February 19, 2021. Based on that approved petition, Ms. Martinez has filed an application
20 for adjustment of status to permanent residence. That application is pending with the USCIS.

21 16. According to DHS records, Ms. Martinez has had a number of encounters with the
22 agency during which her fingerprints and photograph were taken. On April 5, 2022, Ms. Martinez
23 made a FOIA request to the Office of Biometric Identity Management for records of each of her
24 documented biometrics encounters. Exh. 1, Receipt for FOIA request. On April 25, 2022, the
25 OBIM responded to this request by providing a printout detailing seven alleged encounters. Exh.
26 2, FOIA response. However, the response provided the photographs for only two of those
27

1 encounters. Id. Other significant information about the other five encounters was also redacted. Id.

2 17. On July 25, 2022, Ms. Martinez filed an appeal of the OBIM response, arguing that
3 the office should have provided her with, inter alia, the photographs pertaining to the other five
4 encounters. Exh. 3, Administrative appeal; Exh. 4, Receipt for appeal. In her appeal, she provided
5 evidence that a photograph for at least one of those five encounters exists and thus should have been
6 provided with the agency response. Exh. 3.

7 18. Pursuant to a memorandum of agreement, the appeal was transferred to the United
8 States Coast Guard Office of the Chief Administrative Law Judge for adjudication. Exh. 5, Remand
9 order. On February 6, 2023, the reviewing adjudicator agreed with Ms. Martinez’s argument and
10 remanded to the OBIM, providing the office with 30 days to respond to the remand. Id. However,
11 the OBIM did not respond to the remand, and the original OBIM decision became final on March
12 14, 2023. Exh. 6, Final decision on appeal.

13 19. There are no other administrative remedies available to Ms. Martinez to compel the
14 agency to produce the records she seeks.

15
16 **ARGUMENT**

17 **I. DEFENDANTS HAVE UNLAWFULLY WITHHELD AGENCY RECORDS THAT**
18 **SHOULD HAVE BEEN PROVIDED PURSUANT TO THE FREEDOM OF**
19 **INFORMATION ACT, AND THE COURT SHOULD ORDER THEM TO PRODUCE**
20 **THOSE RECORDS.**

21 20. This Court “reviews de novo an agency’s action in response to a FOIA request, and
22 ‘the burden is on the agency to sustain its action.’” Henry v. Dep’t of Justice, No. C-13-05924 DMR,
23 at *10 (N.D. Cal. Sep. 1, 2015); 5 U.S.C. § 552(a)(4)(B). The agency must demonstrate that “it has
24 conducted a search reasonably calculated to uncover all relevant documents.” Henry at *10 (internal
25 citations omitted).

26 21. Ms. Martinez submitted a request to the Office of Biometric Identity Management
27 for records of all of her documented biometric encounters. In response, the OBIM provided records
28 relating to seven alleged encounters. However, the records included photographs for only two of

1 those encounters. It also redacted other information that is critical to understanding the nature of the
2 other five encounters.

3 22. The agency's response to Ms. Martinez's FOIA request was inadequate and thus
4 constituted an improper withholding of agency records. See Dugan v. Dep't of Justice, 82 F. Supp.
5 3d 485, 494 (D.D.C. 2015) ("An inadequate search for records also constitutes an improper
6 withholding under the FOIA."). In her initial request, Ms. Martinez made clear that she requested
7 the photographs pertaining to each of the seven encounters.

8 23. The agency's response to the FOIA request included only two of those photographs.
9 In her appeal, Ms. Martinez specifically requested the five missing photographs. Moreover, she
10 stated that at least one of those photographs – relating to encounter ID number 3303201 – was in the
11 possession of the agency. Exh. 3. In support of that assertion, Ms. Martinez provided a copy of a
12 record related to this encounter that she received in response to a different FOIA request; this copy
13 showed that there was a photograph pertaining to the encounter. Id. Because the photograph was
14 of poor quality, though, she requested that the OBIM's response not only provide the photograph,
15 but provide it in quality high enough that she could discern the identity of the person in it.

16 24. Given that the other four of these five encounters post-dated encounter number
17 3303201, it is likely that photographs also exist for those encounters.

18 25. The agency's response is inadequate in other ways as well. It redacts information
19 relating to the type of encounter on October 14, 2006; October 20, 2006; February 6, 2019; July 20,
20 2020; and January 5, 2021, which make it impossible to understand what those encounters were or
21 where they took place. See Exh. 2. The alleged basis for these redactions – to protect the disclosure
22 of "techniques and/or procedures for law enforcement investigations or prosecutions" – is simply
23 inapplicable. Id.

24 26. The reviewing adjudicator recognized that there was merit to Ms. Martinez's
25 arguments and remanded to the OBIM for "an explanation regarding its response." Exh. 6.
26 However, the OBIM "did not provide an explanation or otherwise respond to the remand." Id. Its
27
28

1 failure to respond to this remand is further evidence of the inadequacy of Defendants’ response.

2 27. Defendants’ improper withholding of its records is not only a violation of the
3 Freedom of Information Act, but it significantly affects Ms. Martinez’s ability to apply for lawful
4 immigration status. Her agency records include records relating to someone named “Rosario Lopez
5 Ruiz,” with a different date of birth and a significantly different physical description than Ms.
6 Martinez. Unless the agency releases the photographs and encounter type information to her, though,
7 she will be unable to properly understand why these encounters are part of her agency file.

8 28. For all of these reasons, Ms. Martinez respectfully requests that the Court order
9 Defendants to produce complete records for each of her alleged biometrics encounters. These
10 records should include, at a minimum, the encounter type and a discernible photograph for each
11 encounter.

12 \\
13 \\
14 \\
15 \\
16 \\
17 \\
18 \\
19 \\
20 \\
21 \\
22 \\
23 \\
24 \\
25 \\
26 \\
27
28

RELIEF REQUESTED

WHEREFORE, Ms. Martinez prays that this Court:

- (1) Accept jurisdiction over this action;
- (2) Declare that Defendants' response to Ms. Martinez's FOIA request constituted an improper withholding of records;
- (3) Order Defendants to provide complete records for each of Ms. Martinez's alleged biometrics encounters;
- (4) Order Defendants to pay Ms. Martinez's attorneys' fees and costs; and
- (5) Grant such other and further relief as this Court deems just and proper under the circumstances.

Dated: April 19, 2023

Respectfully submitted,

/s/ Hilary Han
Hilary Han
Dobrin & Han, PC
705 Second Avenue, Suite 905
Seattle, WA 98104
Tel: (206) 448-3440
E-mail: hilary@dobrin-han.com