

United States District Court
District of Columbia

Ernesto Zaragosa-Solis III,
Plaintiff,

v.

U.S. Dept. of Justice,
Federal Bureau of Prisons,
United States,
Defendants

Case: 1:23-cv-01423

Assigned To : Unassigned

Assign. Date : 5/15/2023

Description: FOIA/Privacy Act (I-DECK)

FREEDOM OF INFORMATION
ACT, Privacy Act, and Civil
Rights Complaint

I. Jurisdiction and Venue:

Jurisdiction is asserted proper pursuant to 5 U.S.C. 552, the Freedom of Information Act; 5 U.S.C. 552a, the Privacy Act; 28 U.S.C. 1331, federal question; FTCA 28 U.S.C. 1346, 2670-80.

Venue is asserted proper pursuant to 28 U.S.C. 1391; HO2(b).

II. The Parties:

1. Plaintiff Ernesto Zaragosa-Solis III, Reg. No. 64572-179, is a federal prisoner.

2. Defendant U.S. Dept. of Justice is a federal agency subject to the FOIA/PA in Washington, D.C. (hereinafter "DOJ")

3 - Defendant Federal Bureau of Prisons is a federal agency, part of the DOJ, in Washington, D.C. (hereinafter "BOP").

4. The Defendant United States, is the FTCA defendant.

III. Statement of Claims:

1. Claim One: Violation of 5 U.S.C. 552, the Freedom of Information Act ("FOIA").

2. Claim Two: Violation of 5 U.S.C. 552a, the Privacy Act;

3. Claim Three: Violation of the First Amendment to the U.S. Constitution

4. Claim Four: Negligence, assault, battery, false imprisonment, abuse of process, intentional infliction of emotional distress, under the Federal Tort Claims Act, 28 U.S.C. 1346 and 2678-80 as to the D.C. employees under District of Columbia law ONLY. (See, D.C. Code).

IV- Supporting Facts :

A. FOIA Claims :

1. The plaintiff submitted, during 2022, several FOIA requests to defendant BOP at its Central Office in Washington, D.C.
2. Three of the requests for information were given File/Request No's. 2022-05623, 2022-05979, and 2022-06078 by the BOP, however plaintiff did not learn of this fact until months later.
3. In each request submitted to the BOP, the plaintiff never received a receipt or acknowledgment from BOP, in any format, as to any of his FOIA requests.
4. After months of waiting on the BOP, the Plaintiff requested assistance from the Office of Government Information Services ("OGIS"), a federal agency that "serves as the Federal FOIA Ombudsman" who contacted the BOP which is how Plaintiff learned of the numbers assigned to his requests BOP never responded to. OGIS assigned the inquiry Case No. 00028075.

5. The BOP, did not, respond to any of the plaintiff's FOIA requests within statutory time limits of the FOIA.

B. The Privacy Act Claims:

1. In addition to his FOIA requests to the BOP, the plaintiff submitted requests to the BOP Central Office via Certified Mail No. 7020 2450 0000 6742 0252 pursuant to 5 U.S.C. 552a, the Privacy Act.

2. Plaintiff requested correction of agency records that contained false, inaccurate, deliberately malicious factual assertions after his placement into the SHU on Sept. 14, 2022. The plaintiff notified BOP that its internal records contained false statements, and that the false statements were intentionally asserted into agency files to achieve a retaliatory transfer of him and that the BOP has been on notice since *Toolaprashad v. Bureau of Prisons*, 286 F.3d 576, 583 (D.C. Cir. 2002) that its failure to maintain accurate records, intentionally, leading to plaintiff's transfer, violated 5 U.S.C. 552a(g)(1)(C).

3. The plaintiff's request described in detail how agency records relating to the investigation, continuation in segregation, request for transfer, redesignation process, and Internal Affairs records contained false information at the direction of BOP Warden Mark Gutierrez. The plaintiff also so asserted as to the PREA File in the matter.

4. Gutierrez, on the basis of the false information, requested plaintiff's redesignation and defended civil litigation using false documents or claims he knew were not accurate in his official capacity for the BOP. As a result, plaintiff was redesignated to a federal penitentiary despite being scored a Medium custody/security level inmate, on the basis of the false information.

C. Retaliation Claims :

1. On Sept. 14, 2022 plaintiff was escorted to a segregation unit ("SHU") for an "SIS Investigation".

2. Also taken to SHU were inmates Jeremy Pinson, and others. Pinson is a well-known social

justice and transgender rights activist, and a jailhouse lawyer.

3. Because of threats and misconduct during the investigation process, plaintiff submitted to the DOS Inspector General Michael Horowitz and Asst. Inspector General Sarah Lake, multiple letters alleging violations of 18 U.S.C. 241, 242, 1001, 1512, 1515, and 28 C.F.R. 115.62, 115.67.

4. Upon receipt of at least one request, which OIG assigned a Complaint No., was forwarded to the BOP Office of Internal Affairs in its Washington, D.C. Central Office.

5. BOP policy identified multiple parts of the plaintiff's complaints as "Classification 1" Cases, BOP's highest and most serious category of staff misconduct. That same policy sets forth a multitude of mandatory and discretionary steps involved in Classification 1 Cases, none of which were followed in Plaintiff's case.

6. When plaintiff inquired as to why Internal Affairs were refusing to investigate his claims,

he was informed by multiple personnel in the BOP that any case involving Pinson would be ignored by Internal Affairs, and a variety of statements about longstanding animus by BOP towards Pinson, and those involved in Pinson's litigation.

7. At the same time as his own complaints, the Plaintiff learned that the DOJ Inspector General Michael Horowitz accused BOP of manipulating investigations to discredit PREA victims like plaintiff, in a letter to BOP Director Colette S. Peters in 2022.

8. At the same time as his own complaints, the Plaintiff learned of a class-action civil lawsuit against BOP by its staff for a pattern and practice of retaliation, as is shown at www.turnerclass.com in 2022.

9. At the same time as his own complaints, the Plaintiff learned of multiple federal Judges accusing BOP employees in its Central Office, and elsewhere, of submitting to federal courts false, inaccurate, misleading documents and testimony.

10. Plaintiff has learned of Congressional Committees that in 2019 and 2022 accused BOP of a culture and practice of retaliation systemwide.

11 - Upon information and belief, BOP's Office of Internal Affairs staff participated in allowing staff rapists to resign or retire (to avoid prosecution or loss of pension benefits) in more than a dozen cases, including a "Rape Club". See, *Beaubrun et al. v. United States*, Case No. 19-cv-00615-TJC-PRL (M.D. Fla.).

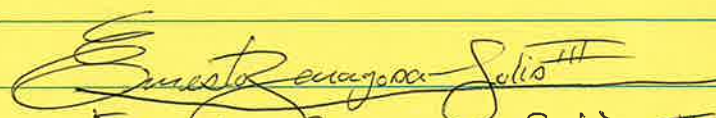
12. - Because of Internal Affairs' refusal to act, the plaintiff was physically and sexually abused, was retaliated against, threatened, his statutory and constitutional rights were violated, and plaintiff suffers from depression, PTSD.

V. Requested Relief:

1. Plaintiff seeks damages in the amount of \$1,000 for his Privacy Act Claim.
2. Plaintiff seeks an injunction requiring BOP


to comply with the provisions of the FOIA as to his FOIA requests.

3. Plaintiff seeks an injunction enjoining BOP from maintaining inaccurate records, and, from using inaccurate records in defense of civil litigation filed by plaintiff.
4. Plaintiff seeks an injunction enjoining his transfer from USP Tucson utilizing false information (5 U.S.C. 552a(g)(1)(C)).
5. Plaintiff seeks damages under the Federal Tort Claims Act for the actions of BOP Office of Internal Affairs staff in relation to his Sept. 14, 2022 assault (only Central Office staff acts or omissions, not non-D.C. personnel, for purposes of this case), against the United States for the facts alleged in Sec. IV(B) and IV(C) herein.


Ernesto Zaragosa-Solis III

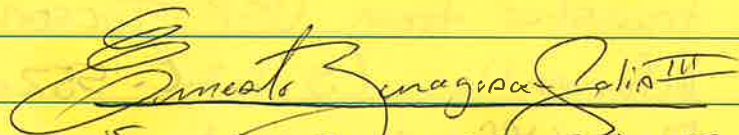
VERIFICATION

I certify, declare, that the factual assertions herein are true, under penalty of perjury, pursuant to 28 U.S.C. 1746.


Ernesto Zaragosa-Solis III

Declaration of Ernesto Zaragosa-Solis

I declare, under penalty of perjury, pursuant to 28 U.S.C. 1746 that on Oct. 3, 2022 the BOP received my SF-95 Claim For Damage, Injury or Death, under the FTCA, and that the time limit to settle my claim has expired, prior to filing this lawsuit. BOP did not decide my claim at all.


Ernesto Zaragosa Solis III