

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

FILIFE GARCIA MARTINS PEREIRA,

Plaintiff,

v.

CASE NO. _____

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; and UNITED
STATES CUSTOMS AND BORDER
PROTECTION,

Defendant.

_____ /

COMPLAINT

Plaintiff, Filipe Garcia Martins Pereira (“Mr. Pereira”), by and through his undersigned counsel, brings this Complaint pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et. seq.*, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from Mr. Pereira by the Defendants, the United States Department of Homeland Security (“DHS”) and the United States Customs and Border Protection (“CBP”) (collectively, the “Defendants”).

Mr. Pereira requested various categories of documents in Defendants’ possession, custody or control related to him. Mr. Pereira has not received any responsive records from Defendants within the time required by law. Thus, Mr. Pereira brings this action for injunctive relief and other appropriate relief to compel Defendants to disclose the records to which Mr. Pereira is entitled.

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. §552(a)(4)(B) and 28 U.S.C. § 1331.

2. Venue is proper in this District pursuant to 5 U.S.C. §552(a)(4)(B) because the agency records are situated in this district.

II. PARTIES

3. Mr. Pereira is a resident of Brazil, and he is a “person” within the meaning of 5 U.S.C. §551(2).

4. DHS is an “agency” of the United States within the meaning of 5 U.S.C. §552(f). CBP is a component of DHS. DHS and/or CBP have possession and control over some or all of the records requested by Mr. Pereira.

III. THE FREEDOM OF INFORMATION ACT

5. Federal agencies, such as DHS, are required under FOIA to release agency records to the public unless a valid statutory exemption applies. 5 U.S.C. §552(a)(3)(A).

6. When Congress created FOIA, it intended it to be “a broad disclosure statute which evidences strong public policy in favor of public access to information in the possession of federal agencies.” *News-Press v. U.S. Dep’t of Homeland Sec.*, 489 F.3d 1173, 1190 (11th Cir. 2007) (citation and quotation marks omitted).

7. Records are “agency records” under FOIA if the agency created or obtained them and the agency controlled them at the time requested. *U.S. Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 144–45 (1989).

8. A federal agency must respond to a request for documents pursuant to 5 U.S.C. §552(a)(6)(A)(i) within twenty (20) business days. Under certain circumstances, the twenty-day period may be extended an additional ten (10) business days. 5 U.S.C. §552(a)(4)(A)(viii)(II)(aa).

9. If an agency either fails to respond within the statutory period or fails to provide the complete set of records requested, the requestor “shall be deemed to have exhausted his administrative remedies.” 5 U.S.C. §552(a)(6)(C)(i).

10. FOIA permits the requestor to file suit immediately upon exhaustion of administrative remedies and confers upon this Court jurisdiction to review, *de novo*, an agency’s failure to provide requested records and to order the production of any records improperly withheld from the requestor. 5 U.S.C. §552(a)(4)(B).

11. FOIA permits this Court to assess reasonable attorney’s fees and other litigation costs in any FOIA action where the plaintiff has substantially prevailed. 5 U.S.C. §552(a)(4)(E).

IV. BACKGROUND

A. Inconsistencies in Mr. Pereira’s U.S. Immigration Documentation

12. Mr. Pereira was formerly an advisor to the Brazilian president.

13. Mr. Pereira is currently under preventive detention (*i.e.*, house arrest) in Brazil on allegations of circumventing Brazilian laws based on questionable documentation regarding Mr. Pereira’s alleged travel history to the United States on December 30, 2022, which did not occur.

14. Mr. Pereira did not leave Brazil and/or enter the United States on December 30, 2022. Yet, as explained below, Mr. Pereira has come to learn that the CBP’s travel history indicates his entry into the U.S. on this date.

15. On April 6, 2024, Mr. Pereira contacted the CBP’s Orlando I-94 team (*i.e.* the place of the port of entry through which Mr. Pereira allegedly entered the United States), and it was

confirmed that there was no record of Mr. Pereira entering the United States on December 30, 2022. Rather, the CBP's Orlando I-94 team stated that Mr. Pereira's last U.S. port of entry was John F. Kennedy (JFK) airport in September 2022, which is consistent with Mr. Pereira's official agenda, where he attended a United Nations event.

16. Two weeks later in mid-April 2024, Mr. Pereira contacted CBP's JFK's I-94 team to obtain his most recent I-94. However, it was discovered that there was an I-94 generated in Orlando with several inconsistencies, including (i) incorrect spelling of Mr. Pereira's first name; (ii) incorrect and/or invalid passport information; and (iii) incorrect and/or invalid visa information. CBP's JFK's I-94 team also confirmed that there were no records of Mr. Pereira departing the United States, which is quite noteworthy given that Mr. Pereira is currently in Brazil.

17. Further, it has also been revealed that, despite the aforementioned inconsistencies in the I-94 generated in Orlando, the information was somehow updated in the electronic system after the inquiries above took place to match Mr. Pereira's current name and documents rather than being removed as requested.

18. Based on the foregoing, Mr. Pereira has reason to believe that his U.S. immigration documentation may have been tampered with or, at least, has suffered imprecise alterations and/or includes entries made after the fact that are inconsistent with the reality.

19. Mr. Pereira has made requests for his United States immigration records to the federal agencies, as described below.

20. Such records are utterly important for Mr. Pereira to show in the Brazilian case that he did not travel to the United States in December 2022 and to prove his innocence in Brazil.

B. Mr. Pereira's Two (2) FOIA Requests

21. On April 9, 2024, Mr. Pereira submitted a FOIA request to DHS and its component CBP (CBP-FO-2024-087772). This request sought documents relating to Mr. Pereira's most recent I-94 data, and Mr. Pereira sought expedited processing due to the fact that he was facing an investigation by Brazilian authorities at the time, and the requested information would serve as additional evidence corroborating that he was not in the United States in December 2022. A true and correct copy of Mr. Pereira's first FOIA request (CBP-FO-2024-087772) is attached hereto as **Exhibit 1**.

22. On June 10, 2024, after two months from submitting the first FOIA request above and not having received a response, Mr. Pereira submitted a second, more detailed FOIA request to DHS and its component CBP (CBP-FO-2024-122163), which request sought various categories of documents, including, *inter alia*: (i) the initial I-94 registration records for Mr. Pereira, including any documentation, logs, and data entries; (ii) any and all modifications, updates, or corrections made to Mr. Pereira's I-94 records, including the reasons and authority for such changes; and (iii) records of communications and decisions made by CBP staff regarding the handling of Mr. Pereira's I-94 records. Mr. Pereira sought expedited processing due to the fact that, by this time, he was in preventive detention in Brazil under allegations of circumventing Brazilian laws, and the requested information would (i) directly impact Mr. Pereira's legal defense, and (ii) facilitate prompt and fair judicial proceedings for Mr. Pereira. A true and correct copy of Mr. Pereira's second FOIA request (CBP-FO-2024-122163) is attached hereto as **Exhibit 2**.

23. Importantly, both of Mr. Pereira's FOIA requests seek only documents, and not correction of Mr. Pereira's records.

C. The CBP's Response to Mr. Pereira's First FOIA Request

24. On November 22, 2024, the CBP responded to Mr. Pereira's first FOIA request (CBP-FO-2024-087772) stating, in relevant part, as follows:

The U.S. Customs and Border Protection (CBP) Freedom of Information Act (FOIA) Division received your FOIA request, reference FOIA number CBP-FO-2024-087772. However, the FOIA Division is unable to assist you with your request. The Department of Homeland Security's Travel Redress Inquiry Program (DHS TRIP) is a single point of contact for individuals who have inquiries or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs—like airports and train stations—or crossing U.S. borders, including: [...] correction of travel records [...] People who have been repeatedly identified for additional screening can file an inquiry to have erroneous information corrected in DHS systems, including corrections to misspelling of name on travel records and corrections to I-94s. Please submit your request for redress through the DHS TRIP website [...]

25. Notably, the CBP's November 22, 2024 correspondence—which focuses on corrections to I-94s—is not responsive to Mr. Pereira's FOIA request, which seeks only documents, as stated above.

26. Moreover, although the CBP instructed Mr. Pereira to direct his request to DHS TRIP, the CBP's own website and Fact Sheet both make clear that: "The I-94 admission record is created electronically and maintained in CBP systems," indicating that (i) the I-94 is a matter within the CBP's responsibility, and (ii) the CBP should have access to I-94 documentation. A true and correct copy of the CBP's webpage (<https://i94.cbp.dhs.gov/help>, accessed on January 23, 2025, at 11:56 am EST – highlighted quote on p. 3), which is available to the public, is attached hereto as **Exhibit 3**. A true and correct copy of the CBP's Fact Sheet on I-94 automation (https://www.cbp.gov/sites/default/files/assets/documents/2021-Jul/I-94_Automation_Fact_Sheet

[_Jul2021.pdf](#), accessed on January 23, 2025, at 11:58 am EST), which is available to the public, is attached hereto as **Exhibit 4**.

D. The DHS's Response to Mr. Pereira's DHS TRIP Request

27. Notwithstanding, pursuant to the CBP's instructions, Mr. Pereira submitted a request to DHS TRIP (case no. 00562032 / Redress Control Number 4051884) through the appropriate system on November 29, 2024, seeking (i) Mr. Pereira's initial I-94 registration records; (ii) records of any changes or updates to Mr. Pereira's I-94; and (iii) CBP communications and decisions regarding the handling of Mr. Pereira's I-94 records. Mr. Pereira also requested a travel history correction to remove notation of the December 30, 2022 trip into the United States, which Mr. Pereira did not take. A true and correct copy of Mr. Pereira's request to DHS TRIP is attached hereto as **Exhibit 5**.

28. DHS TRIP responded on December 18, 2024, without addressing any of the document requests or either approving or denying them. DHS TRIP's response included broad language about reviewing federal watchlists and law enforcement sensitive information, which was not the topic of the DHS TRIP request that Mr. Pereira had filed. Lastly, DHS TRIP referred to a letter that DHS TRIP had sent Mr. Pereira previously, on July 31, 2024, upon Mr. Pereira's filing of an earlier DHS TRIP request, and stated that "[t]here [was] no additional information to share." The July 31, 2024 letter referred by DHS TRIP also failed to address any specifics of Mr. Pereira DHS TRIP's request or to approve or deny the document requests. A true and correct copy of the December 18, 2024, DHS TRIP response email is attached hereto as **Exhibit 6**. A true and correct copy of the July 31, 2024 response letter is attached hereto as **Exhibit 7**.

E. The CBP's Failure to Respond to Mr. Pereira's Second FOIA Request

29. To date, neither the DHS nor its component CBP have responded to Mr. Pereira's second FOIA request (CBP-FO-2024-122163), which was submitted on June 10, 2024.

COUNT ONE – VIOLATION OF FOIA

As to Mr. Pereira's First FOIA Request (CBP-FO-2024-087772)

30. Mr. Pereira realleges and incorporates by reference all of the preceding paragraphs.

31. DHS is an agency subject to FOIA.

32. CBP is a component of DHS.

33. On or about April 9, 2024, Mr. Pereira submitted a valid and proper FOIA request for records related to him within the control of Defendants.

34. More than twenty (20) business days have elapsed since Mr. Pereira submitted his first FOIA request.

35. As of the date of filing this Complaint, Defendants have failed to provide the complete set of records requested by Mr. Pereira in his first FOIA request.

36. Defendants have improperly withheld the requested documents from Mr. Pereira.

37. Mr. Pereira is deemed to have exhausted his administrative remedies because Defendants have failed to provide the complete set of records requested by Mr. Pereira within the time period required by law.

38. The improper withholding of the requested documents has irreparably harmed Mr. Pereira by preventing him from reviewing the documents in Defendants' possession and by preventing him from exercising valuable statutory rights conferred by Congress pursuant to FOIA.

39. The actions of the Defendants, as stated above, are a violation of FOIA, 5 U.S.C. §552, *et seq.*, as amended.

40. Any and all conditions precedent have been satisfied.

COUNT TWO – VIOLATION OF FOIA

As to Mr. Pereira's Second FOIA Request (CBP-FO-2024-122163)

41. Mr. Pereira realleges and incorporates by reference all of the preceding paragraphs.

42. DHS is an agency subject to FOIA.

43. CBP is a component of DHS.

44. On or about June 10, 2024, Mr. Pereira submitted a valid and proper FOIA request for records related to him within the control of Defendants.

45. More than twenty (20) business days have elapsed since Mr. Pereira submitted his second FOIA request.

46. As of the date of the filing of this Complaint, Defendants have failed to respond to Mr. Pereira's second FOIA request.

47. Defendants have improperly withheld the requested documents from Mr. Pereira.

48. Mr. Pereira is deemed to have exhausted his administrative remedies because Defendants have not responded within the time period required by law.

49. The improper withholding of the requested documents has irreparably harmed Mr. Pereira by preventing him from reviewing the documents in Defendants' possession and by preventing him from exercising valuable statutory rights conferred by Congress pursuant to FOIA.

50. The actions of the Defendants, as stated above, are a violation of FOIA, 5 U.S.C. §552, *et seq.*, as amended.

51. Any and all conditions precedent have been satisfied.

PRAYER FOR RELIEF

WHEREFORE, Filipe Garcia Martins Pereira prays that the Court will grant the following relief and any other such relief that the Court deems just and proper:

- 1) Declare the Defendants' failure to comply with FOIA to be unlawful;
- 2) Order the Defendants to immediately process Plaintiff's FOIA requests (CBP-FO-2024-087772, and CBP-FO-2024-122163), to conduct a reasonable search for the requested records, and to disclose them to Plaintiff in full;
- 3) Grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. §552(a)(4)(E); and
- 4) Grant such other relief as the Court deems just and proper.

Dated: January 23, 2025

Respectfully Submitted,

VIALEX LAW, P.A.

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