

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

PEDRO ELIAS HERNANDEZ-LIMA,

Plaintiff,

-v-

UNITED STATES DEPARTMENT OF
JUSTICE, UNITED STATES NATIONAL
CENTRAL BUREAU, INTERPOL
WASHINGTON,

-and-

UNITED STATES DEPARTMENT OF
JUSTICE, OFFICE OF INFORMATION
POLICY,

Defendants.

No.: 4:16-CV-250

COMPLAINT
FOR INJUNCTIVE RELIEF

Plaintiff, Pedro Elias Hernandez-Lima (the "Plaintiff"), through his Attorneys, Baurkot & Baurkot, respectfully brings this Complaint for Injunctive Relief against Defendants, the United States Department of Justice, National Central Bureau, INTERPOL Washington ("INTERPOL-Washington"), and the United States Department of Justice,

Office of Information Policy, (the "OIP") (collectively referred to as the "Defendants"), complaining as follows:

1. This is an action under the Freedom of Information Act (the "FOIA"), 5 USC § 552, for injunctive and other appropriate relief, specifically seeking the disclosure and release of agency records pertaining to Plaintiff, which the Defendants have improperly withheld.

JURISDICTION AND VENUE

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 USC § 552(a)(4)(B).

3. This Court also has jurisdiction over this action pursuant to 28 USC § 1331.

4. Venue lies in the district under 5 USC § 552(a)(4)(B).

PARTIES

5. Plaintiff is detained in the custody of the Department of Homeland Security ("DHS") at the York County Correctional Facility at 3400 Concord Road, York, Pennsylvania 17402.

6. The United States Department of Justice is a Department of the Executive Branch of the United States Government, and includes the United States National Central Bureau, INTERPOL Washington and the Office of Information Policy.

7. The United States National Central Bureau, INTERPOL Washington and the Office of Information Policy are agencies within the meaning of 5 USC § 552(f).

FACTS

8. Plaintiff is a native and citizen of El Salvador.

9. Plaintiff was persecuted in El Salvador at the hands of representatives of the Government of El Salvador, including local police authorities.

10. Fearing for his safety and life, Plaintiff fled El Salvador in March of 2014.

11. Plaintiff entered the United States on May 20, 2014 through the United States border with Mexico on March 20, 2014.

12. Upon entering the United States, Plaintiff immediately sought refugee protection from the United States Government, based on his past persecution in El Salvador and continued threats of torture, unlawful imprisonment and death.

13. Plaintiff reported to DHS immediately upon entry into the United States and asserted a claim for refugee protection. At said time, DHS took Plaintiff into custody and initiated credible fear of persecution proceedings to determine whether or not Plaintiff's claim for protection were credible. Plaintiff remained in DHS custody until DHS Asylum Officers were able to conduct a detailed evaluation of Plaintiff's claims of persecution and extensive background checks of Plaintiff.

14. Following extensive background checks and evaluation of Plaintiff's claims of persecution, DHS determined that Plaintiff's claims were indeed credible. Plaintiff was placed into removal proceedings before an immigration court for a full adjudication of his claims for refugee protection and was immediately released on a \$7,500.00 bond, which was quickly posted. From his release in early-2014 on, Plaintiff was free from any

restraints and was preparing to proceed with his matter for full adjudication before an immigration court.

15. In late-2015, DHS suddenly appeared at Plaintiff's place of adobe and took Plaintiff into custody, without incident from Plaintiff, but absent a warrant, without any notice and without providing Plaintiff any reason as to why he was taken into custody, notwithstanding the fact that Plaintiff did nothing to breach the terms and conditions of the DHS bond posted in or about April of 2014.

16. DHS took Plaintiff to the York County Correctional Facility in York, Pennsylvania.

17. Plaintiff subsequently appeared, without counsel, before the Immigration Court in York, Pennsylvania, for a brief hearing. At said hearing, Plaintiff again asserted his fear of return to El Salvador, stressing his past persecution and fear of torture and ultimate death at the hands of a now-unnamed organization that was closely affiliated with the Government of El Salvador, by and through local police authorities.

18. The Immigration Court at York, Pennsylvania considered the issue of Plaintiff's release on an immigration bond and inquired as to why DHS took Plaintiff into custody more than a year after Plaintiff was initially released on bond from DHS custody. DHS' response was that the Government of El Salvador issued a warrant for Plaintiff's arrest (the "Warrant").

19. DHS did not provide any further information about the Warrant, who issued the Warrant, what the Warrant charged, when the Warrant was issued—nothing.

20. The Immigration Court at York, Pennsylvania denied Plaintiff bond because of the Warrant. Since then, Plaintiff has been detained without bond at the York County Correctional Facility.

21. Plaintiff fears a return to El Salvador, has absolutely no information or knowledge about the Warrant, was never provided any information related to the Warrant from DHS or the Immigration Court at York, Pennsylvania and is scheduled to appear for a hearing before the Immigration Court at York, Pennsylvania, for adjudication of his request for protection by the United States, given his credible, reasonable and legitimate fear of returning to El Salvador.

22. Since his detention at the York County Correctional Facility in York, Pennsylvania, Plaintiff's family has secured the assistance of undersigned Counsel. Unable to elicit any information related to the Warrant from DHS, undersigned Counsel conducted research and, in the course of said research, was able to determine that a "Red Alert" was issued through INTERPOL's headquarters in Lyon, France, at the request of the Judicial Authorities of El Salvador. See Ex. A.

23. By electronic correspondence dated October 22, 2015, addressed to INTERPOL-Washington, Plaintiff, through Counsel, requested copies of all records pertaining to Plaintiff.

24. By letter dated October 7, 2015, Kevin R. Smith, General Counsel for INTERPOL-Washington, advised Plaintiff that his FOIA request had been received and that it had been assigned Number 2016-010.

25. In the same letter, Kevin R. Smith, General Counsel for INTERPOL-Washington, writing on behalf of Geoffrey S. Shank, Director of INTERPOL-Washington, informed Plaintiff that his record with INTERPOL-Washington would be withheld in full, pursuant to 5 U.S.C. § 552(b)(7)(A), which authorizes the withholding of records or information compiled for law enforcement purposes to the extent it could reasonably be expected to interfere with enforcement proceedings. See Ex. B (Letter from INTERPOL-Washington).

26. On October 22, 2015, Plaintiff filed an administrative appeal with the OIP. By letter dated November 13, 2015, Priscilla Jones, Supervisory Administrative Specialist, the OIP, advised Plaintiff that his administrative appeal had been received on November 1, 2015, and that it had been assigned number AP-2016-00372. See Ex. C (Letter from the OIP dated November 13, 2015).

27. By letter dated December 16, 2015, Christina D. Troiani, Attorney-Advisor for Sean O'Neill, Chief of the Administrative Appeals Staff at the OIP, informed Plaintiff that INTERPOL-Washington properly withheld all of Plaintiff's file and affirmed INTERPOL-Washington's action, pursuant to 5 U.S.C. § 552(b)(7)(A), which authorizes the withholding of records or information compiled for law enforcement purposes to the extent it could reasonably be expected to interfere with enforcement proceedings. See Ex. D (Letter from OIP dated December 16, 2015).

28. Moreover, Christina D. Troiani, Attorney-Advisor for Sean O'Neill, Chief of the Administrative Appeals Staff at the OIP deemed the records responsive to Plaintiff's

request were exempt from access pursuant the Privacy Act, 5 U.S.C. § 552a(j)(2). See Ex. D (Letter from OIP dated December 16, 2015).

29. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request.

30. Plaintiff has a right of prompt access to the requested records under 5 USC § 552(a)(3)(A) and both the OIP and INTERPOL-Washington have wrongfully withheld the sought-after documents.

31. The records requested are crucial to Plaintiff's security, well-being, fears and may very well lead to uncovering information that is crucial to Plaintiff's claim for protection in the United States from persecution at the hands of the Government of El Salvador, its local authorities—police and others—as well as a now-unnamed organization that was closely affiliated with the Government of El Salvador, by and through local police authorities.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays that this Court:

- (1) order Defendants to disclose the requested records in their entireties and make copies available to Plaintiff;
- (2) provide for expeditious proceedings in this action;
- (3) order a stay of Plaintiff's immigration proceedings before the Immigration Court at York, Pennsylvania pending disclosure and review of the requested records;

- (4) award Plaintiff his/her costs and reasonable attorneys fees incurred in this action; and
- (5) grant such other relief as the Court may deem just and proper.

Respectfully Submitted:

BAURKOT & BAURKOT

/s/ Raymond G. Lahoud

Dated: February 10, 2016

BY:

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