

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:12cv21109

ENRIQUE PUYANA MANTILLA

Petitioner,

vs.

UNITED STATES DEPARTMENT OF STATE,  
HILLARY RODHAM CLINTON, Secretary of State,  
ERIC H. HOLDER, Jr., United States Attorney General,  
WIFREDO A. FERRER, United States Attorney, Southern District of Florida

Respondents.

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This is an action under the FREEDOM OF INFORMATION ACT, (FOIA), 5 U.S.C. § 552, as amended and the Privacy Act (PA), 5 U.S.C. § 582a, to order the production of agency records previously requested by Petitioner pursuant to the above referenced Acts and which requests have been ignored by the Respondent and which as such constitute a denial of Petitioner's request.

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552 (a)(4)(B) and 5 U.S.C. § 552a (g)(1)(B); (g)(1)(D); (g)(3)(A); (g)(3)(B); (g)(4)(A); and (g)(4)(B).

3. Petitioner ENRIQUE PUYANA MANTILLA is a citizen of the Republic of Colombia residing at Calle 151 # 6-28C, Conjunto Los Pinos, Barrio Bosque de Pinos in Bogota, Colombia, S.A. He is the requestor of the withheld records.

4. Respondent UNITED STATES DEPARTMENT OF STATE is an agency of the United States and it has possession of, and control over, the records that Petitioner seeks.

5. The following is a list of the requests made by Petitioner to the Respondent agency and their lack of response:

a. On October 15, 2010 while at the United States Embassy in Bogota, Colombia seeking the issuance of a visa for her young son, Petitioner's wife, Maria Julian Dimarco Gomez was directed by a consular official to have her husband, Petitioner ENRIQUE PUYANA MANTILLA report to the Embassy for an interview in that it was believed he had criminal problems.

b. Petitioner responded to the United States Embassy and advised consular officials that he had never had any criminal/legal problems. The consul advised Petitioner that he had important legal problems and recommended that he hire an attorney. Subsequently, Petitioner's passport, along with his young son's and wife's were returned with their visas either denied or revoked.

c. At the time of revocation of his visa Petitioner was provided with a United States Department of State "Refusal Worksheet" indicating that his "visa application" was denied in reliance on Immigration and Nationality Act Section 212 (a) (2) C1.

Section 212 (a)(2) C1 has been codified at 8 U.S.C.A. § 1182 and it provides: "Any alien who the consular officer or the Attorney General knows or has reason to believe—

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in [section 802 of Title 21](#)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so;.... is inadmissible.” [Attached hereto as Exhibit A is a copy of the U.S. Department of State “Refusal Worksheet”]

d. A background check and investigation in all judicial districts in the United States has failed to reveal any wrongdoing by Petitioner.

e. Petitioner has held a United States visa since he was four years old making 1 to 2 trips per year to this country with no violations of his visa conditions.

f. Subsequently, on February 1, 2011, Petitioner mailed a specific FOIA request to the Respondent agency seeking that information used by embassy personnel as a basis to cancel his visa because he was believed to be a drug trafficker. [Attached hereto as Exhibit B is Petitioner’s FOIA request]

g. Petitioner’s FOIA request was delivered to the Department of State on February 14, 2011. [Attached hereto as composite Exhibit C are the U.S. Postal Service Certified Mail Receipt and Domestic Return Receipt]

h. On March 14, 2011 Petitioner received a letter from the Respondent United States Department of State acknowledging receipt of his request and assigning Case Control Number F201101263 and advising that Petitioner would be notified as soon as responsive material has been retrieved and reviewed. Since that date, no information has been forthcoming. [Attached hereto as Exhibit D is the letter from the Department of State acknowledging Petitioner’s FOIA request]

i. Numerous telephonic conversations with Department of State FOI Specialist Tedrose McConnen have produced nothing. To date, no records have been provided. Moreover, the Respondent agency has not claimed any exemptions for non-disclosure that are identifiable under the FOIA or Privacy Act.

j. Petitioner has a statutory right to the records that he seeks, and there is no legal basis for the Respondent's refusal to disclose them to him. In light of the Respondent's failure to comply with the applicable time limits Petitioner has made a showing that the UNITED STATES DEPARTMENT OF STATE has improperly withheld agency records.

WHEREFORE, the Petitioner respectfully requests this Honorable Court:

I. Declare that Respondent's refusal to disclose the records requested by Petitioner is unlawful and order their immediate production.

II. Issue an injunction to prevent the UNITED STATES DEPARTMENT OF STATE from relying on their invalid practice of not responding to FOIA/PA requests.

III. Make a finding that the circumstances surrounding the withholding of the requested records raises questions whether there has been arbitrary or capricious agency action and make a referral of the matter to the Merit Systems Protection Board for investigation pursuant to subsection (a)(4)(F).

IV. Award Petitioner his costs and reasonable attorney's fees in this action.

V. Expedite this lawsuit pursuant to 28 U.S.C. § 1657 (a), and,

VI. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/ Irwin G. Lichter  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via certified mailed this 20th day of March, 2012, to the following:

Office of Information Programs and Services  
A/GIS/IPS/RL  
**U.S. DEPARTMENT OF STATE**  
Washington, D.C. 20522-8100

**HILLARY RODHAM CLINTON, Secretary of State,**  
U.S. Department of State  
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s/ Irwin G. Lichter  
IRWIN G. LICHTER, ESQ.