

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DAVID BIER,)
1000 Massachusetts Avenue NW)
Washington, D.C. 20001)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF HOMELAND SECURITY,)
2707 Martin Luther King Jr. Avenue SE)
Washington, D.C. 20528)
)
U.S. CUSTOMS AND BORDER PROTECTION,)
1300 Pennsylvania Ave NW)
Washington, D.C. 20229)
)
Defendants.)

COMPLAINT

1. Plaintiff, DAVID BIER, files this Freedom of Information Act suit to force Defendants U.S. DEPARTMENT OF HOMELAND SECURITY and U.S. CUSTOMS AND BORDER PROTECTION to respond to BIER’s FOIA request seeking CBP’s various data related to drug seizures at or near each of all Border Patrol sectors between 2009 and 2019. In Violation of FOIA, Defendants have failed to issue a determination for over six months.

PARTIES

2. Plaintiff DAVID BIER is a policy analyst and scholar at the Cato Institute and made the FOIA request at issue in this case.

3. Defendant U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”) is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

4. Defendant U.S. CUSTOMS AND BORDER PROTECTION (“CBP”) is a federal agency, a component of DHS, and subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

5. This case is brought under 5 U.S.C. § 552(a)(4)(B) and presents a federal question conferring jurisdiction on this Court. *See* 28 U.S.C. § 1331.

6. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

JULY 19, 2019, FOIA REQUEST

7. On July 19, 2019, BIER submitted a FOIA request to CBP for documents or records showing:

[1] the number of seizures (events in which drugs were taken) for each Border Patrol sector by month for fiscal years 2009 to 2019 of the following drug types: all drugs of any type, any drugs other than marijuana, marijuana, methamphetamine, heroin, cocaine, fentanyl, [and] other drugs (i.e. no cocaine, heroin, [], methamphetamine, or fentanyl);

[2] the number of seizures (events in which drugs were taken) for each Border Patrol sector by month for fiscal years 2009 to 2019 that occurred more than 10 miles from the border of the following drug types: all drugs of any type, any drugs other than marijuana, marijuana, methamphetamine, heroin, cocaine, fentanyl, [and] other drugs (i.e. no cocaine, heroin, [], methamphetamine, or fentanyl);

[3] the number of POUNDS seized by Border Patrol for each Border Patrol sector by month for each fiscal year from 2009 to 2019 of each of the following drug types: marijuana, methamphetamine, heroin, cocaine, [and] fentanyl;

[4] the number of aliens apprehended by Border Patrol for each Border Patrol sector by month for each fiscal year from 2009 to 2019 who were: juveniles, apprehended more than 1 mile from the border, [and] apprehended more than 10 miles from the border; [and]

[5] the number of seizures (events in which drugs were taken) for each Border Patrol sector by month for fiscal years 2009 to 2019 that occurred at Border Patrol checkpoints of the following drug types: all drugs of any type, any drugs other than marijuana, marijuana, methamphetamine, heroin, cocaine, fentanyl, [and] other drugs (i.e. no cocaine, heroin, [], methamphetamine, or fentanyl).

Exhibit A.

8. On July 19, 2019, CBP confirmed the request submission and assigned reference number CBP-2019-069096 to the matter. Exhibit A.

9. On July 21, 2019, CBP acknowledged receipt of the request. Exhibit B.

10. After BIER appealed CBP's lack of response as a constructive denial, on February 11, 2020, CBP responded that "since there is no adverse decision for the Appeal Office to review, this appeal will be closed." Exhibit C.

11. As of the date of this filing, CBP has not further responded and has produced no records responsive to the request.

COUNT I – DEFENDANTS' FOIA VIOLATION

12. The above paragraphs are incorporated herein.

13. Defendants are federal agencies, subject to FOIA.

14. The requested records are not exempt under FOIA.

15. Defendants have not responded at all, let alone produce the requested records in a timely manner.

WHEREFORE, BIER asks the Court to:

- i. Order Defendants to conduct a reasonable search for records and to promptly produce all non-exempt requested records;
- ii. Award Plaintiff attorneys' fees and costs; and
- iii. Enter any other relief the Court deems appropriate.

Dated: March 10, 2020

Respectfully Submitted,
/s/ Joshua Hart Burday

Attorneys for Plaintiff
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