

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

ERDAL KUYUMCU,
Plaintiff,
Registration Number: 89148-053
Federal Correction Institution
FCI Fort Dix
P.O. Box 2000
Joint Base MDL, NJ 08640

COMPLAINT

Case: 1:20-cv-01294 JURY DEMAND
Assigned To : Friedrich, Dabney L
Assign. Date : 5/5/2020
Description: FOIA/Privacy Act (I-DECK)

-against-

JURY TRIAL DEMANDED

1. WILBUR ROSS, Secretary
of commerce of the United
States, 1401 Constitution Avenue,
N.W., Washington, DC 20530;
2. WILLIAM BARR, Attorney
General Of The United States,
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
3. CHRISTOPHER WRAY
Director of the Federal
Bureau of Investigations,
935 Pennsylvania Avenue, N.W.
Washington, DC 20530
4. STEVEN JEFFERSON, Special
Agent for the Federal Bureau
of Investigations, 935 Pennsylvania
Avenue, N.W., Washington, DC 20530
5. THOMAS F. SMITH, Special
Agent, Office of Expert Enforcement
for the Department of Commerce
of the United States,
1401 Constitution Avenue, N.W.,
Washington, DC 20230
6. CRAIG PHILDIUS, Export
Control Officer, Department of
commerce of the United States,
1401 Constitution Avenue, N.W.,
Washington, DC 20230
(each are sued in their individual capacities)

APR 27 2020

Angela A. Cresan, Clerk of Court
U.S. District Court - District of Columbia

C O M P L A I N T

I. Jurisdiction and Venue

1. This is a civil action authorized by 42 U.S.C. 1983 ("Bivens Action"), 1985, 1986 and 5 U.S.C. 552(a)(4)(B). The Court has jurisdiction under 28 U.S.C. Sections 139(b) and 1331(a), 1333(a). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. Sections 2201, 2202, and 2401(a)

2. The District of Columbia is an appropriate venue under 28 U.S.C. Section 1391(b)(2) because it is the place where defendant's principal offices are located, as well, as where their decisions denying Plaintiff's request under the Freedom of Information Act, hereinafter referred to as ("FOIA") were made.

II. Parties

3. Plaintiff, Erdal Kuyumcu, is and was at all times mentioned herein a naturalized United States citizen and inmate of the United States Bureau of Prisons. He is currently confined at the Federal Correction Institution at Fort Dix, New Jersey, with a mailing address of P.O. Box 2000, Joint Base MDL, New jersey 08640.

4. Defendant, Wilbur Ross is and was at all time mention herein the Secretary of the United States Commerce Department. He is responsible for the over-all operations, management and training of all employees of the Commerce Department, as well, as the promulgation of its departmental rules, regulations, and policy-procedures, including the procedures for addressing requests under the ("FOIA"). That additionally he is responsible for approving the actions of employee-defendants; Thomas F. Smith and Craig Phildius, Defendant maintains his principal office at 1401 Constitution Avenue, N.W., Washington, D.C. 20230

5. Defendant, William Barr, is and was at all time mentioned herein serving as the Attorney General of the United States, and responsible for the over-all operations, management and training of all agents, employees, and contractor serving the United States Department of Justice which includes the defendant Christopher Wray, director of the ("FBI") and defendant Steven Jefferson, Special Agent for the ("FBI"). Further, defendant Barr is responsible for the revisions and promulgation of rules, regulations, and policies of the Department of Justice pertaining to approval and enforcement of the ("F.O.I.A.") by the Justice Department and its subsidiaries, divisions, and branches, including the ("F.B.I."). Defendant Barr maintains his principle office at 950 Pennsylvania Avenue, N.W., Washington D.C. 20530.

6. Defendant Christopher Wray is at all times mentioned herein Director of the ("F.B.I."), and along with defendant Barr is responsible for the operations, policy, and procedures, as well as the supervision and training of all agents, including its special task force agents the defendant Steven Jefferson. Defendant Wray maintains his principle office at 935 Pennsylvania Avenue, N.W., Washington, D.C. 20530

7. Defendant, Steven Jeferson, is and was at all times mentioned herein employed as a special agent of the ("FBI") and personally prepared documents, including warrants for the arrest and search of Plaintiff's property. Defendant Jefferson personally examined documents, records, as well, as personally interviewed persons in his investigation of Plaintiff as averred to in his February 18, 2016, affidavit. Defendant Smith maintains his principal office at ("FBI") head quaters located at 935 Pennsylvania Avenue, N.W., Washington D.C. 20530

8. Defendant, Thomas T. Smith, is and was at all times mentioned herein a Special Agent within the Office of Export Enforcement of the ("Department of Commerce"), and offered sworn testimony on May 1st and 2nd of 2016, that he in sum and substance did receive, prepare information and documents pertaining to the investigation of Plaintiff. Defendant Smith is an agent, employee and subordinate under the control and supervision of defendant Wilbor Ross, Secretary

of the ("Commerce Department") who maintains an office at 1401 Constitution Avenue, NW, Washington, DC 20230

9. Defendant, Craig Phildius, is and was at all times mentioned herein employed as an agent and Export Control Officer with the ("Commerce Department") which included traveling from his base of operations in Duba to Istanbul, Turkey to examine reports, documents, interview persons, as well, as personally prepare reports and documents as part of an investigation against Plaintiff as testified to by defendant Thomas F. Smith on May 1st and 2nd 2017. Defendant Phildius is an agent and employee of the defendant Wilbur Ross, who maintains his principal office at 1401 Constitution Avenue, NW, Washington, DC 20230.

10. At all time mentioned herein each of the named defendants acted individually and at time jointly as agents or employees of the United States, under authority allegedly granted them by law.

III. FACTS

11. On March 1, 2016, Plaintiff Erdal Kuyumcu a naturalized United States citizen and native of Turkey, who was a resident of New York State and chief executive officer and founder of Global Metallurgy, LLC ("Global Metallurgy") based in Woodside, Newyork, was arrested by agents of the ("FBI").

12. Plaintiff was arrested and his property searched upon an arrest and search warrant authorized by a United States Magistrate Judge upon the sworn affidavit of defendant Steven Jefferson, a special agent of the ("FBI").

13. Defendant Jefferson averred to in his February 18, 2016, affidavit to his above-referenced application for an arrest and search warrant of the Plaintiff property that he "personally participated in this investigation. I am familiar with the facts and circumstances of this investigation from: (a) my personal participation in this investigation, (b) reports made to me by other law enforcement authorities involved in the criminal investigation, (c) interviews with witnesses, and (d) my review of other records, reports and publicly-available or "open source" information. I have also reviewed documents obtained pursuant to court-authorized search warrants, including emails..."

14. Plaintiff was charged with violations of 50 U.S.C. Section 1705, Conspiracy to violate the International Economic Emergency Powers Act by allegedly knowingly circumventing the law to transport/export a metallic powder. i.e., CoNiCrAlY ("Colbolt Compound") to Iran.

15. On May 1st and 2nd 2017, the defendant Thomas F. Smith, an

agent and employee of the United States Department of Commerce testified in his position as a Special Agent in the Office of Export Enforcement in the United States District Court, Eastern District of New York.

16. That during defendant Smith's 5-1-2017 and 5-2-2017, testimony he similar to defendant Jefferson stated under oath to having examined witnesses, prepared documents and participated in the investigation of plaintiff, including having directly interacted with defendant Craig Phildius, an Export Control Officer with the ("Commerce Department").

17. Plaintiff was sentenced upon a guilty plea to 57 months incarceration and 3 years supervised release on September 17, 2017. see attached exhibit (f).

18. Plaintiff exercised his right to appeal his conviction and in doing so, file a timely notice of appeal, to the United States Court of Appeals for the Second Circuit.

19. That subsequent to filing a direct appeal, plaintiff sought information and documents sworn by defendants Jefferson and Smith to have been prepared, possessed and/or examined by these defendants via plaintiff requests under the Freedom of Information Act or hereinafter referred to as ("FOIA").

20. Notwithstanding defendants sworn averments by way of direct testimony in the district court on May 1st and 2nd of 2017, as well as, defendants February 18, 2016, affidavit to a search warrant, to having prepared and examined documents, as well as, interviewed witnesses relative to their investigations of plaintiff, the defendants and their respective agencies and departments have denied plaintiff's request. Kindly, refer to plaintiff's hereto attached exhibits (a), (b), and (c).

21. Exclusive of defendants repeated denials of having any such documents that defendants swore to exist, plaintiff did receive a meager 86 pages of documents, which consisted of many duplicated pages.

22. Defendants denial of having documents that they themselves swore to have examined and/or prepared, as demonstrated by the hereto attached exhibits (d) and (e) that is defendants Jefferson's February 18, 2016 affidavit at page number 2, and paragraph 2, and defendant Smith's May 1st and 2nd 2017, testimony at plaintiff's ("Fatico") hearing respectively.

23. That the information and documents sought by Plaintiff pursuant to ("FOIA") are needed by Plaintiff as he continues to prove his actual innocence in a proposed future habeas petition. Defendant's acts represent a conspiracy post-September 11, 2001, to conduct unlawful and discriminatory targeting of Turkish Muslim business persons for violations of the Iranian Embargo of 2012, relying upon fraudulent information and documents to seek arrest and search warrants of such persons.

IV. Exhaustion of Legal Remedies

24. Plaintiff Erdal Kuyumcu used the appellate process of defendants respective agencies and/or departments to i.e. the ("Commerce Department") ("Attorney General's Office"), and the ("F.B.I.") in a good faith attempt to receive information and documents these defendants sworn they had reviewed, prepared and/or had custody and control of in both federal court and in affidavits swore to have, as plaintiff's hereto attached exhibits demonstrate. Plaintiff has exhausted all administrative remedies provided by defendants and therefore has no other legal course of action other than seeking judicial intervention by way of this civil action.

V. Legal Claims

25. Plaintiff reallege and incorporate by reference paragraphs number one through twenty-two of this complaint.

26. The defendants have deliberately engaged individually and jointly in a conspiracy in violation of the ("FOIA") to deprive plaintiff of documents and information pertaining to their investigations, arrest, and searches of plaintiff and his properties, equipment, and records, including emails.

27. Defendants have further acted individually and jointly in a continuing conspiracy as defined in 42 U.S.C. Sections 1985 and 1986 to deprive plaintiff of his Constitutionally guaranteed rights under the ("FOIA") to examine, receive, and copy the documents and/or information requested in his request to defendants and their respective agencies and departments.

28. Defendants have individually and jointly by their deliberate actions conspired in violation of Title 42 U.S.C. Sections 1983 ("Bivens Action"), 1985, 1986, as well as, the 14th Amendment to the equal protection and Due Process of the Law.

29. The plaintiff has no plain,adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of the defendants unless this Court grants the declaratory and injunctive relief which plaintiff seeks.

VI. Prayer for Relief

WHEREFORE, plaintiff respectfully prays this Court enter judgment granting plaintiff:

30. A declaration that the acts and omissions described herein violated plaintiff's rights under the Constitution and Laws of the

United States.

31. A preliminary and permanent injunction ordering defendants to stop interfering with his access to information and documents that plaintiff has legally requested pursuant to the ("FOIA").

32. Compensatory damages in the amount of \$1,000,000 against each defendant, jointly and severally.

33. Punitive damages in the amount of \$1,000,000 against each defendant.

34. a jury trial on all issues triable by jury.

35. Plaintiff's cost of suit.

36. Any additional relief.

37. That an Order issue for assignment of a ("FISA") Judge should defendants raise concerns of classified privileges, and for such other and further relief, this Court deems just, proper, and equitable.

RESPECTFULLY SUBMITTED,

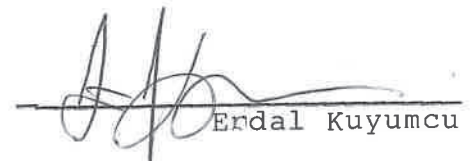
DATED: 03/30/2020


Erdal Kuyumcu

VERIFICATION

I have read the foregoing complaint and hereby verify that the matter alleged therein are true, except as to those matters alleged on information and belief, and, as to those, I believe them to be true. I certify under penalty of perjury that the foregoing are true and correct.

Executed at F.C.I. Fort Dix,
New Jersey on March 30, 2020


Erdal Kuyumcu