

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Erazo VARGAS

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY;
U.S. CITIZENSHIP AND IMMIGRATION SERVICES;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Defendants.

Case No. 20-cv-5464

**Complaint for Declaratory
and Injunctive Relief
Under the Freedom of
Information Act**

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COMPLAINT

Plaintiff files this complaint for declaratory and injunctive relief to compel Defendants to disclose and release agency records improperly withheld that have been requested by Plaintiff through Freedom of Information Act requests: ICE FOIA Case Numbers 2020-ICFO-24152 and 2020-ICAP-00242; and USCIS Control Number NRC2020078769.

INTRODUCTION

1. Plaintiff brings this action to redress violations of the Administrative Procedure Act (“APA”), and the Freedom of Information Act (“FOIA”). Defendants have failed to timely respond to Plaintiff’s FOIA requests and have failed to provide all documents requested.
2. Defendants are unlawfully withholding information sought by the Plaintiff. Defendants are unlawfully withholding information which Plaintiff is entitled to. No valid disclosure exemption allows Defendants to withhold the requested information. Defendants have failed to comply with the statutory mandates and deadlines imposed by the FOIA.

JURISDICTION

3. This Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 552(a)(4)(B) and (a)(6)(E) (iv) (Freedom of Information Act), 5 U.S.C. § 702, 704 and 706 (Administrative Procedure Act), and 28 U.S.C. §§ 1331 (federal question) and 1346 (United States as defendant).
4. The aid of the Court is invoked under 28 U.S.C. §§ 2201 and 2202, authorizing a declaratory judgment.

VENUE

5. Venue is proper in the Northern District of Illinois, Eastern Division because Plaintiff resides in Park City, Illinois. 5 U.S.C. § 552(a)(4)(B). A substantial part of the events giving rise to the instant claim occurred within this judicial district.

REMEDY SOUGHT

6. Plaintiff seeks a Court order compelling Defendants to provide copies of documents requested in the FOIA requests and in a timely manner.

PARTIES

7. Plaintiff, Jairo Erazo Vargas, alien registration number: A215 809 473, resides in Park City, Illinois. He is the subject of records held by Defendants and sought by Plaintiff.
8. Defendant, U.S. Department of Homeland Security (“DHS”) is the federal agency responsible for securing the nation’s borders, in part by enforcing federal immigration laws and managing the immigration process. DHS is an agency within the meaning of 5 U.S.C. § 552(f). DHS has possession, custody, and control of records to which Plaintiff seeks access.
9. Defendant, U.S. Citizenship and Immigration Services (“USCIS”), a component entity of DHS, is responsible for the administration of immigration and naturalization adjudication, establishing immigration services, policies, and priorities, and has custody and control of alien registration files. USCIS is an agency within the meaning of 5 U.S.C. §552(f). USCIS has possession, custody, and control of records to which Plaintiff seeks access.
10. Defendant, U.S. Immigration and Customs Enforcement (“ICE”), a component agency within the DHS, is responsible for enforcing federal immigration statutes. ICE is an agency within the meaning of 5 U.S.C. §552(f). ICE has possession, custody, and control of records to which the Plaintiff access.

EXHAUSTION OF ADMINISTRATION REMEDIES

11. Plaintiff exhausted administrative remedies by completing Defendant’s administrative appeal process for all final FOIA request decisions issued by Defendants pertaining to Plaintiff’s

requests. Plaintiff is deemed to have exhausted administrative remedies where Defendants have not responded within the prescribed statutory period. 5 U.S.C. § 552(a)(6)(C)(i).

FACTUAL ALLEGATIONS

12. On November 21, 2019, Mr. Erazo Vargas was detained by immigration enforcement officials outside his home in Park City, Illinois.
13. On November 22, 2019, Mr. Erazo Vargas was processed at the ICE Field Office in Chicago, Illinois where he was questioned and released.
14. On November 22, 2019, the DHS issued Mr. Erazo Vargas a Notice to Appear in removal proceedings under section 240 of the Immigration and Nationality Act.
15. The Notice to Appear stated Mr. Erazo Vargas's first hearing in Immigration Court will be December 4, 2020.

ICE FOIA Requests 2020-ICFO-24152 and Appeal 2020-ICAP-00242

16. On February 18, 2020, Mr. Erazo Vargas, through counsel, submitted a FOIA request to ICE, Freedom of Information Act Office requesting:

[A]ll documents of any kind relating to and on behalf of: Jairo Erazo Vargas . . . Documents must include: all documents referencing November 21 and/or 22, 2019 encounter with the subject, including but not limited to: warrants for arrest or search, custody determinations, booking sheets, officer notes pertaining to encounter, narrative reports, forms, reports and notes for any and all conversations with the subject and any witnesses, documents describing the basis for probable cause to arrest subject, communications or documents regarding communications with local police pertaining to the encounter.

17. On March 11, 2020, ICE responded to the February 18, 2020 request by providing a letter stating a search “produced 5 pages that are responsive,” and provided five pages of an EARM Case Summary, Person History and View Encounter Summary printout with redactions.

18. On March 13, 2020, Mr. Erazo Vargas appealed the March 11, 2020 response on the basis that ICE did not conduct an adequate search and did not release all the requested documents. In the appeal, Mr. Erazo Vargas further noted ICE did not turn over documents that were explicitly identified in the five pages of documents ICE initially produced.
19. On April 9, 2020, ICE stated it was responding to the appeal and no additional records were available.
20. To date, in spite of Mr. Erazo Vargas's request and appeal, ICE has not provided all requested documents.

USCIS FOIA Request NRC2020078769

21. On May 19, 2020, Mr. Erazo Vargas, through counsel, submitted a FOIA request to USCIS, Freedom of Information Act Office requesting "copies of all documents of any kind, including the complete 'A' file, relating to" Mr. Erazo Vargas.
22. In a letter dated May 26, 2020, USCIS invoked the ten day extension to respond under 5 U.S.C. § 552(a)(6)(B). USCIS also stated the FOIA request was placed on the complex track (Track 2), and that it would not be placed on the Track Three priority processing without a notice to appear showing a future scheduled date for a removal proceeding hearing.
23. On August 20, 2020, Mr. Erazo Vargas submitted a Notice to Appear, showing his next removal proceeding hearing is December 3, 2020, to USCIS and requested his FOIA request be moved to Track Three priority processing.
24. On August 21, 2020, USCIS confirmed the FOIA request was placed on Track III processing, but gave no new estimated completion date.
25. On September 2, 2020, an inquiry was submitted to USCIS requesting an updated estimated date of completion.

26. On September 2, 2020, USCIS replied to the September 2, 2020 inquiry stating it was waiting for records, and gave no estimated completion date.
27. A FOIA/PA Status Check on September 15, 2020 through first.uscis.gov shows this request was estimated to be completed by June 12, 2020.
28. More than 30 business days have passed since the May 19, 2020 FOIA request, and USCIS has not provided a proper response or records.
29. Mr. Erazo Vargas has a right under 5 U.S.C. § 552a(d) to the records requested in the ICE and USCIS FOIA requests because they pertain specifically to him.
30. Mr. Erazo Vargas has an interest in the records request because he must prepare for his removal proceedings and there is information in the records needed for that preparation.

CLAIMS FOR RELIEF

Count One

VIOLATION OF FOIA: FAILURE TO PROVIDE RECORDS

31. Plaintiff re-alleges and incorporates by reference paragraphs 1-30 as if fully set forth herein.
32. Defendants violated the FOIA by failing to produce all non-exempt records responsive to Plaintiff's FOIA requests within the twenty (20) day time period set forth at 5 U.S.C. § 552(a)(6)(A) and 6 C.F.R. § 5.6(c).

Count Two

VIOLATION OF FOIA: FAILURE TO PROVIDE RECORDS

33. Plaintiff re-alleges and incorporates by reference paragraphs 1-30 as if fully set forth herein.
34. Defendants violated the FOIA by failing to produce any and all non-exempt records responsive to Plaintiff's FOIA request within the additional ten (10) day time period set forth at 5 U.S.C. § 552(a)(6)(B) and 6 C.F.R. § 5.5(c).

Count Three

VIOLATION OF FOIA: FAILURE TO SHOW UNUSUAL OR EXCEPTIONAL CIRCUMSTANCES

35. Plaintiff re-alleges and incorporates by reference paragraphs 1-30 as if fully set forth herein.
36. Defendants failed to provide adequate written explanation that constitute “unusual circumstances” needed to extend time to respond to Plaintiff’s FOIA requests, and failed to provide the date on which a determination is expected to be dispatched as set forth in 5 U.S.C. §§ 552(a)(6)(B) and (C).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court:

- A. Assume jurisdiction over this matter;
- B. Find that Defendants violated 5 U.S.C. §§ 552(a)(6)(A) and (B) and 6 C.F.R. §§ 5.5(c) and 5.6(c) by failing to provide a timely response to Plaintiff’s FOIA requests;
- C. Find that Defendants violated 5 U.S.C. § 552(a)(6)(B) and 6 C.F.R. § 5.6(b) by failing to provide adequate notice within twenty (20) days of the “unusual circumstances” that prevented Defendants from processing Plaintiff’s FOIA requests in a timely fashion;
- D. Find that Defendants violated 5 U.S.C. § 552(a)(6)(B) by failing to provide the date on which a determination is expected to be dispatched;
- E. Order Defendants to conduct an adequate search for all agency records responsive to Plaintiff’s FOIA requests;
- F. Enjoin Defendants from withholding any and all nonexempt records responsive to Plaintiff’s FOIA requests;
- G. Order Defendants provide Plaintiff with copies of the requested records;
- H. Award Plaintiff reasonable litigation costs and attorney’s fees pursuant to 5 U.S.C. § 552(a)(4)(E); and

I. Grant such other and further relief as the Court deems just and proper.

Dated: September 15, 2020.

Respectfully submitted by Plaintiffs through Counsel:

/s/Christopher Elmore

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