

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

UNIDAD LATINA EN ACCIÓN and
JUNTA FOR PROGRESSIVE ACTION, INC.,

Plaintiffs,

v.

U.S. DEPARTMENT OF STATE and
U.S. DEPARTMENT OF JUSTICE,

Defendants.

Civ. No. 3:07-cv-01478-MRK
(Hon. Mark Kravitz)

Tuesday, November 6, 2007

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., for declaratory and injunctive relief to compel the disclosure and release of agency records improperly withheld from Plaintiffs by the U.S. Department of State and the U.S. Department of Justice (collectively, "Defendants").

2. Plaintiffs seek to compel the release of records on a matter of public concern, namely, Defendants' participation in enforcement of civil immigration law in and around New Haven, Connecticut. In particular, Plaintiffs seek to compel the release of records regarding the arrest of twenty-nine individuals in and around New Haven, Connecticut, on June 6, 2007. Records already received from the U.S. Department of Homeland Security ("DHS") indicate that employees of both of Defendant agencies participated in carrying out the June 6 operation. The disclosure of the requested records will help inform public debate about these issues.

JURISDICTION AND VENUE

3. This court has jurisdiction over this matter pursuant to the FOIA, 5 U.S.C. § 552(a)(4)(B), and 28 U.S.C. §§ 1331 and 1361.

4. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1391(e) and 1402(a)(1), as all of the Plaintiffs reside in the District of Connecticut.

PARTIES

5. Plaintiff Unidad Latina en Acción (“ULA”) is an unincorporated association fighting for immigrants’ rights in New Haven, Connecticut. The office and principal place of business of ULA is in New Haven, Connecticut.

6. Plaintiff Junta for Progressive Action, Inc. (“JUNTA”) is a community-based non-profit in New Haven, Connecticut. It provides free financial services, educational programs and advocacy in order to improve the social, political, and economic conditions of the Latino community in the New Haven area. The office and principal place of business of JUNTA is in New Haven, Connecticut.

7. Defendant U.S. Department of State (“State Department”) is an agency of the United States government, within the meaning of 5 U.S.C. § 552(f).

8. Defendant U.S. Department of Justice (“Justice Department”) is an agency of the United States government, within the meaning of 5 U.S.C. § 552(f).

STATEMENT OF FACTS

The Arrest of Twenty-Nine Individuals on June 6, 2007

9. On June 6, 2007, DHS led an immigration enforcement operation that resulted in the arrest of twenty-nine men and women in and around New Haven, Connecticut.

10. Records already received from DHS indicate that State Department employees from the Diplomatic Security Service participated in this enforcement operation.

11. Likewise, records already received from DHS indicate that Justice Department employees from the United States Marshals Service participated in this enforcement operation.

12. Information regarding State Department and Justice Department participation in the immigration enforcement operation of June 6, 2007 is of public concern. Plaintiffs seek to determine whether this operation was carried out in accordance with applicable federal, state, and local statutes and regulations. Moreover, Plaintiffs seek to determine why the State Department and Justice Department are engaged in enforcement of civil immigration laws on U.S. soil—which, pursuant to statute, should be the exclusive responsibility of DHS.

Plaintiffs' FOIA Request to the State Department

13. By letter to the State Department dated July 12, 2007, Plaintiffs submitted a FOIA request for various records relating to the arrests that took place on June 6, 2007. A copy of that letter is attached to this amended complaint as Exhibit A.

14. Plaintiffs sent the FOIA request to the State Department by FedEx "Priority Overnight" on July 12, 2007. An employee of Defendant State Department received and signed for the request on July 13, 2007.

15. On September 18, 2007, the State Department responded by letter, acknowledging receipt of Plaintiffs' FOIA request and stating, "We will begin the processing of your request We will notify you as soon as responsive material has been retrieved and reviewed."

16. On October 3, 2007, law student intern Simon Moshenberg spoke with Donald Besom, a State Department employee, by telephone. Mr. Besom represented to Mr. Moshenberg that the State Department had not yet begun to search for records responsive to Plaintiffs' request.

17. Since October 3, 2007, neither Plaintiffs nor Plaintiffs' counsel has any further communication or correspondence with Mr. Besom, or with any other State Department official or employee.

18. To date, the State Department has not provided the records requested by Plaintiffs in their FOIA request, notwithstanding the FOIA's requirement of an agency response within twenty (20) working days. See 5 U.S.C. § 552(a)(6)(A)(i).

19. Due to the State Department's failure to respond to the FOIA request, Plaintiffs have automatically exhausted the applicable administrative remedies with respect to their FOIA request to the State Department. See 5 U.S.C. § 552(a)(6)(C)(i).

20. The State Department has wrongfully withheld the requested records from Plaintiffs.

Plaintiffs' FOIA Request to the Justice Department

21. By letter to the Justice Department dated July 12, 2007, Plaintiffs submitted a FOIA request for various records relating to the arrests that took place on June 6, 2007. A copy of that letter is attached to this amended complaint as Exhibit B.

22. Plaintiffs sent the FOIA request to the Justice Department by FedEx "Priority Overnight" on July 12, 2007. An employee of Defendant Justice Department received and signed for the letter on July 16, 2007.

23. On July 16, 2007, the Justice Department responded by letter, denying Plaintiffs' request in whole.

24. The Justice Department denial letter made reference to Exemption 7(C), for personal information—ignoring the fact that personal information can often be redacted from otherwise-disclosable responsive records, and also ignoring the fact that many responsive records would likely not contain any personal information whatsoever. Without actually searching for responsive records and reviewing them, the Justice Department would have no way of knowing whether Exemption 7(C), or any other exemption, did or did not apply.

25. On July 31, Plaintiffs wrote a letter to the Justice Department, filing an administrative appeal. A copy of that letter is attached to this amended complaint as Exhibit C.

26. Plaintiffs sent the administrative appeal to the Justice Department by FedEx “Priority Overnight” on July 31, 2007. An employee of Defendant Justice Department received and signed for the administrative appeal on August 1, 2007.

27. On September 25, 2007, the Justice Department denied Plaintiffs’ administrative appeal—again citing Exemption 7(C), and again ignoring the fact that many responsive records could be redacted or likely would not contain any personal information whatsoever.

28. On October 5, 2007, Plaintiffs filed this action in the United States District Court for the District of Connecticut.

29. On October 22, 2007, pursuant to conversations held between Plaintiffs’ counsel and counsel for the Justice Department, Assistant U.S. Attorney Victoria Shin, the Justice Department sent Plaintiffs a two-page cover letter, plus 33 pages of redacted documents. The cover letter states that a total of 63 pages were located or referred from another agency, and 30 were withheld in their entirety. The October 22, 2007 cover letter plus 33-page attachment are attached to this amended complaint as Exhibit D.

30. In redacting the 33 pages of disclosed records, the Justice Department has applied FOIA exemptions that are not appropriate, and otherwise wrongfully failed to provide Plaintiffs with the records (and segregable portions thereof) that they requested, pursuant to the FOIA.

31. In withholding 30 pages of records in their entirety, the Justice Department has applied FOIA exemptions that are not appropriate, and otherwise wrongfully failed to provide Plaintiffs with the records (and segregable portions thereof) that they requested, pursuant to the FOIA.

32. The Justice Department has wrongfully withheld the requested records from Plaintiffs.

FIRST CLAIM FOR RELIEF:
Defendant State Department Failed to Disclose and Release Records
Responsive to Plaintiff's FOIA Request

33. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 32 as if repeated and reincorporated herein.

34. The State Department has violated Plaintiffs' rights to State Department records under 5 U.S.C. § 552.

SECOND CLAIM FOR RELIEF:
Defendant State Department Failed to Affirmatively Disclose Records
Responsive to Plaintiff's FOIA Request

35. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 32 as if repeated and reincorporated herein.

36. Defendant State Department's failure to make its records available to the public violates 5 U.S.C. §§ 552(a)(1), (a)(2).

THIRD CLAIM FOR RELIEF:

**Defendant Justice Department Failed to Disclose and Release Records
Responsive to Plaintiff's FOIA Request**

37. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 32 as if repeated and reincorporated herein.

38. The Justice Department has violated Plaintiffs' rights to Justice Department records under 5 U.S.C. § 552.

**FOURTH CLAIM FOR RELIEF:
Defendant Justice Department Failed to Affirmatively Disclose Records
Responsive to Plaintiff's FOIA Request**

39. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 32 as if repeated and reincorporated herein.

40. Defendant Justice Department's failure to make its records available to the public violates 5 U.S.C. §§ 552(a)(1), (a)(2).

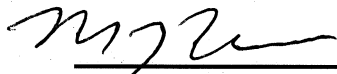
Requested Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Order Defendants to disclose the requested records in their entireties and to make copies available to Plaintiffs;
- 3) Provide for expeditious proceedings in this action;
- 4) Award Plaintiffs costs and reasonable attorneys' fees in this action as provided by 5 U.S.C. § 552(a)(4)(E); and
- 5) Grant any other relief the Court deems appropriate.

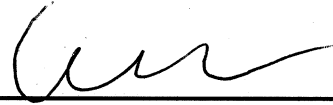
Respectfully submitted,

Dated: 11/6/07
New Haven, Connecticut



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