

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI**

THE STATE OF MISSOURI,)
ex rel. ANDREW BAILEY, in his official)
capacity as Missouri Attorney General,)

Plaintiff,)

v.)

Case No. _____

UNITED STATES DEPARTMENT OF)
HOMELAND SECURITY,)

Defendant.)

COMPLAINT

1. Andrew Bailey, Representing the State of Missouri (“Plaintiff”), brings this action against the United States Department of Homeland Security (“DHS” or “Defendant”). This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from Plaintiff by Defendant.

NATURE OF THE ACTION

2. The Missouri Attorney General’s Office (“AGO”) has reason to believe the Biden Administration is deliberately flying illegal aliens from the border to the interior of the country and has sought to gain public records on behalf of Missouri citizens but has been met with federal interference. Instead

of promptly providing the AGO with the requested documents, the Department of Homeland Security (DHS) has belatedly responded with a denial of this request based on a clearly erroneous reading of the AGO's FOIA request. This game of "hide and seek" violates the spirit and the letter of FOIA, which states that an agency shall withhold information only when the agency "reasonably foresees that disclosure would harm an interest protected by an exemption" or if "disclosure is prohibited by law."

3. FOIA is designed to create transparency within the federal government. DHS's withholding of crucial information has frustrated the ability of citizens to exercise the rights Congress outlined in the FOIA statute. This lack of transparency and refusal to comply with lawful FOIA demands has hindered efforts by the Missouri Attorney General's Office to determine the size and scope of illegal immigration within the Show Me state.

4. On information and belief, DHS has obstructed the AGO's lawful attempts to acquire public records regarding the transportation of illegal immigrants into the State of Missouri. Despite lawful requests made by the AGO for these public records under FOIA, DHS has refused to comply. This refusal thwarts the AGO's ability to ensure the safety and security of Missouri citizens. The transportation of illegal immigrants into Missouri is a matter of public concern, and the citizens of Missouri have a right to know the facts about these alleged activities.

5. In seeking to find public records held by the federal government, the Missouri Attorney General's Office has access to resources that are often not available to private citizens. This includes the benefit of attorneys and support staff who are able to advocate on behalf of the State of Missouri and to file FOIA requests on matters of public concern. However, if federal agencies are allowed to sidestep requests even by the AGO and avoid producing the requested documents, citizens have little hope in taking full advantage of the rights that are granted under FOIA. The actions of the DHS are only the tip of the iceberg and reflect a larger pattern and practice whereby federal agencies use delay and diversion to avoid producing documents requested under FOIA.

JURISDICTION AND VENUE

6. This case seeks declaratory, injunctive, and other appropriate relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02; FOIA, 5 U.S.C. § 552(a)(4)(B); and Federal Rule of Civil Procedure 57.

7. This court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

8. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B), as Plaintiff State of Missouri resides in the Eastern Division of the Eastern District of Missouri. Missouri is a resident of every judicial district and division within its sovereign territory, including this judicial district and division. *See, e.g.,*

Texas v. Garland, 2023 WL 4851893, at *3 (N.D. Tex. July 28, 2023) (noting that a “state resides at every point within its boundaries”) (brackets accepted) (quoting *Atlanta & F.R. Co. v. W. Ry. Co. of Ala.*, 50 F. 790, 791 (5th Cir. 1892)); see also *Florida v. United States*, No. 3:21-cv-1066, 2022 WL 2431443, at *2 (N.D. Fla. Jan. 18, 2022) (“It is well established that a state ‘resides at every point within its boundaries.’” (brackets accepted) (quoting *Atlanta & F.R. Co.*, 50 F. at 791)); *California v. Azar*, 911 F.3d 558, 569–70 (9th Cir. 2018) (“[A] state with multiple judicial districts ‘resides’ in every district within its borders.”); *Utah v. Walsh*, No. 2:23-CV-016-Z, 2023 WL 2663256, at *3 (N.D. Tex. Mar. 28, 2023) (“Texas resides everywhere in Texas.”); *Alabama v. U.S. Army Corps of Eng’rs*, 382 F. Supp. 2d 1301, 1329 (N.D. Ala. 2005) (“[C]ommon sense dictates that a state resides throughout its sovereign borders.”).

PARTIES

9. Plaintiff State of Missouri is a sovereign state of the United States, and Andrew Bailey is the Missouri Attorney General, who represents and is the relator for the State of Missouri in this action.

10. Upon information and belief, the Department of Homeland Security (DHS) is a cabinet-level agency of the United States of America with its principal place of business located 2707 Martin Luther King Jr Ave SE, Washington, DC 20528-0525 and is a federal agency within the meaning of 5 U.S.C. § 552(f).

STATUTORY FRAMEWORK

11. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records that are “reasonably describe[d]” in the request to the public unless one or more specific statutory exemptions apply. *Id.* at § 552(a)(3)(A) (reasonable description), (b) (exemptions).

12. An agency must respond to a party making a FOIA request within twenty (20) working days, notifying that party of at least the agency’s determination whether or not to fulfill the request and of the requestor’s right to appeal the agency’s determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

13. An agency may extend the 20-day limit by notifying the requestor in writing of “unusual circumstances” necessitating an extension and the date on which a determination of the request is expected. 5 U.S.C. § 552(a)(6)(B)(i).

14. An agency’s failure to comply with any timing requirements is a constructive denial and satisfies the requester’s requirement to exhaust administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

15. This Court has jurisdiction, upon receipt of a complaint to “...enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

16. The FOIA requires federal government agencies to release

requested agency records to the public unless one or more specific statutory exemptions apply. 5 U.S.C. § 552(a)(3)(A).

17. FOIA states:

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term 'search' means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request. 5 U.S.C.A. § 552(a)(3).

FACTS

18. By request submitted via FOIA.gov portal and e-mailed to: foia@hq.dhs.gov dated June 15, 2022, Plaintiff asked DHS for documents and communications lawfully due under FOIA. The request (a true and correct copy of which is attached as Exhibit A) was narrowly scripted to include only the following materials:

a. All communications and documents relating to the number of planes used to transport non-citizens from Arizona, California, New Mexico, and Texas into or within the interior United States. (This search may be limited in time from January 20, 2021 to the date of this request for records).

b. All communications and documents relating to the transportation of non-citizens on aircraft into or within the State of Missouri.

c. All communications and documents delineating the cost of flying non-citizens from Arizona, California, New Mexico, and Texas into or within the interior United States. (This search may be limited in time from January 20, 2021 to the date of this request for records).

d. All communications and documents relating to the flying of non-citizens from Del-Rio International Airport in Texas into or within the interior United States.

e. All communications and documents relating to the flying of non-citizens and including, but not limited to, the following humanitarian groups: the Val Verde Border Humanitarian Coalition, the Interfaith Welcome Coalition, or El Buen Samaritano Migrante.

19. Plaintiff submitted the FOIA by both email and via the portal established by DHS in order to make sure the request for information was received. Rather than treating Plaintiff's FOIA as a single request, DHS created a confusing system which made tracking the progress of the request unnecessarily difficult. Upon information and belief, DHS created two FOIA files, assigning Plaintiff's identical FOIA request two distinct tracking numbers.

FOIA Request Assigned Tracking # 2022-ICFO-24422

20. On July 22, 2022, DHS sent Plaintiff email notifications of the receipt of the FOIA request and assigned tracking # 2022-HQFO-01439.

21. Also on July 22, 2022, DHS sent a “final response” to Plaintiff’s FOIA in the form of a letter acknowledging receipt of the request. The letter announced that “Due to the subject matter of your request, I am transferring this request to the FOIA Officer for U.S. Immigration and Customs Enforcement (ICE), for processing under the FOIA and direct response to you.”

22. Moments later, at 3:17 p.m. (CDT), Plaintiff received electronic notification that the status of “FOIA request # 2022-HQFO-01439” was now ‘in process’. At 3:18 p.m., yet another electronic notification was received from DHS/ICE stating that the FOIA request was now ‘closed’.

23. Upon information and belief, Plaintiff’s FOIA request previously assigned tracking #2022-HQFO-01439 was transferred to DHS/ICE and assigned a new tracking number, #2022-ICFO-24422.

24. On July 27, 2022, Plaintiff received notice that FOIA #2022-ICFO-24422 was received by DHS/ICE on July 22. DHS/ICE stated in the notice that “Although ICE’s goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period....ICE will invoke a 10-day extension for your request...”

25. DHS/ICE did not further respond to Plaintiff’s request for nearly five months. On December 23, 2023, ICE messaged Plaintiff asking for

“further clarification” regarding Plaintiff’s original FOIA request. Yet, far from seeking mere “clarification”, ICE rephrased Plaintiff’s FOIA request in such a way as to side-step Plaintiff’s actual request and substitute it with one created out of whole cloth by ICE.

26. DHS/ICE asked five so-called “clarification” questions, each of which related only to “ICE Air”, claiming, among other things, that ICE Air does not relocate or resettle non-citizens, nor utilize the Del Rio International Airport.

27. Plaintiff’s actual FOIA never mentioned the term “ICE Air” and indeed to do so would have been unnecessarily restrictive. Plaintiff’s FOIA asked for “All communications and documents delineating the cost of flying non-citizens from [various border states] into or within the interior United States.” The term “flying” was defined in the FOIA as “the use of an airplane... *or airline companies (including , but not limited to American Airlines), military or any other aircraft ...*” (emphasis added). By rephrasing Plaintiff’s request for information as relating only to “ICE Air”, DHS/ICE invented a question that Plaintiff never asked and thereby constructively refused to respond to Plaintiff’s lawful FOIA.

28. Furthermore, in DHS/ICE’s belated December 23, 2023, response, their purported attempt at a “clarification” of Plaintiff’s June 15, 2022, FOIA further obfuscated and obstructed Plaintiff’s attempt to receive information.

DHS/ICE stated that the FOIA was overbroad and burdensome, incorrectly claiming that “as it stands now, you are asking for *every single email ever received or sent* by ICE Air.” (emphasis added). DHS/ICE warned that if no response was given within 30 days, the FOIA request would be closed.

29. Plaintiff’s FOIA was calculated to be reasonable, targeted, and limited in scope. DHS/ICE’s attempt to create “straw man” clarifications and then refuse to provide documents in response to its own invented questions (while at the same time characterizing Plaintiff’s request as being unreasonable) operated as a refusal to provide documents. Plaintiff has not received any additional communications in relation to FOIA request #2022-ICFO-24422 since December 23, 2023.

FOIA Request Assigned Tracking # 2022-ICFO-20250

30. Although DHS’s system of assigning tracking numbers is unnecessarily cumbersome and confusing, on information and belief, Plaintiff’s original FOIA request to DHS on June 22, 2022, was assigned an additional tracking number and processed. On June 15, 2022, Plaintiff received electronic notification from DHS that the FOIA request had been received and had been assigned request number 2022-ICFO-20250.

31. For nearly seven months, Plaintiff had no update from DHS/ICE until ICE sent Plaintiff a memorandum on February 24, 2023, acknowledging the FOIA request and explaining that the request was determined to be “too

broad in scope”, therefore “placing an unreasonable burden on the agency” to locate the requested records. ICE demanded Plaintiff resubmit their request containing a “reasonable description” of the records being sought within the next 30 days or else the FOIA request would be closed.

32. Also on February 24, 2023, DHS sent the Plaintiff a message that the status of the FOIA request had been changed to the status “On Hold — Need Info/Clarification.”

33. Despite the threat by DHS/ICE to close Plaintiff’s FOIA request #2022-ICFO-20250, the agency continued to keep the request open. Over a year later, on May 8, 2024, DHS sent an electronic message requesting clarification of Plaintiff’s original June 15, 2022, FOIA “related to ICE transports by airplane”. DHS/ICE sought clarification as to whether each bullet of Plaintiff’s five-part FOIA request should be searched from January 20, 2021 through June 15, 2022. DHS warned that if no response was provided within 30 days, the FOIA request would be administratively closed.

34. The following day (May 9, 2024), Plaintiff promptly responded to DHS/ICE, confirming that the entirety of the FOIA request was limited to a search between the dates January 20, 2021 through June 15, 2022.

35. In spite of Plaintiff’s continuing efforts to gain access to documents of immense public interest that are lawfully due under the federal FOIA law, DHS/ICE has continued to obstruct this effort. Indeed, DHS/ICE has not

responded further to Plaintiff's # 2022-ICFO-20250 FOIA request since May 8, 2024.

FOIA Request Assigned Tracking # 2024-ICFO-25911

36. As part of Plaintiff's continuing efforts to access documents relating to the Biden Administration's efforts to fly illegal aliens into the interior of the country, on March 7, 2024, Plaintiff sent DHS/ICE an additional, revised FOIA request, similar to the original one sent on June 15, 2022. This revised FOIA request directly addressed DHS's mischaracterization of Plaintiff's original FOIA from June of 2022 (as set forth in paragraphs 25-28 above). A true and correct copy of which is attached as **Exhibit B**.

37. On March 20, 2024, DHS sent an email to Plaintiff, acknowledging the revised FOIA request and assigning yet another tracking number (#2024-ICFO-25911). Despite previously transferring Plaintiff's substantially similar FOIA request (#2022-HQFO-01439) to ICE to process, DHS now determined that the records requested by Plaintiff were under the purview of U.S. Customs and Border Protection. This inexplicable decision to refer Plaintiff's substantially similar FOIA request to yet another agency within DHS highlights the maze-like nature of DHS' FOIA process.

38. Plaintiff's March 7, 2024, FOIA (assigned tracking #2024-ICFO-25911), represented a good-faith effort to further narrow and tailor Plaintiff's original June 15, 2022 FOIA. Specifically, the revised FOIA was limited to

documents and communications relating to the transportation of non-citizens into or within the State of Missouri. Furthermore, each request was targeted to a narrow date range of less than three months in scope (January 1, 2024 to March 7, 2024). Yet despite this reasonable attempt to meet DHS halfway, Plaintiff has received no documents nor has Plaintiff received any communications from DHS in relation to the latest revised FOIA since DHS' email acknowledging receipt on March 20.

39. The Department of Homeland Security has been in possession of Plaintiff's original FOIA and revised FOIA since June 15, 2022 and March 7, 2024 respectively. Plaintiff has yet to receive the requested documents and there appears to be no change in DHS's attempt to stonewall and obfuscate Plaintiff's lawful request.

**COUNT I: VIOLATION OF THE FOIA STATUTE BY FAILURE
TO COMPLY WITH STATUTORY DEADLINES**

40. Paragraphs 1 through 39 are hereby incorporated by reference as if set forth fully here.

41. The Attorney General properly asked for records within DHS's control.

42. DHS's failure to timely respond to the Attorney General's request violates the statutory deadline imposed by the FOIA statute, including the deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

43. DHS did not provide any notice that its response and/or production of documents would be delayed due to “unusual circumstances” pursuant to 5 U.S.C. § 552(a)(6)(B)(i). And in fact, on information and belief, there are no “unusual circumstances” to be found.

44. DHS has failed to produce any records responsive to the request or to demonstrate that responsive records are exempt from production. Nor, has DHS indicated when it will produce responsive records. 5 U.S.C. § 552(a)(3)(A).

45. DHS has failed to respond to the FOIA request within the time period mandated by statute and has thus improperly and unlawfully withheld the requested DHS records.

46. The Plaintiff has constructively exhausted applicable administrative remedies under FOIA because the DHS failed to meet FOIA’s statutory requirements on timing of document production. 5 U.S.C. § 552(a)(6)(C)(i).

47. DHS has wrongfully withheld agency records. The Plaintiff is entitled to declaratory and injunctive relief ordering DHS to release and disclose the requested records.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of Missouri and its relator, Attorney General Andrew Bailey, request the following relief:

- (a) A declaration that DHS has violated FOIA by failing to lawfully

satisfy Plaintiff's June 15, 2022 FOIA request;

(b) a declaration that DHS has violated FOIA by failing to lawfully satisfy Plaintiff's March 7, 2024 FOIA request;

(c) an order that DHS produce all responsive agency records within ten (10) business days of the court's Order in this matter; and

(d) such other relief as deemed just and proper by the court.

Respectfully submitted,

ANDREW BAILEY
Missouri Attorney General

/s/ Todd A. Scott
Todd A. Scott, #56614
Senior Counsel

/s/ Andrew J. Crane
Andrew J. Crane, #68017
Assistant Attorney General

Missouri Attorney General's Office
P.O. Box 899
Jefferson City, MO 65102
Tel: (573) 751-8366
Fax: (573) 751-0774
E-mail: Todd.Scott@ago.mo.gov

Counsel for Plaintiff