

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

JUDICIAL WATCH, INC.)
501 School Street, S.W., Suite 500)
Washington, DC 20024,)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF STATE)
2201 C Street, N.W.)
Washington, DC 20520)
)
Defendant.)
_____)

**VERIFIED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of State (“DOS”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff is a non-profit, educational foundation organized under the laws of the District of Columbia and having its principal place of business at 501 School Street, S.W., Suite 500, Washington, DC 20024. Plaintiff seeks to promote integrity, transparency, and

accountability in government and fidelity to the rule of law. In furtherance of its public interest mission, Plaintiff regularly serves FOIA requests on federal, state, and local government agencies, entities, and offices, and disseminates its findings to the public.

4. Defendant is an agency of the United States Government. Defendant has its principal place of business at 2201 C St. N.W., Washington, DC 20520. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On or about April 17, 2008, Plaintiff sent a FOIA request to Defendant seeking access to the following records:

- a. Records detailing all contacts and communications between the Department of State (DoS) and any/all officers, agencies and/or representatives of the Government of Mexico concerning Osbaldo Aldrete-Davila, a Mexican national who testified in the prosecution of U.S. Border Patrol Agents Ramos and Compean over a shooting incident in Texas on February 17, 2005.
- b. Records detailing all contacts and communications between DoS and the U.S. Department of Justice, to include but not limited to the Office of U.S. Attorney Johnny Sutton of the Western District of Texas, concerning Osbaldo Aldrete-Davila, a Mexican national who testified in the prosecution of U.S. Border Patrol Agents Ramos and Compean over a shooting incident in Texas on February 17, 2005.
- c. Records detailing all contacts and communications between DoS and the U.S. Department of Homeland Security (DHS), to include but not limited to subordinate DHS agencies, offices and components, concerning Osbaldo Aldrete-Davila, a Mexican national who testified in the prosecution of U.S. Border Patrol Agents Ramos and Compean over a shooting incident in Texas on February 17, 2005.
- d. Any and all records of the Diplomatic Security Services (DSS) regarding U.S. Border Patrol Agents Ramos and Compean and a shooting incident in Texas on February 17, 2005, to include but not limited to DSS activities detailed in a November 21, 2006 DHS Office of Inspector General report.

e. The participation of DoS personnel in coordinating, facilitating, and/or approving the lawful entry(ies) of Osbaldo Aldrete-Davila into the United States. Mr. Aldrete-Davila reportedly entered the United States lawfully to obtain medical treatment, meet with federal investigators and prosecutors, and to testify in court in El Paso, TX.

6. Plaintiff also requested a waiver of both search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 5 U.S.C. § 552(a)(4)(A)(iii).

7. By letter dated May 5, 2008, Defendant acknowledged receiving Plaintiff's FOIA request and notified Plaintiff that it had assigned the request FOIA Case No. 2008-02277. Defendant therefore received Plaintiff's FOIA request on May 5, 2008 at the latest.

8. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to respond to the request within twenty (20) working days, or on or before June 3, 2008.

9. As of June 12, 2008, Defendant has failed to produce any records responsive to the request or demonstrate that responsive records are exempt from production. Nor has it indicated when any responsive records would be produced.

10. Because Defendant failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A) or extend that time limit pursuant to 5 U.S.C. § 552(a)(6)(B), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its April 17, 2008 FOIA request, pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT 1
(Violation of FOIA)

11. Plaintiff realleges paragraphs 1 through 10 as if fully stated herein.

12. Defendant has violated FOIA by failing to produce any and all non-exempt records responsive to Plaintiff's April 17, 2008 request within the twenty (20) day time period

required by 5 U.S.C. § 552(a)(6)(A)(i) and by failing to demonstrate that any withheld records responsive to this same request are exempt from production.

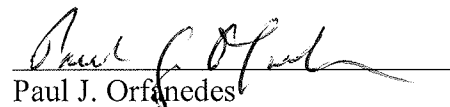
13. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendant's failure to comply with FOIA to be unlawful; (2) order Defendant to search for and produce any and all non-exempt records responsive to Plaintiff's April 17, 2008 request and a *Vaughn* index of allegedly exempt records responsive to the request by a date certain; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to the request; (4) grant Plaintiff an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: June 12, 2008

Respectfully submitted,

JUDICIAL WATCH, INC.



Paul J. Orfanedes
D.C. Bar No. 429716
Suite 500
501 School Street, S.W.
Washington, DC 20024
(202) 646-5172

Attorney for Plaintiff