

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR NATIONAL SECURITY STUDIES)
2130 H Street, N.W., S. 701)
Washington, DC 20037)

AMERICAN CIVIL LIBERTIES UNION)
125 Broad Street)
New York, NY 10004)

ELECTRONIC PRIVACY INFORMATION CENTER)
1718 Connecticut Avenue, N.W.)
Suite 200)

Civil Action)
No. 01-2500)
Judge Kessler)

AMERICAN-ARAB ANTI-DISCRIMINATION)
COMMITTEE)
4201 Connecticut Avenue, N.W., Suite 300)
Washington, DC 20008)

AMERICAN IMMIGRATION LAW FOUNDATION)
918 F Street, N.W., 6th Floor)
Washington, DC 20004)

AMERICAN IMMIGRATION LAWYERS ASSOCIATION)
918 F Street, N.W.)
Washington, DC 20004)

AMNESTY INTERNATIONAL USA)
322 Eighth Avenue)
New York, NY 10001)

ARAB-AMERICAN INSTITUTE)
1600 K Street, N.W., Suite 601)
Washington, DC 20006)

ASIAN AMERICAN LEGAL DEFENSE AND)
EDUCATION FUND)
99 Hudson Street)
New York, NY 10013)

CENTER FOR CONSTITUTIONAL RIGHTS)
666 Broadway, 7th Floor)
New York, NY 10012)

CENTER FOR DEMOCRACY AND TECHNOLOGY)
1634 Eye Street, N.W., Suite 1100)
Washington, DC 20006)

COUNCIL ON AMERICAN ISLAMIC RELATIONS)
453 New Jersey Avenue, S.E.)
Washington, DC 20003)
FIRST AMENDMENT FOUNDATION)

3321 12th Sreet, N.E.)
Washington, DC 20017)
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HUMAN RIGHTS WATCH)
350 Fifth Avenue, 34th Floor)
New York, NY 10118)
))
THE MULTIRACIAL ACTIVIST)
P.O. Box 8208)
Alexandria, VA 22306)
))
THE NATION MAGAZINE)
110 Maryland Avenue N.E., #308)
Washington, DC 20002)
))
NATIONAL ASSOCIATION OF CRIMINAL)
DEFENSE LAWYERS)
1025 Connecticut Avenue, N.W., Suite 901)
Washington, DC 20036)
))
NATIONAL BLACK POLICE ASSOCIATION, INC.)
3251 Mt. Pleasant Street, N.W.)
Washington, DC 20010)
))
PARTNERSHIP FOR CIVIL JUSTICE, INC.)
1901 Pennsylvania Avenue, N.W., Suite 607)
Washington, DC 20006)
))
PEOPLE FOR THE AMERICAN WAY FOUNDATION)
2000 M Street N.W., Suite 400)
Washington, DC 20036)
))
REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS)
1815 N. Ft. Myer Drive, #900)
Arlington, VA 22209)
))
WORLD ORGANIZATION AGAINST TORTURE USA)
1725 K Street, NW, Suite 610)
Washington, DC 20006,)
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Plaintiffs,)
))
v.)
))
DEPARTMENT OF JUSTICE)
950 Pennsylvania Avenue, N.W.)
Washington, DC 20530,)
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Defendant.)
))
_____)

AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, the First Amendment and the common law, for injunctive and other appropriate relief, and seeking the expedited processing and immediate release of agency records requested by plaintiffs from defendant Department of Justice ("DOJ") and DOJ's components Immigration and Naturalization Service ("INS") and Federal Bureau of Investigation ("FBI").

2. This Freedom of Information Act case seeks the immediate disclosure of government documents concerning more than 1,000 individuals who have been arrested and detained in the wake of the September 11th terrorist attacks. This lawsuit does not question the importance of the government's investigation. But the manner in which the government is conducting its investigation also raises issues of the utmost public importance. One of the core purposes of the FOIA is to assure that the government cannot shield its actions from scrutiny by withholding information that is traditionally available to the public. Yet, that is precisely what has occurred here. The government candidly acknowledges that hundreds of people remain in federal custody but refuses to disclose, among other basic facts, who these detainees are and where they are being held. This secrecy is unprecedented and deprives the public of information it is lawfully entitled to receive. In recent days, the government has publicly disclosed some fragmentary and incomplete information about some of the detainees in response to requests from Members of Congress. Thus far, however, the government has either ignored or rejected plaintiffs' FOIA requests, which were filed more than a month ago.

Jurisdiction and Venue

3. 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) and 552(a)(6)(E)(iii). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over plaintiffs' common law claim under 28 U.S.C. § 1367. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

4. Plaintiff Center for National Security Studies has worked to protect civil liberties and human rights for more than 25 years.

5. Plaintiff American Civil Liberties Union is a nationwide, non-profit membership organization with approximately 300,000 members that, since its founding in 1920, has been dedicated to protecting the civil liberties and civil rights of all Americans, both immigrant and native-born.

6. Plaintiff Electronic Privacy Information Center is a non-profit, public interest research center established in 1994 to focus public attention on emerging civil liberties issues and to promote constitutional values.

7. Plaintiff American-Arab Anti-Discrimination Committee is a non-partisan, non-sectarian civil rights organization dedicated to protecting rights of Arab-Americans and promoting cultural heritage.

8. Plaintiff American Immigration Law Foundation was established in 1987 as a tax-exempt, not-for-profit educational

and service organization. The Foundation's mission is to promote understanding among the general public of immigration law and policy, through education, policy analysis, and support to litigators.

9. Plaintiff American Immigration Lawyers Association is a voluntary bar association of 7500 immigration lawyers and law professors.

10. Plaintiff Amnesty International USA is the U.S. Section of Amnesty International, a grassroots activist organization with over one million members worldwide. Amnesty International is dedicated to freeing prisoners of conscience, gaining fair trials for political prisoners, ending torture, political killings and "disappearances," and abolishing the death penalty throughout the world.

11. Plaintiff Arab-American Institute is a tax-exempt public affairs, ethnic citizenship development organization dedicated to the political empowerment of Arab Americans.

12. Plaintiff Asian American Legal Defense and Education Fund, is a non-profit civil liberties organization defending civil rights of Asian Americans nationwide.

13. Plaintiff Center for Constitutional Rights is a non-profit legal and educational organization dedicated to protecting and advancing the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights.

14. Plaintiff Center for Democracy and Technology works to promote democratic values and constitutional liberties in the digital age.

15. Plaintiff Council on American Islamic Relations is a non-profit, grassroots membership organization established to promote a positive image of Islam and Muslims in America.

16. Plaintiff Electronic Frontier Foundation is a non-profit public interest group focused on free speech and civil liberties in the online world.

17. Plaintiff First Amendment Foundation is a constitutional rights organization whose purpose is to educate the public about the fluid nature of First Amendment rights and to maintain these rights.

18. Plaintiff Human Rights Watch is dedicated to protecting the human rights of people around the world.

19. Plaintiff The Multiracial Activist is a libertarian oriented activist journal covering social and civil liberties issues of interest to individuals who perceive themselves to be "biracial" or "multiracial," "interracial" couples/families and "transracial" adoptees.

20. Plaintiff The Nation magazine is a weekly magazine published by The Nation Company.

21. Plaintiff National Association of Criminal Defense Lawyers is a professional bar association committed to preserving fairness within American's criminal justice system.

22. Plaintiff National Black Police Association, Inc. is a non-profit organization established to improve relationships between police departments, African American police officers and communities of color. It also works to maintain a network between African American police officers across the country.

23. Plaintiff Partnership for Civil Justice, Inc., is a public interest law firm that litigates on behalf of individuals and activist and political organizations in constitutional and civil rights claims challenging discrimination and protecting the right to engage in political dissent.

24. Plaintiff People For the American Way Foundation is a constitutional liberties organization.

25. Plaintiff Reporters Committee for Freedom of the Press was created in 1970 at a time when the nation's news media faced a wave of government subpoenas asking reporters to name confidential sources.

26. Plaintiff World Organization Against Torture USA is a non-profit human rights monitoring, reporting and advocacy group, and a U.S. affiliate of the international World Organization Against Torture, a worldwide network of over 200 human rights organizations.

27. Defendant DOJ is a Department of the Executive Branch of the United States Government, and includes component entities including the INS and the FBI. DOJ is an agency within the meaning of 5 U.S.C. § 552(f).

The Post-September 11 Detentions

28. In the wake of the terrorist attacks in New York and Washington on September 11, 2001, Attorney General Ashcroft, FBI Director Mueller, and other officials issued a series of statements indicating that individuals had been "arrested" or "detained" as a result of investigative activities relating to the

attacks. On October 25, the Attorney General announced that, "[t]o date, our anti-terrorism offensive has arrested or detained nearly 1,000 individuals as part of the September 11 terrorism investigation."

Plaintiffs' FOIA Requests and Requests for Expedited Processing

29. By three separate letters, plaintiffs on October 29, 2001, delivered to defendant DOJ, the INS and the FBI requests under the FOIA seeking the disclosure of agency records "concerning the individuals 'arrested or detained' in the words of Attorney General Ashcroft." Specifically, plaintiffs requested disclosure of the following information:

- a) the identities of each such individual, where they are being held, the circumstances of their detention or arrest, and any charges brought against them;
- b) the identity of any lawyers representing any of these individuals;
- c) the identities of any courts, which have been requested to enter orders sealing any proceedings in connection with any of these individuals, any such orders which have been entered, and the legal authorities that the government has relied upon in seeking any such secrecy orders; and
- d) all policy directives or guidance issued to officials about making public statements or disclosures about these individuals or about the sealing of judicial or immigration proceedings.

30. In their letters to defendant DOJ, the INS and the FBI of October 29, 2001, plaintiffs stated that their FOIA requests met the criteria for expedited processing under defendant DOJ's regulations:

The "information is urgently needed to inform the public concerning some actual or alleged government activity;" the requesting organizations are primarily engaged in

disseminating information to the public; the subject of the detainees "is of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity which affect public confidence," and the information is needed immediately to prevent "the loss of substantial due process rights" to individuals and "threats to their physical safety."

31. Plaintiffs summed up their entitlement to expedited disclosure by noting that "this request is about federal government activity, it concerns a matter of current exigency to the American public, and the consequences of delaying a response would be to compromise a significant recognized interest."

Defendant DOJ's Failure to Timely Comply with Plaintiffs' Request

32. By letter to plaintiffs dated November 1, 2001, defendant DOJ advised plaintiffs that their request for expedited processing had been "granted" on the ground that the request concerned "(a) matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." To date, defendant DOJ has not provided a substantive response to plaintiffs' request, despite the statutory requirement that all requests (even those that don't warrant expedition) must be processed within twenty working days, 5 U.S.C. § 552(a)(6)(A)(i).

33. Plaintiffs have exhausted the applicable administrative remedies with respect to their FOIA request to defendant DOJ.

34. Defendant DOJ has wrongfully withheld the requested records from plaintiffs.

The INS' Failure to Timely Comply with Plaintiffs' Request

35. Notwithstanding the statutory, 5 U.S.C. § 552(a)(6)(E) (ii), and regulatory, 28 CFR 16.5(d)(4), time limit of ten calendar days in which to respond to a request for expedited processing, the INS has not responded to plaintiffs' request for expedited processing of their FOIA request.

36. To date, the INS has not provided a substantive response to plaintiffs' request, despite the statutory requirement that all requests (even those that don't warrant expedition) must be processed within twenty working days, 5 U.S.C. § 552(a)(6)(A)(i).

37. Plaintiffs are entitled to expedited processing of their FOIA request to the INS under the standards contained in defendant DOJ's regulations.

38. Plaintiffs have exhausted the applicable administrative remedies with respect to their FOIA request to the INS.

39. The INS has wrongfully withheld the requested records from plaintiffs.

The FBI's Failure to Timely Comply with Plaintiffs' Request

40. By letter to plaintiffs dated November 1, the FBI stated that "the material responsive to your request is being withheld pursuant to Title 5, United States Code, Section 552, (b)(7)(A)," and advised plaintiffs of their right to submit an appeal of that determination to defendant DOJ. Plaintiffs received the FBI's letter on November 6 and submitted an appeal by facsimile to defendant DOJ's Office of Information and Privacy on November 7.

To date, defendant DOJ has not made a determination of plaintiffs' appeal, despite the statutory requirement that all appeals (even those that don't warrant expedition) must be decided within twenty working days, 5 U.S.C. § 552(a)(6)(A)(ii).

41. Plaintiffs have exhausted the applicable administrative remedies with respect to their FOIA request to the FBI.

42. The FBI has wrongfully withheld the requested records from plaintiffs.

CAUSES OF ACTION

First Cause of Action:

Violation of the Freedom of Information Act for Failure Timely to Respond to Request for Expedited Processing

43. Plaintiffs repeat and reallege paragraphs 1-42.

44. The INS' failure timely to respond to plaintiff's request for expedited processing violates the FOIA, 5 U.S.C. § 552(a)(6)(E)(ii), and defendant DOJ's own regulation promulgated thereunder, 28 CFR 16.5(d)(4).

Second Cause of Action:

Violation of the Freedom of Information Act for Failure Timely to Respond to Request for Agency Records

45. Plaintiffs repeat and reallege paragraphs 1-42.

46. Defendant DOJ's failure timely to respond to plaintiff's request for agency records violates the FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

47. The INS' failure timely to respond to plaintiff's request for agency records violates the FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

Third Cause of Action:

Violation of the Freedom of Information Act for
Failure Timely to Respond to Appeal of Determination to
Deny a Request for Agency Records

48. Plaintiffs repeat and reallege paragraphs 1-42.

49. The failure of defendant DOJ and the FBI to timely respond to plaintiff's appeal of the FBI's determination to deny plaintiffs' request for agency records violates the FOIA, 5 U.S.C. § 552(a)(6)(A)(ii).

Fourth Cause of Action:

Violation of the Freedom of Information Act
for Failure Timely to Release Agency Records

50. Plaintiffs repeat and reallege paragraphs 1-42.

51. Defendant DOJ's failure timely to release the agency records requested by plaintiffs violates the FOIA, 5 U.S.C. § 552.

52. The INS' failure timely to release the agency records requested by plaintiffs violates the FOIA, 5 U.S.C. § 552.

53. The FBI's failure timely to release the agency records requested by plaintiffs violates the FOIA, 5 U.S.C. § 552.

Fifth Cause of Action:

Violation of the First Amendment
for Failure to Release Court Records

54. Plaintiffs repeat and reallege paragraphs 1-42.

55. Defendant DOJ's failure to release to plaintiffs those requested agency records that are also court records violates plaintiffs' First Amendment right of access to records concerning judicial proceedings.

56. The INS' failure to release to plaintiffs those requested agency records that are also court records violates plaintiffs'

First Amendment right of access to records concerning judicial proceedings.

57. The FBI's failure to release to plaintiffs those requested agency records that are also court records violates plaintiffs' First Amendment right of access to records concerning judicial proceedings.

Sixth Cause of Action:

Violation of the Common Law Right of
Access for Failure to Release Court Records

58. Plaintiffs repeat and reallege paragraphs 1-42.

59. Defendant DOJ's failure to release to plaintiffs those requested agency records that are also court records violates plaintiffs' common law right of access to records concerning judicial proceedings.

60. The INS' failure to release to plaintiffs those requested agency records that are also court records violates plaintiffs' common law right of access to records concerning judicial proceedings.

61. The FBI's failure to release to plaintiffs those requested agency records that are also court records violates plaintiffs' common law right of access to records concerning judicial proceedings.

Requested Relief

WHEREFORE, plaintiffs pray that this Court:

- A. order defendant to process plaintiffs' FOIA requests immediately;

- B. order defendant to disclose the requested records and make copies available to plaintiffs;
- C. provide for expeditious proceedings in this action;
- D. award plaintiffs their costs and reasonable attorneys fees incurred in this action; and
- E. grant such other relief as the Court may deem just and proper.

Respectfully submitted,

DAVID L. SOBEL
D.C. Bar No. 360418
Electronic Privacy Information Center
1718 Connecticut Avenue, N.W.
Suite 200
Washington, DC 20009
tel. 202-483-1140
fax 202-483-1248

ARTHUR B. SPITZER
D.C. Bar. No. 235960
American Civil Liberties Union
of the National Capital Area
1400 20th Street, N.W. #119
Washington, D.C. 20036
tel. 202-457-0800
fax 202-452-1868

KATE MARTIN
D.C. Bar No. 949115
Center for National Security Studies
2130 H Street, N.W. S. 701
Washington, D.C. 20037
202-994-7060

STEVEN R. SHAPIRO
LUCAS GUTTENTAG
American Civil Liberties Union
Foundation
125 Broad Street
New York, N.Y. 10004

212-549-2500

ELLIOT M. MINCBERG
D.C. Bar No. 941575
People For the American Way Foundation
2000 M Street N.W., Suite 400
Washington, D.C. 20036
tel. 202-467-4999
fax 202-293-2672

Counsel for Plaintiffs

December 10, 2001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Amended Complaint for Injunctive Relief has been served by messenger delivery, this 10th day of December 2001, upon counsel for defendant:

Lisa Olson, Esq.
U.S. Department of Justice
901 E Street, N.W.
Room 1052
Washington, DC 20530

DAVID L. SOBEL