

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

STATE OF FLORIDA,

Plaintiff,

v.

Case No. **2:24-cv-797**

IMMIGRATION & CUSTOMS
ENFORCEMENT; *and* FEDERAL
BUREAU OF PRISONS,

Defendants.

**COMPLAINT FOR INJUNCTIVE RELIEF AND
TO COMPEL PRODUCTION OF DOCUMENTS**

1. Historically, when the federal government brought illegal aliens to the United States to be prosecuted for their crimes, it was well understood that the aliens would be deported once they served their criminal sentence. That was until the Biden-Harris Administration implemented their shockingly irresponsible immigration policy,¹ pushing unknown numbers of dangerous criminals straight from federal prison into our communities and causing chaos, anarchy, and crime.²

¹ See Memo from Alejandro Mayorkas, Secretary, Department of Homeland Security, to Tae Johnson, Acting Director, U.S. Immigration & Customs Enforcement re: Guidelines for the Enforcement of Civil Immigration Law (Sept. 30, 2021), <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

² See, e.g., *Denver suburb rocked by 'huge increase' in migrant gang violence: 'Biden-Harris administration is complicit,'* Fox News (Aug. 28, 2024), <https://www.foxnews.com/media/denver-suburb-rocked-huge-increase-migrant-gang-violence-biden-harris-administration-complicit>.

2. Recently, Americans watched in horror as they witnessed the consequences of this Biden-Harris policy, as well as other open borders policies, when armed gang members took over an apartment complex in Colorado and used it as a base for criminal activity.³ That incident represents merely one example of the destruction and chaos wrought by this Administration's policy choices.

3. Even so, most Americans do not understand just how reckless the Biden-Harris Administration has been behaving. By way of example, consider aliens caught on the high seas seeking to smuggle illicit drugs into our country.

4. Unlike aliens who reach land, aliens caught at sea are generally not eligible to claim asylum or to appear before an immigration judge.⁴ The federal government, however, sometimes *chooses* to bring these criminal aliens to the United States so the aliens can be prosecuted consistent with federal law and serve time in prison.

5. But everyone has always assumed—in both Democrat and Republican Administrations—that such aliens would be *deported* the moment they finished their criminal sentence. Otherwise, the decision to bring a criminal to the United States for prosecution results in a *benefit* to that alien in the form of the right to permanently remain in the United States.

³ *Id.*

⁴ See Press Release: Task Force continues to prevent irregular, unlawful maritime migration to United States, U.S. Coast Guard News (Apr. 12, 2024), <https://www.news.uscg.mil/Press-Releases/Article/3739500/task-force-continues-to-prevent-irregular-unlawful-maritime-migration-to-united/> (describing the different processing pathways for immigrants attempting to reach the United States by sea).

6. For the first time in history, however, the Biden-Harris Administration has abandoned that practice. And it has done so with respect to dangerous criminal aliens who were brought to the United States for purposes of prosecution.

7. In other words, as things stand, *asylum seekers* caught on the high seas have been returned to their home country without even seeing an immigration judge, while *drug traffickers* and other serious criminals brought to the United States only for the purpose of serving prison time are being released straight into our communities to wreak havoc on our citizenry.

8. Florida filed a Freedom of Information Act (FOIA) request seeking more information about these practices so that the State can protect its citizens. Because the federal government failed to comply, Florida now files this suit.

PARTIES

9. Plaintiff State of Florida is a sovereign State and has the authority and responsibility to protect its public fisc and the health, safety, and welfare of its citizens and to seek information related to these duties.

10. Defendant Immigration and Customs Enforcement (ICE) is an agency of the United States Government. ICE has possession, custody, and control of certain public records to which Florida seeks access.

11. Defendant Federal Bureau of Prisons (BOP) is an agency of the United States Government. BOP has possession, custody, and control of certain public records to which Florida seeks access.

JURISDICTION AND VENUE

12. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

13. Venue lies in this district pursuant to 28 U.S.C. § 1391(e)(1) because the State of Florida is a resident of every judicial district in its sovereign territory, including this judicial district (and division). *See California v. Azar*, 911 F.3d 558, 570 (9th Cir. 2018); *Florida v. United States*, No. 3:21-cv-1066, 2022 WL 2431443, at *2 (N.D. Fla. Jan. 18, 2022).⁵

STATEMENT OF FACTS

14. On March 18, 2024, Florida sent FOIA requests to Defendants. *See* Ex. 1; Ex. 2. Among other documents, the requests sought records regarding federal government policies permitting the release of dangerous criminals into the United States.

15. Florida sent one request to BOP-OGC-EFOIA-S@bop.gov, the email address provided for FOIA requests to BOP.⁶ *See* Ex. 1.

16. BOP acknowledged receipt of Florida's request on March 26, 2024. *See* Ex. 3.

⁵ *Accord Alabama v. U.S. Army Corps of Eng'rs*, 382 F. Supp. 2d 1301, 1329 (N.D. Ala. 2005); *see also Atlanta & F.R. Co. v. W. Ry. Co. of Ala.*, 50 F. 790, 791 (5th Cir. 1892) (explaining that "the state government . . . resides at every point within the boundaries of the state").

⁶ BOP provides FOIA contact information at <https://www.justice.gov/oip/find-foia-contact-doj/list>.

17. Florida sent a second request to ICE via ICE's online FOIA submission portal. *See* Ex. 2.

18. ICE acknowledged receipt of Florida's request on March 25, 2024. Ex. 4.

19. Under 5 U.S.C. § 552(a)(6)(A)(i), Defendants must respond to a FOIA requests within twenty working days of receipt but allows for a ten-day extension of time if "unusual circumstances" require more time for completion of the request, § 552(a)(6)(B).

20. Both BOP and ICE invoked the ten-day extension. Ex. 3 at 2; Ex. 4 at 2.

21. Nonetheless, Defendants were required to respond by April 29, 2024.

22. As of the date of this Complaint, Defendants have failed to (i) determine whether to comply with the requests; (ii) notify Florida of any such determination or the reasons therefor; (iii) advise Florida of the right to appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

COUNT I

Violation of the Freedom of Information Act, 5 U.S.C. § 552 (BOP)

23. Florida repeats and incorporates by reference ¶¶ 1–22.

24. BOP has failed to process and make a determination regarding Florida's March 18, 2024 FOIA requests within the statutory time limit and is unlawfully withholding records requested by Florida under 5 U.S.C. § 552.

25. Because BOP failed to make a final determination on Florida's requests within the time limits set by FOIA, Florida is deemed to have exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C)(i).

26. BOP's actions harm Florida by continuously denying Florida access to documents that it has a legal right to. This harm is irreparable because no monetary damages can compensate Florida for this loss. Florida will continue to be irreparably harmed unless and until BOP is compelled to conform their conduct to the requirements of the law.

COUNT II

Violation of the Freedom of Information Act, 5 U.S.C. § 552 (ICE)

27. Florida repeats and incorporates by reference ¶¶ 1–22.

28. ICE has failed to process and make a determination regarding Florida's March 18, 2024 FOIA request within the statutory time limit and is unlawfully withholding records requested by Florida under 5 U.S.C. § 552.

29. Because ICE failed to make a final determination on Florida's requests within the time limits set by FOIA, Florida is deemed to have exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C)(i).

30. ICE's actions harm Florida by continuously denying Florida access to documents that it has a legal right to. This harm is irreparable because no monetary damages can compensate Florida for this loss. Florida will continue to be irreparably harmed unless and until ICE is compelled to conform their conduct to the requirements of the law.

PRAYER FOR RELIEF

For these reasons, Florida asks the Court to:

- a) Order Defendants to conduct a search for any and all records responsive to Florida's FOIA requests and to demonstrate that they employed search methods reasonably calculated to uncover all records responsive to the requests;
- b) Order Defendants to produce, by a date certain, any and all non-exempt records responsive to Florida's FOIA requests and an index of any responsive records withheld under claim of exemption;
- c) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Florida's FOIA requests;
- d) Award Florida costs and reasonable attorney's fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- e) Award such other relief as the Court deems equitable and just.

Respectfully submitted,

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