

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTHERN OHIO
EASTERN DIVISION**

THE OHIO STATE UNIVERSITY)
MORITZ COLLEGE OF LAW CIVIL CLINIC)
55 W. 12th Ave.)
Columbus, Ohio 43201)

Case No. 14-2329

and)

ADVOCATES FOR BASIC)
LEGAL EQUALITY, INC.)
525 Jefferson Ave., Ste. 300)
Toledo, OH 43604)

Complaint for Injunctive Relief

Plaintiffs,)

v.)

U.S. CUSTOMS AND)
BORDER PROTECTION)
FOIA Division)
799 9th Street NW, 10th Floor)
Washington, DC 20229-1181)

Defendant.)

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief, seeking the release of agency records requested by the Moritz College of Law Civil Clinic (“Civil Clinic”) and Advocates for Basic Legal Equality, Inc. (“ABLE”) from U.S. Customs and Border Protection (“CBP”).

2. Plaintiffs seek to procure government records of significant public concern, in particular, records related to CBP Sandusky Bay Station’s policies and practices regarding the apprehension, arrest, and detention of individuals. The Sandusky Bay Station’s alleged use of racial and ethnic profiling has caused documented concern in the community, as

demonstrated by media attention and litigation addressing the practice. *See Muñiz-Muñiz v. U.S. Border Patrol*, 741 F.3d 668 (6th Cir. 2013); Brian Bennett, *Immigration rights groups accuse officials of racial profiling*, L.A. TIMES, Mar. 13, 2013; Jessica Cuffman, *Federal legislators weigh in on border patrol allegations*, SANDUSKY REGISTER, Jan. 31, 2013. The public has a right to review such practices and procedures in order to ensure that constitutional safeguards are respected and the rights of the most vulnerable are upheld.

3. Concerns about the practices and policies of the Sandusky Bay Station arise at a time when there is a growing national dialogue around racial profiling and immigration enforcement. *See, e.g., Families for Freedom v. U.S. Customs & Border Prot.*, 797 F. Supp. 2d 375 (S.D.N.Y. 2011); Matt Apuzzo, *Federal inquiry of Ferguson police will include apparent racial profiling*, N.Y. TIMES, Sept. 4, 2014; *see also Miranda-Olivares v. Clackamas Cnty.*, 2014 BL 102221, *11 (D. Or. Apr. 11, 2014) (holding that local law enforcement agents violate the Fourth Amendment by detaining an individual solely for federal immigration purposes). As such, it is imperative that the American public be provided with sufficient information to understand the practical and legal implications of Sandusky Bay Station's enforcement activities.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552(a)(6)(C)(i), and 28 U.S.C. § 1331.

5. Venue is proper in this jurisdiction under 5 U.S.C. § 552(a)(4)(B). Plaintiff Civil Clinic is located in Columbus, Ohio and the Eastern Division of this Court.

Parties

6. Plaintiff Civil Clinic provides no-cost civil legal services to individuals in need. Civil Clinic also provides law students with the opportunity to develop lawyering skills under the careful supervision of law professors admitted to practice in Ohio.

7. Plaintiff ABLE is a non-profit regional law firm providing legal assistance in the areas of civil rights and poverty law to low-income individuals and groups in northwestern and western Ohio and to migrant farmworkers throughout all of Ohio.

8. Defendant CBP is an agency established in the Executive Branch of the United States Government within the meaning of 5 U.S.C. § 552(f)(1). The Sandusky Bay Station in Port Clinton, Ohio, is a component of CPB.

Factual Background

9. In 2008, CBP established the Sandusky Bay Station as a full-time presence in Ohio. Shortly thereafter, community members began to voice concerns about Border Patrol agents' enforcement activities. These concerns included allegations of racial and ethnic profiling.

10. Across the country, allegations of CBP's widespread use of racial and ethnic profiling have resulted in media attention and in litigation filed against the Border Patrol.

See, e.g., Muñiz-Muñiz v. United States Border Patrol, 741 F.3d 668 (6th Cir. 2013); Levi Pulkkinen, *Anacortes artist: Border Patrol lied to justify racist arrest*, SEATTLE PI, Jan. 1, 2014; Manuel Valdes, *ACLU, immigrant groups to keep an eye on U.S. Border Patrol after profiling-case win*, WASH. POST, Sept. 24, 2013; Kera Wanielista, *Skagit County artist sues Border Patrol over detention*, SKAGIT VALLEY HERALD, Jan. 2, 2014; William Yardley, *In far Northwest, a new border focus on Latinos*, N.Y. TIMES, May 28, 2012; *Garcia De La Paz v. Coy.* No. 12-00957 (W.D. Tex., filed Oct. 9, 2012); *Sanchez v. United States Off. of Border Patrol*, No. 12-05378 (W.D. Wash. filed Apr. 26, 2012); *Vargas Ramirez v. United States*, No. 13-cv-02325 (W.D. Wash. filed Dec. 27, 2013); *Villegas v. Garibay*, No. 13-01040 (N.D. Tex. filed Mar. 11, 2013); Letter from American Civil Liberties Union to Dep't of Homeland Sec. Office of Inspector Gen. and Office of Civil Rights & Civil Liberties (Jan. 15, 2014), *available at* <http://www.acluaz.org/sites/default/files/documents/ACLU%20AZ%20Complaint%20re%20CBP%20Checkpoints%20%202014%2001%2015.pdf>.

11. In *Muñiz*, 741 F.3d 668, Plaintiff ABLE represents the *Muñiz* Plaintiffs in a lawsuit against Defendant alleging that the Sandusky Bay Border Patrol Station was illegally profiling Hispanics for detentions, seizures, and arrests based on their being Hispanic. The lawsuit also alleged that the Border Patrol was encouraging local law enforcement agencies to illegally profile Hispanics and then turn these individuals over to the Border Patrol. During discovery in *Muñiz*, Plaintiffs obtained documents that they believe support these profiling allegations.

The FOIA Request

12. On August 18, 2014, the Civil Clinic and ABLE electronically submitted a FOIA Request (“the Request”) to CBP’s FOIA office for records regarding “Sandusky Bay Border Patrol’s practices and procedures relating to racial profiling.” (Attached hereto as Exhibit A). The Request was originally assigned a tracking number of CBP-2014-041422.

13. On September 9, 2014, CBP’s FOIA office informed Plaintiffs by email that the tracking number had been changed to CBP-OFO-2014-041422.

14. At the time of the filing of this Complaint, CBP has not responded to the Request.

15. Among the requested records are documents that will shed light on Sandusky CBP’s practices and procedures regarding the apprehension, arrest, and detention of individuals. The Request also calls for the release of records related to Sandusky CBP’s policies regarding racial profiling and collaboration with local law enforcement.

16. The Request seeks a waiver of search, review, and duplication fees on the basis that disclosure “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). In the alternative, the Request seeks to limit fees to reasonable standard charges for document duplication because the “records are not sought for commercial use and the Request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II).

CBP's Failure to Disclose Responsive Documents

17. Paragraphs 1-16 above are hereby incorporated by reference as if set forth fully herein.

18. CBP has failed to respond to Plaintiffs' FOIA Request in violation of the statutory deadlines imposed by FOIA, including those set forth in 5 U.S.C. § 552(a)(6)(A).

19. Defendant has failed to perform an adequate search for responsive documents.

20. Defendant has wrongly withheld responsive agency records from Plaintiffs.

21. Plaintiffs have exhausted the applicable administrative remedies with respect to Plaintiffs' FOIA Request pursuant to 5 U.S.C. § 552 (a)(6)(C)(i).

22. Plaintiffs are entitled to injunctive relief compelling the release and disclosure of the requested agency records.

Requested Relief

WHEREFORE, Plaintiffs prays that this Court:

- A. Order Defendant to immediately conduct a reasonable search for agency records responsive to Plaintiffs' FOIA Request;
- B. Order Defendant to immediately produce all responsive agency records;
- C. Order Defendant to waive all fees for processing Plaintiffs' FOIA request pursuant to 5 U.S.C. §552(a)(4)(A)(3)(i) and 5 U.S.C. § 552(a)(6)(A);
- D. Award Plaintiff its costs and reasonable attorneys' fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E);

E. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

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