

Chief District Judge Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COUNCIL ON AMERICAN-ISLAMIC
RELATIONS–WASHINGTON,

Plaintiff,

Case No. 2:20-cv-217-RSM

v.

FIRST AMENDED COMPLAINT

UNITED STATES CUSTOMS AND BORDER
PROTECTION, UNITED STATES
DEPARTMENT OF HOMELAND
SECURITY,

Defendants.

INTRODUCTION

1. This lawsuit challenges defendant U.S. Customs and Border Protection’s (CBP) refusal to reveal a directive issued to CBP officers to detain and interrogate Iranian-Americans, among others, upon returning to the United States. Despite detaining scores of Iranian-Americans pursuant to this directive, CBP has repeatedly denied that the agency issued any such directive. Pursuant to the Freedom of Information Act (FOIA), plaintiff Council on American-Islamic Relations–Washington (CAIR) seeks to ensure that CBP remains accountable for taking such actions.

1 2. Between January 4 and January 5, 2020, dozens of persons of Iranian heritage
2 returning to the United States after visiting British Columbia, including U.S. citizens and lawful
3 permanent residents, were detained, questioned and held for hours by CBP officers at the Blaine
4 Port of Entry in Blaine, Washington. Some were held through most of the night, others were held
5 for hours with their small children. They were detained, not based on concerns that they were
6 unauthorized to enter the country nor based on concerns that they were transporting contraband,
7 but instead, based solely on their national origin—a practice that runs afoul of this country’s
8 most basic principles.

9 3. The apparent detention of U.S. citizens and lawful permanent residents based only
10 on their national heritage prompted an immediate outcry from lawmakers and advocates and
11 generated substantial media attention. Despite the detentions of several dozen Iranians, as well as
12 other individuals born in select countries in the Middle East, CBP officials denied that a directive
13 had been issued ordering that these persons be detained for further screening. Instead, the agency
14 explicitly disclaimed that U.S. citizens and lawful permanent residents were being held or that
15 orders had been given to target such individuals. According to a statement issued by CBP’s press
16 secretary on January 5, 2020, “Social media posts that CBP is detaining Iranian-Americans and
17 refusing their entry into the U.S. because of their country of origin are false. Reports that
18 DHS/CBP has issued a related directive are also false.”

19 4. There can be no serious question that CBP lied to the American public about its
20 actions targeting Iranian-U.S. citizens and lawful permanent residents in violation of their rights.
21 Dozens of individuals reported their detention at the Blaine Port of Entry, discrediting CBP’s
22 denials that individuals of Iranian heritage were detained. Most recently, media outlets have also
23 reported the existence a leaked memorandum issued by CBP’s Seattle Field Office, which
24

1 directed officers at the border to detain and question individuals based solely on their place of
2 birth.

3 5. In light of these disturbing events, plaintiff CAIR filed a FOIA Request seeking
4 any directives and communications related to these detentions at the border. CAIR is a civil
5 rights and advocacy organization that defends the rights of and advocates on behalf of Muslim
6 communities in the United States. Under FOIA, CBP had twenty days to respond to CAIR's
7 request. CBP failed to respond within the designated timeline, and provided an answer to CAIR's
8 requests nearly two months after filing this lawsuit, and in direct response to it.

9 6. CBP continues to unlawfully withhold records subject to disclosure pursuant to
10 FOIA. While noting that the agency had located dozens of responsive records, CBP released only
11 four, partially redacted pages and a link to an online bulletin. CAIR now amends its complaint to
12 add claims challenging the agency's continued delay in producing responsive records—records
13 that are subject to disclosure under FOIA, notwithstanding the exemptions that CBP claims apply
14 here.

15 JURISDICTION & VENUE

16 7. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. §
17 1331 (federal question).

18 8. This Court has jurisdiction to grant declaratory, injunctive, and further necessary
19 or proper relief pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. §§ 2201-2202, and Federal Rules
20 of Civil Procedure 57 and 65.

21 9. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §
22 1391(e).

PARTIES

10. Plaintiff Council on American-Islamic Relations–Washington (CAIR) is a chapter of the Council on American-Islamic Relations, which is a nonprofit 501(c)(3) organization. CAIR works to defend the civil rights of and advocate on behalf of Muslim communities throughout the United States.

11. Defendant U.S. Customs and Border Protection (CBP) is part of the U.S. Department of Homeland Security, and is the entity responsible for screening individuals entering the United States. CBP is an agency within the meaning of 5 U.S.C. § 551(1).

12. Defendant U.S. Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the Immigration and Nationality Act. It is responsible for overseeing CBP, and is an agency within the meaning of 5 U.S.C. § 551(1).

FACTUAL ALLEGATIONS

13. On January 3, 2020, President Donald Trump announced that a U.S. drone strike killed major general Qasem Soleimani of the Iranian Revolutionary Guard Corps near Baghdad International Airport in Iraq.

14. Following Soleimani’s assassination, CBP Acting Commissioner Mark Morgan and Deputy Commissioner Robert Perez held a conference call with CBP field officer directors nationwide. During the course of this call, CBP headquarters urged its field offices to exercise additional vigilance in light of the attack.

15. Upon information and belief, CBP’s Seattle Field Office, which oversees dozens of ports of entry across much of the northern United States, subsequently issued a directive to all ports of entry under the Field Office’s supervision that effectively mandated the detention of all

1 individuals, including United States citizens and lawful permanents, from Palestine, Lebanon,
2 and Iran at U.S. ports of entry.

3 16. Specifically, the purported directive states that the Tactical Analytical Unit of the
4 Seattle Field Office would “conduct vetting” on “[a]ll persons” who were born in, travelled to, or
5 were citizens of Palestine, Lebanon, or Iran.

6 17. The directive went on to state that these individuals should be subjected to
7 “secondary procedures,” which refers to CBP’s practice of detaining individual for additional
8 vetting prior to permitting (or denying) their entry to the United States.

9 18. To conduct this vetting, the directive required CBP officers to question detained
10 individuals regarding, among other matters, their connections to the Iranian military or their
11 religious faith.

12 19. This directive quickly manifested itself in the form of the detention of dozens of
13 Iranian individuals at the Blaine Port of Entry in Blaine, Washington on January 4 and into the
14 morning hours of January 5, 2020. Media reports have indicated that between 60 to 200 people
15 were detained at ports of entry in Washington State, primarily at the Blaine Port of Entry.

16 20. Accounts from the Iranian-American citizens and lawful permanent residents
17 detained at the Blaine Port of Entry indicate that many individual were held for several hours,
18 some in excess of ten hours. Moreover, many individuals were detained with their young
19 children.

20 21. These accounts also demonstrate that CBP officers carried out the questioning
21 that the directive required. Reports indicate that CBP officers questioned detainees regarding
22 their political views, allegiances, personal histories, and family members, among other topics.

1 22. Individual accounts demonstrate that after they were questioned, the individuals
2 were held until the attending CBP officers received instructions from their supervisor authorizing
3 release.

4 23. CBP's national heritage-based detentions at the Blaine Port of Entry immediately
5 became the subject of public outcry from both advocates and lawmakers. They also became the
6 subject of several media reports, in which journalists interviewed individuals who specifically
7 recounted and described the traumatic experience they had suffered when attempting to re-enter
8 the United States.

9 24. Despite the widespread outcry and credible media reports, CBP flatly denied that
10 any wrongdoing had taken place or that it had issued any instruction or a directive commanding
11 officers to detain all Iranian individuals. On Twitter, the agency claimed that "Social media posts
12 that CBP is detaining Iranian-Americans and refusing their entry into the U.S. because of their
13 country of origin are false. Reports that DHS/CBP has issued a related directive are also false."
14 CBP's press secretary issued a statement to the same effect.

15 25. CBP's claims are not credible, as firsthand detention accounts and subsequent
16 media reporting make clear. In light of CBP's denials, on January 8, 2020, Plaintiff CAIR filed a
17 Freedom of Information Act Request, asking the agency to produce "all directives, orders,
18 guidance, briefings, instructions, musters, e-mail, other electronic communications or any other
19 communications, whether issued verbally or in writing, issued by the Seattle Field Office
20 Director or any other Department of Homeland Security (DHS) or Customs and Border
21 Protection (CBP) official, officer, or employee to any CBP officer, port director, or CBP Seattle
22 Field Officer or Blaine Sector or Blaine Port of Entry employee regarding the screening of
23 individuals of Iranian heritage or any other changes in screening or secondary inspection
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1 procedures between January 1, 2020, and January 8, 2020, including, but not limited to, any
2 changes based on the ‘current threat environment,’ or the need for ‘enhanced vigilance,’
3 ‘additional caution,’ or an ‘enhanced posture.’”

4 26. The request additionally asked for CBP “directives, orders, guidance, briefings,
5 instructions, e-mails, other electronic communications” that were produced “in response to the
6 reports of secondary screenings, vetting, detention, or denial of entry or exit of individuals of
7 Iranian heritage at the Blaine Port of entry, issued between January 3, 2020 and January 8,
8 2020.”

9 27. Counsel for CAIR received an email acknowledging the information request,
10 which was filed through CBP’s online portal, on January 9, 2020.

11 28. Under the Freedom of Information Act, CBP had 20 business days to respond to
12 this request. *See* 5 U.S.C. § 552(a)(6). CBP’s response was therefore due by February 7, 2020.
13 *See* 5 U.S.C. § 552(a)(6)(a)(i). CBP did not provide a response or ask for an extension of the
14 deadline within that timeframe.

15 29. On April 15, 2020, over two months after a response to CAIR’s FOIA was due,
16 CBP provided a response to CAIR’s FOIA request through the undersigned counsel. *See* Maltese
17 Decl. Ex. A, Email from Michelle Lambert, AUSA to Aaron Korthuis (Apr. 15, 2020); *id.* Ex. B,
18 CBP FOIA Response Letter.

19 30. In its response, CBP provided four partially redacted pages and a link to a one
20 page online bulletin. *See* Maltese Decl. Ex C, CBP Redacted FOIA Response Request; *id.* Ex. D,
21 Online Bulletin. However, the CBP response letter stated that the agency had identified at least
22 “129 pages of records responsive to your request.”

1 31. On April 30, 2020, CBP provided a second response to CAIR's FOIA request,
2 stating that the agency had identified an additional 19 pages of responsive records. *See* Maltese
3 Decl. Ex. E. CBP partially released five pages of records in conjunction with this second letter.
4 *See* Maltese Decl. Ex. F.

5 32. According to CBP, the remaining 140+ page of unreleased documents are subject
6 to exemptions from release under 5 U.S.C. § 552(b)(6), (b)(7)(A), (b)(7)(C), and (b)(7)(E).

7 33. CBP's letters did not detail what databases, email accounts, or other records
8 storage sites the agency used to conduct its search.

9 34. A timely and fulsome response to CAIR's request is especially appropriate under
10 the circumstances presented here. Credible, firsthand media accounts and follow-up reporting
11 have demonstrated that CBP officials designated U.S. citizens and lawful permanent residents as
12 categorical subjects of detention based on their national heritage. CBP categorically denied such
13 claims.

14 35. Events in the weeks since CAIR's request only underscore the important and
15 pressing nature of CAIR's request. On January 29, 2020, an article in Blaine's newspaper, *The*
16 *Northern Light*, published an copy of the purported directive at issue in this case. CBP has
17 declined to verify that the document is genuine, despite previously disavowing the existence of
18 any such directive. *See* Patrick Grubb, "Source Provides Directive Telling CBP Officers to
19 Detain Iranian-born Travelers," *The Northern Light*, Jan. 29, 2020,
20 [https://www.thenorthernlight.com/stories/source-provides-directive-telling-cbp-officers-to-](https://www.thenorthernlight.com/stories/source-provides-directive-telling-cbp-officers-to-detain-iranian-born-travelers,9315)
21 [detain-iranian-born-travelers,9315](https://www.thenorthernlight.com/stories/source-provides-directive-telling-cbp-officers-to-detain-iranian-born-travelers,9315); *see also* Maltese Decl. Ex. G, Copy of Agency Directive.

22 36. A few days later, on February 3, 2020, U.S. Representative Pramila Jayapal
23 issued a statement after meeting with Seattle Field Office Director Adele Fasano. According to
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1 the statement, CBP finally admitted at the meeting that “there was indeed a breach of protocol
2 and . . . a large number of Iranian Americans were inappropriately targeted.” Press Release, U.S.
3 Representative Pramila Jayapal, Jayapal Statement of Meeting with CBP Seattle Field Office
4 Leadership (Feb. 3, 2020).

5 37. However, despite CBP’s admission of mistakes, Seattle Field Office leadership
6 has continued to disavow responsibility for unlawful detentions. A Seattle Times article
7 published the same day noted that Director Fasano “only learned about the incidents through
8 news reports.” Nicole Brodeur, “Jayapal: CBP Admits to ‘Enormous Mistakes’ in Border Stops
9 of Iranian Americans, Others from Middle East,” *The Seattle Times*, Feb. 3, 2020.

10 38. Because CBP continues to fail to provide any meaningful response to CAIR’s
11 FOIA request, critical questions remain regarding the detentions that took place on January 4 and
12 5, 2020. CAIR’s request thus remains an important tool to ensure that an accurate and full public
13 accounting of CBP’s actions occur.

14 39. CAIR has the capacity and intent to disseminate widely the requested information
15 to the public. As described above, CAIR-WA is state chapter of a national organization that
16 seeks to defend and advocate on behalf of the rights of Muslim communities in the United States.
17 As a national organization, CAIR is well-equipped to provide public access to released
18 documents and work with media outlets to disseminate any responsive materials.

19 **CLAIMS FOR RELIEF**

20 **Count I**
21 **Violation of Freedom of Information Act**
22 **(Failure to Provide Timely Response to FOIA Request)**

23 40. Plaintiff repeats and re-alleges the allegations contained in the preceding
24 paragraphs of this complaint as if fully set forth herein.

1 41. Defendants are obligated under 5 U.S.C. § 552(a)(3) to “promptly” make
2 available agency records requested by any person.

3 42. Under 5 U.S.C. § 552(a)(6)(A)(i), Defendants must decide within 20 days of a
4 request whether the agency will produce responsive documents.

5 43. An extension of this timeline is permitted only “[i]n unusual circumstances”
6 where the agency provides “written notice.” Such notices allow the agency to extend the
7 response deadline for ten additional working days. 5 U.S.C. § 552(a)(6)(B)(i); *see also, e.g.*,
8 *Hajro v. U.S. Citizenship & Immigration Servs.*, 811 F.3d 1086, 1092 (9th Cir. 2016) (“The
9 statutory time limits require an agency to determine within twenty days whether to comply with
10 a FOIA request or, in the alternative, notify the requester of any ‘unusual circumstances’
11 requiring an extension in responding to the request.”). Defendants have not provided any such
12 notice here.

13 44. Plaintiff has exhausted its administrative remedies by making its request and
14 waiting twenty days for a response. 5 U.S.C. § 552(a)(6)(C); *Hajro*, 811 F.3d at 1092.

15 45. Accordingly, Defendants have violated FOIA, and Plaintiff is entitled to relief
16 requiring the agency to provide immediately a response to its request and production of records
17 that the agency plans to release.

18 **Count II**
19 **Violation of Freedom of Information Act**
20 **(Unlawfully Withheld Agency Records)**

21 46. Plaintiff repeats and re-alleges the allegations contained in the preceding
22 paragraphs of this complaint as if fully set forth herein.
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24

1 47. Defendants' wrongful withholdings of specific responsive records, or portions
2 thereof, violates FOIA, 5 U.S.C. §§ 552(a)(3)(A) and (6)(A), and Defendants' corresponding
3 regulations.

4 48. Accordingly, Plaintiff is entitled to relief requiring the agency to provide any and
5 all records not subject to the lawful application of FOIA's exemptions.

6 **Count III**
7 **Violation of Freedom of Information Act**
8 **(Failure to Conduct Adequate Search)**

9 49. Plaintiff repeats and re-alleges the allegations contained in the preceding
10 paragraphs of this complaint as if fully set forth herein.

11 50. Defendants have failed to make a reasonable effort to search for records in
12 electronic form or format responsive to Plaintiffs' Request.

13 51. The failure to conduct an adequate search violates FOIA, 5 U.S.C. § 552(a)(3)(C).

14 52. Accordingly, Plaintiff is entitled to relief requiring Defendants to conduct a
15 reasonable and adequate search for records responsive to its FOIA request.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays that this Court grant the following relief:

- 18 a. Assume jurisdiction over this matter;
- 19 b. Order Defendants to immediately produce all corresponding documents and
20 records responsive to Plaintiff's FOIA Request;
- 21 c. Award Plaintiff attorney's fees and costs under the 5 U.S.C. § 552(a)(4)(E) and on
22 any other basis justified under law; and
- 23 d. Grant any other and further relief that this Court deems just and proper.
- 24

1 DATED this 1st day of May, 2020.

s/ Matt Adams
Matt Adams, WSBA No. 28287
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s/ Aaron Korthuis
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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system.

DATED this 1st day of May, 2020.

s/ Aaron Korthuis
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