

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

American Civil Liberties Union and the American
Civil Liberties Union Foundation,
125 Broad Street, 18th Floor
New York, New York 10004

Plaintiffs,

v.

United States Coast Guard,
2703 Martin Luther King Jr. Avenue, SE
Washington, D.C. 20593

Defendant.

Civil Action No. 1:19-cv-01388

COMPLAINT FOR INJUNCTIVE RELIEF

1. This Freedom of Information Act lawsuit by Plaintiffs the American Civil Liberties Union and the American Civil Liberties Union Foundation (“ACLU”) seeks to compel the production of records in response to a request for records relating to the United States Coast Guard’s practice of apprehending foreign nationals suspected of drug trafficking in international waters and secretly detaining them indefinitely on Coast Guard ships pending their prosecution in U.S. courts. Although the request seeks records of these Coast Guard operations that took place in the East Caribbean Sea between September 1, 2017 and November 15, 2017, this lawsuit demands only records related to: (1) a single operation that took place between September 14, 2017 and October 16, 2017, involving the following four individuals, all Jamaican nationals: Robert Dexter Weir, Patrick Wayne Ferguson, Luther Fian Patterson, and David Roderick Williams; and (2) Coast Guard guidance and other documents pertaining to (a) the search and seizure of suspects; (b) the detention and treatment of suspects; and (c) the search and destruction of interdicted vessels.

2. During interdiction operations in international waters, Coast Guard personnel are involved in boarding foreign-flagged vessels, searching those vessels and individuals on board, seizing any contraband found on those individuals or the vessels, destroying the vessels in question, and detaining individuals whom the Coast Guard suspects are involved in drug trafficking. However, the details of these at-sea law enforcement operations, including the required procedures, actual procedures followed, and the conditions under which suspected traffickers are detained on board Coast Guard ships pending their prosecution in U.S. courts, remain shrouded in secrecy.

3. Media reports and court transcripts document that the Coast Guard often holds detainees for weeks or even months, chained to the open decks of Coast Guard ships, without adequate shelter from the elements, proper sanitation and washing facilities, or adequate food and water. These same reports and transcripts also document that the Coast Guard holds detainees in these conditions completely incommunicado, without access to counsel or family members.

4. This action is brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, seeking injunctive and other appropriate relief, including the immediate processing and release of a subset of records sought by the ACLU from the Coast Guard through a FOIA request (“Request”) made by the ACLU.

5. The ACLU submitted the Request to the Coast Guard and sought expedited processing and a waiver of fees. To date, the Coast Guard has not released any records in response to the Request.

Jurisdiction and Venue

6. This Court has subject-matter and personal jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. § 1331, and 5 U.S.C. §§ 701–06. Plaintiffs have exhausted their administrative remedies.

7. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

8. Plaintiff American Civil Liberties Union is a nationwide, non-profit, nonpartisan organization with more than 1.5 million members dedicated to the constitutional principles of liberty and equality. The ACLU is committed to ensuring that the U.S. government acts in compliance with the Constitution and laws, including international legal obligations. The ACLU is also committed to principles of transparency and accountability in government, and seeks to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and human rights. Obtaining information about governmental activity, analyzing that information, and widely publishing and disseminating it to the press and the public (in both its raw and analyzed form) is a critical and substantial component of the ACLU's work and one of its primary activities.

9. Plaintiff American Civil Liberties Union Foundation is a separate § 501(c)(3) organization that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties.

10. Defendant Coast Guard is a branch of the U.S. military within the Department of Homeland Security and an agency within the meaning of 5 U.S.C. § 552(f)(1).

The ACLU's FOIA Request

11. On December 5, 2018, Plaintiffs submitted the Request for records concerning: “(1) Logbooks and/or logbook entries and other records related to the detention of suspected drug traffickers maintained by officers onboard Coast Guard vessels in the Eastern Caribbean Sea, including Cutter CONFIDENCE (CON) and CG-23142 boat crew between 1 September 2017 and 15 November 2017; (2) Records of radio traffic between personnel at the bridge of CON and CG-23142 boat crew on September 14, 2017; (3) Photographs, videos and other visual evidence of vessels interdicted by CON on September 14, 2017; (4) Protocols related to the destruction of interdicted vessels determined to be ‘hazards to navigation’; (5) Protocols related to the treatment of detainees onboard Coast Guard vessels engaging in anti-drug smuggling operations in the Caribbean.” A copy of the Request is attached to this complaint as Exhibit A.

12. Through this lawsuit, Plaintiffs seek to compel the production of a small subset of these records that relate to; (1) a single Coast Guard operation that took place between September 14, 2017 and October 16, 2017, involving the apprehension and detention of four Jamaican nationals onboard four Coast Guard ships in the East Caribbean Sea, and the Coast Guard’s search and destruction of their fishing boat; and (2) Coast Guard guidance and other documents pertaining to (a) the search and seizure of suspects; (b) the detention and treatment of suspects; and (c) the search and destruction of interdicted vessels.

13. These records include: (i) Logbooks and/or logbook entries and other records relative to the Coast Guard’s seizure, detention and treatment of Jamaican nationals, Robert Dexter Weir, Patrick Wayne Ferguson, Luther Fian Patterson and David Roderick Williams, between September 14, 2017 and October 16, 2017; (ii) Records of radio traffic between Coast Guard personnel onboard United States Coast Guard Cutter Confidence (“CON”) and Coast

Guard vessel CG-23142 boat crew on September 14, 2017; (iii) Photographs, videos and other visual evidence of the Coast Guard's interdiction, search and destruction of a Jamaican registered fishing boat, *Jossette* WH 478 by Coast Guard personnel of CON on September 14, 2017; and (iv) Coast Guard guidance and other documents pertaining to: (a) the search and seizure of drug trafficking suspects; (b) the detention and treatment of suspects; and (c) the search and destruction of vessels interdicted by the Coast Guard.

14. In their Request, Plaintiffs sought expedited processing, contending that the records were urgently needed to inform the public about actual or alleged government activity and that the ACLU was primarily engaged in disseminating information. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 28 C.F.R. § 16.5(e)(1)(ii); 32 C.F.R. § 286.8(e)(i)(B).

15. Plaintiffs sought a waiver of search, review, and duplication fees on the basis that disclosure of the requested records was in the public interest because it was “likely to contribute significantly to public understanding of the operations or activities of the government and [was] not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 28 C.F.R. § 16.11(k)(1); 32 C.F.R. § 286.12(e)(1). Plaintiffs also sought the waiver on the basis that the ACLU constitutes a “representative of the news media” and that the records were not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 32 C.F.R. § 286.12(e)(1); 28 C.F.R. § 16.10(d).

The Coast Guard's Response

16. To date, the Coast Guard has not responded to the ACLU's request for expedited processing.

17. The only response the Coast Guard has provided to the ACLU is an e-mail dated April 11, 2019, stating that the Request “has been forwarded to the Office of Investigations for processing

and response to [the ACLU] under FOIA number 2019-CGFO-00544.”

18. The Coast Guard has not released any record in response to the Request.

Causes of Action

19. The Coast Guard’s failure to conduct a reasonable search for records sought by the Request violates FOIA, 5 U.S.C. § 552(a)(3), and the Coast Guard’s corresponding regulations.

20. The Coast Guard’s failure to promptly make available the records sought by the Request violates FOIA, 5 U.S.C. § 552(a)(3)(A), and the Coast Guard’s corresponding regulations.

21. The Coast Guard’s failure to grant Plaintiffs’ request for a waiver of fees violates FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II) and the Coast Guard’s corresponding regulations.

22. The Coast Guard’s failure to grant Plaintiffs’ request for a waiver of search, review, and duplication fees violates FOIA, 5 U.S.C. § 52(a)(4)(A)(iii), and the Coast Guard’s corresponding regulations.

23. The Coast Guard’s denial of Plaintiffs’ request for expedited processing violates FOIA, 5 U.S.C. § 552(a)(6)(E), and the Coast Guard’s corresponding regulations.

Requested Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Order the Coast Guard to immediately produce the following records responsive to the Request: (1) Logbooks and/or logbook entries and other records relative to the Coast Guard’s seizure, detention and treatment of Jamaican nationals, Robert Dexter Weir, Patrick Wayne Ferguson, Luther Fian Patterson and David Roderick

Williams, between September 14, 2017 and October 16, 2017; (2) Records of radio traffic between Coast Guard personnel onboard United States Coast Guard Cutter Confidence (“CON”) and Coast Guard vessel CG-23142 boat crew on September 14, 2017; (3) Photographs, videos and other visual evidence of the Coast Guard’s interdiction, search and destruction of a Jamaican registered fishing boat, *Josette* WH 478 by Coast Guard personnel of CON on September 14, 2017; and (4) Coast Guard guidance and other documents pertaining to: (a) the search and seizure of drug trafficking suspects; (b) the detention and treatment of suspects; and (c) the search and destruction of vessels interdicted by the Coast Guard;

- B. Enjoin the Coast Guard from charging Plaintiffs search, review, or duplication fees for the processing of the Request;
- C. Award Plaintiffs their costs and reasonable attorneys’ fees incurred in this action; and
- D. Grant such other relief as the Court may deem just and proper.

May 14, 2019

Respectfully submitted,

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