

FILED

APR 19 2010

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

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

Alberto Concepcion,

Plaintiff,

v.

U.S. Customs and Border Protection et al.,

Defendants.

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Civil Action No.: 10 0599

MEMORANDUM OPINION AND ORDER

The plaintiff has filed an application to proceed in forma pauperis and a pro se complaint. The application will be granted and, except for the claims and defendants dismissed by this Order, the complaint will be filed.

The plaintiff, Alberto Concepcion, is a federal prisoner serving time for violating federal drug laws. He filed this lengthy complaint as one brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and names as defendants the U.S. Customs and Border Protection ("CBP") and the U.S. Department of Justice ("DOJ"). The complaint refers to a single FOIA request that the plaintiff directed to the CBP, seeking a "history of passenger activity" relating to his deceased brother, Miguel, from January 1, 1997, until the date of the request, July 8, 2008. *See* Compl. ¶ 14 & Exs. N-7. The CBP acknowledged Concepcion's FOIA request of July 8, 2008 and assigned it No. 2009F1670. *See id.*, Ex. N-9.¹ As relief, the plaintiff seeks "disclosure of all the specified requested . . . records related to any airline travels of Miguel" for the time

¹ The complaint appends a second FOIA request, of the same date, that seeks "a copy of all records in possession of your agency on myself or which makes a reference to me." *See id.* Exhibit N-8. The text of the complaint makes no reference to that FOIA request except to cite the appended exhibit, *see id.* ¶ 14. Furthermore, the plaintiff seeks no relief with respect to the FOIA request concerning himself appended to the complaint as Exhibit N-8. It is not clear if this request was part of FOIA request No. 2009F1670, or even if it was directed to the CBP.

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specified. *See* Compl. at 20. The complaint does not allege, or otherwise demonstrate or suggest that this suit encompasses a FOIA request plaintiff submitted to the DOJ. Therefore, the DOJ will be dismissed because the complaint does not allege a FOIA claim against it.

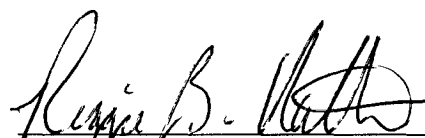
The bulk of the complaint is comprised of what appears to be argument relating to evidence used to prosecute the plaintiff; it does not appear to be related to the FOIA request directed to the CBP. *See id.* ¶¶ 13 (“Notice”) & 22-41. The “alternative” relief the plaintiff seeks in relation to these arguments relating to his prosecution — such as \$400 million in damages for withholding requested records, falsifying public records, invading the plaintiff’s privacy, wire fraud, mail fraud, aiding and abetting, obstruction of justice, lack of jurisdiction over plaintiff’s criminal case, kidnapping, bribery, extortion, and subornation of perjury, among other things — is not available in a FOIA action. Accordingly, the claims related to the unrealizable relief will be dismissed for failure to state a claim upon which relief may be granted.

In sum, the complaint will be treated as one against the CBP for the FOIA request dated July 8, 2008 and identified as No. 2009F1670. All other claims and defendants are dismissed for failure to state a claim upon which relief may be granted under the FOIA. Accordingly, it is hereby

ORDERED that the Department of Justice is DISMISSED as a defendant to this action; and it is further

ORDERED that all claims seeking relief not available under the FOIA are DISMISSED.

Date: April 13, 2010


United States District Judge