

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE OHIO STATE UNIVERSITY :
MORITZ COLLEGE OF LAW :
CIVIL CLINIC, : CASE NO. 2:14-cv-2329

and : JUDGE FROST

ADVOCATES FOR BASIC LEGAL : MAGISTRATE JUDGE PRESTON
EQUALITY, INC., : DEAVERS

Plaintiffs, :

v. :

U.S. CUSTOMS AND BORDER :
PROTECTION, :

Defendant. :

**MOTION TO TRANSFER VENUE TO THE U.S. DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OHIO UNDER 28 U.S.C. § 1404**

Defendant United States Customs and Border Protection moves the Court to transfer venue to the U.S. District Court for the Northern District of Ohio under 28 U.S.C. § 1404(a). The reasons for this motion are in the attached memorandum.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. Background

Plaintiffs Advocates for Basic Legal Equality (ABLE) and The Ohio State University Moritz College of Law Legal Clinic bring this action against Defendant U.S. Customs and Border Protection (CBP) under the Freedom of Information Act, 5 U.S.C. § 552. Plaintiffs seek records “related to CBP Sandusky Bay Station’s policies and practices regarding the apprehension, arrest, and detention of individuals.” (Compl. ¶ 2.)

Plaintiff ABLE is a non-profit regional law firm in Toledo, Ohio, that provides legal assistance in civil rights and poverty law to low-income individuals and groups in northwestern and western Ohio and to migrant farmworkers throughout Ohio. (Compl., ¶ 7.) CBP’s Sandusky Bay Station is in Port Clinton, in the Northern District of Ohio.¹

For more than five years, Plaintiff ABLE has been litigating the *Muñiz-Muñiz* case against CBP in the Northern District of Ohio. *Muñiz-Muñiz v. U.S. Border Patrol*, Civil No. 3:09-02865 (N.D. Ohio) (filed December 10, 2009) (Zouhary, J.). In that case, ABLE represents Hispanics, as well as organizational plaintiffs who “work with and organize Hispanics to vindicate their rights and to enhance their lives.” (NDOH, Am. Compl. ¶ 1, ECF No. 21, attached as Exhibit A.) In addressing the *Muñiz* litigation in their FOIA complaint, Plaintiffs allege that the “Sandusky

¹See U.S. Customs and Border Protection, Sandusky Bay Station, available at <http://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/detroit-sector-selfridge-angb-michigan/sandusky-bay-station> (last visited January 21, 2015).

Bay Border Patrol Station was illegally profiling Hispanics for detentions, seizures, and arrests based on their being Hispanic.” (Compl., ECF No. 1; PgId. 4.)

The *Muñiz* litigation is extensive, with more than 220 docket entries on a 40-plus page docket sheet. (See *Muñiz-Muñiz* Northern District of Ohio Docket Sheet, attached at Exhibit B.) The document production in *Muñiz* has been correspondingly extensive, with numerous discovery requests, responses, exchange of key word search terms for e-discovery production, status reports, and discovery conferences and orders. (NDOH ECF Nos. 90, 91, 92, 97, 102, 105, 106, 109, 117, 119, 122, 123.)

Moreover, the District Court for the Northern District of Ohio issued a Stipulated Protective Order authorizing production of sensitive and private information. The Court recognized “that disclosure of information in this action may involve the production of sensitive and/or private information for which special protection from public disclosure, and from use for any purpose other than prosecuting this action, would be warranted.” (See NDOH Stipulated Protective Order, ECF No. 101, attached at Exhibit C.) Since the protective order, the parties have made numerous filings under seal. (NDOH, ECF Nos. 130, 170, 175–187.)

Trial in *Muñiz* is set for May 11, 2015. (NDOH, ECF No. 223.)

II. Plaintiff’s FOIA Request Relating to CBP’s Sandusky Bay Station.

In this case, Plaintiffs allege that Plaintiff ABLE obtained documents in *Muñiz* that they believe support their profiling allegations. (Compl. ¶ 11.) Plaintiffs allege that the records ABLE obtained in *Muñiz* are of significant public concern and request a waiver of search, review and duplication fees. (Compl. ¶¶ 2, 3, 11, 16.)

In August 2014, Plaintiffs made a broad FOIA request to CBP for fifteen categories (and numerous subcategories) of records “created by and/or in the possession of Sandusky CBP” on or after October 1, 2008. (Compl., FOIA Request, ECF No. 1-2; PgId. 13–14.) The requested records include records on “each individual detained or taken into custody by Sandusky CBP,” “daily apprehension logs” containing data on the individuals apprehended, “[a]ll records of communications between Sandusky CBP and state or local law enforcement agencies” on various topics, “[a]ll records setting forth policies and procedures related to the planning and/or implementation of immigration enforcement actions,” “[a]ll records indicating what methods of law enforcement were used by Sandusky CBP during immigration enforcement actions,” [a]ll records containing guidance . . . from other federal agencies or components of the Department of Homeland Security, for what sort of suspicious activities or suspicious groups of people Sandusky CBP should look for,” and more. (*Id.*) CBP has not responded to the request, and Plaintiffs ask this Court to compel immediate search and disclosure of the requested records, a waiver of all fees for processing the FOIA request, and their costs and reasonable attorneys’ fees. (Compl., ¶¶ A-D; PgId. 6.)

III. The Court Should Transfer Venue to the Northern District of Ohio under 28 U.S.C. § 1404(a).

Section 1404(a) states that “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.” 28 U.S.C. § 1404(a). As long as transfer would be to a

district or division where the case “might have been brought,” the district court enjoys broad discretion to transfer. 28 U.S.C. § 1404(a); *see also Atl. Marine Const. Co., Inc. v. U.S. Dist. Court for W. Dist. of Tex.*, 134 S.Ct. 568, 579 (2013); *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 264–65 (1981) (noting that district courts have more discretion to transfer under Section 1404(a) than they had to dismiss on grounds of *forum non conveniens*, the common law predecessor doctrine). Thus, the threshold question this motion presents is whether this case “might have been brought” in the Northern District of Ohio.

This case “might have been brought” in the Northern District of Ohio. FOIA itself states that:

On complaint, the district court of the United States in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.
5 U.S.C. § 552(a)(4)(B).

Here, “complainant” ABLE is in the Northern District of Ohio. (Compl.)

Moreover, the FOIA complaint seeks records “created by and/or in the possession of Sandusky CBP,” which is headquartered in Port Clinton, also in the Northern District of Ohio. (ECF No. 1-2; PgId. 12.) This case could have been brought in the Northern District of Ohio on either ground. Therefore, the district court has the discretion to transfer this case “[f]or the convenience of parties and witnesses, in the interest of justice.” 28 U.S.C. § 1404(a).

Here, both the private interests of the parties as well as the public interest in obtaining efficient use of judicial resources favors transferring the case to the

Northern District of Ohio. As for the private interests, Plaintiff Moritz College of Law is the only connection this case has to the Southern District of Ohio. Plaintiff Moritz's location in the Southern District of Ohio does not determine the answer to the question whether venue should be transferred. *Mobil Corp. v. Sec. & Exch. Comm'n*, 550 F. Supp. 67, 70 (S.D.N.Y. 1982) (transferring venue in a FOIA case, reasoning that “[t]he simple fact that the Southern District is plaintiffs’ choice, therefore, does not address the issue whether the public and private interests affected by a transfer warrant the transfer or not”). Plaintiff ABLE is in Toledo. Defendant CBP’s Sandusky Bay Station is in Port Clinton. The extensive document requests cover documents from CBP’s Sandusky Bay Station. Employees working on the FOIA request who may be called as witnesses or declarants would not be from locations in the Southern District of Ohio, but would likely be from the Sandusky Bay Station.² Thus, the private interests favor transferring this case to the Northern District of Ohio.

The efficient use of judicial resources also favors transferring the case to the Northern District of Ohio. The substantive questions addressing a court under

² In-court appearance is generally unnecessary in FOIA cases because FOIA cases are typically decided on summary judgment based on declarations of agency employees. *Rugiero v. U.S. Dept of Justice*, 257 F.3d 534, 544 (6th Cir. 2001). The plaintiffs’ FOIA request is particularly voluminous, however, and if agency employees were needed to appear in court, for example, for an *in camera* review or other judicial proceeding, those employees would likely come from the Northern District of Ohio. *Cf. id.* at 543–544 (discussing *in camera* review). CBP employees would not come from the Southern District of Ohio. Moreover, the location of the records primarily in the Northern District of Ohio merits attention because “Congress appears to have considered location of documents important by vesting jurisdiction in FOIA actions in the district in which the agency records are situated” *Mobil Corp. v. S.E.C.*, 550 F. Supp. 67, 70 (D.C.N.Y. 1982) (quoting 5 U.S.C. § 552(a)(4)(B)).

FOIA are the adequacy of the agency's search in light of the request and whether the agency's exemptions are proper. *Rugiero v. U.S. Dept. of Justice*, 257 F.3d 534, 547–553 (6th Cir. 2001) (addressing adequacy of search and agency's reliance on exemptions). The Northern District of Ohio is familiar with the extensive litigation and documents that have been produced in *Muñiz*. That familiarity would be instrumental in terms of understanding the enormous breadth of the Plaintiffs' FOIA request and the adequacy and timing of the agency's search for records in light of that broad request. Moreover, the Northern District has issued a protective order covering sensitive documents, and there is likely to be significant overlap in FOIA exemptions that would prevent public disclosure, such as the law enforcement exemptions. 5 U.S.C. § 552(b)(7)(A)–(F). Again, the Court's familiarity with the documents and issues from *Muñiz* would be instrumental in understanding the FOIA exemptions that may apply.

To elaborate, FOIA's law enforcement exemption alone covers a range of records compiled for law enforcement purposes, such as records that: "could reasonably be expected to interfere with enforcement proceedings" (*id.* (b)(7)(A)); "could reasonably be expected to constitute an unwarranted invasion of personal privacy" (*id.* (b)(7)(B)); "could reasonably be expected to disclose the identity of a confidential source, including any State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis . . ." (*id.* (b)(7)(C)); and records that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement

investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” *Id.* (b)(7)(E).

It is readily apparent that in light of the Northern District of Ohio’s instrumental understanding gained from the lengthy *Muñiz* litigation, it can more efficiently address the issues implicated in this case, including Plaintiffs’ broad FOIA request, the law enforcement topics of that request, and Plaintiffs’ assertion that a waiver of fees is appropriate because disclosure would be in the public interest.

In conclusion, because transfer to the Northern District of Ohio under 28 U.S.C. § 1404(a) is in the private interests of the parties and furthers the wise use of scarce public resources, Defendant U.S. Customs and Border Protection requests that the Court transfer the case to the Northern District of Ohio.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 29, 2015, I electronically filed the foregoing Motion to Transfer Venue using the Court's CM/ECF system, which will serve opposing counsel.

s/John J. Stark

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Assistant United States Attorney