

CLOSED

**United States District Court  
District of Massachusetts (Boston)  
CIVIL DOCKET FOR CASE #: 1:20-cv-11127-IT**

Stylianios et al v. US Citizenship and Immigration Services  
Assigned to: Judge Indira Talwani  
Cause: 05:552 Freedom of Information Act

Date Filed: 06/13/2020  
Date Terminated: 01/29/2021  
Jury Demand: None  
Nature of Suit: 895 Freedom of Information Act  
Jurisdiction: Federal Question

**Plaintiff****Thomas Stylianios Jr.**

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**Plaintiff****Daniel Dem**

represented by **Thomas Stylianios , Jr.**  
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V.

**Defendant****US Citizenship and Immigration Services**

represented by **Anita Johnson**  
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Date Filed	#	Docket Text
06/13/2020	<u>1</u>	COMPLAINT <i>Injunctive (FOIA) Relief</i> against All Defendants Filing fee: \$ 400, receipt number 0101-8284142 (Fee Status: Filing Fee paid), filed by Thomas, Jr. Stylianios. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Category Form, # <u>3</u> Exhibit)(Stylianios, Thomas) (Entered: 06/13/2020)

06/15/2020	<u>2</u>	ELECTRONIC NOTICE of Case Assignment. Judge Indira Talwani assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge M. Page Kelley. (Finn, Mary) (Entered: 06/15/2020)
06/15/2020	<u>3</u>	Summons Issued as to US Citizenship and Immigration Services. <b>Counsel receiving this notice electronically should download this summons, complete one for each defendant and serve it in accordance with Fed.R.Civ.P. 4 and LR 4.1. Summons will be mailed to plaintiff(s) not receiving notice electronically for completion of service.</b> (Kelly, Danielle) (Entered: 06/15/2020)
07/06/2020	<u>4</u>	NOTICE of Appearance by Anita Johnson on behalf of US Citizenship and Immigration Services (Johnson, Anita) (Entered: 07/06/2020)
07/10/2020	<u>5</u>	AFFIDAVIT OF SERVICE Executed by Thomas Stylianos Jr., Daniel Dem. All Defendants. Acknowledgement filed by Thomas Stylianos Jr., Daniel Dem. (Attachments: # <u>1</u> Exhibit Service Proof)(Stylianos, Thomas) (Entered: 07/10/2020)
07/17/2020	<u>6</u>	Assented to MOTION for Extension of Time to 8/16/2020 to File Answer <i>partially</i> by US Citizenship and Immigration Services.(Johnson, Anita) (Entered: 07/17/2020)
07/20/2020	7	Judge Indira Talwani: ELECTRONIC ORDER <b>granting in part and denying in part</b> Defendant's <u>Motion for Extension of Time 6</u> . The Defendant requests a 60-day extension of time to respond in part because Defendant "is attempting to locate the files requested and to consider whether, considering they relate to another individual, they are releasable to Plaintiff." The court finds no cause for the requested extension where this inquiry should have occurred prior to the denial of Plaintiff's administrative appeal. As a courtesy, the court extends the Defendant's time to respond to the complaint to July 31, 2020. (Kelly, Danielle) (Entered: 07/20/2020)
08/11/2020	<u>8</u>	MOTION for Extension of Time to File Answer by US Citizenship and Immigration Services.(Johnson, Anita) (Entered: 08/11/2020)
08/11/2020	<u>9</u>	ANSWER to Complaint by US Citizenship and Immigration Services.(Johnson, Anita) (Entered: 08/11/2020)
08/12/2020	10	ELECTRONIC NOTICE Setting Hearing on Motion <u>8</u> MOTION for Extension of Time to File Answer: Motion Hearing set for 8/13/2020 01:45 PM before Judge Indira Talwani.  This hearing will be conducted by video conference. Counsel of record will receive a video conference invite at the email registered in CM/ECF. If you have technical or compatibility issues with the technology, please notify the session's courtroom deputy as soon as possible.  Access to the hearing will be made available to the media and public. In order to gain access to the hearing, you must sign up at the following address: <a href="https://forms.mad.uscourts.gov/courtlist.html">https://forms.mad.uscourts.gov/courtlist.html</a> .  For questions regarding access to hearings, you may refer to the Court's general orders and public notices available on <a href="http://www.mad.uscourts.gov">www.mad.uscourts.gov</a> or contact <a href="mailto:media@mad.uscourts.gov">media@mad.uscourts.gov</a> .  (MacDonald, Gail) (Entered: 08/12/2020)
08/13/2020	11	Electronic Clerk's Notes for proceedings held before Judge Indira Talwani: Motion Hearing held on 8/13/2020 re <u>8</u> MOTION for Extension of Time to File Answer filed by US Citizenship and Immigration Services. Case called. Court had colloquy with counsel. MOTION for Extension of Time to File Answer <u>8</u> granted nunc pro tunc. Def. shall email the clerk and Mr. Stylianos in a week as to whether or not motion to dismiss for lack of subject-matter jurisdiction will be filed. Scheduling conference to be set. (Court Reporter: Robert Paschal at rwp.reporter@gmail.com.)(Attorneys present: Stylianos, Johnson) (MacDonald, Gail) (Entered: 08/17/2020)
08/17/2020	<u>12</u>	NOTICE of Scheduling Conference. Telephonic Scheduling Conference set for 9/9/2020 02:30 PM before Judge Indira Talwani. Counsel are instructed to dial 888-808-6929 and enter Code: 8523158 to be connected to the court's teleconference system.(MacDonald, Gail) (Entered: 08/17/2020)

08/21/2020	<u>13</u>	First MOTION for Summary Judgment by Daniel Dem, Thomas Stylianos Jr.. (Attachments: # <b>REFER TO 15</b> Undisputed Facts, # <b>REFER TO 14</b> Memoranda, # <u>3</u> Exhibit A, # <u>4</u> Exhibit B, # <u>5</u> Exhibit C)(Stylianos, Thomas) Modified on 8/24/2020 (Kelly, Danielle). (Entered: 08/21/2020)
08/21/2020	<u>14</u>	MEMORANDUM of Law in Support re <u>13</u> First MOTION for Summary Judgment filed by Daniel Dem, Thomas Stylianos Jr. (Kelly, Danielle) (Entered: 08/24/2020)
08/21/2020	<u>15</u>	Statement of Material Facts L.R. 56.1 re <u>13</u> First MOTION for Summary Judgment filed by Daniel Dem, Thomas Stylianos Jr. (Kelly, Danielle) (Entered: 08/24/2020)
08/31/2020	<u>16</u>	ANSWER to Complaint by US Citizenship and Immigration Services.(Johnson, Anita) (Entered: 08/31/2020)
09/02/2020	<u>17</u>	JOINT STATEMENT re scheduling conference . (Stylianos, Thomas) (Entered: 09/02/2020)
09/07/2020	<u>18</u>	MOTION for Extension of Time to 9/25/2020 to File Response/Reply to <i>Plaintiffs' Motion for Summary Judgment</i> by US Citizenship and Immigration Services.(Johnson, Anita) (Entered: 09/07/2020)
09/08/2020	19	<p>Judge Indira Talwani: ELECTRONIC ORDER <b>granting in part and denying in part</b> Defendant's <u>Motion for Extension of Time to Respond to Plaintiffs' Motion for Summary Judgment 18</u> . The Defendant requests a 14–day extension of time to respond to Plaintiffs' <u>Motion for Summary Judgment 13</u> because "USCIS is in the process of considering whether, under the circumstances, [documents] are releasable to Plaintiffs without the consent of the other individual" under whose name the documents are being held. Def.'s Mot. 1 <u>18</u> . Defendant contends further that "[t]he additional time requested for USCIS' response is necessary for USCIS counsel and FOIA staff to investigate and reach a considered judgment on the request, at a time when FOIA staff has been overwhelmed with FOIA requests and informs the undersigned that they are unable to provide an earlier response." <u>Id.</u> The request mirrors Defendant's earlier request to extend time to answer the complaint. <u>See</u> Def.'s Mot. <u>6</u> ("USCIS is attempting... to consider whether [the records] are releasable to Plaintiff"). The court denied the previous request in part, finding "no cause for the requested extension where this inquiry should have occurred prior to the denial of Plaintiff's administrative appeal." Elec. Order 7 . The same lack of good cause continues here.</p> <p>Defendant also notes that "the extension would provide additional time to resolve the dispute, if possible." Def.'s Mot. 1–2 <u>18</u> . The parties' <u>Scheduling Conference Memorandum 17</u> filed just days earlier states the Plaintiffs' settlement demand and that Defendant does not agree to the proposal. Defendant makes no suggestion as to why the likelihood of settlement has changed in the days since that Scheduling Conference Memorandum was filed.</p> <p>The court finds no cause for the extension. But as a courtesy to Defendant's counsel, the court extends Defendant's time to respond to Plaintiffs' Motion for Summary Judgment <u>13</u> to September 18, 2020. The court does not anticipate granting further extensions of this deadline. (Kelly, Danielle) (Entered: 09/08/2020)</p>
09/09/2020	20	Electronic Clerk's Notes for proceedings held before Judge Indira Talwani: Scheduling Conference held on 9/9/2020. Case called. Court had colloquy with counsel. There will be no fact discovery. Opp. to Summary Judgment due 9/18/2020; either cross motion will be filed or notice that the issues are partially resolved with a proposed schedule for resolving any remaining fee issues. (Court Reporter: Robert Paschal at rwp.reporter@gmail.com.)(Attorneys present: Thomas Stylianos Jr., Anita Johnson) (MacDonald, Gail) (Entered: 09/14/2020)
09/18/2020	<u>21</u>	MOTION for Summary Judgment by US Citizenship and Immigration Services.(Johnson, Anita) (Entered: 09/18/2020)
09/18/2020	<u>22</u>	MEMORANDUM in Support re <u>21</u> MOTION for Summary Judgment <i>and In Opposition to Plaintiffs' Motion for Summary Judgment</i> filed by US Citizenship and Immigration Services. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Exhibit)(Johnson, Anita) (Entered: 09/18/2020)

09/23/2020	<u>23</u>	STATEMENT of facts re <u>21</u> MOTION for Summary Judgment . (Johnson, Anita) (Entered: 09/23/2020)
09/29/2020	<u>24</u>	MEMORANDUM in Opposition re <u>21</u> MOTION for Summary Judgment <i>by Defendants</i> filed by Daniel Dem, Thomas Stylianos Jr.. (Attachments: # <u>1</u> Affidavit Affidavit of Record Subject, # <u>2</u> Affidavit Declaration of CBA member)(Stylianos, Thomas) (Entered: 09/29/2020)
10/11/2020	<u>25</u>	MOTION for Extension of Time to 10/23/2020 to File Response/Reply by US Citizenship and Immigration Services.(Johnson, Anita) (Entered: 10/11/2020)
10/13/2020	26	Judge Indira Talwani: ELECTRONIC ORDER entered <b>granting</b> <u>25</u> Motion for Extension of Time to File Response/Reply. Replies due by 10/23/2020. The court does not anticipate granting further extensions of this deadline. (Kelly, Danielle) (Entered: 10/13/2020)
10/21/2020	<u>27</u>	REPLY to Response to <u>21</u> MOTION for Summary Judgment filed by US Citizenship and Immigration Services. (Johnson, Anita) (Entered: 10/21/2020)
11/16/2020	<u>28</u>	NOTICE of Appearance by Michael P. Sady on behalf of US Citizenship and Immigration Services (Sady, Michael) (Entered: 11/16/2020)
11/16/2020	<u>29</u>	NOTICE of Withdrawal of Appearance by Anita Johnson (Johnson, Anita) (Entered: 11/16/2020)
12/15/2020	30	<p>Judge Indira Talwani: Electronic Order: Before the court are Defendant United States Citizenship and Immigration Service's (USCIS) and Plaintiffs Thomas Stylianos, Jr. and Daniel Dem's <u>Motions for Summary Judgment 21 , 13</u> . At issue in the summary judgment motions is whether copies of certain documents should be produced to Mr. Dem under the Freedom of Information Act (FOIA). Defendant USCIS argues that the documents, which are located in Mr. Dem's wife's USCIS file, were properly held under Exemption 6 to FOIA, which permits the government, when responding to a FOIA request, to withhold information about individuals when the disclosure would constitute a clearly unwarranted invasion of personal privacy. Plaintiffs argue that Exemption 6 does not apply here where the records concern Mr. Dem and were prepared and submitted to USCIS by him.</p> <p>Although the parties are litigating the action under FOIA, Mr. Dem's initial application to USCIS was made on USCIS Form G-639, which may be used to obtain records under <u>both</u> FOIA and the Privacy Act ("PA"). <u>See</u> Form Instructions, accessed at <a href="https://www.uscis.gov/sites/default/files/document/forms/g-639instr.pdf">https://www.uscis.gov/sites/default/files/document/forms/g-639instr.pdf</a>. (Dec. 14, 2020). As USCIS explains in the instructions for the form, the Privacy Act "allows U.S. citizens or lawful permanent residents to: 1. Request access to information pertaining to themselves in Federal agency records; and 2. Correct or amend their records." Here, the initial application identified Mr. Dem as both the person on whose behalf the request has been made and as the subject of the requested records. <u>See</u> Def.'s Ex. A (submitted form G-639) [22-2]. This suggests that the Privacy Act, and not FOIA, may be the more appropriate framework for considering whether Mr. Dem is entitled by law to the requested records.</p> <p>However, for reasons that are not apparent from the record submitted to the court and although USCIS seems to have recognized Plaintiffs' request as made under both statutes, <u>see</u> Def.'s Ex. C (March 2, 2020 letter) [22-2] (identifying the request in correspondence as a "Freedom of Information Act/Privacy Act (FOIA/PA) request" for Daniel Dem regarding his marriage certificate and the first page of his Petition for Alien Relative (Form I-130)); Def.'s Ex. E (June 3, 2020 letter) (same), USCIS treated the request as one made under FOIA only; USCIS referenced rights to appeal under FOIA only, directed Dem's counsel to mark the appeal sent to the USCIS FOIA/PA Appeals Office as a "Freedom of Information Act Appeal," and finally denied the request solely on the basis that the records were exempt from disclosure under FOIA without any discussion of the Privacy Act. <u>See</u> Def.'s Ex. C (March 2, 2020 letter) [22-2]; Def.'s Ex. E (June 3, 2020 letter); <u>see also</u> Eggleston Aff. Paragraph 8 [22-1] (now asserting that the original request was "a FOIA request").</p> <p>To resolve or clarify this issue, the court directs counsel to confer and determine: (1) whether the issue should have been addressed by USCIS under the Privacy Act; (2) if so, whether the court should remand the matter, consider the Privacy Act request in the</p>

		first instance, or allow counsel additional time to try to resolve the matter as a Privacy Act request; and (3) if not, whether counsel jointly agree that the Privacy Act is not applicable to Mr. Dem's records request. By December 23, 2020, counsel shall file a joint statement responding to the court's inquiry and, if they are not in agreement on how to proceed, shall include a proposed briefing schedule to address the court's questions. (Kelly, Danielle) (Entered: 12/15/2020)
12/23/2020	<u>31</u>	JOINT STATEMENT of counsel . (Sady, Michael) (Entered: 12/23/2020)
01/28/2021	<u>32</u>	Judge Indira Talwani: ORDER entered. Memorandum and Order <b>DENYING</b> Plaintiffs' <u>Motion for Summary Judgment 13</u> and <b>GRANTING</b> Defendant's <u>Motion for Summary Judgment 21</u> . Please see attached. (Kelly, Danielle) (Entered: 01/28/2021)
01/29/2021	<u>33</u>	Judge Indira Talwani: ORDER entered. <b>JUDGMENT</b> . Please see attached. (Kelly, Danielle) (Entered: 01/29/2021)