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11
12 IN THE UNITED STATES DISTRICT COURT
13 THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 TAHIRIH JUSTICE CENTER,

16 Plaintiff,

17 v.

18 UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES; UNITED
19 STATES DEPARTMENT OF HOMELAND
SECURITY,

20 Defendants.
21

Case No. 3:21-cv-04440

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF FOR
VIOLATION OF THE FREEDOM OF
INFORMATION ACT, 5 U.S.C. § 552 et
seq.**

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1 Plaintiff Tahirih Justice Center (“Plaintiff”), by its undersigned attorneys, alleges as
2 follows:

3 **INTRODUCTION**

4 1. From 2014 until the beginning of 2018, United States Citizenship and
5 Immigration Services (“USCIS”), the arm of the United States Department of Homeland
6 Security (“DHS”) (collectively, “Defendants”) responsible for administering the United States
7 naturalization and immigration system, scheduled interviews for individuals with pending
8 asylum applications on a “first-in, first-out” system. In other words, USCIS generally prioritized
9 interviews for people whose asylum applications had been pending for the longest period of
10 time.

11 2. On January 29, 2018, USCIS inverted its system for scheduling asylum
12 interviews, moving to a “last-in, first-out” system.

13 3. Under the last-in, first-out system, USCIS gives first priority to asylum interviews
14 that had to be rescheduled. It gives second priority to interviewing asylum applicants whose
15 applications have been pending 21 days or less. And it gives third, and the lowest, priority to all
16 other applicants. It schedules those applicants for interviews beginning with those with the
17 newest applications and proceeding backward in time.

18 4. As a result of USCIS’s change to a last-in, first-out process for affirmative asylum
19 interviews, many of Plaintiff’s clients who filed for asylum under the first-in, first-out system
20 still have not received calls to complete their asylum interviews. In fact, because the backlog of
21 asylum applications at USCIS has grown since January 2018—to a total of more than 386,000
22 pending applications at the end of fiscal year 2020—people who filed asylum applications in
23 2016 and 2017 are now farther back in line than they were when they originally submitted their
24 applications four to five years ago. These asylum applicants are stuck in a period of indefinite
25 administrative limbo created by USCIS’s changed priorities.

26 5. On July 5, 2019, Plaintiff made a Freedom of Information Act request to USCIS
27 requesting information regarding USCIS’s switch to the last-in, first-out system (the “2019 FOIA
28

1 Request”). Nearly *two years* after Plaintiff made its request, USCIS still has not responded to
 2 Plaintiff’s request, and no responsive documents have been produced.

3 6. On April 2, 2021, Plaintiff made a second Freedom of Information Act request to
 4 USCIS that supplemented the July 5, 2019, request (the “2021 FOIA Request”). Two months
 5 after Plaintiff made its second request, USCIS still has not responded to Plaintiff’s request, and
 6 no responsive documents have been produced.

7 7. Plaintiff brings this action under the Freedom of Information Act, 5 U.S.C. § 552
 8 *et seq.*, as amended (“FOIA”), to enjoin USCIS and DHS from continuing to improperly
 9 withhold agency records that are responsive to Plaintiff’s 2019 and 2021 FOIA Requests. This
 10 FOIA action is necessary because Defendants continue to withhold responsive records since
 11 Plaintiffs made the 2019 FOIA Request over 23 months ago and the 2021 FOIA Request over
 12 two months ago, constituting constructive denials of the FOIA Requests.

13 8. The Freedom of Information Act “focuses on the citizens’ right to be informed
 14 about ‘what their government is up to,’” by requiring the release of “[o]fficial information that
 15 sheds light on an agency’s performance of its statutory duties.” *DOJ v. Reporters Comm. For*
 16 *Freedom of the Press*, 489 U.S. 749, 750, 773 (1989) (citations omitted). “[D]isclosure, not
 17 secrecy, is the dominant objective” of FOIA. *Dep’t of Interior v. Klamath Water Users*
 18 *Protective Ass’n*, 532 U.S. 1, 8 (2001) (internal quotation marks and citations omitted).

19 9. Through its FOIA Requests, Plaintiff seeks to shine a public light on information
 20 about Defendants’ use of immigration policy to constructively deny asylum seekers their asylum
 21 interview.

22 PARTIES

23 10. Plaintiff Tahirih Justice Center is an award-winning national non-profit providing
 24 direct services, legal representation, policy advocacy, training, and education to women and
 25 children fleeing gender-based violence as immigrants to the United States. Tahirih Justice
 26 Center uses an interdisciplinary, trauma-informed approach to help violence survivors obtain
 27 legal representation and social services to rebuild their lives.¹

28 ¹ See <https://www.tahirih.org/about-us/>.

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1 11. Defendant USCIS is a component of the Executive Branch of the United States
2 Government.

3 12. Defendant Department of Homeland Security is a component of the Executive
4 Branch of the United States Government.

5 13. Defendants are each an “agency” within the meaning of 5 U.S.C. § 552(f).

6 14. Plaintiff is informed and believes that each Defendant has possession and control
7 of the records sought by the FOIA Requests.

8 **JURISDICTION**

9 15. This Court has subject-matter jurisdiction over this action and personal
10 jurisdiction over the parties under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 701-706, and 28 U.S.C.
11 § 1331.

12 **VENUE**

13 16. Venue in the Northern District of California is proper under 5 U.S.C.
14 § 552(a)(4)(B) as Plaintiff’s 2021 FOIA Request occurred in San Mateo County, where Plaintiff
15 maintains an office. For the same reason, venue is also proper under 28 U.S.C. § 1391(e).

16 17. Assignment to the San Francisco Division is proper under Civil Local Rule 3-2(c)
17 and (d) because Plaintiff’s work with asylum applicants and its 2021 FOIA Request occurred in
18 San Mateo County, within this Division.

19 **FACTS**

20 18. Plaintiff sent the 2019 FOIA Request to USCIS on July 5, 2019. Plaintiff
21 requested copies (including electronic records) of any documents dated after January 1, 2017,
22 that relate to USCIS’s decision to give priority to the most recently filed affirmative asylum
23 applications when scheduling asylum interviews and the consequences of that decision.

24 Plaintiff’s FOIA Request specifically requested documents containing information regarding:

- 25 a. The reasons for scheduling priorities that took effect on January 29, 2018;
- 26 b. The reasons for departing from the prior set of scheduling priorities;
- 27 c. Any concerns, practical, legal, or otherwise, with the new scheduling
- 28 priorities that took effect on January 29, 2018;

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- 1 d. The purpose of the revised scheduling priorities;
- 2 e. The extent of any backlog of petitions filed before the revised scheduling
- 3 priorities took effect;
- 4 f. Any efforts by USCIS to eliminate that backlog and adjudicate all pending
- 5 affirmative asylum applications;
- 6 g. The time it will take to adjudicate any or all pending affirmative asylum
- 7 applications; and
- 8 h. The date of the earliest-filed affirmative asylum applications that remained
- 9 pending at any time.

10 19. Plaintiff also advised USCIS that documents responsive to the 2019 FOIA
11 Request may have originated with the Asylum Division, the Office of Policy and Strategy, the
12 Director’s Office, the Deputy Director’s Office, or other USCIS components. Plaintiff also
13 requested a waiver of all fees for the 2019 FOIA Request since Tahirih Justice Center is a
14 national 501(c) charitable organization. Attached as **Exhibit A** is a true and correct copy of the
15 FOIA Request.

16 20. On August 9, 2019, USCIS acknowledged receipt of the 2019 FOIA Request and
17 assigned it control number COW2019500891. USCIS granted Plaintiff’s request for a fee
18 waiver. Attached as **Exhibit B** is a true and correct copy of this acknowledgment of receipt.

19 21. There has been no further response from USCIS.

20 22. As of June 8, 2021, the USCIS FOIA website states that Plaintiff’s request is
21 565th in line. The website still lists an “estimated completion date” of August 9, 2019.

22 23. On April 2, 2021, Plaintiff submitted the 2021 FOIA Request to USCIS pursuant
23 to FOIA that supplemented the 2019 FOIA Request. The 2021 FOIA Request seeks records
24 regarding the last-in, first-out system under which USCIS gives priority to the most recently filed
25 affirmative asylum applications when scheduling asylum interviews. Plaintiff’s 2021 FOIA
26 Request specifically requested documents containing information regarding:

- 27 a. USCIS’s decision to return to a last-in, first out system;
- 28 b. USCIS’s decision to depart from the prior first-in, first-out system;

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- 1 c. The scope, or exceptions to, the last-in, first-out system instituted on
- 2 January 29, 2018;
- 3 d. The predicted, expected, or actual consequences of returning to a last-in,
- 4 first-out system;
- 5 e. Records showing or estimating the date of the earliest-filed pending
- 6 asylum application at any time;
- 7 f. USCIS’s capacity for processing affirmative asylum applications or steps
- 8 to increase that capacity;
- 9 g. The estimated waiting time until an interview for pending or future asylum
- 10 applications; and
- 11 h. The predicted, expected, or actual effect of first-in, first-out; last-in, first-
- 12 out; or other priority systems on that estimated waiting time.

13 24. Plaintiff also advised USCIS that the 2021 FOIA Request supplements Plaintiff’s
14 earlier 2019 FOIA Request on the same topic filed two years prior. Plaintiff also requested a
15 waiver of all fees for the 2021 FOIA Request since Tahirih Justice Center is a national 501(c)
16 charitable organization. Attached as **Exhibit C** is a true and correct copy of the 2021 FOIA
17 Request.

18 25. As of June 1, 2021, USCIS has not acknowledged receipt of the 2021 FOIA
19 Request and or assigned it case number. The only communication Plaintiff received from
20 USCIS was an automatic reply email on April 2, 2021, stating the message was from the USCIS
21 mailbox that facilitates the submission of FOIA requests for access to USCIS records. The email
22 specifically stated that “If you are submitting a FOIA request, this courtesy reply does not
23 replace the Acknowledgement Letter which will be sent to you once your request has been
24 scanned into our FOIA processing system.”

25 26. There has been no further response from USCIS.

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FIRST CAUSE OF ACTION
(VIOLATION OF FOIA)

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3 27. Plaintiff realleges and incorporates the allegations contained in the proceeding
4 paragraphs as if fully set forth herein.

5 28. Plaintiff's FOIA Requests seek "agency" records within the Defendants' custody
6 and control.

7 29. Defendants failed to produce any responsive records to Plaintiff's FOIA Requests.
8 Plaintiff has a legal right under FOIA to obtain the agency records it requested in its FOIA
9 Requests, and there exists no "exceptional circumstances" or legal basis for Defendants' failure
10 to respond to Plaintiff's FOIA Requests and to make these records available.

11 30. Defendants' failure to make promptly available the records sought by Plaintiff's
12 FOIA Requests violates FOIA, 5 U.S.C. § 552(a)(3)(A) and (a)(6)(A)(ii), and applicable
13 regulations promulgated thereunder.

14 31. Plaintiff is entitled to declaratory relief finding that Defendants have violated
15 FOIA and that Plaintiff is immediately entitled to receive all records responsive to its Requests.

16 32. Plaintiff is further entitled to injunctive relief, ordering Defendants to
17 immediately produce copies of all records responsive to Plaintiff's FOIA Requests without
18 further delay.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the Court award it the following relief:

- A. Declare that Defendants violated FOIA in their response and lack thereof to Plaintiff's 2019 and 2021 FOIA Requests;
- B. Order Defendants to immediately disclose the requested records to Plaintiff and enter an injunction prohibiting Defendants from continuing to withhold the requested records;
- C. Order Defendants to immediately disclose any responsive records in their possession or control to Plaintiff;
- D. Award Plaintiff its reasonable costs and attorney's fees; and
- E. Grant such further relief as the Court may deem just and proper.

DATED: June 9, 2021

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP
THOMAS R. BURKE

By: /s/ Thomas R. Burke
Thomas R. Burke

Attorneys for Plaintiff
TAHIRIH JUSTICE CENTER

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