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ALLAN S. LOLLY
Allan S. Lolly & Assoc. P.C.
888 Prospect Street, Suite 200
La Jolla, CA 92037

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

ALLAN S. LOLLY & ASSOCIATES
P.C.,

Plaintiffs,

vs.

U.S. DEPARTMENT OF HOMELAND
SECURITY; and UNITED STATES
CITIZENSHIP AND IMMIGRATION
SERVICES,

Defendants

Case No.: '21CV1925 L DEB

**COMPLAINT FOR INJUNCTIVE
AND OTHER APPROPRIATE
RELIEF UNDER 5 U.S.C. § 552.**

INTRODUCTION

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3 1. This action is brought by Plaintiff Allan S. Lolly & Associates
4 (“Lolly”) under the Freedom of Information Act 5 U.S.C. § 552 (“FOIA”) for
5 injunctive and other appropriate relief seeking disclosure and release of agency
6 documents improperly withheld by Defendant Department of Homeland Security
7 (“DHS”) through its agency U.S. Citizen and Immigration Services (“USCIS”).
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12 2. This Court has both subject matter jurisdiction and personal
13 jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also
14 has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331.
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18 3. On August 31, 2021, Plaintiff Lolly, submitted a Freedom of
19 Information Act Request (“The Request”) to USCIS.
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22 4. On September 1, 2021, USCIS acknowledged that it had in fact
23 received The Request and electronically delivered a confirmation letter confirming
24 receipt of The Request.
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27 5. As of November 6, 2021, USCIS has failed to respond to or produce
28 any documents as outlined in the Request.

6. Defendants’ failure to respond to The Request is a violation of 5
U.S.C. § 552.

1 7. Plaintiff prays to this Court to grant an injunction compelling USCIS
2
3 to respond to The Request pursuant to 5 U.S.C. §552.
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5 **PARTIES**
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7 8. Plaintiff Lolly is an immigration law firm, having worked on
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9 immigration and naturalization matters for over 14 years.
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11 9. Defendant DHS is a department of the executive branch of the United
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13 States Government, and includes the agency USCIS. Defendant DHS is an agency
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15 within the meaning of 5 U.S.C. §552 (f).

16 10. Defendant USCIS is a component of DHS and is an agency within the
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18 meaning of 5 U.S.C. §552(f)(1) and has control or possession of the documents
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20 requested by Lolly.
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22 **FACTS AND BACKGROUND.**
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24 11. On August 31, 2021, Plaintiff Lolly drafted a FOIA request seeking
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26 materials, procedures, memoranda, and documents related to the implementation,
27
28 training, and application of the Adam Walsh Act (“AWA”) in making risk
determinations.

12. Plaintiff Lolly submitted the FOIA on August 31, 2021, request
seeking disclosure of the AWA materials.

1 13. Defendant USCIS confirmed receipt of the FOIA request by sending a
2 confirmation email to Plaintiff Lolly on September 1, 2021.
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5 14. 5 U.S.C.§552(a)(6)(A)(i) Provides that a governmental agency must
6 respond to a FOIA request within 20 business days of receipt of such request.
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10 15. As of Nov. _____, 2021, Defendant USCIS has made no effort to
11 respond or produce any documents related to Plaintiff's FOIA request.
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14 16. It has been over 20 business days and Plaintiff Lolly has received no
15 response to the FOIA request.
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18 17. USCIS lack of response to the Lolly FOIA request constitutes a
19 violation of 5 U.S.C.§552.
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22 18. Violations of 5 U.S.C.§552 are subject to immediate judicial review
23 when a government agency fails to produce a response within 20 business days.
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JURISDICTION AND VENUE

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3 19. Jurisdiction of the Court is predicated upon 28 USC §§1331 as a
4 federal question is involved, 1346(a)(2) in that the matter in controversy arises
5 under the Constitution and laws of the United States and the United States is a
6 Defendant; and 28 U.S.C. § 1346(b) because federal defendants are involved.
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10 20. Jurisdiction is also predicated under 5 U.S.C.§552(a)(4)(B) as this
11 action relates to a 5 U.S.C.§552 request made to an agency as defined in the
12 statute.
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16 21. Venue is proper in this District under 28 USC §1391(e), because this
17 is a civil action in which Defendants are employees or officers of the United States,
18 acting in their official capacity; the Southern District of California is a proper
19 venue because venue is proper in any judicial district in which any defendant
20 resides. For purposes of 28 U.S.C. § 1391(e)(1), the residence of federal officers is
21 that place where the officers perform their official duties. *See* Reuben H.
22 Donnelley Corp. v. F.T.C., 580 F.2d 264, 266 n.3 (7th Cir. 1978). Moreover, Under
23 28 USC §1391(b)(3), venue is appropriate in any judicial district where any
24 defendant is subject to personal jurisdiction.
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CAUSE OF ACTION

COUNT ONE

5 U.S.C. § 552

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22. Plaintiffs incorporate the allegations in the paragraphs above as though fully set forth here.

23. 5 U.S.C. § 552(a)(4)(B) provides that a court has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

24. 5 U.S.C. § 552(a)(6)(A)(ii) imposes a duty on an agency to respond to a FOIA request within 20 days (not including weekends and holidays) and state whether they will comply or not comply with the request.

25. Plaintiff's remedy is stated in 5 U.S.C. § 552(a)(4)(B) which enables the court to enjoin an agency from withholding documents when it has failed to respond to a FOIA request within the statutory 20 day period.

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26. 5 U.S.C. § 552 (a)(4)(E)(i) provides that the court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Make a finding that Defendant USCIS has improperly withheld documents from Plaintiff Lolly;
- (3) Make a determination that Defendant USCIS violated 5 U.S.C. § 552 by failing to respond to Plaintiff’s FOIA request within the statutory time limit.
- (4) Pursuant to the Court’s finding, order Defendants to produce the documents outlined in The Request;
- (5) Award reasonable costs and attorney’s fees as outlined in 5 U.S.C. § 552 (a)(4)(E)(i) ; and

1 (6) Grant such further relief as the Court deems just and proper.
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6 Dated: November 11, 2021

7 By: /s/Allan S. Lolly

8 Allan S. Lolly
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TABLE OF EXHIBITS

Exhibit A: Plaintiff Lolly’s FOIA Request

Exhibit B: Defendant USCIS Acknowledgement of Receipt