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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

11 THE CENTER FOR INVESTIGATIVE) Case No. _____
12 REPORTING and NAJIB AMINY,)
13 Plaintiffs,) **COMPLAINT FOR INJUNCTIVE**
14 v.) **RELIEF**
15 U.S. DEPARTMENT OF HOMELAND)
16 SECURITY,)
17 Defendant.)

18 **INTRODUCTION**

19 1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552,
20 for injunctive and other appropriate relief. The Center for Investigative Reporting (hereinafter
21 “CIR”) and Najib Aminy (collectively “Plaintiffs”) seek processing and release of agency records
22 requested from Defendant U.S. Department of Homeland Security (hereinafter “DHS”), U.S.
23 Citizenship and Immigration Services (hereinafter “USCIS”).

24 2. In February 2022, Plaintiffs submitted a FOIA request to USCIS for records related
25 to humanitarian parole applications by Afghan nationals.

26 3. To date, Defendant has failed to comply with FOIA’s statutory deadlines and have
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1 improperly withheld records responsive to these FOIA requests.

2 4. Plaintiffs have constructively exhausted all administrative remedies.

3 5. Plaintiffs now ask the Court for an injunction requiring Defendant to promptly release
4 the withheld records.

5 **JURISDICTION**

6 6. The Court has subject matter jurisdiction over this action and personal jurisdiction
7 over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and (a)(6)(C)(i). This Court also has
8 jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1436, and 5 U.S.C. §§ 701–706.
9

10 **VENUE AND INTRADISTRICT ASSIGNMENT**

11 7. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1391(e) and 1402.
12 Plaintiff CIR has its principal place of business in this district.

13 8. Assignment to the San Francisco Division or the Oakland Division is proper pursuant
14 to Local Rules 3-2(c) and (d) because a substantial portion of the events giving rise to this action
15 occurred in Alameda County, where Plaintiff CIR’s principal place of business is located and most
16 actions in this case occurred.
17

18 **PARTIES**

19 9. Plaintiff CIR publishes *Reveal*, an online news site, at revealnews.org, and *Reveal*, a
20 weekly public radio show with approximately 3 million listeners per week, as well as documentaries
21 and other media. Founded in 1977 as the first non-profit investigative news organization in the
22 country, CIR has received multiple awards for its reporting. CIR is a non-profit established under
23 the laws of the State of California, with its primary office in Emeryville, California.
24

25 10. Plaintiff Najib Aminy is a producer for *Reveal* and an employee of CIR. *Najib*
26 *Aminy*, *Reveal*, <https://revealnews.org/author/najib-aminy>.
27
28

1 11. USCIS is a component of Defendant U.S. Department of Homeland Security within
2 the executive branch of the United States government and a federal agency within the meaning of 5
3 U.S.C. § 552(f). CIR is informed and believes that the USCIS has possession and control of the
4 records sought by its FOIA requests.

5 **FACTUAL BACKGROUND**

6 12. Pursuant to the Immigration and Nationality Act, USCIS has discretion to parole
7 noncitizens applying for temporary admission into the United States for urgent humanitarian
8 reasons. See 8 U.S.C. 1182(d); see also USCIS, *Humanitarian or Significant Public Benefit Parole*
9 *for Individuals Outside the United States*, [https://www.uscis.gov/humanitarian/](https://www.uscis.gov/humanitarian/humanitarianpublicbenefitparoleindividualsoutsideUS)
10 [humanitarianpublicbenefitparoleindividualsoutsideUS](https://www.uscis.gov/humanitarian/humanitarianpublicbenefitparoleindividualsoutsideUS).
11

12 13. Following the announcement that U.S. troops would pull out of Afghanistan, USCIS
13 received a significant influx of humanitarian parole applications from Afghan nationals. Between
14 July 2021 and February 2022, USCIS received over 43,000 humanitarian parole applications from
15 Afghan nationals. Miriam Jordan, *Afghans Who Bet on Fast Path to the U.S. Are Facing a Closed*
16 *Door*, N.Y. TIMES (Fed. 28, 2022), [https://www.nytimes.com/2022/02/16/us/afghan-refugees-](https://www.nytimes.com/2022/02/16/us/afghan-refugees-humanitarian-parole.html)
17 [humanitarian-parole.html](https://www.nytimes.com/2022/02/16/us/afghan-refugees-humanitarian-parole.html).
18

19 14. As of February 2022, USCIS had processed fewer than 2,000 of the humanitarian
20 parole applications filed by Afghan nationals and denied the vast majority of them. *Id.* The high
21 denial rate led several U.S. Senators to write to the Secretary of State and the Secretary of
22 Homeland Security to express concerns. See, e.g., *Van Hollen, Menendez, Colleagues Sound*
23 *Alarm Following Reports of High Denial Rates for At-Risk Afghans Seeking Humanitarian Parole*
24 *into U.S.*, U.S. SENATOR CHRIS VAN HOLLEN OF MARYLAND (Jan. 20, 2022),
25 [https://www.vanhollen.senate.gov/news/press-releases/van-hollen-menendez-colleagues-sound-](https://www.vanhollen.senate.gov/news/press-releases/van-hollen-menendez-colleagues-sound-alarm-following-reports-of-high-denial-rates-for-at-risk-afghans-seeking-humanitarian-parole-into-)
26 [alarm-following-reports-of-high-denial-rates-for-at-risk-afghans-seeking-humanitarian-parole-into-](https://www.vanhollen.senate.gov/news/press-releases/van-hollen-menendez-colleagues-sound-alarm-following-reports-of-high-denial-rates-for-at-risk-afghans-seeking-humanitarian-parole-into-)
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1 us-

2 15. One recently filed federal lawsuit alleges that USCIS, faced with thousands of
3 humanitarian parole applications from Afghan nationals, improperly changed its rules to delay and
4 deny their applications. *Roe v. Mayorkas*, Docket No. 1:22-cv-10808-MLW (D. Mass. May 25,
5 2022), *initial filing*.

6 **PROCEDURAL BACKGROUND**

7
8 16. On February 17, 2022, Plaintiffs submitted a FOIA request (hereinafter “Request”) to
9 USCIS for records and data related to humanitarian parole applications by Afghan nationals from
10 January 1, 2021 to February 1, 2021, as well as documents and training materials pertaining to USCIS
11 determinations on humanitarian parole applications. A true and correct copy of the Request is
12 attached as Exhibit A. Plaintiffs requested a fee waiver and expedited processing. Ex A. at 2.

13 **Discussions with USCIS and Requests for Clarification**

14 17. By letter dated February 17, 2022, USCIS acknowledged receipt of the Request. A
15 true and correct copy of USCIS’s acknowledgment letter is attached as Exhibit B. USCIS assigned
16 the Request tracking number COW2022000785 and indicated it was “placed in the simple track
17 (Track 1)”. Ex. A at 2. Citing “unusual circumstances,” USCIS indicated it would “invoke a 10-day
18 extension for [the Request] pursuant to 5 U.S.C. (a)(6)(B).” *Id.* at 4. USCIS also requested further
19 support for Plaintiffs’ request for expedited processing. *Id.*

20 18. By letter dated February 23, 2022, USCIS requested clarification of the substance of
21 the Request. A true and correct copy of USCIS’s first clarification request is attached as Exhibit C.

22 19. On March 4, 2022, Plaintiffs responded to USCIS’s requests. A true and correct copy
23 of Plaintiffs’ response is attached as Exhibit D. Plaintiffs clarified the Request and provided
24 additional information to support the request for expedited processing. Ex. D at 4-5.

25 20. On March 15, 2022, USCIS acknowledged receipt of Plaintiffs’ clarifications. A true
26 and correct copy of USCIS’s email acknowledging receipt is attached as Exhibit E.

27 21. By letter dated March 28, 2022, USCIS requested additional clarification of the
28 Request. A true and correct copy of USCIS’s second clarification request is attached as Exhibit F.

1 USCIS indicated that Plaintiffs could contact USCIS’s FOIA Public Liaison for assistance “in
2 adequately describing the records sought.” Ex. F. USCIS provided an email address and phone
3 number for the USCIS FOIA Public Liaison. *Id.*

4 22. Following USCIS’s second clarification request, Plaintiffs attempted to contact the
5 USCIS FOIA Public Liaison by emails sent on March 31 and April 1, 2022. A true and correct copy
6 of Plaintiffs’ emails are attached as Exhibit G.

7 23. Plaintiffs received no response from the USCIS FOIA Public Liaison after multiple
8 emails and phone calls.

9 24. On April 1, 2022, Plaintiffs emailed the DHS Privacy Office, which oversees FOIA
10 for the entire Department, in hope of scheduling a phone call to discuss the Request. A true and
11 correct copy of this email is included in Exhibit H. *See* Ex. H at 14-15. Receiving no response,
12 Plaintiffs’ counsel also emailed DHS on April 4, 2022. *Id.* at 13-14.

13 25. On April 5, 2022, in response to Plaintiffs’ emails to the DHS Privacy Office, USCIS
14 Government Information Specialist T. Allen Jaynes emailed Plaintiffs to schedule a phone meeting.
15 *Id.* at 12-13.

16 26. On April 7, 2022, Plaintiffs had a phone meeting with Mr. Jaynes to further clarify
17 Plaintiffs’ request for a second time. *Id.* at 9-11. Mr. Jaynes indicated USCIS had granted Plaintiffs
18 expedited processing and a fee waiver as of March 15, 2022. *Id.* at 9-10.

19 27. On May 4, 2022, USCIS asked Plaintiff for a third clarification of the Request. *Id.* at
20 7.

21 28. On May 5, 2022, Plaintiffs further clarified the Request for the third time. *Id.* at 6-7.
22 In light of the considerable delay in processing the Request, Plaintiffs also revised the data query end
23 date from February 1, 2022, to May 1, 2022. *Id.*

24 29. On May 19, 2022, USCIS notified Plaintiffs by email that USCIS had started the
25 search for records responsive to the Request. *Id.* at 4.

26 30. On May 23, 2022, USCIS sent Plaintiffs an email enumerating the data points USCIS
27 would query for data responsive to the Request. *Id.* at 3-4.

28 31. On June 10, 2022, Plaintiffs had a phone meeting with Mr. Jaynes to discuss the status

1 of the Request. A true and correct copy of an email sent by Plaintiffs to USCIS summarizing the
2 phone meeting is attached as Exhibit I. On that call, Mr. Jaynes indicated that USCIS expected it
3 would take approximately nine months to fulfill the Request. Ex. I.

4 32. On June 14, 2022, the USCIS FOIA office sent an email to Plaintiffs committing to
5 provide the humanitarian parole data by July 8, 2022. A true and correct copy of this email is attached
6 as Exhibit J. *See* Ex. J at 6. Based on this commitment by USCIS to produce the data by July 8, CIR
7 agreed to delay filing litigation.

8 33. On July 8, 2022, USCIS did not provide the requested humanitarian parole as agreed.
9 On that day, the USCIS FOIA office sent several emails indicating the agency could “immediately”
10 provide “aggregate data” (also called “summary data”), but that “detailed granular data” was not
11 ready. *Id.* at 3-4. USCIS indicated the “summary data” would be provided “today” through Mr.
12 Aminy’s “online account.” *Id.* at 1.

13 34. Mr. Aminy did not receive any data from USCIS on July 8, not even the specified
14 “summary data.” *Id.* at 1-2.

15 35. On July 11, 2022, USCIS released humanitarian parole data via the USCIS online
16 portal. *Id.* at 1.

17 36. The data USCIS released only went up to February 1, 2022, rather than May 1, 2022,
18 as the parties previously agreed would be the data timeframe scope. *Id.*

19 37. USCIS did not produce any of the training materials and other documentation Mr.
20 Aminy requested. Ex. A.

21 38. Following the July 11 release, CIR attempted to clarify whether USCIS intended to
22 produce additional humanitarian parole data in keeping with the June 24 agreement. Ex. J at 1.
23 USCIS did not respond to these inquiries.

24 39. On July 18, USCIS released additional humanitarian parole data via the USCIS online
25 portal. A true and correct copy of the email confirming receipt of this release is attached as Exhibit
26 K.

27 40. Again, USCIS did not produce any of the training materials requested—item #15 of
28 Mr. Aminy’s initial request.

1 51. Defendant USCIS is subject to FOIA and must therefore release in response to a FOIA
2 request any disclosable records in its possession and must provide a lawful reason for withholding
3 any materials as to which they claim an exemption.

4 52. Defendant USCIS failed to issue a final determination as to the Request within the 30
5 business days required by FOIA. *See* 5 U.S.C. § 552(a)(6)(B). Accordingly, Plaintiffs are deemed
6 to have constructively exhausted their administrative remedies under FOIA.

7 53. Defendant USCIS failed to fully process the Request, which was granted expedited
8 processing, “as soon as practicable.” *See* 5 U.S.C. § 552(a)(6)(E)(iii).

9 54. Defendant USCIS failed to notify Plaintiffs that the Request was granted expedited
10 processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(i)(I).

11 55. Plaintiffs are entitled to declaratory and injunctive relief compelling the expedited
12 release and disclosure of the requested records.
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15 **REQUESTED RELIEF**

16 WHEREFORE, Plaintiffs prays that this Court:

17 1. Declare that Defendant USCIS violated FOIA by failing to timely provide requested
18 records in response to Plaintiffs’ request; by failing to notify Plaintiffs of a final determination as to
19 the request within the statutory time limit; by failing to process their expedited request as soon as
20 practicable; and by failing to notify Plaintiffs that expedited processing had been granted within the
21 statutory time limit.

22
23 2. Declare that the documents sought by the Request, as described in the foregoing
24 paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

25 3. Order Defendant USCIS to expeditiously provide the requested documents to
26 Plaintiffs within 20 business days of the Court’s order;

27 4. Award Plaintiffs the costs of this proceeding, including reasonable attorneys’ fees, as
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1 expressly permitted by FOIA; and

2 5. Grant Plaintiffs such other and further relief as this Court may deem just and proper.

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4 DATED: October 11, 2022

Respectfully submitted,

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8 By: _____
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