

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

INTERNATIONAL REFUGEE
ASSISTANCE PROJECT, INC.

Plaintiff,

v.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES and UNITED
STATES DEPARTMENT OF STATE,

Defendants.

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

Civil Action No. 24-cv-03431

1. This case seeks records relating to the government’s reinstatement and expansion of a policy to ensure that refugees and asylees are not separated from their partners due to their inability to formalize their marriage for reasons out of their control—such as restrictions on same-sex or interfaith marriage or circumstances relating to their flight from persecution.

2. The government refers to such relationships as “camp” or “informal” marriages, and historically recognized them for purposes of refugee resettlement or reuniting U.S.-based refugees and asylees with their spouses stranded abroad. During the Trump Administration, however, the government rescinded this humanitarian exception, making it more difficult or impossible for a refugee who could not legally marry to be resettled with or reunify with their spouse.

3. Shortly after taking office, President Biden directed United States Citizenship and Immigration Services (USCIS) and the Department of State (DOS) to consider appropriate actions to again recognize informal refugee marriages. In response, USCIS returned to its prior policy, under which individuals in committed relationships with refugees and asylees who are

unable to formally perfect their marriage may nonetheless have their spousal relationships recognized for the purpose of joining their spouses in the United States.

4. Although this policy change was a welcome development for refugee families and advocates, there is little information available about how it has been implemented by USCIS and DOS, including any statistics about how many informal marriages have been considered and “approved” by the agencies.

5. Plaintiff International Refugee Assistance Project, Inc. (IRAP) represents and provides informational resources to refugee families who cannot legalize their marriages in the countries from or to which they fled, as well as other advocates. IRAP has sought agency policy documents, reports, and data that would shed light on the actual implementation of the recent policy change, improve the ability of refugee families and their advocates to avail themselves of the policy, and ensure that the government is honoring its commitments to marriage equality and family unity.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(4)(B), and 28 U.S.C. § 1331.

7. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) since Plaintiff IRAP’s principal place of business is in the Southern District of New York.

PARTIES

8. Plaintiff IRAP is a 501(c)(3) non-profit global legal aid and advocacy organization with a mission to create a world where refugees and all people seeking safety are empowered to claim their right to freedom of movement and a path to lasting refuge.

9. IRAP provides direct legal assistance to refugees and others seeking security, and works with a global network of student advocates, pro bono partners, and supporters to deliver legal solutions for displaced people. Informed by its direct services work, IRAP also engages in media and policy advocacy, as well as impact litigation, to address systemic issues affecting refugees and others in need of a safe home.

10. Disseminating information is an integral component of IRAP's mission. IRAP publishes policy reports on issues relevant to refugees. IRAP creates and maintains "Know Your Rights" legal summaries and other educational materials on its websites, which have been accessed more than 359,000 times, as well as resources for legal practitioners, which have been accessed more than 7,000 times. And it organizes and publishes documents obtained through the FOIA on its website for use by advocates. IRAP also routinely collects and distributes resources to its network of twenty-six law school chapters and over eighty pro bono law firm and corporate partners. IRAP regularly issues press releases and publishes a blog that covers topics relating to refugee policy. In addition, IRAP circulates a monthly newsletter to over 30,000 individuals and maintains a Facebook account with over 54,000 followers and a Twitter/X account with over 23,000 followers. Specific to the policy at hand, IRAP maintains resources for applicants on family reunification and for practitioners on marriage in U.S. immigration law.¹

11. To engage in its mission-driven work, IRAP relies on FOIA requests, such as the requests underlying this lawsuit, to understand governmental policies affecting refugees and other displaced people on the move.

¹ See, e.g., Family Reunification, Int'l Refugee Assistance Project, <https://support.iraplegalinfo.org/hc/en-us/sections/360008472692-Family-Reunification> (last visited May 3, 2024); Overview of Marriage in U.S. Immigration Law Practice Guide, Int'l Refugee Assistance Project, <https://refugeerights.org/news-resources/overview-of-marriage-in-u-s-immigration-law-practice-guide> (last visited May 3, 2024).

12. Defendant USCIS is an agency within the U.S. Department of Homeland Security (DHS) that is responsible for processing and adjudicating refugee, asylum, and family reunification applications. USCIS produces written materials related to the processing and adjudication of refugee, asylum, and family reunification applications, such as refugee and asylum officer trainings and manuals, and other policies and procedures, such as the policy change at the center of this case. It also uses software systems in its processing and adjudication of refugee asylum, and family reunification applications, including RAD Global, Enterprise Collaboration Network, Refugee Case Manager, Case and Activity Management for International Operations (“CAMINO”), and R-TRACK.

13. Defendant DOS is a cabinet department of United States government. DOS manages the U.S. Refugee Admissions Program (USRAP); it also operates the Refugee Processing Center and overseas Resettlement Support Centers to facilitate the processing of refugees and their family members for admission to the United States. DOS consular officers act as agents of USCIS to process some refugee and asylee family reunification applications. DOS produces a variety of written materials related to the processing and adjudication of refugee applications and refugee/asylee family reunification petitions, including the manual governing overseas processing for USRAP, standard operating procedures issued to Resettlement Support Centers, and other policies and procedures.

14. Defendant DOS also administers refugee case management software systems, including START and RPC AWS. START tracks refugee cases at the individual and aggregate level, and RPC AWS facilitates statistical analysis and reporting.

STATEMENT OF FACTS

Recognition of Informal Marriages in Refugee Adjudications

15. In evaluating applications for various immigration benefits, USCIS and DOS generally recognize a marriage only when it meets the legal requirements for a marriage in the country where it occurred (also known as the “place-of-celebration rule”). Until 2018, however, they applied an exception for refugees who were not able to lawfully marry because of discriminatory host country restrictions.

16. In 2018, USCIS rescinded this long-standing exception for people applying for admission to the United States as refugees (i.e., applicants filing Form I-590, Registration for Classification as Refugee); in 2019, the exception was also rescinded for recently arrived refugees and asylees applying for their spouses abroad to join them in the United States (i.e., applicants filing Form I-730, Refugee Relative Petition). These policy changes made it more difficult, and in some cases impossible, for refugees who could not legally marry to be resettled with or reunify with their spouses.

17. Soon after taking office, President Biden issued an executive order directing the Secretary of State and the Secretary of Homeland Security to

consider taking actions, as appropriate and consistent with applicable law, to recognize as “spouses” for purposes of derivative status through USRAP individuals who are in committed life partnerships but who are unable to marry or to register their marriage due to restrictions in the law or practices of their country of origin, including for individuals in same-sex, interfaith, or camp-based marriages.²

² Executive Order 14013, Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration Sec. 4(j), Feb 4, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/04/executive-order-on-rebuilding-and-enhancing-programs-to-resettle-refugees-and-planning-for-the-impact-of-climate-change-on-migration/>.

The executive order also ordered the Secretaries to provide the President a report describing any such actions within 180 days of the date the action was taken.

18. On February 14, 2022, USCIS issued new guidance regarding the recognition of informal marriages for refugees and asylees (the “2022 Informal Marriage Policy” or the “Policy”). Under the Policy, USCIS will recognize an informal marriage when a refugee or asylee could not lawfully marry due to their flight from persecution and circumstances beyond their control or because of restrictive laws or practices in their country of origin or the country to which they fled.

19. The 2022 Informal Marriage Policy applies to three types of adjudications where someone might seek a benefits for a spouse: applications for refugee resettlement (Form I-590), applications for asylum (Form I-589), and applications for a U.S.-based refugee or asylee’s spouse to join them in the United States (Form I-730). Although refugee and asylum applications are adjudicated by USCIS, I-730 petitions may be adjudicated by either USCIS or DOS, acting as an agent of USCIS.

20. In addition to applying the Policy prospectively, USCIS accepts requests for review or motions to reconsider cases denied under the more restrictive 2018 and 2019 policies.

21. The 2022 Informal Marriage Policy has the potential to ensure that refugee couples are not needlessly separated due to discriminatory marriage policies in the countries they fled from or to. However, there is little publicly available information about the implementation of the Policy, limiting the ability of families and advocates to understand and take advantage of the policy change. For example, despite Forms I-730 and I-589 being revised after the Policy was issued, the instructions contained therein make no reference to the Policy, despite including lists of acceptable evidence of a spousal relationship.

22. The years-long wait times for I-590, I-589, and I-730 applications to be finally adjudicated further limit the ability of advocates to even infer how often informal marriages are approved under the Policy.

23. IRAP seeks disclosure of documents regarding USCIS and DOS's implementation of the policy change recognizing informal marriages for refugees—including agency policy documents, reports prepared pursuant to Executive Order 14031, and data about the marriages evaluated under the changed policy—to inform its legal representation and ensure that refugee families, advocates, and the public are aware of how the U.S. government's stated commitments are being upheld.

IRAP's First FOIA Request: Internal Guidance on Implementation of Informal Marriage Policy

24. On May 5, 2023, IRAP submitted a FOIA request to USCIS via the online portal at <https://first.uscis.gov/>. A copy of IRAP's first request to USCIS is attached as **Exhibit A**.

25. IRAP's first request to USCIS seeks (1) reports from DHS or DOS required by Section 4(j) of Executive Order 14013, (2) final policy memoranda, SOPs, training materials, and similar records describing the implementation of the 2022 Informal Marriage Policy, and (3) monthly data showing the number of applications for derivative spousal benefits for refugees in informal marriages submitted and/or approved since issuance of the Policy.

26. USCIS acknowledged receipt of IRAP's first FOIA request by letter dated May 5, 2023. According to the letter, USCIS had assigned IRAP's first FOIA request the control number COW2023003184, placed it in the "complex" track, and granted IRAP's request for a fee waiver.

27. As of the filing date of this Complaint, Defendant USCIS has not made a determination about request COW2023003184.

28. IRAP has exhausted its administrative remedies with respect to request COW2023003184 due to USCIS's failure to comply with the FOIA's time limit provisions. *See* 5 U.S.C. § 552(a)(6)(C)(i).

29. On May 5, 2023, IRAP submitted a substantially similar FOIA request to DOS via the online portal at <https://pal.foia.state.gov/>. A copy of IRAP's first request to DOS is attached as **Exhibit B**.

30. IRAP's request seeks (1) reports from DHS or DOS required by Section 4(j) of Executive Order 14013, (2) final policy memoranda, SOPs, and similar records describing final DOS policy or guidance regarding the implementation of Section 4(j) of Executive Order 14013, and (3) monthly data showing the number of applications for derivative spousal benefits for refugees in informal marriages submitted and/or approved pursuant to the policy change reflected in Section 4(j) of Executive Order 14013.

31. DOS acknowledged receipt of IRAP's first FOIA request by email on May 8, 2023. According to the email, DOS had assigned IRAP's first FOIA request the reference number F-2023-0835, placed it in the "complex" processing track, and granted IRAP's request for a fee waiver.

32. DOS's May 8, 2023 email also stated that DOS would not be able to respond within the 20 days provided by the FOIA due to "unusual circumstances," including the need to search for and collect requested records from other Department offices or Foreign Service posts.

33. As of the filing date of this Complaint, Defendant DOS has not made a determination about request F-2023-0835.

34. IRAP has exhausted its administrative remedies with respect to request F-2023-0835 due to Defendant DOS's failure to comply with the FOIA's time limit provisions. *See* 5 U.S.C. § 552(a)(6)(C)(i).

IRAP's Second FOIA Request: Data on Implementation of Informal Marriage Policy

35. On December 22, 2023, IRAP submitted another FOIA request to USCIS via the online portal at <https://first.uscis.gov/>. IRAP's second request to USCIS seeks monthly data showing the number of applications for derivative spousal benefits for refugees in informal marriages submitted and/or approved pursuant to the policy change reflected informal marriages, disaggregated by a number of demographic indicators (including nationality, religion, gender, place of celebration, and application type). A copy of IRAP's second request to USCIS is attached as **Exhibit C**.

36. USCIS acknowledged receipt of IRAP's second request via letter dated December 26, 2023. According to the letter, USCIS had assigned IRAP's second FOIA request the control number OPQ2023000039, placed the request in the "simple" track, and denied IRAP's request for a fee waiver.

37. As of the filing date of this Complaint, Defendant USCIS has not made a determination about request OPQ2023000039.

38. IRAP has exhausted its administrative remedies with respect to request OPQ2023000039 due to USCIS's failure to comply with the FOIA's time limit provisions. *See* 5 U.S.C. § 552(a)(6)(C)(i).

39. On December 22, 2023, IRAP submitted a substantially similar FOIA request to DOS via the online portal at <https://pal.foia.state.gov/>. A copy of IRAP's second request to DOS is attached as **Exhibit D**.

40. DOS acknowledged receipt of IRAP's first FOIA request by email on January 30, 2024. According to the email, DOS had assigned IRAP's second FOIA request the reference number F-2024-04009 and placed it in the complex processing track.

41. DOS's January 30, 2024 email also stated that DOS would not be able to respond within the 20 days provided by the FOIA due to "unusual circumstances," including the need to search for and collect requested records from other Department offices or Foreign Service posts.

42. As of the filing date of this Complaint, Defendant DOS has not made a determination about request F-2024-04009.

43. IRAP has exhausted its administrative remedies with respect to request F-2024-04009 due to DOS's failure to comply with the FOIA's time limit provisions. *See* 5 U.S.C. § 552(a)(6)(C)(i).

CLAIM FOR RELIEF

44. Plaintiff realleges and incorporates each of the foregoing allegations as if fully set forth herein.

45. Plaintiff has a legal right under FOIA to obtain the specific records sought in request numbers COW2023003184, F-2023-0835, OPQ2023000039, and F-2024-04009 (together, the "FOIA Requests" or the "Requests") to Defendants.

46. Defendants violate the law by failing to respond to the FOIA Requests in a timely manner, to conduct a reasonable search for records responsive to the Requests, and to promptly make the requested records available to Plaintiff. *See* 5 U.S.C. § 552(a); 6 C.F.R. §§ 5.5–5.6; 22 C.F.R. § 171.11.

47. On information and belief, Defendants currently have possession, custody, or control of the records sought in the FOIA Requests.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare that Defendants are in violation of the FOIA by unlawfully withholding the requested records;
2. Order Defendants to conduct a reasonable search for the requested records and to disclose them to Plaintiff in their entireties and requested format as soon as practicable;
3. Review any and all of Defendants' decisions to redact or withhold information in the requested records as exempt from disclosure;
4. Award Plaintiff's costs and reasonable attorneys' fees in this action as provided by 5 U.S.C. § 552(a)(4)(E); and
5. Grant other such relief as the Court may deem just and proper.

Dated: May 3, 2024

Respectfully submitted,

/s/ Deepa Alagesan
Deepa Alagesan
Kimberly R. Grano
International Refugee Assistance Project
One Battery Park Plaza, 33rd Floor
New York, NY, 10004
Tel: (516) 838-7044
dalagesan@refugeerights.org
kgrano@refugeerights.org