

‘generally will grant an agency's motion for summary judgment only if the agency identifies the documents at issue and explains why they fall under exemptions.’”).

2. This lawsuit is brought specifically due to USCIS' refusal to adequately search for and produce one (1) specific responsive agency record that Plaintiff needs to effectively represent his client; thus, forcing Plaintiff to file the instant lawsuit after Plaintiff's administrative FOIA remedies were exhausted. In support of Plaintiff's Complaint, Plaintiff alleges as follows:

II. PARTIES

3. Plaintiff Michael W. Gahagan is an Immigration Attorney at The Immigration Law Firm of New Orleans, and he resides in the Eastern District of Louisiana. Plaintiff requested a copy of his client's USCIS Form I-485, Application to Register Permanent Residence or Adjust Status, Receipt Notice ("Form I-485 Receipt Notice"), which is in the possession of USCIS, for the purpose of obtaining the information needed to effectively represent Plaintiff's client in his currently pending removal proceedings at the New Orleans, Louisiana Executive Office for Immigration Review ("Immigration Court"). Plaintiff has requested the specific information pursuant to FOIA, 5 U.S.C. § 552.

4. USCIS is an agency within the U.S. Department of Homeland Security, which has custody and control of the specific Form I-485 Receipt Notice requested by Plaintiff. USCIS is an agency within the meaning of FOIA, 5 U.S.C. § 552(f).

III. JURISDICTION

5. This action arises under the Freedom of Information Act, 5 U.S.C. § 552. This Honorable Court has subject matter jurisdiction and personal jurisdiction over this action pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(E)(iii) (Freedom of Information Act). This Honorable Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (Federal Question) as this action arises under the Freedom of Information Act, 5 U.S.C. § 552.

6. The aid of this Honorable Court is invoked under 28 U.S.C. §§ 2201 and 2202, authorizing a declaratory judgment.

IV. VENUE

7. Venue lies in the United States District Court for the Eastern District of Louisiana pursuant to 5 U.S.C. § 552(a)(4)(B) since Plaintiff resides in the Eastern District of Louisiana.

V. TIME FOR DEFENDANT TO RESPOND

8. Pursuant to FOIA, USCIS has thirty (30) days to respond to the instant Complaint. 5 U.S.C. § 552(a)(4)(C).

VI. PLAINTIFF OBJECTS TO ANY CONTINUANCE

9. Because Plaintiff's client is currently in immigration removal proceedings at risk of deportation, and because Plaintiff has been trying to obtain the Form I-485 Receipt Notice from USCIS via FOIA since June 19, 2016, Plaintiff objects to any continuance requested by USCIS in responding to the instant Complaint. Any unwarranted continuance would make FOIA's twenty (20) day mandate for USCIS to produce records to FOIA requesters, and FOIA's thirty (30) day response period, meaningless. *See* 5 U.S.C. § 552(a)(6)(A)(i)-(ii); 5 U.S.C. § 552(a)(4)(C).

VII. LEGAL FRAMEWORK

a. Freedom of Information Act:

10. FOIA was passed with the intent to allow individuals access to information under government control. When a FOIA request for information is made to a government agency, that agency has twenty (20) working days to respond to the request. 5 U.S.C. § 552(a)(6)(A)(i). The agency may grant itself a ten (10) working day extension where "unusual circumstances" exist, but the agency must notify the FOIA requester by "written notice to the person making such request setting forth the unusual circumstances." 5 U.S.C. § 552(a)(6)(B)(i). Where an agency

has failed to respond to a FOIA request within the mandated time period, the person making the FOIA request is deemed to have exhausted his administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i). The FOIA requester may then file suit in the federal district court to enforce the Freedom of Information Act. 5 U.S.C. § 552(a)(4)(B). On complaint, the U.S. District Court may "enjoin the agency from withholding agency records and ... order the production of any agency records improperly withheld from complainant" ... "and the burden is on the agency to sustain its action." 5 U.S.C. § 552(a)(4)(B).

11. Since Plaintiff has exhausted his FOIA administrative remedies with USCIS, and USCIS has not conducted a legally adequate search for the requested Form I-485 Receipt Notice, nor has USCIS produced the unlawfully withheld agency record, USCIS is in violation of FOIA, 5 U.S.C. § 552.

VIII. BACKGROUND INFORMATION

12. USCIS has a long history of disobeying the Freedom of Information Act and refusing to lawfully respond to Plaintiff's FOIA requests when Plaintiff is requesting agency records required to represent his clients in immigration removal proceedings, thus forcing a federal lawsuit. *See e.g. Gahagan v. U.S. Citizenship and Immigration Services*, 2015 WL 350356, at *10 (E.D.La. Jan. 23, 2015)(Brown, J.)(granting Plaintiff's first and second motions for summary judgment granted due to USCIS' refusal to produce a *Vaughn* index, and its unlawful withholding of responsive agency records *in toto* without citing a lawful FOIA exemption, even though USCIS argued that obeying FOIA and producing the responsive agency records was "a complete waste of time"); *DaSilva v. U.S. Citizenship and Immigration Services*, 2014 WL 775606, at *7 (E.D.La. Feb. 24, 2014)(Africk, J.)(USCIS filed untruthful declarations and untruthful pleadings with this Honorable Court claiming that all responsive agency records had been produced to Plaintiff, and then notified the Court on the day before its response to Plaintiff's

motion for summary judgment was due that it had been unlawfully withholding over 1,000 pages of responsive agency records. Judge Africk held that "Defendant's initial withholding of the [over 1,000 pages of] emails did not have even a colorable basis in law.... Defendant's sworn declarations and pleadings ... are plainly misleading. ... [T]his is the kind of recalcitrant and obdurate conduct that merits attorney's fees."(citations and quotation marks omitted); *Gahagan v. U.S. Citizenship and Immigration Services*, No. 2:14-cv-01268 (E.D.La. 2014)(Barbier, J), *vacated by*, No. 14-31148 (5th Cir.2015)(USCIS unlawfully withheld responsive documents from Plaintiff in violation of FOIA, and refused to produce responsive agency records to Plaintiff until three weeks after Plaintiff filed his appellate brief with the Fifth Circuit in an effort to "moot" Plaintiff's appeal with *ex post facto* created, heavily redacted documents); *Hegyí v. Gomez*, No. 2:13-cv-06430 (E.D.La. 2014)(Milazzo, J.)(USCIS refused to produce any responsive agency records in response to Plaintiff's FOIA request until after being sued and served with Plaintiff's motion for summary judgment); *Gahagan v. U.S. Dept. of Justice, et al.*, 2:13-cv-05526 (E.D.La. May 23, 2014)(Engelhardt, J.)(Granting Plaintiff's first and third motions for summary judgment and ordering the government to conduct an adequate search for responsive agency records); *Gahagan v. U.S. Customs and Border Protection, et al.*, 2:14-cv-02619 (E.D.La. 2015)(Brown, J.)(granting Plaintiff's first and second motions for summary judgment and ordering the government to conduct an adequate search for responsive agency records).

IX. STATEMENT OF FACTS

13. Plaintiff's client hired Plaintiff to represent him in his currently pending immigration removal proceedings at the New Orleans, Louisiana Immigration Court. Because Plaintiff's client is married to a United States citizen, and USCIS has already ruled that he has a *bona fide* marriage with his U.S. citizen wife through the approval of a USCIS Form I-130, Petition for Alien Relative, Plaintiff's client is allowed to apply for Lawful Permanent Resident status with

the Immigration Judge and terminate his removal proceedings. *See* 8 U.S.C. § 1255(a), INA § 245(a). In order to apply for Lawful Permanent Resident status while in removal proceedings, Plaintiff's client (via Plaintiff) must first file a copy of his USCIS Form I-485, Application to Register Permanent Residence or Adjust Status, ("Form I-485") with USCIS; and USCIS has a regulatory duty to issue a Form I-485 Receipt Notice to Plaintiff and Plaintiff's client. 8 C.F.R. § 292.5. Plaintiff then must file the Form I-485 Receipt Notice with the Immigration Judge in order to request Lawful Permanent Resident status from the Immigration Judge. 8 C.F.R. § 1245.1-.2. Until the Immigration Judge is given a copy of the Form I-485 Receipt Notice, he does not have jurisdiction to adjudicate Plaintiff's client's request for Lawful Permanent Resident status, nor can the Immigration Judge terminate the removal proceedings against Plaintiff's client. *Id.* Although Plaintiff properly filed Plaintiff's client's Form I-485 with USCIS on October 27, 2015, USCIS failed to mail a Form I-485 Receipt Notice to either Plaintiff or Plaintiff's client, which has caused Plaintiff's client's case to be continued for one year while Plaintiff attempts to obtain the Form I-485 Receipt Notice through FOIA, and now through the instant FOIA lawsuit.

14. On June 19, 2016, Plaintiff properly filed a FOIA request for a copy of Plaintiff's client's Form I-485 Receipt Notice from USCIS pursuant to the Freedom of Information Act via U.S. Postal Service certified mail, return receipt. Specifically, Plaintiff requested the following:

Specifically, I am requesting a copy of my client's Form I-485 Receipt Notice (I-797C, Notice of Action), which was not produced to either [Plaintiff's client] or undersigned counsel as required by law.

(emphasis in original).

15. Plaintiff made clear in his FOIA request that he was filing his FOIA "request in connection with removal proceedings" and he requested that "the document be disclosed within 20 working days as mandated by FOIA."

16. USCIS acknowledged receipt of Plaintiff's FOIA request, and assigned to the request Case Number NRC2016095617.

17. Even though Plaintiff only requested one very specific agency record consisting of a total of one (1) page, specifically Plaintiff's client's Form I-485 Receipt Notice, Plaintiff has received no production of records from USCIS. In addition, the lawfully required Vaughn index fully describing the search methods employed and individually describing the lawful basis for each exemption on each page of information has not been produced to Plaintiff as mandated by FOIA. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C.Cir. 1973), *on remand to*, 383 F.Supp. 1049 (D.D.C. 1974), *judgment aff'd*, 523 F.2d 1136 (D.C.Cir. 1975)(The government must provide detailed justification of its exemption claims, and it must specifically itemize and index each document or portion thereof so as to show which were disclosable and which were exempt); *Batton v. Evers*, 598 F.3d 169, 173 (5th Cir.2010)("the district court abused its discretion by failing to order a Vaughn index").

18. USCIS' refusal to search for or produce the requested Form I-485 Receipt Notice agency record in its possession is not attributable to Plaintiff.

19. Plaintiff has been irreparably harmed because of USCIS' unlawful failure to provide the information requested under the Freedom of Information Act, because without the requested information, Plaintiff will be unable to prepare adequately to defend Plaintiff's client in his immigration removal proceedings; and Plaintiff's client will not receive either procedural due process or effective assistance of counsel as guaranteed by the Fifth and Sixth Amendments respectively. *Accardi v. Shaughnessy*, 347 U.S. 260 (1954)(A government agency's failure to follow its own regulations that are promulgated to protect fundamental statutory or constitutional rights violates due process and no showing of prejudice or harmful error is required); *Bridges v. Wilson*, 326 U.S. 135 (1945); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2011)("[T]he Due Process

Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent"); *Padilla v. Kentucky*, 559 U.S. 356 (2010)(Aliens present in the United States are afforded the right to effective assistance of counsel under the Sixth Amendment to the U.S. Constitution); *Reno v. Flores*, 507 U.S. 292, 306 (1993)("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings."); *see also Plyler v. Doe*, 457 U.S. 202 (1982); *Wong Yang Sung v. McGrath*, 339 U.S. 33 (1950); *Hernandez v. Cremer*, 913 F.2d 230 (5th Cir. 1990); *Chike v. INS*, 948 F.2d 961 (5th Cir. 1991).

X. EXHAUSTION OF ADMINISTRATIVE REMEDIES

20. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request to USCIS, and there are no further administrative acts that Plaintiff can take to obtain the information to which he is entitled. Plaintiff's only remedy remaining is by way of this Complaint. *See* 5 U.S.C. § 552(a)(6)(C).

XI. FOIA ATTORNEY'S FEES

21. Plaintiff seeks an award of his attorney's fees, costs and expenses under FOIA, 5 U.S.C. § 552(a)(4)(E). *See Gahagan v. U.S. Citizenship and Immigration Services*, 2016 WL 1110229 (E.D.La.2016)(Brown, J.); *Gahagan v. United States Customs and Border Protection*, 2016 WL 3090216 (E.D.La.2016)(Brown, J.); *Hernandez v. U.S. Customs and Border Protection Agency*, 2012 WL 398328 (E.D.La. 2012)(Barbier, J.).

XII.FIRST CAUSE OF ACTION (FREEDOM OF INFORMATION ACT VIOLATION, 5 U.S.C. § 552)

22. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 21 as if set forth fully herein.

23. USCIS is unlawfully withholding the requested Form I-485 Receipt Notice, in violation of 5 U.S.C. § 552.

24. Plaintiff is being irreparably harmed by reason of USCIS' unlawful withholding of the requested information; and Plaintiff will continue to be irreparably harmed unless USCIS is compelled to conform its conduct to the requirements of FOIA.

25. USCIS has violated FOIA by failing to produce any and all non-exempt information responsive to Plaintiff's FOIA request within the twenty (20) business day responsive time period set forth at 5 U.S.C. § 552(a)(6)(A)(i)-(ii).

XIII. PRAYER FOR RELIEF

26. WHEREFORE, Plaintiff respectfully prays this Honorable Court to:

- a. Assume jurisdiction over this matter;
- b. Order USCIS to conduct a reasonable and adequate search for the requested information, produce forthwith any and all non-exempt information responsive to Plaintiff's FOIA request, and produce a *Vaughn* index of any responsive records withheld under claim of exemption;
- c. Enjoin USCIS from continuing to withhold any and all non-exempt responsive agency records responsive to Plaintiff's FOIA request;
- d. Grant reasonable attorney's fees, costs and expenses pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(E); and
- e. Grant such other relief as this Honorable Court may deem just and proper.

Respectfully submitted this 11th day of October, 2016.

s/ Michael W. Gahagan, Esq.

Michael W. Gahagan, Esq.

La. State Bar #31165

The Immigration Law Firm of New Orleans

3445 North Causeway Blvd., Ste. 524

Metairie, LA. 70002

Tel: (504) 931-5355

Fax: (504) 836-0070

MichaelGahagan@ImmigrationLawNewOrleans.com

Pro Se

VERIFICATION

I, Michael W. Gahagan, being duly sworn upon oath, hereby state: I am the Plaintiff in this case, and I verify that the information contained in the foregoing Complaint is true and correct to the best of my knowledge and belief.

Executed this 11th day of October, 2016.

s/ Michael W. Gahagan
Michael W. Gahagan