

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHELSEA ZUZINDLAK
1625 E. 4th Street
Royal Oak, MI 48067

Case No.

Plaintiff,

v.

UNITED STATES CITIZENSHIP
AND IMMIGRATION SERVICES
Office of the Chief Counsel
20 Massachusetts Avenue, NW
Washington, DC 20529

Defendant.

Complaint for Declaratory and Injunctive Relief

Introduction

1. Plaintiff Chelsea Zuzindlak brings this action against Defendant U.S. Citizenship and Immigration Services (“USCIS”) to compel immediate compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, specifically, disclosure and release of the full contents of An Ngoc Ho’s Alien File.

2. Ms. Zuzindlak, an attorney who specializes in immigration and naturalization law, filed a FOIA request with USCIS on September 10, 2018, seeking any and all records related to her non-citizen client, An Ngoc Ho, including but not limited to, the full contents of Mr. Ho’s Alien File (Alien Number xxx-xxx-615).

3. Notwithstanding the statutory time limit, USCIS has not determined whether it will comply with the request, nor has it produced any responsive records, in violation of FOIA. Ms. Zuzindlak is seeking declaratory, injunctive, and other appropriate relief in view of USCIS’s unlawful withholding of these records.

Jurisdiction and Venue

4. The Court has personal and subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

5. Venue properly rests with this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1)(C) because Ms. Zuzindlak’s principal place of business is in the Eastern District of Michigan.

6. Ms. Zuzindlak has exhausted all mandated administrative remedies in connection with this FOIA request. 5 U.S.C. § 552(a)(6)(C)(i).

Parties

7. Plaintiff Chelsea Zuzindlak is a United States citizen and a member of the State Bar of Michigan who has a principal place of business at 1625 E. 4th Street, Royal Oak, in the county of Oakland and state of Michigan.

8. Defendant USCIS is a component of the Department of Homeland Security and is an “agency” within the meaning of 5 U.S.C. § 552(f).

9. USCIS has possession of and control over numerous records pertaining to An Ngoc Ho, including but not limited to, the full contents of his Alien File.

Statement of Relevant Facts

10. On August 29, 2018, Ms. Zuzindlak submitted a FOIA request to USCIS via email at uscis.foia@uscis.dhs.gov. Attached to this email was a completed Form G-639, executed by Ms. Zuzindlak and her client Mr. Ho, and a cover letter authored by Ms. Zuzindlak seeking “any and all records related to [Mr. Ho], i.e., the full contents of [Mr. Ho’s] Alien File.” A complete copy of this email and its attachments are attached as **Exhibit A**.

11. The Form G-639 identifies Ms. Zuzindlak as the Requestor and Mr. Ho as the Subject of Record who consents to the release of his records to Ms. Zuzindlak. *See Exhibit A*.

12. Ms. Zuzindlak received a letter from USCIS dated September 10, 2018, acknowledging receipt of the FOIA request, assigning the request control number NRC2018133852, and invoking the statutory ten-day extension for responding to the request. *See* 5 U.S.C. § 552(a)(6)(B). A copy of USCIS's acknowledgment letter is attached as **Exhibit B**.

13. USCIS's thirty-day deadline for responding to Ms. Zuzindlak's FOIA request – the normal twenty-day statutory period plus the ten-day extension that the agency invoked – was October 19, 2018, at the latest.

14. As of the date of this Complaint, USCIS has provided no response to Ms. Zuzindlak's FOIA request.

Statement of Relevant Law

15. 5 U.S.C. § 552(a)(3)(A) provides that:

Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

16. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), the agency shall determine whether to comply with a request made under 5 U.S.C. § 552(a)(3)(A) within twenty (20) business days after receipt of that request and notify the requestor immediately

of its determination, the reasons therefor, and the right to appeal any adverse determination.

17. The agency may extend the twenty-day statutory time limit by an additional ten (10) working days in unusual circumstances, provided the agency sends a written notice to the requestor setting forth the unusual circumstances for the extension and the date on which a determination is expected to be dispatched. 5 U.S.C. § 552(a)(6)(B).

18. If the agency fails to comply with the applicable time limit provisions – the normal twenty-day statutory period plus the ten-day extension – then a requestor is deemed to have constructively exhausted any and all administrative remedies with respect to her request. 5 U.S.C. § 552(a)(6)(C).

19. On complaint, the district court of the United States in the district in which the requestor resides, or has her principal place of business, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld. 5 U.S.C. § 552(a)(4)(B).

Cause of Action
(Violation of FOIA, 5 U.S.C. § 552)

20. Plaintiff Chelsea Zuzindlak restates and incorporates the allegations in paragraphs 1 through 19 above, as if fully set forth herein.

21. Ms. Zuzindlak made a proper FOIA request, received on September 10, 2018, which (i) reasonably described the records sought and (ii) was made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed. *See* 5 U.S.C. § 552(a)(3)(A).

22. Within 30 days of receipt of the request (excluding weekends and public holidays), USCIS was required to determine whether to comply with the request and to notify Ms. Zuzindlak of its determination, the reasons therefor, and her right to appeal any adverse determination. 5 U.S.C. §§ 552(a)(6)(A)(i) and (B).

23. Ms. Zuzindlak has received no communication from USCIS that contains the notification required by 5 U.S.C. § 552(a)(6)(A)(i).

24. USCIS's failure to respond within the statutory time limit violates 5 U.S.C. § 552(a)(6)(A), as well as the regulations promulgated thereunder.

25. Accordingly, Ms. Zuzindlak has exhausted her administrative remedies with respect to her request. 5 U.S.C. § 552(a)(6)(C).

26. Because USCIS has improperly withheld agency records identified by Ms. Zuzindlak in her request, Ms. Zuzindlak is entitled to relief compelling the processing and disclosure of the requested records.

Prayer for Relief

WHEREFORE, Plaintiff Chelsea Zuzindlak requests that judgment be entered in her favor and asks the Court to grant the following relief:

- (a) Declare that Defendant's failure to respond to Plaintiff's FOIA request within the statutory time limits violates FOIA;
- (b) Order Defendant to conduct a prompt search for any and all records responsive to Plaintiff's FOIA request;
- (c) Order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and to produce a Vaughn index of any responsive records withheld under claim of exemption;
- (d) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;
- (e) Award Plaintiff her costs and reasonable attorneys' fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412; and
- (f) Grant Plaintiff such other relief as the Court deems just and equitable.

Respectfully submitted,

s/ Chelsea Zuzindlak

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Dated: February 27, 2019