

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

ABDERRAHMANE FARHANE,
Plaintiff,

v.

UNITED STATES CITIZENSHIP
AND IMMIGRATION SERVICES,
Defendant.

Case No. 20-cv-800

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

Plaintiff Abderrahmane Farhane (“Plaintiff” or “Mr. Farhane”) is a U.S. citizen and resident of Brooklyn, New York. Through his attorneys, Mr. Farhane submitted a Freedom of Information Act (“FOIA”) request to Defendant United States Citizenship and Immigration Services (“Defendant” or “USCIS”) on August 8, 2018 for records concerning his immigration history. Over seventeen months later, Defendant has failed to make a determination on Mr. Farhane’s FOIA request and failed to disclose the requested documents within the time prescribed by FOIA. Moreover, without the requested records, Mr. Farhane will be prejudiced in his pending denaturalization proceedings. Therefore, Mr. Farhane now files this action for injunctive and other appropriate relief under the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.
2. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B) (providing for venue in FOIA cases in the district where Plaintiff resides).
3. This Court has the authority to award reasonable costs and attorneys' fees under 5 U.S.C. § 552(a)(4)(E).
4. Plaintiff has exhausted all applicable administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i) and now seeks an order from this Court requiring Defendant to immediately produce the records sought in Plaintiff's FOIA request, as well as other appropriate relief, including attorneys' fees and costs.

PARTIES

5. Plaintiff Abderrahmane Farhane is a U.S. citizen who submitted a FOIA request to USCIS through his lawyers on August 8, 2018. He is a resident of Brooklyn, New York. There are denaturalization proceedings pending against him in this Court.
6. Defendant USCIS is a component agency of the Department of Homeland Security ("DHS") and an agency of the United States under 5 U.S.C. § 552(f)(1). Among other duties, USCIS is responsible for adjudicating petitions and applications for certain immigration benefits in the United States. USCIS has in its possession, custody, and control individual immigration files, formally titled "Alien Registration Files," also known as "A-Files."

7. Defendant is charged with the duty to provide public access to records in its possession consistent with the requirements of FOIA. Defendant's refusal to provide Plaintiff with the records requested on August 8, 2018 is a violation of FOIA, a federal law.

STATEMENT OF FACTS

8. Under FOIA, an agency is required to make an initial "determination" with regard to a request within twenty business days of its receipt. *See* 5 U.S.C. § 552(a)(6)(A)(i).
9. If there are "unusual circumstances," as defined by statute, an agency may extend the time to make its determination by no more than ten working days. *See* 5 U.S.C. § 552(a)(6)(B)(i).
10. The statute and regulations allow a requester to seek expedited processing from USCIS if the request involves a "compelling need," including "[t]he loss of substantial due process rights." *See* 5 U.S.C. § 552(a)(6)(E)(i); 6 C.F.R. § 5.5(e)(1)(iii).
11. Under FOIA, an agency has ten working days to respond to a request for expedited processing. *See* 5 U.S.C. § 552(a)(6)(E)(ii).
12. Under FOIA, a person making a request is deemed to have exhausted his administrative remedies if the agency fails to comply with the applicable time limit provisions set forth in the statute. *See* 5 U.S.C. § 552(a)(6)(C)(i).
13. There are denaturalization proceedings currently pending against Mr. Farhane in this Court. *United States v. Farhane*, No. 18-CV-4347 (RPK) (E.D.N.Y. filed Aug. 13, 2018).
14. On August 8, 2018, Mr. Farhane, through his lawyers, filed a FOIA request ("Request" or "FOIA Request") with USCIS for records critical to his upcoming denaturalization proceedings. The FOIA Request complied with USCIS's FOIA requirements and is attached as Exhibit A.

15. The Request specifically sought expedited processing, explaining that “Mr. Farhane requires expedited processing in order to defend himself in denaturalization proceedings.”
See Ex. A.
16. In a letter dated August 24, 2018, USCIS confirmed receipt of Mr. Farhane’s FOIA Request and assigned the Request a control number, NRC2018126559.¹ *See Ex. B.* USCIS’s letter did not provide an estimated date for making its determination about whether to comply with the Request or address the request for expedited processing.
17. In its receipt notice, USCIS invoked the “unusual circumstances” exception, permitting USCIS a ten-day extension for responding to the Request, pursuant to 5 U.S.C. § 552(a)(6)(B). *Id.*
18. Even with the above-mentioned exception, USCIS was required to make its determination with regard to the Request and notify Mr. Farhane by October 9, 2018. *See* 5 U.S.C. § 552(a)(6)(A)(i), (B)(i). However, USCIS failed to respond by this deadline.
19. Since September 2018, undersigned counsel was limited to checking the status of the Request online through the USCIS Freedom of Information Act Records System (“FIRST”). According to FIRST, the estimated date of completion for the Request was October 10, 2018.
20. On October 18, 2019, more than a year after USCIS received the Request, the “FOIA/PA Status Check” webpage in FIRST stated that the Request was in place 120 out of 20,273 pending requests in the queue. By October 21, 2019, the Request somehow fell to place

¹ Tracking services provided by the U.S. Postal Service confirm that USCIS received the Request nine business days—or eleven calendar days—earlier, on August 13, 2018. *See Ex. A.* Under FOIA, the statutory time limit for responding to a request begins to run on the date of “the receipt of any such request.” 5 U.S.C. § 552(a)(6)(A)(i).

121 out of 20,068 pending requests in the queue. Despite the fact that there were fewer requests pending on October 21, 2019 than on October 18, 2019, Mr. Farhane's Request had somehow slipped further behind in the queue.

21. On November 18, 2019, after fifteen months of waiting for a determination from USCIS, Mr. Farhane filed an administrative appeal of USCIS's failure to respond to his August 8, 2018 FOIA Request. *See* Ex. C.
22. In his administrative appeal, Mr. Farhane requested that USCIS respond to the original Request and appeal within twenty business days, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), and reiterated the need for expedited processing due to his pending denaturalization proceedings. *See id.*
23. On December 9, 2019, USCIS responded to the administrative appeal by stating that Mr. Farhane's FOIA Request "is not subject to administrative appeal at this time." *See* Ex. D.² USCIS admitted that its prior action on the Request amounted to "the lack of a substantive response to date." *Id.*
24. USCIS further stated in its response that Mr. Farhane's Request would be processed "in the order it was received." *Id.* USCIS's response to the administrative appeal did not address the fact that, for some period of time in October 2019, Mr. Farhane's FOIA Request was not being processed in the order in which it was received.
25. As of the date of this Complaint (i.e., February 13, 2020), Defendant has still not provided any substantive response to Mr. Farhane's Request or his appeal. The original FOIA

² The envelope was postmarked December 13, 2019 and arrived at counsel's office on December 17, 2019.

Request has now been pending for over 508 days³ without a response, even though the statute requires a determination within twenty working days of the original request (or thirty days in the case of unusual circumstances). *See* 5 U.S.C. § 552(a)(6)(A)(i), (B)(i).

26. USCIS has thus far failed to produce any responsive agency records to Plaintiff within that same time period. USCIS has similarly failed to communicate the scope of the documents it intends to produce and withhold or its reasons for withholding any documents.
27. Undersigned counsel at CLEAR has submitted at least ten similar FOIA requests to USCIS over the same time period for other clients, and all have been processed within nine months or less. Given this fact, it is not clear that USCIS is processing Mr. Farhane's FOIA Request in the order it was received.
28. USCIS has not provided any explanation or reason as to why Mr. Farhane's Request has been processed on a different timeline than similar requests.
29. USCIS's action is prejudicial to Mr. Farhane's denaturalization case, currently pending in this Court. Mr. Farhane's denaturalization proceedings have been stayed pending the disposition of related litigation in the Southern District of New York. Mr. Farhane needs access to his immigration records so that he is not prejudiced if the stay on the denaturalization proceedings is lifted.

³ The FOIA Request has been pending for 519 calendar days since USCIS received the FOIA Request, according to tracking information from the U.S. Postal Service. The Request has been pending for 508 calendar days since the August 24, 2018 receipt date acknowledged by USCIS.

CAUSES OF ACTION

COUNT ONE

**Violation of the Freedom of Information Act, 5 U.S.C. § 552(a)(3);
Failure to Disclose Responsive Records**

30. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.
31. FOIA reflects a “profound national commitment to ensuring an open Government,” and agencies must “adopt a presumption in favor of disclosure.” Presidential Mem., 74 Fed. Reg. 4683 (Jan. 21, 2009).
32. Defendant is obligated to promptly disclose records responsive to Plaintiff’s FOIA Request, pursuant to 5 U.S.C. § 552(a)(3).
33. Plaintiff has a legal right to obtain such records, and no legal basis exists for Defendant’s failure to disclose them.
34. Defendant’s failure to disclose all responsive records violates 5 U.S.C. § 552(a)(3)(A).

COUNT TWO

**Violation of the Freedom of Information Act, 5 U.S.C. §§ 552(a)(3) & (a)(6);
Failure to Respond Within Time Required**

35. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.
36. FOIA requires agencies to determine within twenty working days after the receipt of any FOIA request whether to comply with the request. 5 U.S.C. § 552(a)(6)(A)(i). Agencies may only extend this time period for an additional ten working days in “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B)(i). FOIA also provides that, upon request, agencies are to make records “promptly available.” 5 U.S.C. § 552(a)(3)(A).

37. Twenty working days from August 24, 2018 (the date Defendant stated it received Plaintiff's FOIA Request) was September 24, 2018. Assuming *arguendo* that the ten-day extension that Defendant claimed applies, thirty working days from August 24, 2018 was October 9, 2018. Plaintiff received no notice of a determination from Defendant on his Request by this deadline.
38. As of the date of this filing, Plaintiff has received no documents in response to his Request nor any determination from Defendant with regard to his Request.
39. Defendant's failure to make a determination or disclose the documents requested in Plaintiff's August 8, 2018 FOIA Request within the time frame mandated under FOIA is a denial and a wrongful withholding of records in violation of 5 U.S.C. § 552.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Assume jurisdiction in this matter and maintain jurisdiction until Defendant complies with FOIA and every order of this Court;
2. Order Defendant to expeditiously conduct an adequate search for all records responsive to Plaintiff's FOIA Request in accordance with 5 U.S.C. § 552(a)(3)(C);
3. Order Defendant to expeditiously disclose all responsive, non-exempt records and enjoin Defendant from improperly withholding records;
4. Declare that Defendant's failure to promptly disclose the records responsive to Plaintiff's Request violates FOIA, 5 U.S.C. § 552(a)(3)(A);
5. Declare that Defendant's failure to make a timely determination with regard to Plaintiff's Request violates FOIA, 5 U.S.C. §§ 552(a)(6)(A)(i) and (B);
6. Award Plaintiff his attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and

7. Grant such additional and further relief to which Plaintiff may be entitled.

Dated: February 13, 2020

Respectfully submitted,

**CLEAR PROJECT
MAIN STREET LEGAL SERVICES,
INC.**

/s/ Ramzi Kassem

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