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11 ASISTA Immigration Assistance, Inc.

12 UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO / OAKLAND DIVISION

15 IMMIGRATION CENTER FOR WOMEN AND  
16 CHILDREN; ASISTA IMMIGRATION  
17 ASSISTANCE, INC.,

18 Plaintiffs,

19 v.

20 U.S. CITIZENSHIP AND IMMIGRATION  
21 SERVICES; U.S. DEPARTMENT OF  
22 HOMELAND SECURITY,

23 Defendants.

Case No. 3:20-cv-03000

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF UNDER  
THE FREEDOM OF  
INFORMATION ACT**

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*ICWC, et al., v. USCIS, et. al.*, No. 3:20-cv-03000

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER THE FREEDOM OF INFORMATION ACT

**INTRODUCTION**

1  
2 1. Plaintiffs Immigration Center for Women and Children (ICWC) and ASISTA Immigration  
3 Assistance, Inc., (ASISTA) are non-profit organizations that work to advance the rights, routes to  
4 status, and legal remedies for immigrant survivors of domestic violence and other serious crimes.

5 2. Plaintiffs bring this action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552,  
6 *et seq.*, seeking to compel U.S. Citizenship and Immigration Services (USCIS) and U.S.  
7 Department of Homeland Security (DHS) to immediately release records relating to the  
8 discretionary adjudication of adjustment of status for U nonimmigrants under Immigration and  
9 Nationality Act (INA) § 245(m), 8 U.S.C. § 1255(m).

10 3. On October 28, 2000, Congress created a new nonimmigrant visa classification called U  
11 nonimmigrant status or a U-visa. 8 U.S.C. § 1101(a)(15)(U). It allows undocumented immigrants  
12 who were victims of qualifying crimes and who assisted in the detection, investigation, or  
13 prosecution of that criminal activity to apply for and receive this visa. *Id.*; *see also* 8 C.F.R. §  
14 214.14(a)(5). The U-visa provides noncitizens with four years of nonimmigrant status and work  
15 authorization. *See* 8 U.S.C. § 1184(p)(6). Moreover, upon residing in the United States in U  
16 nonimmigrant status continuously for three years, noncitizens may apply for permanent residency,  
17 i.e., their “green card.” *See* 8 U.S.C. § 1255(m). This second stage green card application process  
18 is known as “adjustment of status.”

19 4. Beginning in or around Spring 2018, Plaintiffs observed that USCIS began requiring  
20 adjustment of status applicants to supply a variety of documents that it had previously not required  
21 under identical or similar circumstances. Examples include applicants’ arrest reports, police  
22 reports, sworn statements regarding circumstances of an arrest, and/or charging documents,  
23 particularly in situations where charges were never filed, charges were dismissed, and/or where  
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1 the relevant records have been sealed. Often times, USCIS requested documents and information  
2 pertaining to incidents that the applicant had previously disclosed prior to the issuance of their U-  
3 visa, the issuance of which often entailed a waiver of any ground of inadmissibility resulting from  
4 their conduct. If applicants did not provide the requested information, USCIS began to deny their  
5 applications as a matter of discretion. For applicants who did provide the requested documents,  
6 USCIS began issuing denials based on the substance of the documents. In fact, USCIS has denied  
7 applications for adjustment of status based on incidents that applicants had previously disclosed  
8 and that USCIS had explicitly waived at the time it issued the U-visa.

10 5. Prior to Spring 2018, USCIS's practice, which on information and belief reflected USCIS's  
11 policy, generally was to not request this kind of evidence because it had already been considered  
12 in granting the U-visa.

14 6. Because USCIS has not issued a revised or new practice or policy to the public, whether in  
15 the form of a publication, announcement, advisory, or guidance document of any kind, the extent  
16 and parameters of the change in practice and policy are not known. The dearth of information has  
17 left members of the public, including immigration lawyers, advocates for noncitizens, social  
18 workers, and law enforcement personnel without an understanding of the current practice and  
19 policy governing adjustment of status adjudications under 8 U.S.C. § 1255(m).

21 7. Absent such information, developing best practices to address the change in practice and  
22 policy has proven to be difficult and has resulted in uncertainty for an already vulnerable class of  
23 individuals that Congress sought to protect. Non-profit organizations, the immigration bar, and  
24 volunteers throughout the United States are therefore unable to effectively advise and advocate for  
25 justice and fairness for immigrant survivors who seek adjustment of status after having been  
26 granted U-visas.

1 8. Due to the lack of information provided by USCIS regarding its altered adjudicatory  
2 process and procedure, Plaintiffs filed a FOIA request on November 22, 2019, seeking these  
3 records. On December 18, 2019, USCIS issued a notice stating that it received the FOIA request  
4 on December 10, 2019, and assigning a control number for tracking purposes. USCIS informed  
5 Plaintiffs that it had placed their FOIA request in the complex track (Track 2), invoked a 10-day  
6 extension of time, and granted Plaintiffs' fee waiver request. Since that time, Plaintiffs have not  
7 received any additional correspondence from USCIS. To date, months after filing the request,  
8 USCIS has still not produced any records in response to Plaintiffs' FOIA request.

9  
10 9. USCIS's failure to disclose and produce the requested records violates the FOIA and is  
11 impeding Plaintiffs' efforts to ensure the safety and security of immigrant survivors of domestic  
12 violence and other serious crimes whom Congress has explicitly identified for protection.

#### 13 JURISDICTION

14  
15 10. This Court has jurisdiction under 5 U.S.C. § 552, *et seq.* (FOIA statute), 28 U.S.C. § 1331  
16 (federal question), 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act), and 5 U.S.C. § 702 *et.*  
17 *seq.*, the Administrative Procedure Act (APA).

18  
19 11. Defendants' failure to make determinations concerning Plaintiffs' requests for information  
20 relating to the discretionary adjudication of adjustment of status for U nonimmigrants under 8  
21 U.S.C. § 1255(m) within the statutory time period constitutes a constructive denial of Plaintiffs'  
22 request. Thus, Plaintiffs are deemed to have exhausted their administrative remedies. 5 U.S.C. §  
23 552(a)(6)(C)(i).

#### 24 VENUE

25  
26 12. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1) because this is  
27 a civil action in which Defendants are federal agencies; Plaintiff ICWC's place of business is in  
28

1 the county of San Francisco, in the city of San Francisco; Plaintiffs' claims arise out of the county  
2 of San Francisco, in the city of San Francisco; and there is no real property involved in this action.

3 **INTRADISTRICT ASSIGNMENT**

4 13. This action should be assigned to the San Francisco / Oakland division because Plaintiffs'  
5 claims arise in the county of San Francisco, in the city of San Francisco. Local Rules 3-2(c), (d).  
6

7 **PARTIES**

8 **Plaintiffs**

9 14. Plaintiff Immigration Center for Women and Children (ICWC) is a non-profit legal  
10 organization providing free and affordable immigration services to underrepresented immigrants  
11 in California and Nevada. ICWC strives to provide security and stability for children who are  
12 abused, abandoned, or neglected, and for immigrants who are victims of domestic violence, sexual  
13 assault, and other violent crimes. ICWC represents thousands of clients to gain legal status and  
14 obtain work authorization to improve their lives and create security and stability for their families.  
15 ICWC does this by providing direct services, hosting a database for advocates nationwide,  
16 conducting national trainings, and publishing practice manuals in its area of expertise. Since its  
17 foundation in 2004, ICWC has provided legal assistance to more than thirty thousand individuals,  
18 including many who are eligible for, and have received, U nonimmigrant status and adjustment of  
19 status thereafter.  
20  
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22 15. Plaintiff ASISTA Immigration Assistance, Inc. (ASISTA) is a national non-profit  
23 organization that works to advance and protect the rights and routes to lawful status of immigrant  
24 survivors of violence, especially those who have suffered gender-based violence inside the United  
25 States. ASISTA has worked with Congress to create and expand the opportunities to secure  
26 immigration status for survivors of domestic violence, sexual assault, and other crimes in the  
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1 Violence Against Women Act (VAWA) and its subsequent reauthorization. ASISTA serves as  
2 liaison between those who represent these survivors and the U.S. Department of Homeland  
3 Security (DHS) personnel charged with implementing the laws at issue in this action, including  
4 USCIS, Immigration and Customs Enforcement (ICE), and DHS's Office for Civil Rights and  
5 Civil Liberties. ASISTA also trains and provides technical support to local law enforcement  
6 officials, civil and criminal judges, domestic violence and sexual assault advocates, and legal  
7 services, non-profit, pro bono, and private attorneys working with immigrant crime survivors.  
8

### 9 **Defendants**

10 16. Defendant USCIS is a component agency of DHS and is an agency within the meaning of  
11 5 U.S.C. § 552(f)(1). Among other duties, USCIS is responsible for adjudicating petitions and  
12 applications for certain immigration benefits in the United States. USCIS has in its possession,  
13 custody, and control information regarding the discretionary adjudication of adjustment of status  
14 for U nonimmigrants that Plaintiffs seek.  
15

16 17. Defendant DHS is an executive agency of the United States and an agency within the  
17 meaning of 5 U.S.C. § 552(f)(1). Its responsibilities include enforcement and administration of the  
18 immigration laws of the United States. USCIS is a component agency within DHS. DHS has  
19 ultimate responsibility for ensuring that its components comply with the law, including the FOIA.  
20

## 21 **LEGAL BACKGROUND**

### 22 **The U-visa Program, 8 U.S.C. § 1101(a)(15)(U)**

23 18. In creating the U-visa program, Congress sought to “strengthen the ability of law  
24 enforcement agencies to detect, investigate, and prosecute” certain serious crimes “while offering  
25 protection to victims of such offenses in keeping with the humanitarian interests of the United  
26 States.” *See* VTVPA, Pub. L. No. 106-386, Title V, § 1513(a), 114 Stat. 1464, 1533 (2000). By  
27  
28

1 providing victims of crime with an avenue for regularization of their immigrant status, the U-visa  
2 encourages victims to work and cooperate with law enforcement agencies. Congress also aimed to  
3 strengthen relations between law enforcement and immigrant communities by increasing  
4 cooperation and removing some of the fear of deportation held by many undocumented migrants.

5  
6 19. The U-visa provides petitioners and their qualifying family members with legal status to  
7 remain in the United States. 8 U.S.C. § 1101(a)(15)(U). Individuals are eligible for U  
8 nonimmigrant status if they: (1) are the victim of qualifying criminal activity that occurred in the  
9 United States or its territories or possessions; (2) have suffered substantial physical or mental abuse  
10 as a result; and (3) have been helpful to law enforcement in the detection, investigation or  
11 prosecution of such criminal activity. *See* INA § 101(a)(15)(U).

12  
13 20. To apply for a U-visa, a petitioner must file with USCIS a Petition for U Nonimmigrant  
14 Status (Form I-918), along with supporting documentation. *See* 8 C.F.R. § 214.14 (“USCIS has  
15 sole jurisdiction over all petitions for U nonimmigrant status.”). The Form I-918 must be supported  
16 by a signed certification from a Federal, State, or local law enforcement official, prosecutor, judge,  
17 or other Federal, State, or local authority investigating qualifying criminal activity. The  
18 certification, submitted on Form I-918, Supplement B, confirms that the noncitizen “has been  
19 helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of the  
20 criminal activity. *See* INA § 214(p)(1), 8 U.S.C. § 1184(p)(1). *See also* 8 C.F.R. § 214.14(a)(12).

21  
22  
23 21. Individuals who are inadmissible to the United States must also file an Application for  
24 Advance Permission to Enter as Nonimmigrant (Form I-192). When Congress created the U-  
25 nonimmigrant classification, it recognized that many “alien victims may not have legal status.”  
26 *New Classification for Victims of Criminal Activity, Eligibility for “U” Nonimmigrant Status*, 72  
27 Fed. Reg. 179 at 53014 (Sept. 17, 2007). In enacting the provisions for the U nonimmigrant status,  
28

1 Congress created a waiver especially for persons who might otherwise be subject to the INA's  
2 grounds of inadmissibility. 8 U.S.C. § 1182(d)(14). Under this broad waiver, "the Secretary of  
3 Homeland Security has the discretion to waive any ground of inadmissibility with respect to  
4 applicants for U nonimmigrant status, except the grounds applicable to participants in Nazi  
5 persecutions, genocide, acts of torture, or extrajudicial killings." 8 U.S.C. § 1182(d)(14); *New*  
6 *Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status*, 72 Fed.  
7 Reg. 179 at 53021 (Sept. 17, 2007).  
8

9 22. To receive a waiver, the applicant must show that it would be in the "public or national  
10 interest," meaning that the Secretary must "balance adverse factors evidencing inadmissibility as  
11 a lawful permanent resident with the social and humane considerations presented to determine if  
12 the grant of the waiver appears to be in the best interest of the United States." *New Classification*  
13 *of Criminal Activity; Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 179 at 53021 (Sept.  
14 17, 2007).  
15

#### 16 **Adjustment of Status for U nonimmigrants, 8 U.S.C. § 1255(m)**

17 23. Pursuant to 8 U.S.C. § 1255(m), unless it is determined that a U-visa holder unreasonably  
18 refused to provide assistance in a criminal investigation or prosecution, U nonimmigrants may  
19 seek adjustment of status by submitting an Application to Register Permanent Residence or Adjust  
20 Status (Form I-485), if: (1) they are not inadmissible under 8 U.S.C. § 1182(a)(3)(E) (grounds  
21 applicable to participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings);  
22 (2) they have been physically present in the United States for a continuous period of three years in  
23 valid U nonimmigrant status; and (3) their continued presence in the United States is justified on  
24 humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Principal  
25 petitioners and each derivative must independently satisfy the eligibility criteria for adjustment of  
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28



1 status.

2 24. USCIS must automatically extend U nonimmigrant status when a U-visa holder files an  
3 Application to Register Permanent Residence or Adjust Status under 8 U.S.C. § 1255(m) until the  
4 application is adjudicated. 8 U.S.C. § 1184(p)(6).

5 25. The Vermont and Nebraska Service Centers of USCIS have exclusive jurisdiction over  
6 applications for adjustment of status for U nonimmigrants.<sup>1</sup> Specifically, any applicant for  
7 adjustment of status under 8 U.S.C. § 1255(m) must submit their adjustment of status application  
8 and supporting documentation to either the Vermont Service Center or the Nebraska Service  
9 Center, depending on their state of residence. The Vermont Service Center and the Nebraska  
10 Service Center jointly process adjustment of status applications for U nonimmigrants.  
11

### 12 **FOIA Statutory Background**

13 26. FOIA's basic purpose is to ensure government transparency. It establishes the public's right  
14 to access all federal agency records unless the government may withhold such records pursuant to  
15 one of nine, narrowly construed FOIA exemptions. 5 U.S.C. § 552(b)(1)-(9).  
16

17 27. Within 20 working days of receiving a FOIA request, an agency must determine if it will  
18 release requested records and must notify the requester of its determination and the reasons for  
19 that determination, the right to seek assistance from the FOIA Public Liaison, and the right to  
20 appeal an adverse agency determination. *Id.* § 552(a)(6)(A)(i).  
21

22 28. An agency may toll the 20-working-day deadline to seek additional information or  
23 clarification from a requester, but that tolling period ends when the agency receives such  
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25 <sup>1</sup> 8 C.F.R. § 245.24(f) (“The decision to approve or deny a Form I-485 (the adjustment of status  
26 application) filed under section 245(m) of the Act is a discretionary determination that lies solely  
27 within USCIS's jurisdiction”); *see also* <https://www.uscis.gov/i-485-addresses> (last visited Apr.  
28 30, 2020).

1 information or clarification. *Id.* § 552(a)(6)(A)(ii).

2 29. In “unusual circumstances,” an agency may extend the time to make a determination by no  
3 more than 10 additional working days, but it must provide written notice to the requester setting  
4 forth the unusual circumstances for the extension and “the date on which a determination is  
5 expected to be dispatched.” *Id.* § 552(a)(6)(B)(i). If the agency provides written notice that the  
6 request cannot be processed within the specified time limit, the agency shall provide “an  
7 opportunity to limit the scope of the request so that it may be processed within” the statutory time  
8 limit or “an opportunity to arrange with the agency an alternative time frame for processing the  
9 request or a modified request” and shall make available its FOIA Public Liaison” to “assist in the  
10 resolution of any disputes between the requester and the agency.” *Id.* § 552(a)(6)(B)(ii).

11  
12  
13 30. FOIA requires each agency to search for records in a manner that is reasonably calculated  
14 to locate all records that are responsive to the FOIA request. *Id.* § 552(a)(3)(C)-(D).

15 31. FOIA requires federal agencies to promptly disclose requested records. *Id.* § 552(a)(3)(A),  
16 (a)(6)(C)(i).

17  
18 32. In certain limited instances, as stated above, an agency may withhold records or portions  
19 of records pursuant to nine specific exemptions. *Id.* § 552(b). These exemptions must be narrowly  
20 construed in light of FOIA’s dominant objective of disclosure, not secrecy.

21 33. FOIA places the burden on the agency to prove that it may withhold responsive records or  
22 portions of records from a requester. *Id.* § 552(a)(4)(B).

23  
24 34. FOIA provides this Court jurisdiction “to enjoin the agency from withholding agency  
25 records and to order the production of any agency records improperly withheld from the  
26 complainant.” *Id.* § 552(a)(4)(B).

27 35. Alternatively, an agency’s response to a FOIA request is subject to judicial review under  
28

1 the APA, which confers a right of judicial review on any person who is adversely affected by  
2 agency action, 5 U.S.C. § 702, and authorizes district courts to compel agency action that is  
3 unlawfully withheld or unreasonably delayed. *Id.* § 706(1). District courts must set aside any  
4 agency action that is found to be “arbitrary, capricious, an abuse of discretion or otherwise not in  
5 accordance with law.” *Id.* § 706(2)(A).

## 7 FACTUAL ALLEGATIONS

### 8 **Defendant USCIS’s Internal Shift in Adjudication**

9 36. As mentioned above, in or around Spring 2018, Plaintiffs observed a marked change in  
10 USCIS’s process and procedure as it relates to the adjudication of adjustment of status applications  
11 filed by U-visa holders. USCIS frequently began requesting documents that were not formerly  
12 required, such as police reports, and often did so in cases where applicants (a) had not been charged  
13 or convicted of a criminal offense, (b) had already disclosed the incident prior to the approval of  
14 their U-visa and provided a certified record of disposition or conviction, and/or (c) had previously  
15 received a waiver for conduct or a conviction that triggered inadmissibility.<sup>2</sup> If applicants failed to  
16 provide the requested documents, USCIS began denying their applications as a matter of  
17 discretion, finding the refusal to provide requested documents to be a negative discretionary factor.  
18 Similarly, when applicants did provide the requested information, USCIS began denying their  
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22 <sup>2</sup> Previously, however, USCIS accepted certified records of disposition or conviction from a  
23 criminal court when an individual had been arrested, charged, or convicted of a crime. The record  
24 of disposition or conviction establishes the ultimate outcome of proceedings, i.e., whether charges  
25 were filed and, if so, whether the individual obtained a dismissal, pleaded guilty to the charge or a  
26 lesser offense, or had been convicted by a judge or jury. Documents that are acceptable for  
27 establishing the ultimate outcome of a criminal proceeding include an indictment, plea agreement,  
28 colloquy, verdict, and sentencing order. *United States v. Taylor*, 495 U.S. 575, 602 (1990); *United States v. Shepard*, 544 U.S. 13 (2005). Because of their inherent unreliability, police reports are not part of the record of disposition or conviction and are not utilized to determine whether a noncitizen is eligible for relief as a matter of discretion, especially where no conviction exists. *Matter of Arreguin*, 21 I&N Dec. 38 (BIA 1995); *see also* F. R. Evid. 803(b).

1 applications based on the substance of the evidence.

2 37. Despite this shift in adjudication policy, USCIS to date has not issued a revised or new  
3 practice or policy to the public in any form. This lack of information has left members of the  
4 public, as well as immigration lawyers and other advocates for noncitizens, without any  
5 understanding of the current practice and policy governing adjustment of status adjudications  
6 under 8 U.S.C. § 1255(m).  
7

### 8 **Plaintiffs' FOIA Request**

9 38. On November 22, 2019, Plaintiffs submitted their FOIA request seeking information  
10 relating to the discretionary adjudication of adjustment of status for U Nonimmigrants under 8  
11 U.S.C. § 1255(m). Exhibit (Exh.) B, FOIA Request dated November 22, 2019.  
12

13 39. Specifically, Plaintiffs requested the following:

- 14 a. Records, including communications and guidelines, that describe the factors  
15 and criteria employed in the exercise of discretion in the adjudication of  
16 adjustment of status for U Nonimmigrants under 8 U.S.C. § 1255(m),  
17 including, but not limited to, the entirety of Part K, Volume 7 of the USCIS  
18 Policy Manual relating to Crime Victim-Based Adjustment;
- 19 b. Standard operating procedures for adjustment of status applications under 8  
20 U.S.C. § 1255(m) from years 2015-current;
- 21 c. Records, including communications, that describe the factors and criteria  
22 applied in issuing the Requests for Evidence (RFE) or Notices of Intent to  
23 Deny (NOID) for applications for adjustment of status under 8 U.S.C. §  
24 1255(m);
- 25 d. Records, including communications, that describe and/or explain USCIS's  
26 implementation of Policy Memorandum PM-602-0163, entitled "Issuance  
27 of Certain RFEs and NOIDs; Revisions to *Adjudicator's Field Manual*  
28 (AFM), Chapter 10.5(a), Chapter 10.5(b)," dated July 13, 2018, as applied  
to applications for adjustment of status under 8 U.S.C. § 1255(m);
- e. Records that describe and/or explain the implementation of President  
Trump's Executive Order 13768 – Enhancing Public Safety in the Interior  
of the United States as applied to the review, processing, and adjudication

1 of applications for adjustment of status under 8 U.S.C. § 1255(m);

- 2 f. Records demonstrating the number of applications for adjustment of status  
3 under 8 U.S.C. § 1255(m) in which the USCIS has issued a RFE and/or  
4 NOID from 2009-present (separated by year);
- 5 g. Records, including communications, that describe and/or explain the  
6 consideration of inadmissibility grounds, criminal history, and negative  
7 discretionary factors previously disclosed on the Form I-918 or Form I-192  
8 in the adjudication of applications for adjustment of status under 8 U.S.C. §  
9 1255(m);
- 10 h. All policies, whether contained in email, memoranda, or other category of  
11 document, issued between fiscal year 2015 and currently, concerning the  
12 consideration of criminal history and inadmissibility grounds in the  
13 adjudication of applications for adjustment of status under 8 U.S.C. §  
14 1255(m);
- 15 i. Records demonstrating the number of applications for adjustment of status  
16 under 8 U.S.C. § 1255(m), in which the USCIS denied the application solely  
17 as a matter of discretion, from 2009-present (separated by year); and
- 18 j. Records demonstrating the number of applications for adjustment of status  
19 under 8 U.S.C. § 1255(m) in which the USCIS denied the application based  
20 solely on inadmissibility grounds, criminal history, or negative  
21 discretionary factors previously disclosed on the Form I-918 or Form I-192,  
22 from 2009 to present (separated by year).

23 40. On November 22, 2019, Plaintiffs received an automated response via email from  
24 Defendant USCIS. Exh. C, Automatic Receipt Notice from USCIS dated November 22, 2019.

25 41. On December 18, 2019, Defendant USCIS formally acknowledged receipt of Plaintiffs'  
26 FOIA request via a letter which stated it received the request on December 10, 2019. Exh. D,  
27 Notice from USCIS dated December 18, 2019.

28 42. USCIS assigned Plaintiffs' FOIA request control number COW2019501816 and placed it  
in the complex track (Track 2). Id.

43. USCIS also invoked the 10-day extension and granted Plaintiffs' fee waiver. Id.

1 44. As of the date of this complaint, USCIS has not responded to Plaintiffs' FOIA request and  
2 has not provided any responsive records to Plaintiffs. Exh. A, Declaration of Marc Van Der Hout.

3 45. As of the date of this complaint, Plaintiffs' FOIA request is numbered 1164 out of 1406  
4 pending requests.<sup>3</sup> Exh. E, USCIS FOIA Request Status Information.

5 46. USCIS has not provided Plaintiffs with a determination that describes the records that it  
6 intends to produce or withhold and the reasons for withholding any records, or informs Plaintiffs  
7 that the organizations may appeal any specific adverse determination within the relevant time  
8 periods listed in 5 U.S.C. § 552(a)(6)(A)(i) or 5 U.S.C. § 552(a)(6)(B). Exh. A, Declaration of  
9 Marc Van Der Hout.  
10

11 47. USCIS has no lawful basis under FOIA for its delay or for withholding the records that  
12 Plaintiffs requested in their FOIA request.  
13

14 48. Plaintiffs have been required to expend resources to prosecute this action.

15 **CAUSES OF ACTION**

16 **COUNT ONE**

17 **Failure to Provide a Lawful Determination on the FOIA Request**

18 49. Plaintiffs re-allege and incorporate by reference the allegations made in all preceding  
19 paragraphs.  
20

21 50. USCIS violated FOIA by failing to make a timely determination on Plaintiffs' FOIA  
22 request. 5 U.S.C. § 552(a)(6)(A)(i).  
23

24 51. Plaintiffs have a statutory right to receive a determination from USCIS, as well as to  
25 promptly receive the records they seek through FOIA.  
26

27 <sup>3</sup> Check Status of FOIA Request, USCIS, <https://first.uscis.gov/#/check-status> (last visited Apr.  
28 30, 2020) (enter FOIA request control number in the field indicated and click "Submit Status  
Check.").

1 52. Months after filing the FOIA request discussed above, USCIS has still not provided  
2 Plaintiffs with a determination on the FOIA request that describes the scope of the records it  
3 intends to produce or withhold and the reasons for withholding any records or that informs the  
4 Plaintiffs that it may appeal any specific adverse determination within the relevant time periods in  
5 5 U.S.C. § 552(a)(6)(A)(i) or 5 U.S.C. § 552(a)(6)(B). *See also* 5 U.S.C. § 552(a)(7).

6  
7 53. Based on the nature of the Plaintiffs' organizational activities, Plaintiffs will undoubtedly  
8 continue to employ FOIA's provisions in records requests to USCIS in the foreseeable future.

9 54. Plaintiffs' organizational activities will be adversely affected if USCIS and DHS continue  
10 to violate FOIA's requirement to provide a lawful determination on Plaintiffs' FOIA request.

11  
12 55. Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this Court,  
13 USCIS and DHS will continue to violate Plaintiffs' rights to receive public records under FOIA.

14 **COUNT TWO**

15 **Failure to Conduct an Adequate Search for Records Responsive to the FOIA Request**

16 56. Plaintiffs re-allege and incorporate by reference the allegations made in all preceding  
17 paragraphs.

18  
19 57. Plaintiffs have a statutory right to have USCIS and DHS process its FOIA request in a  
20 manner that complies with FOIA. 5 U.S.C. § 552(a)(3).

21 58. USCIS and DHS violated Plaintiffs' rights in this regard when it unlawfully failed to  
22 undertake a search that is reasonably calculated to locate all records that are responsive to  
23 Plaintiffs' FOIA request.

24  
25 59. Based on the nature of Plaintiffs' organizational activities, Plaintiffs will undoubtedly  
26 continue to employ FOIA's provisions in records requests to USCIS and DHS in the foreseeable  
27 future.

1 60. Plaintiffs' organizational activities will be adversely affected if USCIS and DHS continue  
2 to violate FOIA's requirement to provide a lawful determination on Plaintiffs' request.

3 61. Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this Court,  
4 USCIS and DHS will continue to violate Plaintiffs' rights to receive public records under FOIA.

5  
6 **COUNT THREE**

7 **Failure to Promptly Disclose Records Responsive to FOIA Request**

8 62. Plaintiffs re-allege and incorporate by reference the allegations made in all preceding  
9 paragraphs.

10 63. USCIS violated FOIA, 5 U.S.C. § 552(a)(3), by failing to promptly disclose records that  
11 are responsive to Plaintiffs' FOIA request.

12 64. Based on the nature of Plaintiffs' organizational activities, Plaintiffs will undoubtedly  
13 continue to employ FOIA's provisions in records requests to USCIS and DHS in the foreseeable  
14 future.

15 65. Plaintiffs' organizational activities will be adversely affected if USCIS and DHS continue  
16 to violate FOIA's disclosure provisions as it has in this case.

17 66. Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this Court,  
18 USCIS and DHS will continue to violate Plaintiffs' rights to receive public records under FOIA.

19  
20 **COUNT FOUR**

21 **Failure to Provide Reasonably Segregable Portions of Any Lawfully Exempt Records**

22 67. Plaintiffs re-allege and incorporate by reference the allegations made in all preceding  
23 paragraphs.

24 68. Plaintiffs have a statutory right to any reasonably segregable portion of a record that  
25 contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).



1 69. USCIS and DHS violated Plaintiffs' rights in this regard by unlawfully withholding  
2 reasonably segregable portions of any lawfully exempt records that are responsive to the Plaintiffs'  
3 FOIA request.

4 70. Based on the nature of Plaintiffs' organizational activities, Plaintiffs will undoubtedly  
5 continue to employ FOIA's provisions in records requests to USCIS in the foreseeable future.

6 71. Plaintiffs' organizational activities will be adversely affected if USCIS and DHS is allowed  
7 to continue violating FOIA's disclosure provisions as it has in this case.

8 72. Unless enjoined and made subject to a declaration of Plaintiffs' legal rights by this Court,  
9 USCIS and DHS will continue to violate Plaintiffs' rights to receive public records under FOIA.  
10

11 **COUNT FIVE**

12 **(In the Alternative to Counts One Through Four)**

13 **Unlawfully Withholding or Unreasonably Delaying Actions Called for by the FOIA**  
14 **Request**

15 73. Plaintiffs re-allege and incorporate by reference the allegations made in all preceding  
16 paragraphs.  
17

18 74. USCIS unlawfully withheld agency action by failing to comply with the mandates of FOIA  
19 consequent to its failure and refusal to: (1) provide a timely determination on the Plaintiffs' FOIA  
20 request, (2) conduct an adequate search for records that are responsive to the Plaintiffs' FOIA  
21 request, (3) promptly disclose records responsive to the Plaintiffs' FOIA request, and (4) provide  
22 the Plaintiffs with reasonably segregable portions of responsive records in the event that records  
23 may be subject to an exemption. USCIS's and DHS's failures constitute agency actions unlawfully  
24 withheld and, therefore, are actionable pursuant to the APA, 5 U.S.C. § 706(1).  
25

26 75. Alternatively, USCIS and DHS unreasonably delayed agency action by failing to comply  
27 with the mandates of FOIA consequent to its failure and refusal to: (1) provide a timely  
28

1 determination on the Plaintiffs' FOIA request, (2) conduct an adequate search for records that are  
2 responsive to the Plaintiffs' FOIA request, (3) promptly disclose records that are responsive to the  
3 Plaintiffs' FOIA request, and (4) provide the Plaintiffs with reasonably segregable portions of  
4 responsive records in the event that records may be subject to an exemption. USCIS's and DHS's  
5 failures constitute agency actions that are unlawfully withheld and, therefore, these actions are  
6 actionable pursuant to the APA, 5 U.S.C. § 706(1).  
7

8 76. As alleged above, USCIS's and DHS's failure to comply with the mandates of FOIA has  
9 injured the Plaintiffs' interests in public oversight of governmental operations and is a violation of  
10 its statutory duties under the APA.  
11

12 77. Plaintiffs have no other adequate remedy at law to redress the violations noted above.

13 78. Plaintiffs are entitled to judicial review under the APA, 5 U.S.C. § 702.  
14

### **COUNT SIX**

#### **(In the Alternative to Counts One Through Four)**

#### **USCIS's and DHS's Violations of FOIA's Requirements Are Arbitrary, Capricious, An Abuse of Discretion, Or Otherwise Not In Accordance with Law**

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17  
18 79. Plaintiffs re-allege and incorporate by reference the allegations made in all preceding  
19 paragraphs.  
20

21 80. USCIS and DHS violated FOIA's statutory mandates due to its failure and refusal to: (1)  
22 provide a timely determination on the Plaintiffs' FOIA request, (2) conduct an adequate search for  
23 records that are responsive to the Plaintiffs' FOIA request, (3) promptly disclose records that are  
24 responsive to the Plaintiffs' FOIA request, and (4) provide the Plaintiffs with reasonably  
25 segregable portions of responsive records in the event that records may be subject to an exemption.  
26 By repeatedly violating FOIA's statutory mandates, USCIS's and DHS's actions are arbitrary,  
27  
28

1 capricious, an abuse of discretion, or not in accordance with the law and therefore are actionable  
2 pursuant to the APA, 5 U.S.C. § 706(2).

3 81. As alleged above, USCIS's and DHS's failure to comply with the mandates of FOIA has  
4 injured the Plaintiffs' interests in public oversight of governmental operations and is a violation of  
5 its statutory duties under the APA.

6  
7 82. Plaintiffs have no other adequate remedy at law to redress the violations noted above.

8 83. Plaintiffs are entitled to judicial review under the APA, 5 U.S.C. § 702.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiffs request that the Court grant the following relief:

- 11 (1) Assume jurisdiction over this action;
- 12 (2) Declare that Defendant USCIS's failure to make determinations on Plaintiff's  
13 FOIA request within the statutory time frame violates the FOIA;
- 14 (3) Declare that Defendant DHS's failure to make determinations on Plaintiff's  
15 FOIA request within the statutory time frame violates the FOIA;
- 16 (4) Order Defendants USCIS and DHS to make determinations on Plaintiffs' FOIA  
17 request as mandated by 5 U.S.C. § 552(a)(6)(A)(i);
- 18 (5) Award reasonable costs and attorneys' fees pursuant to the FOIA and any other  
19 applicable law; and
- 20 (6) Grant such further relief as the Court deems just and proper.
- 21  
22  
23

24 Dated: April 30, 2020

Respectfully submitted,

25 /s/Marc Van Der Hout  
26 Marc Van Der Hout  
27 Johnny Sinodis  
28 Attorneys for Plaintiffs

**VERIFICATION**

1  
2 I, Marc Van Der Hout, hereby declare under penalty of perjury of the laws of the State of  
3 California and the United States that the facts alleged in the foregoing Complaint for Declaratory  
4 and Injunctive Relief Under the Freedom of Information Act are to the best of my knowledge true  
5 and correct.

6 Executed on this 30th day of April 2020 in San Francisco, California.

7 By: /s/ Marc Van Der Hout  
8 Marc Van Der Hout  
9 Attorney for Petitioners  
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