

1 Trina Realmuto (CA SBN 201088)
National Immigration Litigation Alliance
2 10 Griggs Terrace
3 Brookline, MA 02446
(617) 819-4447
4 trina@immigrationlitigation.org

5 Marie Vincent (CA SBN 286840)
Etan Newman (CA SBN 308728)
6 Pangea Legal Services
7 350 Sansome Street, Suite 650
San Francisco, California 94104
8 (415) 652-0907
marie@pangealegal.org
9 etan@pangealegal.org

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

14 PANGEA LEGAL SERVICES,

15 Plaintiff,

16 v.

17 U.S. CITIZENSHIP AND IMMIGRATION SERVICES,
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19 Defendant.
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Case No. _____

**Complaint for Declaratory
and Injunctive Relief Under
the Freedom of Information
Act**

INTRODUCTION

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2 1. Plaintiff Pangea Legal Services (Pangea) brings this action against U.S.
3 Citizenship and Immigration Services (USCIS) under the Freedom of Information Act (FOIA), 5
4 U.S.C. § 552, to compel the disclosure of records regarding USCIS’ adjudications of Form I-730,
5 Refugee/Asylee Relative Petition (I-730 Petition). Individuals within the United States who hold
6 either refugee or asylee status file I-730 Petitions on behalf of their spouse or unmarried
7 child(ren) under the age of 21. Approval of an I-730 Petition permits the family member of the
8 refugee/asylee to immigrate to the United States or, if already present, to legalize his or her
9 status. Pangea’s FOIA request was filed on March 10, 2020 and has been pending for nearly
10 three months. The statutory deadline for the agency to respond to Pangea’s FOIA request has
11 expired and USCIS has failed to make a determination on the request in violation of FOIA.
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14 2. Pangea filed its FOIA request in the wake of USCIS’ unexpected delays in
15 processing I-730 Petitions filed by Pangea on behalf of their asylee and refugee clients, reports of
16 similar unexpected delays and referrals to Immigration and Customs Enforcement (ICE) by other
17 immigration practitioners in the San Francisco Bay Area, and information shared by local USCIS
18 officials with the Northern California Chapter of the American Immigration Lawyers
19 Association regarding a 2019 USCIS policy change regarding adjudications, which, upon
20 information and belief, USCIS has not made publicly available. With the records sought through
21 the request, Pangea hopes to better understand USCIS’ adjudication of I-730 Petitions to assist
22 their current and future asylee and refugee clients and their families, all of whom are desperate to
23 be reunited with their families and/or legalize the status of their family members. Pangea also
24 intends to share relevant records with other legal service providers representing similarly situated
25 individuals. Pangea aims to make the records publicly available on its website in order to
26 contribute to public understanding of how USCIS adjudicates I-730 Petitions.
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JURISDICTION AND VENUE

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2 3. This Court has jurisdiction under 5 U.S.C. § 552, *et seq.* (FOIA statute), 28
3 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

4 4. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1)
5 because this is a civil action in which Defendant is a federal agency; Plaintiff’s principal place of
6 business is located in this District; and there is no real property involved in this action.

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8 5. Defendant acknowledged receipt of Pangea’s FOIA request. On April 30, 2020,
9 USCIS asked whether Pangea would narrow the FOIA request, which Pangea did that same day.
10 Defendant has not made a determination with respect to the narrowed request. Defendant’s
11 failure to make a determination within the statutory time period constitutes a constructive denial
12 of Plaintiff’s FOIA request. Thus, Plaintiff is deemed to have exhausted its administrative
13 remedy. 5 U.S.C. § 552(a)(6)(C)(i).
14

15 **INTRADISTRICT ASSIGNMENT**

16 6. The claims of Plaintiff Pangea Legal Services arise in the county of San
17 Francisco, in the city of San Francisco. Therefore, assignment to the San Francisco Division of
18 this Court is proper under N.D. Local Rule 3-2(d).

19 **PARTIES**

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21 7. Plaintiff Pangea Legal Services is a tax-exempt, not-for-profit immigrant legal
22 services organization under Section 501(c)(3) of the Internal Revenue Code, with its principal
23 place of business at 350 Sansome Street, Suite 650, San Francisco, California 94101. At the time
24 this Complaint is filed, Pangea has a staff of 12 attorneys, one community advocate, and one
25 paralegal. Pangea represents over 300 clients facing deportation in removal proceedings before
26 an immigration judge or in summary removal proceedings before a DHS officer, including cases
27 on appeal before the Board of Immigration Appeals or the federal appeals courts. Pangea also
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1 represents asylees and refugees who are applying for affirmative immigration benefits. Pangea
2 estimates that it represents approximately 20 clients who currently have I-730 Petitions pending
3 before USCIS, and will file dozens more I-730 Petitions on behalf of clients in the years ahead.

4 8. Defendant USCIS is a component agency of the Department of Homeland
5 Security (DHS) and is an agency within the meaning of 5 U.S.C. § 552(f)(1). Among other
6 duties, USCIS is responsible for adjudicating I-730 Petitions. USCIS has in its possession,
7 custody, and control the records requested by Plaintiff.

9 **LEGAL BACKGROUND**

10 ***FOIA***

11 9. FOIA requires each agency, upon a request for records: (a) to conduct a search
12 reasonably calculated to uncover all responsive documents; (b) to make the records available in
13 the form or format requested if they are readily reproducible in that format; and (c) to promptly
14 make available responsive records. 5 U.S.C. § 552(a)(3)(A)-(C).

15 10. If a FOIA request “was misdirected within DHS, the receiving component’s FOIA
16 office shall route the request to the FOIA office of the proper component(s).” 6 C.F.R. § 5.4(c).

17 11. FOIA also requires the agency to make a determination of whether it will comply
18 with the request within 20 business days. 5 U.S.C. § 552(a)(6)(A)(i); 6 C.F.R. § 5.6(c).

19 12. If the agency finds that unusual circumstances apply, it must request, by written
20 notice, no more than an additional 10 business days to issue its determination. 5 U.S.C.
21 § 552(a)(6)(B)(i).

22 13. “In determining which records are responsive to a request, [an agency] ordinarily
23 will include only records in its possession as of the date that it begins its search. If any other date
24 is used, the component shall inform the requester of that date.” 6 C.F.R. § 5.4(a).

25 14. If an agency fails to comply with the time periods set forth in the statute, the
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1 requester is “deemed to have exhausted his administrative remedies” and may seek judicial
2 review. 5 U.S.C. § 552(a)(6)(C)(i). The agency will not be permitted to assess search fees if it
3 fails to comply with the applicable time limits. 5 U.S.C. § 552(a)(4)(A)(viii)(I); 6 C.F.R.
4 § 5.11(d)(2).

6 *I-730 Petitions*

7 15. The I-730 Petition allows individuals admitted to the United States as refugees or
8 individuals granted asylum (asylees) in the United States, who were the principal applicants for
9 their family, to petition for the same status for their spouse and/or unmarried child(ren) under the
10 age of twenty-one (21) if the refugee admission or asylum grant occurred within the past two
11 years. *See generally* 8 U.S.C. § 1157(c)(2) (refugees); 8 C.F.R. § 207.7 (refugees); 8 U.S.C.
12 § 1158(b)(3) (asylees); 8 C.F.R. § 208.21 (asylees); *see also I-730, Refugee/Asylee Relative*
13 *Petition*, USCIS, (last visited June 1, 2020), <https://www.uscis.gov/i-730>.

14 16. A separate I-730 Petition must be filed for each qualifying family member for
15 whom the refugee or asylee petitions. 8 C.F.R. § 207.7(d); 8 C.F.R. § 208.21(c).

16 17. According to the I-730 Form Instructions, approval of the I-730 Petition for a
17 spouse and/or child(ren) abroad does not guarantee visa issuance. *See Instructions for Form I-*
18 *730*, USCIS, (last visited June 1, 2020), <https://www.uscis.gov/i-730>. The overseas individual
19 must go through the immigrant visa process, including meeting other admissibility requirements.
20 *See Follow-to-Join Refugees and Asylees*, U.S. Dep’t of State, (last accessed June 1, 2020),
21 [https://travel.state.gov/content/travel/en/us-visas/immigrate/follow-to-join-refugees-and-](https://travel.state.gov/content/travel/en/us-visas/immigrate/follow-to-join-refugees-and-asylees.html)
22 [asylees.html](https://travel.state.gov/content/travel/en/us-visas/immigrate/follow-to-join-refugees-and-asylees.html) (detailing process for obtaining visa following I-730 approval); 8 U.S.C.
23 § 1157(c)(2).

24 18. Likewise, approval of an I-730 Petition filed by an asylee for a spouse and/or
25 child(ren) within the United States does not guarantee asylum status. The spouse or child(ren)
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1 must not be ineligible for asylum under 8 U.S.C. § 1158(b)(2)(A)(i)-(v). 8 C.F.R. § 208.21(a).

2 19. If the spouse or child of an asylee or refugee is in the United States and USCIS
3 approves the I-730 Petition, the individual is eligible for employment authorization. 8 C.F.R.
4 § 207.7(f); 8 C.F.R. § 208.21(c).

5 20. Beneficiaries of approved I-730 Petitions may apply to adjust their status to that
6 of a lawful permanent resident after having been physically present in the United States for at
7 least one year after receiving refugee or asylee status. *See generally* 8 U.S.C. § 1159; 8 C.F.R.
8 § 209.
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10 **FACTUAL ALLEGATIONS**

11 **Pangea's FOIA Request**

12 21. On December 5, 2019 and February 6, 2020, the Northern California Chapter of
13 the American Immigration Lawyers Association met with USCIS officials from the San
14 Francisco Field Office of USCIS. At the December 5, 2019 meeting, reference was made to a
15 March 2019 change in USCIS' standard policy and procedures for adjudicating I-730 Petitions.
16 At the February 6, 2020 meeting, a memorandum regarding I-730 adjudications was discussed,
17 although USCIS officials did not produce a copy.
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19 22. Pangea filed its FOIA request in the wake of USCIS' unresponsiveness regarding
20 questions about the referenced memorandum and alleged policy change in adjudication of I-730
21 Petitions, including for beneficiaries with prior removal orders. Pangea has several clients who
22 are beneficiaries of pending I-730 Petitions and who have prior removal orders. In some of these
23 cases, USCIS already has found that these beneficiaries demonstrated a reasonable fear of
24 persecution or torture upon removal to their country of origin, and one has been granted
25 withholding of removal by an immigration judge. Nevertheless, USCIS has not adjudicated the I-
26 730 Petitions of which they are the beneficiaries, and Pangea's efforts to inquire about the
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1 adjudication process with the USCIS San Francisco Field Office have been unsuccessful. In
2 addition, in early 2020, several other immigration practitioners in the San Francisco Bay Area
3 also reported that USCIS had not adjudicated I-730 Petitions their offices had filed where the
4 beneficiary had a prior removal order.

5 23. On information and belief, USCIS’s adjudication of I-730 Petitions, including
6 delays and referrals to ICE, departs from prior policy and practice.

7 24. On March 10, 2020, Pangea submitted a FOIA request via electronic mail to
8 DHS, USCIS’ National Records Center, and the DHS Office of Inspector General.

9 25. The request seeks:

10 . . . disclosure of any and all internal guidance relating to the processing of I-730
11 petitions, including, but not limited to internal policies, procedures, protocols,
12 guidance, training materials, and memorandums relating to the processing of I-730
13 petitions[; and]

14 . . . disclosure of any and all internal guidance relating to the processing of I-730
15 petitions for beneficiaries with prior orders of removal, including, but not limited to
16 internal policies, procedures, protocols, guidance, training materials, and
17 memorandums relating to the processing of I-730 petitions.

18 Exhibit A, at 1.

19 26. The request further indicated that Pangea seeks the specified records “for the
20 period between January 1, 2018 and the date of the final response to this request.” *Id* at 2.

21 27. Pangea’s FOIA request was received by DHS, USCIS’ National Records Center,
22 and the DHS Office of Inspector General on March 10, 2020 as it was delivered by electronic
23 mail. *Id.* at 1.

24 28. On March 23, 2020, DHS acknowledged receipt of the FOIA request on March
25 10, 2020 and informed Pangea that, “[d]ue to the subject matter of [the] request,” it was
26 “transferring this request to the FOIA Officer for the U.S. Citizenship and Immigration
27 Services.” Exhibit B.

1 29. On April 1, 2020, USCIS acknowledged receipt of the March 10, 2020 FOIA
2 request, issued FOIA control number COW2020000433 for the request, and invoked the 10
3 business-day unusual circumstances extension pursuant to 5 U.S.C. § 552(a)(6)(B). Exhibit C.

4 30. On April 2, 2020, USCIS acknowledged receipt of DHS' March 23, 2020 transfer
5 of the March 10, 2020 FOIA request, issued FOIA control number COW2020000426 for the
6 transferred request, and again invoked the 10 business-day unusual circumstances extension
7 pursuant to 5 U.S.C. § 552(a)(6)(B). Exhibit D.

8 31. On April 30, 2020, a paralegal with USCIS' National Records Center contacted
9 Pangea with respect to the transferred request, FOIA control number COW2020000426, by
10 telephone and email to inquire whether Pangea would be willing to narrow the FOIA request.
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12 32. That same day, Pangea responded by email that it would be willing to narrow the
13 FOIA request to records seeking:

14 copies of all internal DHS guidance, trainings, policies and memoranda used in the
15 processing of I-730 petitions for beneficiaries with prior orders of removal in the
16 time frame of January 1, 2018 to the date of the final response to this request.

17 Exhibit E.

18 33. On May 1, 2020, the paralegal with USCIS' National Records Center responded
19 by email that she would "respond to the offices performing the search for records with the
20 clarification statement [Pangea] provided and using the time frame of **January 1, 2018 to**
21 **March 3, 2020** to fulfill [the] request." Exhibit F (emphasis in original). The email claimed that,
22 according to 6 C.F.R. § 5.4(a), USCIS "uses a 'cut-off' date to delineate the scope of a FOIA
23 request by treating records created after that date as not responsive to that request," and therefore
24 USCIS "will only include records in the possession of this agency as of March 3, 2020, the date
25 we began the search for records." *Id.* The March 3, 2020 cut-off date is clearly erroneous as
26 Pangea had not filed its FOIA request until March 10, 2020.
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1 34. On May 8, 2020, the DHS Office of Inspector General acknowledged receipt of
2 the FOIA request on March 10, 2020 and informed Pangea that it did not maintain the requested
3 records. Exhibit G. DHS Office of Inspector General is *not* a defendant to this action.

4 35. To date, Pangea has received no further correspondence from USCIS regarding its
5 narrowed request.

6 36. As of June 1, 2020, according to USCIS' online web portal, located at
7 first.uscis.gov/#!/check-status, which allows a requester to check the status of a pending FOIA
8 request: (a) Pangea's request to USCIS' National Records Center (FOIA control number
9 COW2020000433) was submitted on March 25, 2020, its place in the processing queue is 1,331
10 of 1,410, and the estimated completion date is October 7, 2020; and (b) Pangea's request to
11 DHS, which DHS later transferred to USCIS (FOIA control number for COW2020000426)
12 (referenced as a referral FOIA request) was submitted on March 23, 2020, its place in the
13 processing queue is 1,327 of 1,410, and the estimated completion date is October 5, 2020.

14 37. As of the date of this complaint, after the expiration of the statutory time period
15 for a response, USCIS has failed to notify Pangea (a) of any determination regarding the
16 requests, including the scope of any responsive records USCIS intends to produce or withhold;
17 or (b) whether USCIS will produce the requested records or demonstrate that the requested
18 records are lawfully exempt from production.
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22 **CAUSES OF ACTION**

23 **COUNT ONE**

24 **Violation of FOIA, 5 U.S.C. § 552**

25 **Failure to Conduct an Adequate Search for Responsive Records**

26 38. Plaintiff incorporates the allegations in the paragraphs above as though fully set
27 forth here.
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1 39. Defendant is obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search
2 for records responsive to Plaintiff’s narrowed FOIA request.

3 40. Plaintiff has a legal right to obtain such records, and no legal basis exists for
4 Defendant’s failure to search for them.

5 41. There is no basis for Defendant to limit cut off its search of records within its
6 possession as of March 3, 2020 given that Plaintiff did not file its FOIA request until March 10,
7 2020.

8 42. At a minimum, Defendant is obligated to search for records “in its possession as of
9 the date that it begins its search.” 6 C.F.R. § 5.4(a).

10 43. Defendant’s online portal indicates that the agency has not begun a search of its
11 records. Given the online portal indicates that Plaintiff’s narrowed FOIA request is 1,331 and 1,327
12 in a queue of 1,410 requests, Defendant has not yet begun to process Plaintiff’s request.

13 44. Defendant’s failure to conduct a reasonable search for records responsive to
14 Plaintiff’s narrowed FOIA request violates, at a minimum, 5 U.S.C. § 552(a)(3)(C), as well as the
15 regulations promulgated thereunder.

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18 **COUNT TWO**
19 **Violation of FOIA, 5 U.S.C. § 552**
20 **Failure to Disclose Responsive Records**

21 45. Plaintiff incorporates the allegations in the paragraphs above as though fully set
22 forth here.

23 46. Defendant is obligated under 5 U.S.C. § 552(a)(3) to promptly produce records
24 responsive to Plaintiff’s narrowed FOIA request.

25 47. Plaintiff has a legal right to obtain such records, and no legal basis exists for
26 Defendant’s failure to disclose them.

27 48. Defendant’s failure to disclose all responsive records violates, at a minimum, 5
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1 U.S.C. § 552(a)(3)(A), as well as the regulations promulgated thereunder.

2 **COUNT THREE**
3 **Violation of FOIA, 5 U.S.C. § 552**
4 **Failure to Timely Respond**

5 49. Plaintiff incorporates the allegations in the paragraphs above as though fully set
6 forth here.

7 50. Defendant is obligated under 5 U.S.C. § 552(a)(6)(A)(i) to promptly produce
8 records responsive to Plaintiff's FOIA request.

9 51. There is no basis for Defendant's online portal to indicate that Pangea's request to
10 USCIS' National Records Center (FOIA control number COW2020000433) was submitted on
11 March 25, 2020 when Plaintiff filed its FOIA request with USCIS' National Records Center by
12 electronic mail on March 10, 2020 and it was received by the agency on that date.

13 52. There is no basis for Defendant's online portal to indicate that Pangea's request to
14 DHS, which DHS later transferred to USCIS (FOIA control number for COW2020000426)
15 (referenced as a referral FOIA request) was submitted on March 23, 2020 when Plaintiff filed its
16 FOIA request with DHS by electronic mail on March 10, 2020 and it was received by the agency
17 on that date.

18 53. Regardless whether the receipt date was March 10, 2020, the date Plaintiff
19 emailed the request, or whether the receipt date was March 25 or March 23, 2020, the dates the
20 online portal incorrectly lists, Defendant has not made a determination on Plaintiff's FOIA
21 request within the statutory time period under FOIA.

22 54. Plaintiff has a legal right to obtain such records, and no legal basis exists for
23 Defendant's failure to disclose them.

24 55. Defendant's failure to disclose all responsive records within the statutory time
25 period violates, at a minimum, 5 U.S.C. §§ 552(a)(3)(A) and (a)(6)(A), as well as the regulations
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1 promulgated thereunder.

2 **PRAYER FOR RELIEF**

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4 WHEREFORE, Plaintiff prays that this Court grant the following relief:

- 5 (1) Assume jurisdiction over this action;
- 6 (2) Declare that Defendant’s failure to make determinations on Plaintiff’s
7 FOIA request within the statutory time frame violates the FOIA and the
8 regulations promulgated thereunder;
- 9 (3) Declare that Defendant’s failure to promptly produce records responsive
10 to Plaintiff’s request violates FOIA and the regulations promulgated
11 thereunder;
- 12 (4) Order Defendant to expeditiously process and disclose all responsive,
13 nonexempt records, and enjoin Defendant from improperly withholding
14 records;
- 15 (5) Award costs and reasonable attorney fees incurred under 5 U.S.C.
16 § 552(a)(4)(E), and any other applicable law; and
- 17 (6) Grant such further relief as the Court deems just and proper.

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19 Dated: June 1, 2020

20
21 Respectfully submitted,

22 By: *s/ Trina Realmuto*

23 Trina Realmuto (CA SBN 201088)
24 National Immigration Litigation Alliance
25 10 Griggs Terrace
26 Brookline, MA 02446
27 (617) 819-4447
28 trina@immigrationlitigation.org

Marie Vincent (CA SBN 286840)
Etan Newman (CA SBN 308728)
Pangea Legal Services
650 Sansome Street, Suite 650
San Francisco, CA 94101
(415) 652-0907
marie@pangealegal.org
etan@pangealegal.org

Attorneys for Plaintiff