

to reunite refugees and asylees with family members who are statutorily entitled to admission to the United States, in reality, the I-730 Petition adjudication process is fraught with delay.

Although beneficiary family members often are stranded abroad in dangerous situations, Defendant routinely takes years to adjudicate the petitions. Furthermore, since Defendant does not publish detailed information on the procedures for adjudicating the petitions, the cause of these significant delays remains outside the public view. The requested information is critically important to assist attorneys, immigrants, and the general public in understanding how Defendant process I-730 Petitions and why significant delays in the process persist.

4. As a result, on August 16, 2022, Plaintiffs National Immigration Alliance (NILA) and Church World Services (CWS) submitted a FOIA request to Defendant. The requested records related to statistics, policies, memos, materials, and guidance for related to the adjudication of I-730 Petitions and issues that may impact delays in such adjudication. *See* Exhibit A. Despite its statutory obligation to do so, Defendant has failed to produce any records or make a substantive response in response to the FOIA Request. Accordingly, Plaintiffs are entitled to a judgment declaring that Defendant has violated FOIA and ordering Defendant to conduct a reasonable search for records responsive to the FOIA Request and to provide such records to Plaintiffs in accordance with FOIA.

JURISDICTION AND VENUE

7. This Court has subject-matter jurisdiction under 5 U.S.C. § 552 *et seq.* (FOIA statute) and 28 U.S.C. § 1331 (federal question). This Court has jurisdiction to grant declaratory, injunctive, and further necessary or proper relief pursuant to 28 U.S.C. §§ 2201–2202 (Declaratory Judgment Act).

8. Venue is proper in this District under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)

because this is a civil action in which Defendant is a federal agency, there is no real property involved in this action, and Plaintiff NILA has its principal place of business in this District.

9. Defendant acknowledged receipt of the FOIA Request by sending a notice on August 16, 2022. *See* Exhibit B. To date, Defendant has not made a determination on Plaintiffs' FOIA Request pursuant to 5 U.S.C. § 552(a)(6)(A). Defendant's failure to make a determination within the statutory time period constitutes a constructive denial of the FOIA Request. Thus, Plaintiffs are deemed to have exhausted their administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

PARTIES

10. Plaintiff NILA is a tax-exempt, not-for-profit charitable organization under section 501(c)(3) of the Internal Revenue Code, with its principal place of business in Brookline, Massachusetts. Founded in 2020, NILA was established to realize systemic change in the immigrant rights' arena by engaging in impact litigation and by building the capacity of immigration attorneys to litigate in federal court by co-counseling individual cases with them and providing strategic assistance to them. In addition to litigation, NILA disseminates practice materials and materials obtained through FOIA on its public website and frequently presents on immigration issues.

11. Plaintiff CWS is a tax-exempt, not-for-profit charitable organization under section 501(c)(3) of the Internal Revenue Code, with a principal place of business in Durham, North Carolina. Founded in 1946, CWS is an international faith-based non-profit organization focused on humanitarian relief, education, and advocacy on issues related to hunger, poverty, displacement, and disaster. CWS staff regularly assist with the resettling of refugees and disseminate information about the latest immigration-related developments to the media, lawmakers, and the public at large in order to build solidarity and collective movement toward policy change.

13. Defendant DOS is a component agency of the Department of Homeland Security and is the federal agency responsible for adjudicating visas and certain overseas processing of immigration-related benefit applications, including I-730 Petitions. DOS is an “agency” within the meaning of 5 U.S.C. § 552(f) and has control over the records Plaintiffs seek.

FACTUAL ALLEGATIONS

I-730 Petitions and Processing Delays

14. Asylees and refugees seeking to reunite with their immediate family members can petition for their spouses and children who remain abroad to join them via an I-730 Petition. After submitting an I-730 Petition and accompanying documentation to U.S. Citizenship and Immigration Services (USCIS), USCIS assesses the applicant’s eligibility and determines whether to approve the petition. *See* 8 C.F.R. § 207.7(d)-(f). Then, the petition is submitted for overseas processing at either an international USCIS office or a DOS location—a U.S. embassy or consulate that offers immigrant visa services.

15. Congress has expressed its “sense . . . that the processing of an immigration benefit application should be completed not later than 180 days after the initial filing of the application . . .” 8 U.S.C. § 1571(b). Despite this expectation, I-730 Petitions take much longer to adjudicate in reality. Information about processing delays is of great public concern— multiple national and international publications have published articles that discuss prolonged wait times, including those faced by asylees and refugees in the United States who file for family members to join them. *See, e.g.,* Miriam Jordan, *Trump Administration Plans to Close Key Immigration Operations Abroad*, N.Y. TIMES (Mar. 12, 2019); Suzanne Monyak, *Immigrants with Asylum put Lives on Hold over Green Card Waits*, ROLL CALL (Mar. 16, 2022).

Plaintiffs' FOIA Request to Defendant DOS

19. On August 16, 2022, Plaintiffs submitted a FOIA Request to Defendant by online form and by fax. The request seeks “records prepared, received, transmitted, and/or collected by the U.S. Department of State related to the staffing, processing and adjudication of Form I-730 Refugee/Asylee Relative Petitions.” *See* Exh. A.

20. The FOIA Request also asked that Defendant waive all associated processing fees because disclosure of the records is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the [Plaintiffs].” *Id.* (quoting 5 U.S.C. § 552(a)(4)(A)(iii)).

21. Plaintiffs identified several subcategories of records sought, including:

- The number of DOS consular officers trained and delegated to review, process, and/or adjudicate I-730 Petitions;
- The number of I-730 Petitions pending;
- The number of I-730 Petitions refused, rejected, or remanded to USCIS by DOS consular officers;
- The number of I-730 Petitions approved for travel by DOS consular officers;
- The average time for administrative processing of I-730 Petitions by the DOS by consulate or embassy;
- The average time between receipt of I-730 Petitions and issuance of a travel document;
- Policies, memos, correspondence, formal or informal guidance, and training materials related to DOS involvement in obtaining exit permissions or exit visas for beneficiaries of I-730 Petitions;
- Policies, memos, formal or informal guidance, and training materials related to timelines for DOS processing, reviewing, and/or adjudicating I-730 Petitions;
- A complete copy of the Foreign Affairs Manual, Volume 9, Section 203.6 (9 FAM 203.6);
- Policies, memos, formal or informal guidance, and training materials related to post-interview “administrative processing” of I-730 Petitions;
- Policies, memos, formal or informal guidance related to circuit rides for USCIS and/or DOS officers to review, process, and/or adjudicate I-730 Petitions;
- Reports prepared pursuant to Section 4(h) of Executive Order 14013;
- All standard operating procedures (SOPs) for the processing of I-730

Petitions at select locations.

Exhibit A is the complete FOIA request.

22. The FOIA Request explained that disclosure of the requested information will contribute significantly to Plaintiffs' and the public's understanding of the processing of I-730 Petitions.

See Exh. A.

23. Since Defendant does not publish detailed information on the staffing, adjudication or processing procedures for I-730 Petitions at their offices, the public has an interest in this ongoing program that reviews thousands of applications based on guidance that is not transparent and outside the public view. The requested information is critically important to assist attorneys, immigrants, and the public in understanding how the Defendant processes I-730 Petitions, some of which have been in the "processing" stage for decades. Plaintiffs have the capacity and intent to disseminate widely the requested information to the public. *See id.*

24. By email dated August 16, 2022, Defendant acknowledged receipt of the FOIA Request. *See* Exh. B. Defendant stated that it "will not be able to respond within the 20 days provided by the statute due to 'unusual circumstances.'" *Id.* (quoting 5 U.S.C. § 552(a)(6)(B)(i)-(iii)).

25. By email dated August 29, 2022, Defendant again acknowledged receipt of the FOIA Request. *See* Exh. C. Defendant stated that it "will not be able to respond within the 20 days provided by the statute due to 'unusual circumstances.'" *Id.* (quoting 5 U.S.C. § 552(a)(6)(B)(i)-(iii)). Defendant stated that it would adjudicate the fee waiver request "at a later date." *Id.*

26. Defendant did not determine whether to comply with the FOIA Request by the deadlines set forth in 5 U.S.C. § 552(a)(6)(A) or (B). Defendant has failed to produce any records or make any substantive response to the FOIA Request.

CLAIMS FOR RELIEF

COUNT ONE

**Violation of FOIA, 5 U.S.C. § 552
Failure to Timely Respond**

27. All of the foregoing allegations are repeated and realleged as though fully set forth herein.
28. Pursuant to 5 U.S.C. § 552(a)(6)(A) and (B), Defendant was obligated to promptly produce records responsive to Plaintiffs' FOIA Request.
29. Plaintiffs submitted the FOIA Request on August 16, 2022. Defendant failed to issue a response, including a determination of whether to comply with the request and the reasons therefore, in the time provided under 5 U.S.C. § 552(a)(6)(A)(i) (20 days, excluding Saturdays, Sundays, and legal public holidays) or within the time permitted in certain unusual circumstances pursuant to 5 U.S.C. § 552(a)(6)(B)(i) (10 additional working days).
30. Defendant's failure to disclose all responsive records within the statutory time period therefore violates, at a minimum, 5 U.S.C. § 552(a)(6)(A) and (B) and the corresponding regulations.

COUNT TWO

**Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct an Adequate Search and to Disclose Responsive Records**

31. All of the foregoing allegations are repeated and realleged as though fully set forth herein.
32. Defendant is obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for records responsive to the FOIA Request and to promptly produce those records.
33. Upon information and belief, Defendant has not conducted and/or completed any search for responsive records to Plaintiffs' FOIA request. Defendant has not produced any records

responsive to the FOIA request. Plaintiffs have a legal right to obtain such records, and no legal basis exists for Defendant's failure to search for them.

34. Defendant's failure to conduct a reasonable search for records responsive to the FOIA Request violates, at a minimum, 5 U.S.C. § 552(a)(3)(C), as well as the regulations promulgated thereunder.

COUNT THREE

Violation of FOIA, 5 U.S.C. § 552 Failure to Grant Plaintiffs' Public Interest Fee Waiver Request

35. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

36. Plaintiffs are entitled to a waiver of processing fees associated with responding to the FOIA Request pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

37. Defendant has failed to make a determination on Plaintiff's request for a fee waiver. In accordance with 5 U.S.C. § 552(a)(4)(A)(iii), the Court should order Defendant to waive processing fees associated with responding to the FOIA Request.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court:

- a. Assume jurisdiction over this action;
- b. Declare unlawful Defendant's failure to make a determination on the FOIA Request within the statutory time frame, failure to conduct an adequate search for the requested records, and failure to disclose the records requested by Plaintiffs;
- c. Order Defendant to make a full, adequate, and expeditious search for the requested records;
- d. Order Defendant to expeditiously process and disclose all responsive,

nonexempt records, and enjoin Defendant from improperly withholding requested records;

e. Order Defendant to waive fees associated with responding to the FOIA Request;

g. Award Plaintiffs reasonable attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E), the Equal Access to Justice Act, and any other applicable provision of law; and

h. Grant such other relief as the Court may deem just, equitable, and appropriate.

Respectfully submitted,

/s/ Stephanie Marzouk
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**Pro hac vice applications forthcoming*

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