



3. Although I-730 Petitions are intended to provide a simple and straightforward procedure to reunite refugees and asylees with family members in 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 Service (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* Exh. A. Despite its statutory obligation to do so, Defendant has failed to make a substantive determination or produce any records 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 and adequate search for records responsive to the FOIA Request and to provide such records to Plaintiffs.

#### **JURISDICTION AND VENUE**

5. 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).

6. 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.

7. Defendant acknowledged receipt of the FOIA Request by sending an acknowledgment letter on August 16, 2022. *See* Exh. 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**

8. 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.

9. 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.

10. Defendant USCIS is a component agency of the Department of Homeland Security and, among other duties, is the federal agency responsible for adjudicating I-730 Petitions. USCIS 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**

11. 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 an applicant submits an I-730 Petition and accompanying documentation, Defendant assesses eligibility and determines whether to approve the petition. *See* 8 C.F.R. § 207.7(d)-(f).

12. 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 significantly 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 USCIS**

13. On August 16, 2022, Plaintiffs submitted a FOIA Request to Defendant by online form. The request seeks:

records prepared, received, transmitted, and/or collected by U.S. Citizenship and Immigration Services (USCIS) related to the processing and adjudication of Form I-730 Refugee/Asylee Relative Petitions submitted by individuals admitted to the United States (hereinafter, Refugee I-730 Petitions) and by individuals granted asylum (hereinafter, Asylee I-730 Petitions), as well as USCIS office closures and staffing that may impact the processing and adjudication of Refugee/Asylee I-730 Petitions.

*See* Exh. A.

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

- Policies, memos, communications, training materials, and guidance related to transfers of I-730 Petitions between USCIS offices and service centers;
- The number of I-730 Petitions pending at each USCIS office or service center;
- The number of I-730 Petitions refused, rejected, or remanded to USCIS by the U.S. Department of State (DOS);
- The number of I-730 Petitions with USCIS approval for which the beneficiary has not travelled to the United States;
- The number of I-730 Petitions with USCIS approval and refugee resettlement assurance for which the beneficiary has not travelled to the United States;
- The average time for processing of I-730 Petitions;
- The average time between receipt of an I-730 Petition at specified USCIS offices or service centers and approval, denial, or transfer of a petition;
- The average time between an I-730 Petition's arrival at an international USCIS office and denial or approval of the petition;
- The number of USCIS officers trained and/or delegated to review, process, or adjudicate I-730 Petitions;
- The number of Refugee, Asylum, and International Operations Directorate (RAIO) officers trained and/or delegated to review, process, or adjudicate I-730 Petitions;
- Policies and procedures related to the assignment of RAIO officers to review, process, or adjudicate Refugee I-730 Petitions;
- Policies, memos, communications, training materials, and guidance related to decisions to transfer I-730 Petitions prior to approval;
- Policies, memos, communications, training materials, and guidance related to enhanced vetting of I-730 Petitions pursuant to Executive Order (EO) 13815, EO 13780, EO 13769, or Presidential Proclamation 9645;
- Policies, memos, and guidance related to circuit rides for USCIS officers to review, process, and/or adjudicate Refugee I-730 Petitions;

- Policies, memos, communications, and guidance related to closure of international USCIS offices.

Exhibit A is the complete FOIA request.

15. By letter dated August 16, 2022, Defendant acknowledged receipt of the FOIA Request. *See* Exh. B. Defendant stated that it “will invoke a 10-day extension [to the 20 business day deadline] for [Plaintiffs’] request pursuant to 5 U.S.C. § 552(a)(6)(B)” due to “unusual circumstances.” *Id.* Defendant granted Plaintiffs’ request for a fee waiver. *Id.*

16. By email dated September 7, 2022, Government Information Specialist T. Allen Jaynes of Defendant’s FOIA office “follow[ed] up” on Plaintiffs’ FOIA request, requesting “clarification and/or additional information” before beginning to search for records. Following a telephone call with counsel for Plaintiff NILA to clarify the scope of the request, Specialist Jaynes sent an email providing Defendant’s understanding of the clarifications to the scope of the request on September 13, 2022. Plaintiffs, through counsel, further clarified the scope of the request by email on September 22, 2023. On September 23, 2022, Specialist Jaynes stated by email that Defendant “will begin [its] search based on [Plaintiffs’] original request and the clarifications.”

17. On November 8, 2022, following an email inquiry from Plaintiffs’ counsel, Specialist Jaynes stated that Defendant “is still working to compile the available records” due to “the multiple USCIS offices . . . involved.” The email stated that Defendant “hope[d] to provide the records within approximately 90 days.”

18. On February 14, 2023, following an email inquiry from Plaintiffs’ counsel, Specialist Jaynes stated that Defendant “has received records from numerous offices” but “[d]ue to many unforeseen circumstances[,] USCIS’ response will be delayed” and that Plaintiffs’ FOIA Request was currently “1,238 out of 1,429 pending requests.” Specialist Jaynes did not provide

an explanation of the allegedly unforeseen circumstances.

19. Defendant did not “indicate within the relevant time period [set forth in 5 U.S.C. § 552(a)(6)(A) or (B)] the scope of the documents it will produce and the exemptions it will claim with respect to any withheld documents.” *Citizens for Responsibility and Ethics in Washington v. Fed. Election Comm’n*, 711 F.3d 180, 182-83 (D.C. Cir. 2013). Thus, Defendant did not determine whether to comply with the FOIA Request and did not “immediately notify [the requestor] of such determination and the reasons therefor, and of the right [to appeal to the head of the agency any adverse determination]” by the deadlines set forth in 5 U.S.C. § 552(a)(6)(A) or (B). 5 U.S.C. § 552(a)(6)(A)(i).

20. In the more than seven months since Plaintiffs filed the FOIA Request, Defendant has failed to produce any records in response.

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

#### **Violation of FOIA, 5 U.S.C. § 552(a)(6) Failure to Timely Respond**

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

22. Pursuant to 5 U.S.C. § 552(a)(6)(A) and (B), Defendant was obligated to promptly produce records responsive to Plaintiffs’ FOIA Request.

23. Plaintiffs submitted the FOIA Request on August 16, 2022. Defendant failed to issue a substantive 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).

24. 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 implementing regulations.

**COUNT TWO**

**Violation of FOIA, 5 U.S.C. § 552(a)(3)  
Failure to Conduct an Adequate Search and to Disclose Responsive Records**

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

26. Defendant is obligated under 5 U.S.C. § 552(a)(3)(A) to conduct a reasonable search for records responsive to the FOIA Request and to promptly produce those records.

27. 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.

28. 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.

**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. 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
- f. Grant such other relief as the Court may deem just, equitable, and appropriate.

Respectfully submitted,

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*\*Pro hac vice applications forthcoming*

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Dated: March 28, 2023