

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA**

LAILA L. HLASS)
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6329 Freret Street, Suite 216-E)
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THE DOOR – A CENTER OF)
ALTERNATIVES)
121 Avenue of the Americas)
New York, NY 10013)

Plaintiffs,)

v.)

UNITED STATES CITIZENSHIP AND)
IMMIGRATION SERVICES,)
20 Massachusetts Ave N.W.)
Washington, D.C. 20529)

Defendant.)

COMPLAINT

NATURE OF THE ACTION

1. Pursuant to the Freedom of Information Act, 5 U.S.C § 552 (“FOIA”), Laila L. Hlass and The Door—A Center of Alternatives (“The Door”) (each a “Plaintiff” and collectively the “Plaintiffs”) file this complaint (“Complaint”) against United States Immigration and Citizenship Services (“USCIS” or “Defendant”) seeking an order compelling Defendant to provide expedited processing of their FOIA request (the “Request”).

2. On April 21, 2021, Plaintiffs filed the Request seeking from the Defendants information about Special Immigrant Juvenile Status (“SIJS”) adjudications and applications to adjust immigration status based on SIJS. *See* Ex. A. The information requested by the Plaintiffs

is needed to enable them to study and report on trends regarding the treatment of immigrant children under the SIJS statute—a matter of urgent public importance that affects the well-being of thousands of youth.

3. Because of the urgent need for the requested information, Plaintiffs sought expedited processing of the Request. In the Request, Plaintiffs explained in detail why expedited processing was justified under DHS regulations and appended multiple news articles as exhibits to the Request. The news articles highlighted the urgency of addressing the needs of immigrant children, particularly SIJS applicants, in light of the vulnerabilities of this population, the growing backlog of SIJS youth waiting for visa availability, and the ongoing humanitarian crisis impacting largely Central American children who seek to enter the United States at the border. According to one news article, some 26,000 immigrant juveniles whose SIJS applications were approved after a state court found them to be abandoned, abused or neglected by one or both parents (“Special Immigrant Juveniles”) are nonetheless vulnerable to deportation as they wait for visas to become available so that they may seek lawful permanent residence. But rather than provide any meaningful consideration to Plaintiffs’ request for expedited processing, Defendant denied the request on the purported grounds that it did not meet DHS criteria for expedited processing, without any explanation of the basis for that decision.

4. Based on precedent in this District, when an agency’s denial of a request for expedited processing does “nothing more than parrot its own regulatory language, and offer[s] no reasoning or analysis, its decision, as in the APA context, is entitled to little deference.” *Citizens for Responsibility & Ethics in Washington v. Dep’t of Justice*, 436 F.Supp.3d 354, 361 (D.D.C. 2020). Accordingly, Plaintiffs seeks a *de novo* judicial review of USCIS’s denial of their application for expedited processing and an order compelling Defendant to provide expedited

processing to the Request. *See* 5 U.S.C. § 552(a)(6)(E)(iii).

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552(a)(6)(E)(iii). This Court also has jurisdiction over this action as a federal question under 28 U.S.C. § 1331.

6. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

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

PARTIES

8. Plaintiff Laila L. Hlass is a law professor at Tulane Law School whose research and teaching focus on immigration law. Tulane Law School is a graduate school within Tulane University, a well-respected research university and 501(c)(3) educational institution. Through her publication of scholarly articles in numerous law journals, Professor Hlass is an individual primarily engaged in the dissemination of information to the general public.

9. Plaintiff The Door is a New York-based tax-exempt, not-for profit organization under Internal Revenue Code 501(c)(3). Founded in 1972, The Door aims to empower New York City's diverse and rapidly growing population of disconnected youth by providing them the tools they need to become successful. In service of that mission, The Door offers legal assistance, health care, educational assistance, and other comprehensive social services to the nearly 11,000 youth it serves annually. The Door's Legal Services Center provides legal and case management services to youth in need of immigration and other civil legal assistance. The Door handles upwards of 2,500 immigration cases per year, and has particular expertise in representing immigrants seeking SIJS status. The Door regularly participates in public information campaigns for Special

Immigrant Juveniles, such as its LinkNYC public information campaign.¹ Accordingly, it is an organization primarily engaged in the dissemination of information to the general public as defined under FOIA.

10. Defendant USCIS is a federal agency within DHS that oversees lawful immigration to the United States and is responsible for conferring immigration benefits such as adjudicating SIJS applications. USCIS is headquartered at 20 Massachusetts Ave N.W., Washington, D.C. 20529. USCIS is an agency within the meaning of 5 U.S.C. § 552(f)(1).

FACTUAL BACKGROUND

Plaintiffs' FOIA Request

11. On April 21, 2021, Plaintiffs sent the Request by electronic mail to Defendant USCIS at the email address uscis.foia@uscis.dhs.gov, and noted they were seeking expedited processing. *See Ex. A, Plaintiffs' FOIA Request.*

12. The Request sought specific, narrowly-tailored data compiled by USCIS related to applications by immigrant children for SIJS status. *Id.* at 6. USCIS had previously provided such data to Ms. Hlass for fiscal years prior to 2010, and the Request sought updated data for the years since 2010. *Id.* at 5. The Request identified with specificity which office of USCIS would likely hold the records, and further provided targeted search terms that Defendant USCIS could use to search for the records. *Id.* at 6.

13. The Request included three pages explaining the need for expedited processing based on an urgency to inform the public about federal government activity. *Id.* at 3-5. The Request noted that expedited processing was justified because delaying a response would

¹ *See* <https://door.org/sijspressrelease/>

compromise a significant public interest related to pending legislation relevant to SIJS applicants. *Id.* at 4. Specifically, “Congress is actively engaged in legislative immigration reform at this very moment, with significant interest in the humanitarian protection of unaccompanied minors and immigrant children.” *Id.* The Request further emphasized that “[o]btaining data on SIJS is an important aspect of the examination of the functioning of our immigration system and its ability to respond to the needs of vulnerable immigrant children, those already within our borders and those arriving daily. Without this data it is not possible to accurately understand the demographics of children applying for SIJS, nor whether as a country we are prepared to adequately respond to the growing humanitarian needs of immigrant children.” *Id.* at 5.

14. In support of its request for expedited processing, the Request included as exhibits nine news media articles totaling over 50 pages in length from major news outlets such as the *New York Times* and *National Public Radio* highlighting the significance of the treatment of SIJS applicants, and the humanitarian crisis at the United States-Mexico border related to Unaccompanied Alien Children. *See* Ex. A at 10-64. Below is a listing of the articles appended to the Request:

1	Andrew R. Calderon, “These Young People Were Told They Could Stay in the U.S. They Might Get Deported Anyway,” <i>The Marshall Project</i> , (Jan. 28, 2021)
2	Stef W Kight and Jonathan Swan, “Exclusive: Hundreds of kids held in Border Patrol stations,” <i>Axios</i> (Feb. 25, 2021)
3	Alexandra Villarreal, “Border agency reports spike of nearly 6,000 immigrant children crossing into US alone,” <i>The Guardian</i> (Feb. 15, 2021)
4	Stef W Kight, “Scoop: Border officials project 13,000 child migrants in May,” <i>Axios</i> , (Feb. 26, 2021)
5	“US says nearly 19,000 kids picked up traveling alone across Mexican border in March, largest monthly number ever tallied,” <i>Associated Press</i> (Apr. 8, 2021)
6	Dara Lind, “No Good Choices”: HHS Is Cutting Safety Corners to Move Migrant Kids Out of Overcrowded Facilities,” <i>ProPublica</i> (Apr. 1, 2021)

7	Denise Bell and Leah Chavla, “Children belong with their families – here’s how we can get there,” <i>The Hill</i> , (Apr. 11, 2021)
8	Michael D. Shear, Zolan Kanno-Youngs and Eileen Sullivan, “Young Migrants Crowd Shelters, Posing Test for Biden,” <i>N.Y. Times</i> (Apr. 17, 2021)
9	John Burnett, “The Border Patrol’s New Migrant Child Care Cadre,” <i>N.P.R.</i> (Apr. 6, 2021)

USCIS’s Response

15. In a letter dated April 21, 2021, USCIS confirmed receipt of the Request (the “Response”). *See* Ex. B. The Response acknowledged that the Request was a simple request to be processed on Track 1 of USCIS’s multi-track processing system and invoked the 10-day extension to the normal 20-day response time for a request under FOIA. *Id.* at 2. Accordingly, under the statutory timetable established in FOIA, USCIS was required to respond to the Request by June 4, 2021.

16. The Response also denied the request for expedited processing. *Id.* The Response, however, provided no reasoning or analysis as to why the Request did not merit expedited processing and instead simply parroted DHS regulations governing requests for expedited processing. *Id.* at 2-3.

17. Plaintiffs did not receive any further response from USCIS by the June 4, 2021 deadline, and have received no other response from USCIS as of the filing of this Complaint.

APPLICABLE LAW

18. FOIA governs the disclosure of records held by a federal agency in response to a request for such records by a member of the public. Pursuant to FOIA, the relevant agency is required to provide the requested documents unless those records fall within one of the narrow statutory exemptions delineated in the FOIA statute and regulations itself. *See* 5 U.S.C. § 552(a)(3)(A).

19. In furtherance of its purpose to ensure government transparency, FOIA imposes strict deadlines on agencies to provide documents responsive to FOIA requests. *See* 5 U.S.C. § 552(a)(6)(A). Specifically, the agency at issue must make a reasonable effort to search for the requested records. 5 U.S.C. § 552(a)(1)(C). Additionally, an agency that receives a FOIA Request is required to determine within 20 business days after receipt of the request whether to comply with it. 5 U.S.C. § 552(a)(6)(A)(i).

20. The agency must also immediately notify the requester of the agency's decision as to whether it will comply with the request, provide the reasons for its determination, and inform the requesting party of their right to appeal an adverse agency determination. 5 U.S.C. § 552(a)(6)(B)(ii). The subject agency "must at least inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions." *Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n*, 771 F.3d 180, 186 (D.C. Cir. 2013).

21. Under FOIA, an agency is entitled to one ten-day extension of time to respond to a request if it provides written notice to the requester explaining that "unusual circumstances" exist that warrant additional time. 5 U.S.C. § 552(a)(6)(B). If the request cannot be processed within the time limit notwithstanding the 10 day extension, the agency must notify the requester and may ask the requester to limit the scope of the request or to arrange an alternative timeframe for processing the request. 5 U.S.C. § 552(a)(6)(B)(ii).

22. FOIA also requires an agency to produce records on an expedited basis when there is a "compelling need" for expedition. 5 U.S.C. § 552(a)(6)(E)(i). A requester can establish a compelling need exists if the requester is a person "primarily engaged in disseminating information" and the requester shows an "urgency to inform the public concerning actual or alleged

Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *accord* 6 C.F.R. § 5.5(e)(1)(ii) (DHS regulations). Under DHS regulations, an agency must respond to a request for expedited processing within 10 days of receiving such a request. 6 C.F.R. § 5.5(e)(5).

23. The United States Court of Appeals for the District of Columbia Circuit has noted that agencies should examine three factors for determining whether a FOIA request qualifies for expedited processing based on an urgency to inform the public. *See Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001). Namely, an agency should examine, “(1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity.” *Id.* Additionally, DHS regulations note that “[t]he existence of numerous articles published on a given subject can be helpful to establishing the requirement that there be an ‘urgency to inform’ the public on the topic.” 6 C.F.R. § 5.5 (e)(1)(ii). *See also ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 (D.D.C. 2004) (noting that numerous newspaper articles about the government action or policy justified expedited processing of the request).

24. If an agency denies a request for expedited processing, a requester has immediate standing to seek judicial review of the agency’s decision. 5 U.S.C. §552(a)(6)(E)(iii); *Citizens for Responsibility & Ethics in Washington v. Dep’t of Justice*, 436 F. Supp.3d 354, 358 (D.D.C. 2020)(exhaustion of administrative remedies not necessary to seek judicial review of a denial of expedited processing). Judicial review of the agency’s denial, however, is limited to only the record before the agency at the time of denial. 5 U.S.C. § 552(a)(6)(E)(iii).

25. An agency denial of a request for expedited processing that does “nothing more than parrot its own regulatory language, and offer[s] no reasoning or analysis. . . is entitled to little

deference.” *Citizens for Responsibility & Ethics in Washington v. Dep’t of Justice*, 436 F. Supp. 3d 354, 361 (D.D.C. 2020).

26. FOIA also provides that documents shall be furnished without charge or at a reduced charge if disclosure of the information is in the public interest because it “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 requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Requests for fee waivers are to be “liberally construed in favor of waivers for noncommercial requesters.” *Envtl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 432 F.3d 945, 947 (9th Cir. 2005) (citations omitted).

STATEMENT OF CLAIMS

Count I

(Improper Denial of Plaintiffs’ Request for Expedited Processing In Violation of 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 6 C.F.R. § 5.5(e))

27. Plaintiffs re-alleges and incorporates the foregoing paragraphs as if set forth in full.

28. Plaintiffs have demonstrated that the Request concerns a matter of current exigency to the American public, that the consequences of delaying a response would compromise a significant recognized interest, and that the request concerns federal government activity. *See Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001).

29. Defendant has provided no reasoning or analysis justifying its denial of the request for expedited processing.

30. Accordingly, Plaintiffs are entitled to an order mandating USCIS to grant expedited processing of Plaintiff’s Request, and mandating USCIS to produce the documents “as soon as practicable.” 5 U.S.C. § 552(a)(6)(E)(iii).

Count II
(Failure of USCIS to Respond to Request within Statutory Timeframe in Violation of 5 U.S.C. § 552(a)(6)(A)(i) and (6)(B))

31. Plaintiff re-alleges and incorporates the foregoing paragraphs as if set forth in full.

32. Under FOIA, USCIS was required to respond to Plaintiffs' Request by June 4, 2021.

33. As of the filing of this Complaint, USCIS still has not produced documents in response to the Request, and thus, Defendant USCIS has failed to timely respond to Plaintiff's Request within the statutorily mandated timeframe.

34. Because USCIS has failed to timely respond to Plaintiff's Request within the statutorily-mandated timeframe, Plaintiffs are entitled to (i) a declaration that USCIS has violated 5 U.S.C. §§ 552(a)(6)(A)(i) and (6)(B) and (ii) an order directing defendants to produce documents responsive to the Request promptly.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that the Court enter an order:

- A. Declaring that the Defendants unlawfully denied expedited processing of Plaintiffs' Request.
- B. Ordering Defendant to grant expedited processing of Plaintiffs' Request and to produce the records requested "as soon as practicable." 5 U.S.C. § 552(a)(6)(E)(iii).
- C. Ordering Defendant, should it seek to invoke a FOIA exemption, to produce a *Vaughn* Index and/or a Declaration under oath with facts sufficient to justify the withholding of any responsive information requested based on a valid FOIA exemption;
- D. Awarding Plaintiffs their costs and reasonable attorney's fees in this action as provided

by 5 U.S.C. § 552(a)(4)(E); and

E. Granting such other relief as this Court may deem just and proper.

Dated: August 18, 2021

MILBANK LLP

By: /s/Aaron Renenger

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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2021, I caused a copy of the foregoing Complaint to be filed electronically and that these documents are available for viewing and downloading in the ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. I hereby certify that participants in the case will additionally be served by registered U.S. mail.

/s/ Aaron Renenger