

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

INTERNATIONAL REFUGEE
ASSISTANCE PROJECT, INC.

Plaintiff,

v.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES; and UNITED
STATES DEPARTMENT OF STATE,

Defendants.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF FOR
VIOLATION OF THE
FREEDOM OF INFORMATION
ACT, 5 U.S.C § 552 *et. seq.***

Civil Action No. _____

1. The Trump Administration has implemented opaque changes to the United States Refugee Admissions Program (“USRAP”) that have drastically reduced refugee resettlement, a matter of urgent concern to the American public. Although the Administration first attempted to halt refugee admissions through a series of public-facing executive actions, the critical changes affecting refugee admissions have subsequently occurred in the agency manuals and policy guidance governing the USRAP’s quotidian operations. To date, Defendants have failed to produce a single page of the requested records shedding light on these refugee processing changes.

2. Since taking office, President Trump and his Administration have sought to dismantle the processes through which noncitizens fleeing persecution and violence can find safety in the United States through humanitarian forms of legal protection. The attacks on these processes have been at all levels—from sweeping executive banning of refugees and asylum

seekers down to the operational level, where agencies have instructed line officers to apply the law in ways that contradict governing statutes and regulations.¹

3. Unfortunately, these instructions to line officers are rarely made public, and frequently only become known when leaked to the press.² In fact, the Administration has also made efforts to conceal what little information was previously publicly available, including removing policy and training documents from the U.S. Citizenship and Immigration Services (“USCIS”) website that had long been made public.

4. The changes to humanitarian processing directly implicate the work of Plaintiff International Refugee Assistance Project (“IRAP”), a non-profit legal organization that provides direct legal assistance to refugees and challenges unlawful systemic policies affecting refugees and other displaced persons. In furtherance of its mission—and to ascertain the ways in which legal guidance from this Administration has diverged from past guidance and what the law requires—IRAP submitted two specific and narrow requests pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, as amended (“FOIA”), to the two agencies that administer the U.S. Refugee Admissions Program (“USRAP”): USCIS and the U.S. Department of State (“DOS”) (collectively, “Defendants”). The requests seek records that explain the current state of refugee processing, including the training materials, manuals, and policies that govern the evaluation of refugee applications.

5. IRAP now brings suit because Defendants have failed to timely make a determination on Plaintiff’s requests: more than 100 days after IRAP filed the FOIA requests,

¹ See, e.g., Am. Compl., *Kiakombua v. McAleenan*, No. 19-CV-1872 (KBJ) (D.D.C. filed June 28, 2019) (alleging that a lesson plan governing the credible fear process and used by asylum officers during credible fear interviews was revised in a variety of unlawful ways). Plaintiff IRAP represents the plaintiffs in *Kiakombua*.

² See Am. Compl. ¶ 77, *Kiakombua*, *supra* (noting that the lesson plan challenged there was only public because it was leaked to Reuters, which published it online).

Defendants have failed to produce a single page of responsive records; nor have they given any estimate of when they will. Plaintiff accordingly brings this action pursuant to FOIA for declaratory and injunctive relief, seeking to compel the disclosure and release of urgently needed refugee processing records that Defendants have improperly withheld from public scrutiny.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to the FOIA, 5 U.S.C. § 552(a)(4)(B), and 28 U.S.C. § 1331.

7. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1391(e) and 1402(a)(2), as Plaintiff IRAP's principal place of business is in the Southern District of New York.

PARTIES

8. Plaintiff IRAP is a non-profit 501(c)(3) organization that organizes law students and lawyers to develop and enforce the legal and human rights of refugees and displaced persons. IRAP utilizes media and systemic policy advocacy, direct legal aid, and impact litigation to serve the world's most persecuted individuals and empower the next generation of human rights leaders.

9. Dissemination of information is an integral component of IRAP's mission. IRAP routinely engages in gathering information from its legal and policy work including through FOIA, analyzing the information, and distributing it. IRAP has published a number of policy reports to the public on refugee resettlement issues and maintains "Know Your Rights" and other educational materials on its website. It routinely releases press releases and publishes a blog on its work and on issues relating to refugee policy. It has a monthly newsletter that reaches over 25,000 individuals. It maintains a Facebook account with over 47,000 followers and a Twitter

account with over 18,000 followers. IRAP also routinely collects and distributes resources and up-to-date information to its network of 30 law school chapters and 80 law firms with which it works.

10. IRAP uses materials such as the requested records in order to understand the current state of refugee processing. Access to the training materials, manuals, and policies governing the evaluation of refugee applications forms the foundation for IRAP's policy advocacy, direct client representation, and impact litigation.

11. Defendant USCIS is an agency within the U.S. Department of Homeland Security ("DHS"). Many components of USCIS are involved with refugee processing, including conducting quarterly Circuit Rides to interview refugee applicants abroad, evaluating refugee applications and security vetting results, and making recommendations to improve USCIS's administration of immigration benefits. USCIS produces a variety of written materials used in the administration of USRAP such as refugee officer trainings, the Refugee Officers Manual, Circuit Ride Reports, and other policies and procedures.

12. Defendant DOS is a cabinet department of the United States federal government with the mission to lead America's foreign policy through diplomacy, advocacy, and assistance. Components of DOS manage USRAP in conjunction with DHS and the Department of Health and Human Services and contract with organizations that assist in resettling refugees in the United States. DOS produces a variety of written materials used in the management of USRAP, including the manual governing overseas processing for USRAP, and standard operating procedures issued to Resettlement Support Centers and pertaining to refugee data entry in the Worldwide Refugee Admissions Processing System ("WRAPS"), the principal database used in refugee processing.

STATEMENT OF FACTS

Plaintiff's FOIA Request to USCIS

13. On May 24, 2019, IRAP submitted a request to USCIS ("USCIS Request") via certified mail and email. The USCIS Request is attached hereto as Exhibit A.

14. The USCIS Request sought USCIS refugee officer training materials; the Refugee Officers Manual; standard operating procedures related to USRAP; manuals, guidance, and policies related to fraud detection; and reports from quarterly Circuit Rides to interview refugee applicants abroad.

15. USCIS received the request by certified mail on May 28, 2019. USCIS acknowledged receipt of the request by letter dated June 4, 2019, which reflected that USCIS had assigned the request control number COW2019500446. Exhibit B, USCIS Confirmation Letter.

16. In its acknowledgement of receipt, USCIS invoked the statutory 10-day extension to respond to the request, 5 U.S.C. § 552(a)(6)(B), pointing to the number of requests received by USCIS, the need to contact multiple offices, and potential consultation with other agencies or DHS components. However, it did not provide a determination as to whether, or when, USCIS would comply with the request.

17. USCIS granted IRAP's request for fee waiver and indicated that IRAP's request for expedited processing would be addressed in a separate letter. To date, IRAP has not received a determination regarding expedited processing, in violation of the agency's regulatory obligation to provide a determination on expedited processing within 10 calendar days, per 6 C.F.R. § 5.5(e)(4).

18. As of the filing date of this Complaint, more than 100 calendar days have elapsed since USCIS received the USCIS Request and USCIS has not made a determination regarding IRAP's request within the statutorily-prescribed time frame, per 5 U.S.C. § 552(a)(6).

19. Because USCIS failed to comply with the time limit provision of FOIA, IRAP is deemed to have exhausted its administrative remedies with respect to the USCIS Request. *See* 5 U.S.C. § 552(a)(6)(C)(i).

Plaintiff's FOIA Request to DOS

20. On May 24, 2019, IRAP submitted a request to DOS ("DOS Request") via certified mail. The DOS Request is attached hereto as Exhibit C.

21. The DOS Request sought the USRAP Overseas Processing Manual, DOS refugee program announcements, and standard operating procedures related to the USRAP and the WRAPS database.

22. DOS received the request by certified mail on June 4, 2019. DOS acknowledged receipt in a letter dated June 10, 2019, stating that the request was received June 5, 2019 and that DOS had assigned the tracking number F-2019-06730. Exhibit D, DOS Confirmation Letter.

23. In its acknowledgement of receipt, DOS granted IRAP's request for a fee waiver but denied IRAP's request for expedited processing, claiming the request failed to demonstrate a "compelling need" for the information under 22 C.F.R. § 171.11(f). DOS did not provide a determination as to whether, or when, DOS would comply with the request.

24. On August 29, 2019, IRAP submitted an appeal of DOS's denial of expedited processing by certified mail. To date, IRAP has not received DOS's determination regarding the appeal.

25. As of the filing date of this Complaint, more than 100 calendar days have elapsed since DOS received the DOS Request and DOS has not made a determination regarding Plaintiff's request within the statutorily-prescribed time frame, per 5 U.S.C. § 552(a)(6).

26. Because DOS failed to comply with the time limit provision of FOIA, IRAP is deemed to have exhausted its administrative remedies with respect to the DOS Request. *See* 5 U.S.C. § 552(a)(6)(C)(i).

CLAIM FOR RELIEF

27. Plaintiff has a legal right under FOIA to obtain the specific records sought in the Requests, and Defendants' failure to promptly make the requested records available to Plaintiff has no legal basis.

28. Defendants' failure to make a determination with regard to each request within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt violates FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and applicable regulations promulgated thereunder, 6 C.F.R. § 5.6(c); 22 C.F.R. § 171.11(e).

29. Defendants' failure to conduct a reasonable search for the records responsive to the Requests and to promptly make them available violates FOIA, 5 U.S.C. § 552(a)(3), and applicable regulations promulgated thereunder, 6 C.F.R. §§ 5.5–5.6; 22 C.F.R. § 171.11.

30. On information and belief, Defendants currently have possession, custody, or control of the requested records.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare that Defendants violated FOIA by unlawfully withholding the requested records;

2. Order Defendants to conduct a reasonable search for the requested records and to disclose them to Plaintiff in their entireties as soon as practicable;
3. Review any and all of Defendants' decisions to redact or withhold information in the requested records as exempt from disclosure;
4. Award Plaintiff's costs and reasonable attorneys' fees in this action as provided by 5 U.S.C. § 552(a)(4)(E); and
5. Grant other such relief as the Court may deem just and proper.

Respectfully submitted,

Dated: September 25, 2019

/s/ Kathryn C. Meyer

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**pro hac vice* application forthcoming