

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

INTERNATIONAL REFUGEE ASSISTANCE
PROJECT, INC.

Plaintiff,

v.

U.S. CITIZENSHIP AND IMMIGRATION
SERVICES,

Defendant.

COMPLAINT

Civil Action No. 1:23-cv-2931

1. Last year, U.S. Citizenship and Immigration Services (“USCIS”) changed the form an individual must file if they wish to sponsor a child or family member who is seeking parole through the Central American Minors (“CAM”) Refugee and Parole Program. When it changed the form, the agency required some additional information, but the agency did not inform the public that it had changed the substantive requirements that sponsors and beneficiaries must meet to be approved.

2. After the change, however, Plaintiff International Refugee Assistance Project (“IRAP”) observed that USCIS began requesting additional evidence from both sponsors and CAM beneficiaries. These requests result in long delays in CAM parole application processing for children and families in humanitarian need.

3. Last year, IRAP submitted a Freedom of Information Act (“FOIA”) request (“FOIA Request” or “Request”) to Defendant USCIS, seeking a small number of documents that show what CAM sponsors and beneficiaries must demonstrate to be approved. IRAP needs these documents to assist its CAM clients.

4. More than five months have passed since IRAP submitted its Request, and USCIS has yet to respond, in violation of the FOIA.

5. Moreover, USCIS's long delay appears to result, at least in part, from its policy to deprioritize FOIA requests filed by advocacy organizations like IRAP that seek information about government policy relevant to their work.

6. IRAP seeks to vindicate its rights through this case.

PARTIES

7. Plaintiff IRAP is a 501(c)(3) non-profit corporation incorporated under the laws of New York, and headquartered at One Battery Park Plaza, 33rd Floor in New York, New York.

8. Defendant U.S. Citizenship and Immigration Services ("USCIS") is a subcomponent of the Department of Homeland Security ("DHS") and is an agency of the United States Government under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551(1). USCIS is headquartered at 5900 Capital Gateway Drive, Camp Springs, Maryland, 20746. USCIS has possession, custody, and control of the documents that IRAP seeks in response to its FOIA Request.

JURISDICTION AND VENUE

9. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).

10. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1) because IRAP's principal place of business is in this district.

STATEMENT OF FACTS

A. IRAP's Work on Behalf of Refugees and Other Displaced People

11. IRAP is a global legal aid and advocacy organization with a mission to create a world where refugees and all people seeking safety are empowered to claim their right to freedom of movement and a path to lasting refuge.

12. IRAP provides free, direct legal assistance to refugees and others seeking safety, and it works with a network of student advocates, pro bono partners, and supporters around the globe to deliver legal solutions for displaced people. In addition, informed by its direct services work, IRAP engages in media and systemic policy advocacy, as well as impact litigation, to address systemic issues affecting refugees, asylum seekers, and others in need of a safe home.

13. Dissemination of information is an integral component of IRAP's mission. IRAP has published a number of policy reports to the public on issues relevant to refugees and asylum seekers, and it maintains "Know Your Rights" legal summaries and other educational materials on its websites. It generates materials for legal practitioners, which have been accessed more than 7,000 times. It routinely issues press releases and publishes a blog that covers topics relating to refugee policy. IRAP distributes a monthly newsletter to over 30,000 individuals, maintains a Facebook account with over 53,000 followers, and maintains a Twitter account with over 23,000 followers. IRAP also routinely collects and distributes resources to its network of 29 law school chapters and 75 law firm and corporate partners. And IRAP organizes and publishes documents obtained through FOIA on its website for use by advocates. See, e.g., <https://refugeerights.org/news-resources/irap-shares-an-extensive-collection-of-refugee-processing-documents-obtained-through-foia>; <https://refugeerights.org/news-resources/irap-obtains-uscis-guidance-on-humanitarian-parole-applications-through-foia-litigation>.

14. To accomplish its goal of educating the public, IRAP relies on information made available by the U.S. Government, including information made publicly available through the FOIA.

15. To engage in its mission-driven work, IRAP uses materials such as the records sought through the FOIA Request to understand the U.S. Government's policies affecting those

seeking refuge in the United States. Access to such materials is essential to enable IRAP to engage in direct client representation, policy advocacy, and impact litigation. As an organization committed to providing assistance to those seeking safety, IRAP requires an understanding of the governmental policies affecting refugees, asylum seekers, and other displaced people on the move.

16. As further alleged below, the information sought through the FOIA Request will be used to advance these goals and to educate the public.

17. In addition, the information sought through the FOIA Request is directly relevant to the legal representation IRAP provides to its clients who are seeking to reunify with their family members through the CAM Program. In particular, the information is relevant to IRAP's mission because, as further alleged below, IRAP represents clients applying for the CAM program and seeking to renew their CAM parole. IRAP also works with law firms providing pro-bono representation to CAM parolees, and it provides CAM-related resources and guidance to legal service providers assisting this population. Accordingly, the information sought is critical to IRAP's ability to provide effective counsel to its clients and to disseminate information to the public related to the CAM Program.

B. IRAP's CAM Clients and Their Parole Applications

18. The CAM Program was established in 2014, and subsequently terminated in phases in 2017 and 2018. It was reestablished in 2021.

19. CAM provides a legal pathway for certain children and their family members in danger in El Salvador, Guatemala, and Honduras to reunite with their parents or legal guardians who have certain legal statuses in the United States.

20. Under CAM, the U.S. Government first considers whether applicants qualify for refugee resettlement to the United States. If the government determines they do not, it considers whether applicants merit a discretionary exercise of parole on a case-by-case basis.

21. Parole provides temporary permission to be present in the United States.

22. Applicants who enter the United States with CAM parole may apply to renew their parole periods on a case-by-case basis.

23. One component of an application for CAM parole is Form I-134, Declaration of Financial Support (“Form I-134”).

24. Form I-134 is a document submitted by a sponsor who commits to financially support a parole beneficiary for the duration of their stay in the United States.

25. In April 2022, USCIS changed Form I-134 (“revised Form I-134”). When it changed the form, USCIS required additional information from beneficiaries and their sponsors.

26. For instance, the revised I-134 Form asked for the beneficiary’s income and assets. Previous versions of the form did not request any financial information from the beneficiary.

27. The revised Form I-134 required the sponsor and beneficiary to submit their latest income tax returns. Prior versions of Form I-134 required only the sponsor’s W-2 Form.

28. The revised Form I-134 does not, however, provide notice that the agency has raised the minimum income and assets that a sponsor must demonstrate in order to be approved.

29. Nor does it state that the beneficiary must, for the first time, demonstrate a minimum income and/or assets to be approved.

30. After the revision to the form, IRAP observed that rather than approving applications, USCIS began requesting additional documentary evidence of CAM parole applicants and their proposed sponsors.

31. Gathering additional evidence and responding to these requests for evidence results in significant processing delays.

32. As a result of the delays occasioned by USCIS's requests for evidence, IRAP's CAM clients are waiting at least a year for a decision on their cases, and sometimes significantly longer.

C. IRAP's November 1, 2022, FOIA Request

33. On November 1, 2022, IRAP submitted its FOIA Request to USCIS via the online portal at USCIS.gov/foia. The Request is attached hereto as Exhibit A.

34. The Request sought "[r]ecords sufficient to show" the evidence USCIS requires of individuals seeking to sponsor CAM parolees and the standard sponsors must meet to be approved. Ex. A at 1.

35. The Request sought expedited processing, citing the urgency to inform the public of the changes to the substantive standard and documentary evidence required of CAM parole sponsors. Ex. A at 3.

36. The Request also included a fee waiver request. Ex. A at 2.

37. On November 1, 2022, IRAP received an acknowledgement letter ("Letter") from USCIS which assigned the Request control number COW2022005519. A copy of USCIS's Letter is attached as Exhibit B.

38. USCIS's Letter denied IRAP's request to expedite processing, Ex. B at 1, and invoked a 10-day extension to respond to the Request, pursuant to 5 U.S.C. § 552(a)(6)(B), *id.* at 3.

39. USCIS approved IRAP's fee waiver request. Ex. B at 2.

40. Under the FOIA, after invoking the 10-day extension, USCIS was required to respond to IRAP's Request within 30 business days—i.e., on or before November 14, 2022.

41. USCIS has yet to provide any response to IRAP's Request. USCIS has failed to produce the requested documents or to make the legally required determination on the Request.

42. USCIS has therefore not made a final determination on IRAP's FOIA Request within the time limits prescribed by FOIA.

43. By failing to respond to IRAP's Request as required by law, USCIS has deprived IRAP of the ability to adequately advise its CAM clients and the public about the information needed to sponsor a loved one through the CAM program.

D. USCIS Deprioritizes FOIA Requests from Advocacy Organizations Like IRAP

44. DHS FOIA regulations permit the agency's components (including USCIS) to establish multitrack processing of FOIA requests to distinguish between simple and complex FOIA requests. Freedom of Information Act Regulations, 81 Fed. Reg. 83625, 83635 (Nov. 22, 2016) (codified at 6 C.F.R. pt. 5) ("DHS's FOIA Regulations").

45. Simple and complex FOIA requests are to be distinguished "based on the estimated amount of work or time needed to process the request." *Id.*

46. USCIS and other DHS components may consider factors such as the number of pages involved in the FOIA request and/or the need to consult or refer the request to other agency components. *Id.*

47. USCIS in turn has created a three-track system for the FOIA requests it receives. Exhibit C, at 4-5.

48. Cases placed on “Track 1” are processed more expeditiously than Track 2. According to USCIS guidance, the agency places cases on Track 1 when they are “less complex cases in which a requestor needs only one or only a few specific documents,” Ex. C at 5, or when the “[requester] is asking for specific documents” with “no limit on number.” Exhibit D at 12.

49. Cases placed on “Track 2” are processed more slowly. USCIS guidance states the agency places cases on this track when they are “more complex,” such as an individual’s asylum file including all supporting documents, Ex. C, at 5, or requests seeking a high volume of records that require extensive review.¹

50. USCIS acknowledges that it takes nearly twice as long to process Track 2 cases as it does Track 1 cases, for non-immigration-file related requests.²

51. The complexity of the request is not the only reason that USCIS places FOIA requests on Track 2, however. USCIS also diverts cases to the slowest processing track based on the identity of the FOIA requester.

52. Specifically, USCIS places FOIA requests from “news media or special interest groups,” such as activist groups and “watchdog organizations,” on Track 2 Ex. D, at 12, 23. USCIS guidance provides a non-exhaustive list of such organizations: “AILA, ACLU, CAIR, CREW, EGG.” *Id.*

E. USCIS Deprioritized and Delayed Processing of IRAP’s Simple Request

¹ Office of Government Information Services, Compliance Review of U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security Freedom of Information Act Program 11 (2017).

² USCIS, Check Status of FOIA Request, <https://first.uscis.gov/#/check-status> (lasted visited Apr. 6, 2023).

53. IRAP’s FOIA Request sought a small number of documents that are necessary to answer a simple question: what do individuals seeking to sponsor CAM parolees need to provide USCIS in order to be approved?

54. Specifically, IRAP sought “[r]ecords sufficient to show” the evidence USCIS requires of sponsors and the threshold they must meet to be approved. Ex. A at 1.

55. Notwithstanding IRAP’s simple request and request for expedited processing, the agency assigned the Request to Track 2, the “complex track.” Ex. B at 1.

56. USCIS provided no reasoning or explanation for its decision to assign IRAP’s Request to the complex track.

57. As a matter of policy, USCIS places requests from advocacy organizations like IRAP on the slower, “complex” track—regardless of the complexity of their requests—based only on the identity of the FOIA requester. Ex. D at 12, 23.

58. USCIS’s decision to place IRAP’s FOIA Request on the complex track based on IRAP’s identity as an advocacy organization is arbitrary and capricious and contrary to DHS’s FOIA Regulations.

CLAIM FOR RELIEF

FIRST CAUSE OF ACTION

Violation of the Freedom of Information Act, 5 U.S.C. § 552

59. The foregoing allegations are repeated and realleged as though fully set forth herein.

60. IRAP has a legal right under the FOIA to obtain the specific records sought in the Request, and USCIS’s failure to promptly make the requested records available to IRAP has no legal basis.

61. USCIS's failure to make a determination on IRAP's Request within 30 days³ (excepting Saturdays, Sundays, and legal public holidays) after receipt violates the FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and applicable regulations promulgated thereunder, 6 C.F.R. § 5.6(c).

62. USCIS's failure to conduct a reasonable search for the records responsive to the Request and to promptly make them available violates the FOIA, 5 U.S.C. § 552(a)(3), and applicable regulations promulgated thereunder, 6 C.F.R. §§ 5.5–5.6.

63. On information and belief, USCIS currently has possession, custody, or control of the requested records.

SECOND CAUSE OF ACTION

Violation of the Administrative Procedure Act, Arbitrary and Capricious

64. The foregoing allegations are repeated and realleged as though fully set forth herein.

65. Pursuant to its multitrack processing policy, USCIS places FOIA requests from advocacy organizations on the “complex track” (“Advocate Delay Policy”), based only the identity of the requester and regardless of the complexity of the FOIA request.

66. The Advocate Delay Policy is a final agency action subject to judicial review. *See* 5 U.S.C. § 704.

67. IRAP submitted a FOIA request seeking only “documents sufficient to show” what an individual seeking to sponsor a CAM parolee must provide to USCIS.

68. IRAP's Request was simple.

69. Absent the Advocate Delay Policy, IRAP's Request would have been placed on Track 1, which provides faster processing.

³ The 30 working days includes the 20 working days pursuant to the FOIA plus a 10-day extension invoked by USCIS for unusual circumstances pursuant to 5 U.S.C. § 552(a)(6). *See* Ex. B at 3.

70. Because of the policy, IRAP's Request was placed on Track 2, and IRAP continues to wait for a response to its simple FOIA request more than four months after filing.

71. The APA provides that a court "shall ... hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2).

72. USCIS's Advocate Delay Policy is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with the law, and therefore it must be held unlawful and set aside.

73. USCIS's application of its Advocate Delay Policy to IRAP's FOIA Request is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with the law, and therefore must be held unlawful and set aside.

THIRD CAUSE OF ACTION

Administrative Procedure Act, *ACCARDI*

74. The foregoing allegations are repeated and realleged as though fully set forth herein.

75. USCIS's Advocate Delay Policy is a final agency action subject to judicial review. *See* 5 U.S.C. § 704.

76. USCIS's Advocate Delay Policy, which delays FOIA processing based on the identity of the requester, violates DHS's FOIA Regulations.

77. USCIS's application of the Advocate Delay Policy has prejudiced IRAP's rights and interests.

78. USCIS's Advocate Delay Policy should therefore be set aside under the principles articulated in *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) ("*Accardi* doctrine").

79. USCIS's Advocate Delay Policy as applied to IRAP's Request also violates DHS's FOIA Regulations and must be set aside under the *Accardi* doctrine.

PRAYER FOR RELIEF

WHEREFORE, IRAP respectfully requests that this Court enter a judgment for IRAP and award the following relief:

1. Declare that USCIS violated the FOIA by unlawfully withholding the requested records;
2. Order USCIS, by a date certain, to conduct a search that is reasonably likely to lead to the discovery of any and all records responsive to IRAP's Request;
3. Order USCIS, by a date certain, to demonstrate that it has conducted an adequate search;
4. Order USCIS, by a date certain, to produce to IRAP any and all non-exempt records or portions of records responsive to IRAP's Request, as well as a *Vaughn* index of any records or portions of records withheld due to a claim of exemption;
5. Enjoin USCIS from withholding the requested records;
6. Declare USCIS's Advocate Delay Policy arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law;
7. Hold unlawful and set aside USCIS's Advocate Delay Policy;
8. Declare USCIS's application of its Advocate Delay Policy to IRAP's Request arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law;

9. Hold unlawful and set aside USCIS's application of its Advocate Delay Policy to IRAP's Request;
10. Award IRAP its costs and attorneys' fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E);
11. Grant IRAP such other and further relief as the Court may deem just and proper.

Dated: April 7, 2023

Respectfully submitted,

/s/ Linda B. Evarts

Linda B. Evarts
INTERNATIONAL REFUGEE
ASSISTANCE PROJECT
One Battery Park Plaza, 33rd Floor
New York, New York 10004
Telephone: (516) 838-1655
Fax: (516) 324-2267
levarts@refugeerights.org