

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL REFUGEE
ASSISTANCE PROJECT, INC.

Plaintiff,

v.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES,

Defendant.

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

Civil Action No. 1:24-cv-7813

1. Refugees seeking safety are often separated from their loved ones while fleeing persecution and dangerous conditions. Many family members left behind remain at grave risk. Recognizing the need for a pathway for reunification, Congress created the follow-to-join process to allow refugees and asylees in the United States to apply for their spouse and children to join them.

2. Because the follow-to-join process is the subject of extensive delays and backlogs, particularly at the overseas processing stage, many refugee and asylee families have been waiting years to reunite.

3. The impact of these delays is immeasurable. In many cases, family members of the refugee or asylee applying from the United States live in areas of the world where there is ongoing conflict or persecution and discrimination against refugee populations. Furthermore, because of prolonged separation due to delays, parents have missed milestones in their children's lives, spouses have missed years of companionship and support, and children have grown up without the love and stability their parents could otherwise provide.

4. Plaintiff International Refugee Assistance Project (“IRAP”) represents refugee and asylee families in the follow-to-join process. As part of this work, IRAP seeks to understand how the follow-to-join process operates to better represent its clients and address the sources of delay that harm refugee and asylee families.

5. Defendant U.S. Citizenship & Immigration Services (“USCIS”) is responsible for adjudicating refugee and asylee follow-to-join applications and reuniting these families. Since USCIS does not have an international office in most countries, it delegates responsibility for overseas processing of refugees and asylees to the U.S. Department of State (“DOS”) in countries where it does not have physical presence.

6. To improve its understanding of follow-to-join processing, including how the relevant agencies work together to ensure that families are reunited, IRAP submitted a Freedom of Information Act (“FOIA”) request for any agreements or memoranda of understanding between the U.S. Department of Homeland Security (“DHS”), including USCIS, and DOS related to refugee and asylee follow-to-join processing. To date, USCIS has neither notified IRAP of its determination nor produced records responsive to IRAP’s request. IRAP now seeks to compel disclosure of these records under the FOIA.

JURISDICTION AND VENUE

7. 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 (Federal Question), and it has additional remedial authority under 28 U.S.C. §§ 2201-02 (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 Plaintiff IRAP’s principal place of business is in the Southern District of New York.

PARTIES

9. Plaintiff IRAP is a 501(c)(3) non-profit corporation headquartered at One Battery Park Plaza, 33rd Floor in New York, NY.

10. Defendant USCIS is a component agency within DHS. USCIS is responsible for adjudicating and processing refugee and asylum applications, including those for follow-to-join refugees and asylees.

STATEMENT OF FACTS

IRAP's Work to Reunite Refugee Families

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 direct legal assistance to refugees and others seeking security, and works with a global network of student advocates, pro bono partners, and supporters to deliver legal solutions for displaced people. Informed by its direct services work, IRAP also engages in media and policy advocacy, as well as impact litigation, to address systemic issues affecting refugees and others in need of a safe home.

13. Family reunification lies at the core of IRAP's work.¹ It has previously and is currently representing dozens of clients seeking to reunite with their family members in the United States through the follow-to-join process. Moreover, IRAP has advocated for changes that will reduce delays and address backlogs in the refugee and asylee follow-to-join process, and make the program more equitable, efficient, and transparent.

¹ Int'l Refugee Assistance Project, *Family Reunification*, <https://refugeerights.org/issue-areas/family-reunification> (last visited Aug. 6, 2024).

14. Disseminating information is an integral component of IRAP's mission. IRAP publishes policy reports on issues relevant to refugees. IRAP creates and maintains "Know Your Rights" legal summaries and other educational materials on its websites. These materials include resources for legal practitioners, such as a specific guidance about family reunification pathways and recommendations to address unreasonable delays in refugee and asylee family reunification.²

15. To engage in its mission-driven work, IRAP relies on FOIA requests, such as the request underlying this lawsuit, to understand governmental policies affecting refugees and other displaced people on the move. It also organizes and publishes documents obtained through the FOIA on its website for use by advocates.³

Background on the Refugee and Asylee Follow-to-Join Process

16. USCIS is responsible for the refugee and asylee follow-to-join processes. 8 U.S.C. §§ 1157(c)(1)-(2), 1158(b)(3); 6 U.S.C. § 271(b)(3).

17. Refugees and asylees can apply for their spouse or unmarried child to join them in the United States by filing a Form I-730 petition with USCIS. 8 U.S.C. §§ 1157(c)(1)-(2), 1158(b)(3); 8 C.F.R. § 207.7(d).

18. After USCIS conditionally approves the I-730 petition, it forwards the petition for processing overseas where the beneficiary resides to determine whether the beneficiary is

² See, e.g., Int'l Refugee Assistance Project, *Practice Advisory: Avoiding Requests for Evidence in Refugee Family Reunification Petitions*, (Sept. 15, 2023), <https://refugeerights.org/news-resources/practice-advisory-avoiding-requests-for-evidence-in-refugee-family-reunification-petitions>; see also Int'l Refugee Assistance Project, *Families in Limbo: What the Biden Administration Can Do Now to Address Unreasonable Delays in Refugee and Asylee Family Reunification* (2021), available at <https://refugeerights.org/wp-content/uploads/2021/03/FTJ-Report-FINAL.pdf>.

³ See, e.g., Int'l Refugee Assistance Project, *IRAP Obtains USCIS Guidance on Humanitarian Parole Applications Through FOIA Litigation*, <https://refugeerights.org/news-resources/irap-obtains-uscis-guidance-on-humanitarian-parole-applications-through-foia-litigation> (last visited Feb. 3, 2023).

admissible and eligible to travel to the United States. This step typically includes interviewing the beneficiary/ies.⁴

19. In countries with a USCIS international field office, USCIS officers handle overseas processing. 9 FAM 203.5-3(a)(4). But in countries where USCIS does not have a field office, DOS officers at a U.S. Embassy or Consulate perform overseas processing of follow-to-join applications on behalf of USCIS pursuant to an interagency agreement. 9 FAM 203.5-3(a)(5).

20. USCIS does not have an international office in most countries, including countries like Ethiopia, Iraq, and Burma, where many follow-to-join beneficiaries are processed.⁵

21. As of March 2023, there were approximately 9,500 refugee or asylee follow-to-join applications pending interview and additional processing with USCIS, and approximately 16,000 such applications pending interview and additional processing with DOS.⁶

22. Due to extensive delays in the refugee and asylee follow-to-join process, particularly at the overseas processing stage, IRAP seeks to better understand how the process works and how USCIS and DOS collaborate to process these applications.

23. The records responsive to IRAP's FOIA request will allow IRAP to better serve its clients, understand the source of delays, and ensure prompt reunification of refugee families.

⁴ U.S. Citizenship & Immigr. Servs., *Questions and Answers for Form I-730 Refugee/Asylee Follow-to-Join Processing National Engagement* 16, (Mar. 29, 2023), <https://www.uscis.gov/sites/default/files/document/outreach-engagements/FormI730RefugeeAsyleeFollowtoJoinProcessingNationalEngagementStakeholderQuestions.pdf>.

⁵ USCIS maintains only eleven international offices in ten countries (China, Cuba, El Salvador, Guatemala, Honduras, India, Kenya, Mexico, Qatar, and Turkey), see U.S. Citizenship & Immigr. Servs., *International Immigration Offices*, <https://www.uscis.gov/about-us/find-a-uscis-office/international-immigration-offices> (May 9, 2024), leaving many locations with the highest number of follow-to-join refugee and asylee cases pending interview without a corresponding USCIS international office for overseas processing. See U.S. Citizenship & Immigr. Servs., *supra* note 4, at 10 (listing the top geographic locations where follow-to-join refugee cases are pending an interview).

⁶ See U.S. Citizenship & Immigr. Servs., *supra* note 4, at 9.

IRAP's FOIA Request

24. On January 19, 2024, IRAP submitted a FOIA request to DHS via electronic mail and an identical FOIA request to USCIS via the agency's online portal. A copy of IRAP's request ("FOIA Request") is attached as **Exhibit A**.

25. IRAP's request seeks disclosure of all memoranda of understanding, memoranda of agreement, and/or interagency agreement between DHS or USCIS and DOS related to the processing of applications for follow-to-join benefits under 8 U.S.C. § 1157(c) and § 1158(b)(3).

26. DHS subsequently notified IRAP via email that it had transferred the FOIA Request to Defendant USCIS. A copy of DHS's letter is attached as **Exhibit B**.

27. USCIS acknowledged by letter on January 19, 2024 that it had received the request and assigned it a control number of COW2024000606. A copy of USCIS's letter is attached as **Exhibit C**.

28. As of the filing date of this Complaint, Defendant USCIS has neither notified Plaintiff IRAP of its determination nor provided Plaintiff IRAP with records responsive to its FOIA Request.

29. IRAP has exhausted its administrative remedies with respect to the FOIA Request due to Defendant USCIS's failure to comply with the FOIA's time limit provisions. *See* 5 U.S.C. § 552(a)(6)(C)(i); *see also* 6 C.F.R. § 5.4(g).

CLAIM FOR RELIEF

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

30. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

31. Under the FOIA, Plaintiff has a legal right to obtain the specific records sought in the FOIA Request.

32. Defendant was required to notify Plaintiff of the agency's determination within thirty working days after receiving the request. *See* 5 U.S.C. §§ 552(a)(6)(A), (a)(6)(B).

33. Defendant's failure to communicate the requisite determination to the Plaintiff within the time allowed by the statute violates the FOIA. *See* 5 U.S.C. § 552(a)(6)(A)(i).

34. Furthermore, Defendant violated the law by failing to promptly produce non-exempt records responsive to Plaintiff's FOIA Request. *See* 5 U.S.C. § 552(a)(3)(A).

35. Defendant currently has possession, custody, or control of the requested records.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare that Defendant violated the FOIA by failing to notify Plaintiff of its determination on Plaintiff's FOIA request within the statutorily-authorized time period and unlawfully withholding the requested records;

2. Order Defendant to produce the records in their entireties and requested format as soon as practicable, and to the extent that Defendant's search was unreasonable, order Defendant to conduct a reasonable search;

3. Review any and all of Defendant's decisions to redact or withhold information in the requested records as exempt from disclosure;

4. Award Plaintiff 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.

Dated: October 15, 2024

Respectfully submitted,

/s/ Mevlüde Akay Alp

Mevlüde Akay Alp
International Refugee Assistance Project
One Battery Park Plaza, 33rd Floor
New York, NY, 10004
Tel: (646) 988-9876
makayalp@refugeerights.org

Camelia Metwally*
International Refugee Assistance Project
One Battery Park Plaza, 33rd Floor
New York, NY, 10004
Tel: (516) 701-4616
cmetwally@refugeerights.org

**Motion for admission pro hac vice
forthcoming*

Attorneys for Plaintiff

Exhibit A



International Refugee
Assistance Project

January 19, 2024

Sent via electronic mail & USCIS online portal FIRST

Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. AVE SE
Washington, DC 20528-065
Phone: 202-343-1743 or 866-431-0486
E-mail: foia@hq.dhs.gov

**RE: FOIA Request for Records Related to DHS/USCIS-Department of State
MOU & MOA Regarding Follow-to-Join Processing.**

Dear Freedom of Information Officer:

This is a Freedom of Information Act (FOIA) request on behalf of the International Refugee Assistance Project (IRAP).

RECORDS REQUESTED

IRAP seeks disclosure of:

1. All memoranda of understanding, memoranda of agreement, and/or interagency agreement¹ between the U.S. Department of Homeland Security (DHS) or U.S. Citizenship and Immigration Services (USCIS) and the U.S. Department of State (DOS) related to the processing of applications for follow-to-join benefits under 8 U.S.C. 1157(c) and 1158(b)(3).²

FEE WAIVER REQUEST

IRAP is a non-profit organization with a mission that includes disseminating current information about topics related to pathways for safety for displaced persons. See <https://refugeerights.org/who-we-are/mission-values>.

IRAP seeks a public interest fee waiver as IRAP has no commercial interest in the records requested and the records requested are likely to contribute significantly to public understanding of the activities of the government, specifically relating to how DHS, USCIS, and DOS assign responsibility over aspects of follow-to-join processing and adjudication of follow-to-join benefits. Currently, no public information exists regarding the allocation of responsibilities

¹ According to the Foreign Affairs Manual (FAM), an interagency agreement between USCIS and DOS exists for the processing of I-730 petitions. See 9 FAM 203.5-1(b)(2).

² This includes, but is not limited to, the processing of Form I-730, Refugee/Asylee Relative Petition, and travel eligibility determinations for beneficiaries of such petitions.

between these agencies in follow-to-join processing even though most follow-to-join processing requires the involvement of both USCIS and DOS due to USCIS's limited geographic presence globally. These records would provide critical information to inform the public's understanding of this issue.

IRAP also seeks a fee waiver as a representative of the news media. IRAP routinely uses materials obtained through FOIA and other methods to create and publish informational and educational materials about safe pathways for displaced people. These materials are widely disseminated to the public free-of-charge through IRAP's legal information website, blogs and publications posted on its website, and social media platforms (see, e.g., <https://twitter.com/IRAP>; <https://www.facebook.com/RefugeeAssist/>). IRAP's website dedicated to providing legal information about migration pathways to displaced people (<https://support.iraplegalinfo.org/hc/en-us>) was viewed by over 130,000 unique visitors between May 2021 and 2022. In the same time frame, IRAP's News & Resources pages (<https://refugeerights.org/news-resources>) that host its publications was viewed by over 100,000 unique visitors.

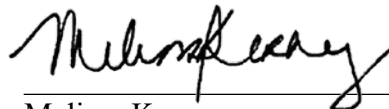
* * *

Should the agency deny the fee waiver request, IRAP requests to be notified in advance of incurring any costs exceeding \$100. Please provide the requested records and direct any questions to:

Melissa Keaney
International Refugee Assistance Project
One Battery Park Plaza, 33rd floor
New York, NY 10004
(916)546-6125
mkeaney@refugeerights.org

Thank you for your consideration.

Sincerely,



Melissa Keaney
Senior Supervising Attorney, U.S. Litigation

Exhibit B



Homeland
Security

January 24, 2024

Melissa Keaney
Senior Supervising Attorney, U.S. Litigation
International Refugee Assistance Project
One Battery Park Plaza
New York, New York 10004

Re: 2024-HQFO-00642

Dear Requester:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), Privacy Office, dated 1/19/2024, and received in this office on 1/19/2024. You requested documents regarding all memoranda of understanding, memoranda of agreement, and/or interagency agreement between the U.S. Department of Homeland Security (DHS) or U.S. Citizenship and Immigration Services (USCIS) and the U.S. Department of State (DOS) related to the processing of applications for follow-to-join benefits under 8 U.S.C. 1157(c) and 1158(b)(3).2.

Due to the subject matter of your request, I am transferring this request to the FOIA Officer for U.S. Citizenship and Immigration Services (USCIS) for processing under the FOIA and direct response to you. You may contact USCIS at:

National Records Center, FOIA/PA Office
P. O. Box 648010
Lee's Summit, MO 64064-8010
Phone: [1-800-375-5283](tel:1-800-375-5283)
Email: FOIAPAQuestions@uscis.dhs.gov

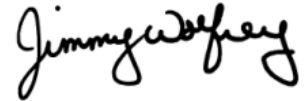
You have a right to appeal the above determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to: Privacy Office, Attn: FOIA Appeals, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Avenue, SE, Mail Stop 0655, Washington, D.C. 20528-0655, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.5(e)(2). Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS FOIA regulations are available at www.dhs.gov/foia.

You may contact the DHS FOIA Public Liaison at 202-343-1743 for any further assistance and to discuss any aspect of your request. You may also contact OGIS at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National

Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you need to contact our office again about this matter, please refer to 2024-HQFO-00642. You may contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

A handwritten signature in black ink that reads "Jimmy Wolfrey". The signature is written in a cursive, flowing style.

Jimmy Wolfrey
Senior Director, FOIA Operations and Management

Exhibit C

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010



U.S. Citizenship
and Immigration
Services

Control Number: COW2024000606

January 19, 2024

Melissa Keaney
One Battery Park Plaza, 33rd floor
new york, NY 10004

Dear Melissa Keaney:

We received your request for information relating to all memoranda of understanding, memoranda of agreement, and/or interagency agreement between the U.S. Department of Homeland Security (DHS) or U.S. Citizenship and Immigration Services (USCIS) and the U.S. Department of State (DOS) related to the processing of applications for follow-to-join benefits under 8 U.S.C. 1157(c) and 1158(b)(3). This includes, but is not limited, to the processing of Form I-730, Refugee/Asylee Relative Petition, and travel eligibility determinations for beneficiaries of such petitions.

Your request was received in this office on January 19, 2024. We may need to contact you at a later date to discuss the scope of your request.

Your request is being handled under the provisions of the Freedom of Information Act (5 U.S.C. § 552). It has been assigned the following control number: COW2024000606. Please cite this number in all future correspondence about your request.

We respond to requests on a first-in, first-out basis and on a multi-track system. Your request has been placed in the simple track (Track 1).

In your request, you seek a fee waiver. Under the Freedom of Information Act's (FOIA) fee waiver standard, 5 U.S.C § 552 (A)(4)(iii), two requirements must be met prior to a grant of a fee waiver. As stated, documents shall be furnished without any charge or at a charge reduced below the fees established, where the requester has demonstrated that:

- (i) disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and
- (ii) disclosure is not primarily in the commercial interest of the requester.

Since you have not met the necessary requirements for a fee waiver, we are denying your fee waiver request.

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our USCIS FOIA Public Liaison at U.S. Citizenship and Immigration Services, National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064-8010, or by email at FOIAPAQuestions@uscis.dhs.gov.

A USCIS FOIA Public Liaison is an agency official to whom FOIA requesters can raise concerns about the service the requester has received from the agency's FOIA Office. USCIS FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency, and understanding of the status of requests, and assisting in the resolution of disputes.

If you are unable to resolve your FOIA dispute through our USCIS FOIA Public Liaison, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records

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Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; email ogis@nara.gov; telephone 202-741-5770; toll free 877-684-6448; or facsimile 202-741-5769.

Consistent with 6 C.F.R. § 5.5(a) of the Department of Homeland Security (DHS) FOIA regulations, USCIS processes FOIA requests according to their order of receipt. Although USCIS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances. Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Additionally, due to the scope and nature of your request, USCIS will need to locate, compile, and review responsive records from multiple offices, both at headquarters and in the field. USCIS may also need to consult with another agency or other component of the Department of Homeland Security that have a substantial interest in the responsive information. Due to these unusual circumstances, USCIS will invoke a 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B). Please contact our office if you would like to limit the scope of your request or to agree on a different timetable for the processing of your request. We will make every effort to comply with your request in a timely manner.

In accordance with Department of Homeland Security Regulations (6 C.F.R. § 5.3(c)), your request is deemed to constitute an agreement to pay any fees that may be chargeable up to \$25.00. Fees may be charged for searching for records sought at the respective clerical, professional, and/or managerial rates of \$4.00/\$7.00/\$10.25 per quarter hour, and for duplication of copies at the rate of \$.10 per copy. The first 100 copies and two hours of search time are not charged, and the remaining combined charges for search and duplication must exceed \$14.00 before we will charge you any fees. Most requests do not require any fees; however, if fees in excess of \$25.00 are required, we will notify you beforehand.

The National Records Center (NRC) has the responsibility to ensure that personally identifiable information (PII) pertaining to U.S. Citizenship and Immigration Services (USCIS) clients is protected. In our efforts to safeguard this information, we may request that additional information be provided to facilitate and correctly identify records responsive to your request. Though submission of this information is voluntary, without this information, your request may be delayed while additional steps are taken to ensure the correct responsive records are located and processed. Further, if we are unable to positively identify the subject of the record we may be unable to provide records responsive to your FOIA request.

How to Check the Status of Your Request

You may check the status of your FOIA request online at first.uscis.gov/#/check-status. If you have any questions concerning your pending FOIA/PA request, or to check the status of a pending application or petition, please call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

How to Submit Questions or Changes

COW2024000606

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Questions concerning this FOIA/PA request may be mailed to U.S. Citizenship and Immigration Services, National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064-8010 or emailed to FOIAPAQuestions@uscis.dhs.gov. All FOIA/PA related requests, including address changes must be submitted in writing, and signed by the requester. Please include the control number listed above on all correspondence. For more information regarding the USCIS FOIA Program, please visit the USCIS website at www.uscis.gov/FOIA.

Sincerely,

A handwritten signature in blue ink that reads "Jarrod Panter". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jarrod T Panter

Acting Chief FOIA Officer

Freedom of Information Act & Privacy Act Unit