

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

LAWYERS FOR CIVIL RIGHTS,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY and UNITED
STATES CITIZENSHIP AND
IMMIGRATION SERVICES,

Defendants.

Civil Action No. _____

COMPLAINT

1. This action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, seeks to compel the United States Citizenship and Immigration Services (“USCIS”), a component of the United States Department of Homeland Security (“DHS,” and collectively with USCIS, “Defendants”), to release records related to how fee waiver requests are adjudicated for persons seeking Employment Authorization Documents, Form I-766 (“EAD”), applications for Temporary Protected Status, Form I-812 (“TPS”), and Naturalization, Form N-400.

2. On July 14, 2023, Lawyers for Civil Rights (“LCR”) submitted a FOIA request to Defendants seeking records related to fee waiver adjudications. Over eleven months later, Defendants have produced no records.

3. The need for information about the adjudication of applications for fee waivers is great. The Immigration and Nationality Act (“INA”) authorizes the DHS Secretary to designate fees for immigration adjudications.¹ Recognizing that these fees severely limit the ability of low-

¹ 8 U.S.C. § 1356(m).

income individuals to apply for crucial immigration benefits, USCIS has been granted discretion to waive certain fees and makes determinations on a case-by-case basis.² Accordingly, in 2010 and 2011, USCIS adopted a new form, Form I-912, for applicants for various types of immigration benefit requests to request a fee waiver.

4. Due to this broad discretionary authority, more transparency is needed regarding how USCIS makes these determinations and how frequently fee waivers are granted.

5. Since 2013, USCIS has received around 500,000 fee waiver requests annually, and the agency denies at least one in nine applications.³

6. Per the USCIS website, Form I-912 is available for various applications to USCIS, including applications for EAD, TPS, and naturalization.

7. **EADs** allow refugees, asylees, and certain other non-citizens to begin working legally in the United States. USCIS recognizes that EADs are “critical to a newly arrived refugee’s ability to integrate into the United States.”⁴ An application for an EAD costs between \$260 to \$520 to file,⁵ posing a formidable hurdle for newly arrived migrants who often arrive with limited financial resources and cannot legally earn money in the U.S. without an EAD.

8. **TPS** is a humanitarian program which protects migrants fleeing from armed conflict, natural disasters, and other extraordinary and temporary conditions.⁶ TPS allows citizens of designated countries to live and work legally in the U.S. for an extendable period. As of March

² 8 C.F.R. § 103.7(c) (Oct. 1, 2020); *see also* DHS, *Use of Fee Waivers: Policies and Data*, 2 (June 20, 2023), https://www.dhs.gov/sites/default/files/2023-08/23_0727_uscis_use_of_fee_waivers_q1.pdf.

³ DHS, *Use of Fee Waivers: Policies and Data, Third Quarter, Fiscal Year 2023* (Oct. 13, 2023), https://www.dhs.gov/sites/default/files/2023-11/2023_1013_uscis_use_of_fee_waivers_policies_and_data_q3_fy23.pdf.

⁴ USCIS, *USCIS Streamlines Process for Refugee Employment Authorization Documents* (May 12, 2024), <https://www.uscis.gov/newsroom/alerts/uscis-streamlines-process-for-refugee-employment-authorization-documents>.

⁵ USCIS, *Fee Schedule*, 33 (Apr. 1, 2024), <https://www.uscis.gov/sites/default/files/document/forms/g-1055.pdf>.

⁶ USCIS, *Temporary Status*, <https://www.uscis.gov/humanitarian/temporary-protected-status> (last visited June 13, 2024).

2023, over 600,000 foreign nationals from sixteen countries were protected by TPS.⁷ Initial TPS applications have a filing fee of \$50 and applicants typically simultaneously apply for an EAD. Individuals fleeing impoverished or conflict-laden regions will not have the resources to pay these fees. These prohibitive filing fees are counterproductive, as they contradict the very purpose for which the federal government established this vital immigration protection for citizens from these designated countries.

9. **Naturalization** allows lawful permanent residents to become U.S. citizens, participate in the political process, and enjoy a deeper sense of permanence in their communities. Studies show that the filing fee for a naturalization application, which can range from \$380 to \$760,⁸ is a substantial barrier to naturalization, and that fee waivers lead to an increase in the number of naturalized citizens.⁹ The fee waiver program has allowed hundreds of thousands of immigrants to begin the naturalization process despite limited financial resources. In 2017, nearly 40 percent of all naturalization applications were submitted with a fee waiver.¹⁰ However, for every year since 2016, USCIS has waived fewer fees for naturalization applicants than in the preceding year.¹¹

10. Application fees constitute a significant barrier to all of the above applications. The application fees deprive an extremely vulnerable population of the ability to seek U.S. government

⁷ Diana Roy & Claire Klobucista, *What is Temporary Protected Status*, Counsel on Foreign Relations, <https://www.cfr.org/background/what-temporary-protected-status> (last updated Sept. 21, 2023).

⁸ *Fee Schedule*, *supra* note 5, <https://www.uscis.gov/sites/default/files/document/forms/g-1055.pdf>.

⁹ Vasil Yasenov et al., *Standardizing the fee-waiver application increased naturalization rates of low-income immigrants*, National Library of Medicine (Aug. 20, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6708319/>.

¹⁰ U.S. Citizenship and Immigration Services Ombudsman, *Annual Report 2018*, Department of Homeland Security, 27 (June 28, 2018).

¹¹ *Use of Fee Waivers: Policies and Data*, *supra* note 2, at 12, https://www.dhs.gov/sites/default/files/2023-08/23_0727_uscis_use_of_fee_waivers_q1.pdf.

protections and legal opportunities that would otherwise be available to them solely on the basis of their indigency, constituting an unfair deprivation of access.

11. For these reasons, Plaintiff submitted a FOIA request seeking information from Defendants related to how fee waiver requests are adjudicated. Yet more than nine months after the request was made, Defendants have yet to produce any records.

12. By this civil action, Plaintiff now asks the Court to issue an injunction requiring Defendants to process Plaintiff's request immediately and to produce the requested records.

JURISDICTION AND VENUE

13. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

14. Venue lies in the District of Massachusetts pursuant to 5 U.S.C. § 552(a)(4)(B), including because it is the district in which LCR has its principal place of business.

PARTIES

15. LCR is a non-profit legal organization that works with communities of color and immigrants to fight discrimination and foster equity through creative and courageous legal advocacy, education, and economic empowerment. Part of LCR's core mission is public education on areas of interest to the groups LCR represents. As a result, gathering and disseminating information—particularly from public officials or agencies—is an integral part of LCR's purpose and function. Materials LCR disseminates are available for free, including through its website,¹² to a broad range of individuals and groups, including other not-for-profit organizations, faith communities, students, faculty, and directly affected individuals. LCR also uses information from

¹² Lawyers for Civil Rights, www.lawyersforcivilrights.org.

FOIA requests to conduct immigration-related “Know Your Rights” presentations to various immigrant-serving organizations throughout Massachusetts.

16. The United States Department of Homeland Security (“DHS”) is an agency of the government of the United States of America (the “U.S.” or “United States”).

17. The United States Citizenship and Immigration Services (“USCIS”) is an agency within DHS.

FACTUAL ALLEGATIONS

BACKGROUND

18. Filing fees pose a substantial hurdle for low-income immigrants of color who seek to obtain EADs, apply for TPS, or naturalize. As a result, denials of fee waivers serve as a major obstacle for individuals striving to work legally in the United States, enter into the United States, or fully engage as residents of the United States. Yet the process by which Defendants adjudicate fee waiver applications is shrouded in secrecy, and little public information exists about how and why applications are denied.

19. Amidst the escalating influx of migrants, Massachusetts promptly recognized the urgency of the need for EADs and took decisive action. In partnership with the U.S. DHS, the Healy-Driscoll Administration orchestrated a series of work authorization clinics tailored explicitly to meet the needs of migrants residing in emergency family shelters across the Commonwealth.¹³

¹³ Mass.gov, *Healey-Driscoll Administration Announces Upcoming Work Authorization Legal Clinic in Partnership with DHS* (Oct. 30, 2023), <https://www.mass.gov/news/healey-driscoll-administration-announces-upcoming-work-authorization-legal-clinic-in-partnership-with-dhs>.

20. Policymakers have acknowledged immigrants' pivotal role in offsetting the anticipated recession post-COVID-19,¹⁴ notably by helping bridge the labor gap.¹⁵ However, to sustain this positive impact, migrants must be able to obtain an EAD and immigration protection—an endeavor that is often inaccessible without fee waivers.

21. As the humanitarian crisis at the border persists, the Biden Administration has turned to TPS as a vital tool to extend protections to citizens of various countries due to war, natural disasters, and other dangerous conditions. This has helped provide immigration protections to thousands of migrants from Venezuela, Ukraine, Afghanistan, Ethiopia, Myanmar, Cameroon, Somalia, Syria, South Sudan, and Yemen.¹⁶

22. Similarly, naturalization fees and fee waiver denials exclude the otherwise-eligible working poor from applying for U.S. citizenship. DHS reports that 9 million lawful permanent residents in the United States are eligible to apply for U.S. citizenship.¹⁷ However, filing fees prove prohibitive to naturalization. For example, one study found that increases in naturalization fees are associated with drops in naturalization rates in poorer Mexican immigrant communities, where

¹⁴ In defiance of economists' predictions of a recession, the nation's economy expanded by 3 percent in 2023. Federal Reserve Chair Jerome Powell emphasized the significance of immigration as a key contributor to this growth. See Tobias Burns, *How Immigration Is Helping the Economy Defy Expectations*, The Hill (Apr. 10, 2024), <https://thehill.com/business/4581122-how-immigration-is-helping-the-economy-defy-expectations/>.

¹⁵ A compelling example can be found in Maine, where immigrants are actively filling the labor gap within the food manufacturing industry—a cornerstone of the state's economy—particularly as native-born workers transition into retirement. See Jeanna Smialek, *Immigrants in Maine Are Filling a Labor Gap. It May Be a Prelude for the U.S.*, New York Times (Apr. 12, 2024), <https://www.nytimes.com/2024/04/12/business/economy/immigrants-maine-lobster-aging-workforce.html>.

¹⁶ USCIS, *Temporary Protected Status, Countries Currently Designated for TPS*, <https://www.uscis.gov/humanitarian/temporary-protected-status> (last visited June 4, 2024); see also Mohamad Moslimani, *How Temporary Protected Status Has Expanded Under the Biden Administration*, Pew Research Center (Mar. 29, 2024), <https://www.pewresearch.org/short-reads/2024/03/29/how-temporary-protected-status-has-expanded-under-the-biden-administration/>.

¹⁷ Sarah Miller & Bryan Baker, *Estimates of the Lawful Permanent Resident Population in the United States and the Subpopulation Eligible to Naturalize: 2023*, Off. of Homeland Sec. Stats., DHS, https://www.dhs.gov/sites/default/files/2023-11/2023_1017_plyc_lawful_permentent_resident_population_estimate_2023.pdf.

fees may constitute an entire week of take-home pay.¹⁸ Conversely, another study found that when application fee waivers are available, naturalization rates skyrocket by over 40%, suggesting that the naturalization filing fee stands as a formidable barrier for millions of low-income individuals who are otherwise eligible for naturalization.¹⁹

23. USCIS statistics suggest that tens of thousands of fee waiver requests are denied annually to refugees, asylees, otherwise-eligible non-citizens seeking work authorization or legal entry, and lawful permanent residents seeking naturalization.²⁰

24. Fee waivers have become increasingly vital with the introduction of USCIS' new fee schedule, which took effect on April 1, 2024. The new fee schedule increases fees for a wide range of family, humanitarian, and employment-based immigration benefits, including EADs which will increase from \$410 to \$470 for online filing or \$520 for paper filing.²¹ This would also have an impact on TPS applicants who simultaneously apply for EADs.

25. Disclosure of the requested information will contribute significantly to public understanding of fee waiver applications, government operations regarding why fee waivers are approved or denied and on what basis, and the criteria for obtaining a fee waiver.

PLAINTIFF'S FOIA REQUEST & DEFENDANTS' FAILURE TO RESPOND

26. On July 14, 2023, LCR submitted a FOIA request for fee waiver determination records (**Exhibit 1**) to USCIS pursuant to 5 U.S.C. § 552, to learn more about how fee waiver applications are being processed, their approval and denial rates, and processing times.

¹⁸ See NBC News, *High Fees Limiting U.S. Citizenship to Wealthy, Non-Mexicans*, <https://www.nbcnews.com/news/latino/high-fees-limiting-u-s-citizenship-wealthy-non-mexicans-n283061> (last updated Jan. 11, 2015).

¹⁹ Jens Hainmueller et al., *A randomized controlled design reveals barriers to citizenship for low-income immigrants*, PNAS (Jan. 16, 2018), <https://www.pnas.org/doi/10.1073/pnas.1714254115>

²⁰ See *Use of Fee Waivers: Policies and Data*, *supra* note 2, at 12, https://www.dhs.gov/sites/default/files/2023-08/23_0727_uscis_use_of_fee_waivers_q1.pdf.

²¹ *Fee Schedule*, *supra* note 5, <https://www.uscis.gov/sites/default/files/document/forms/g-1055.pdf>.

27. Specifically, LCR sought:

- USCIS guidance, policies, procedures, and memorandums regarding fee waiver applications;
- Statistics pertaining to fee waiver applications nationwide for EAD, TPS, and Naturalization; and
- Statistics pertaining to fee waiver applications filed in the Commonwealth of Massachusetts.

28. On September 7, 2023, USCIS sent Plaintiff a letter acknowledging receipt of its FOIA request and granting Plaintiff’s fee waiver.

29. As of June 24, 2024, the USCIS FOIA Request Case Status website indicates that LCR’s FOIA request is ranked 816 out of 1,476 pending requests.²² The “Estimated Completion Date” is listed as October 3, 2023—a date that has long since passed.²³

Request Details

Control Number	COW2023005028
Date Submitted	07/17/2023
Request Type	FOIA Request

Request Status

Place in Queue	816 of 1476 pending requests
Status	Files Received
Estimated Completion Date	10/03/2023

Note: This is an estimated date based on average processing times. Availability of records and complexity of request may effect completion date.

For more information about making a FOIA/PA request or submitting an Administrative Appeal, please see the link [How to Request Records through the Freedom of Information Act or Privacy Act \(uscis.gov\)](https://uscis.gov/foia).

²² See USCIS, *Check Status of FOIA Request*, <https://first.uscis.gov/#/check-status> (last visited June 24, 2024).

²³ *Id.*

30. To date, USCIS has not provided any documents in response to Plaintiff's request, nor has it articulated an applicable exemption to the request in any respect.

31. LCR now brings this action to compel a response from USCIS as to its FOIA request.

CAUSES OF ACTION

First Cause of Action

Violation of Freedom of Information Act for Failure to Respond within the Time Required

32. The foregoing allegations are re-alleged and incorporated herein.

33. Within 20 days after receiving the FOIA Request (excluding Saturdays, Sundays, and legal public holidays), USCIS was required under 5 U.S.C. § 552(a)(6)(A)(i) to determine whether to comply with the request and to notify the Plaintiff of its determination and the reasons therefor and of its rights to appeal any adverse determination.

34. None of the communications that Plaintiff has received from USCIS to date contained the notification required by 5 U.S.C. § 552(a)(6)(A)(i).

35. USCIS has not subsequently provided the requisite notification to Plaintiff as required by 5 U.S.C. § 552(a)(6)(A)(i).

36. Defendants' failure to respond within the statutory time limit violated 5 U.S.C. § 552(a)(6)(A)(i), as well as the regulations promulgated thereunder.

Second Cause of Action

Violation of Freedom of Information Act for Failure to Conduct a Reasonable Search and to Disclose Responsive Records

37. The foregoing allegations are re-alleged and incorporated herein.

38. Defendants were obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for records responsive to Plaintiff's requests, and to promptly produce them to Plaintiff, including in the format requested by Plaintiff if they are readily reproducible in that format.

39. Upon information and belief, USCIS has not conducted a reasonable search for records responsive to Plaintiff's FOIA request.

40. USCIS has not produced any records responsive to Plaintiff's FOIA request.

41. Nor has USCIS asserted that any FOIA exemption applies that would prevent disclosure of any or all records requested.

42. Plaintiff has a legal right to obtain the records requested, and no legal basis exists for Defendants' failure to search for and disclose them.

43. Defendants' failure to conduct a reasonable search for and to produce records responsive to Plaintiff's requests violates 5 U.S.C. § 552(a)(3), as well as the regulations promulgated thereunder.

PRAYER FOR RELIEF

Wherefore, Plaintiff asks this Court to GRANT the following relief:

- (a) Declare that Defendants' failure to respond to Plaintiff's FOIA request to date, their failure to search for records responsive to Plaintiff's request, and their failure to disclose such responsive records violates FOIA;
- (b) Order that Defendants shall produce the requested records forthwith, or alternatively on an expedited schedule established by the Court;
- (c) Enjoin Defendants from charging Plaintiff search, review, processing, and/or duplication fees in connection with responding to Plaintiff's FOIA request;
- (d) Award Plaintiff costs and reasonable attorney fees in the action; and
- (e) Grant such other relief as the Court may deem just and proper.

Date: June 25, 2024

Respectfully Submitted,

/s/ Mirian Albert

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