

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

AMERICAN IMMIGRATION LAWYERS)	
ASSOCIATION,)	
)	
Plaintiff,)	
)	
v.)	No. 1:16-cv-00956-RJL
)	
UNITED STATES CITIZENSHIP)	
AND IMMIGRATION SERVICES, et al.,)	
)	
Defendants.)	

**DEFENDANTS’ ANSWER TO PLAINTIFF’S COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Defendants, United States Citizenship and Immigration Services (“USCIS”) and United States Department of Homeland Security (“DHS”) (collectively “Defendants”), by and through their counsel, the United States Attorney’s Office for the District of Columbia, hereby answer the Complaint of American Immigration Lawyers Association (“AILA” or “Plaintiff”) (ECF No. 1) as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff’s Complaint fails to state a claim upon which relief can be granted because Defendants have conducted an adequate search for responsive records under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 522.

SECOND AFFIRMATIVE DEFENSE

Plaintiff’s Complaint fails to state a claim upon which relief can be granted because Defendants have provided all nonexempt records responsive to Plaintiff’s FOIA request, and

have properly withheld exempt information pursuant to the exemptions provided in the FOIA at 5 U.S.C. § 552(b).

THIRD AFFIRMATIVE DEFENSE

Answering the specific allegations of the complaint, Defendants admit, deny, or otherwise aver as follows:

1. The allegations in Paragraph 1 consist of Plaintiff's characterization of the H-1B nonimmigrant visa petition process and the Immigration and Nationality Act ("INA"), which speaks for itself. Furthermore, these allegations have no bearing on any FOIA-related claims or the underlying issues in this case. To the extent that the allegations mischaracterize this process or the INA, Defendants deny the allegations in Paragraph 1.

2. The allegations in Paragraph 2 consist of Plaintiff's characterization of the Department of Homeland Security's regulatory authority, which speaks for itself. To the extent that the allegations mischaracterize DHS's regulatory authority, Defendants deny the allegations in Paragraph 2.

3. Paragraph 3 contains a characterization of Plaintiff's Complaint and Plaintiff's request for relief under the Freedom of Information Act, 5 U.S.C. § 522, to which no response is required. To the extent that a response is deemed necessary, Defendants deny that Plaintiff is entitled to any of the requested relief.

JURISDICTION AND VENUE¹

4. Paragraph 4 contains Plaintiff's allegations concerning jurisdiction, which consists of legal conclusions to which no response is required.

¹ For ease of reference, Defendants refer to Plaintiff's headings and titles, but to the extent those headings and titles could be construed to contain factual allegations, those allegations are denied.

5. Paragraph 5 contains Plaintiff's allegations concerning venue, which consist of legal conclusions to which no response is required.

THE PARTIES

6. Defendants lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 6.

7. Defendants admit that DHS falls under the authority of the Executive Branch of the United States Government, and that DHS is vested with, among other things, the authority to administer and enforce the immigration laws of the United States in accordance with the INA and all other applicable laws and regulations. The remaining allegations of this paragraph contain Plaintiff's allegations concerning the FOIA, which consist of legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 7.

8. Defendants admit that USCIS is an agency within the DHS, and that USCIS is the custodian of alien files ("A-files"), which serve as the official government records of individuals passing through the immigration and inspection process. *See* 76 Fed. Reg. 34233 (June 13, 2011). The remaining allegations of this paragraph contain Plaintiff's allegations concerning the FOIA, which consist of legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 8.

BACKGROUND

9. Paragraph 9 consists of Plaintiff's characterization of DHS's regulations and the INA, which speak for themselves. To the extent that the allegations mischaracterize the INA or DHS's regulatory authority, Defendants deny the allegations in Paragraph 9.

10. The allegations in Paragraph 10 consist of Plaintiff's characterization of the H-1B nonimmigrant visa petition process and the INA, which speaks for itself. To the extent that the allegations mischaracterize this process or the INA, Defendants deny the allegations in Paragraph 10.

11. The allegations in Paragraph 11 consist of Plaintiff's characterization of the H-1B nonimmigrant visa cap process, DHS's regulations and the INA, which speak for themselves. To the extent that the allegations mischaracterize this process, DHS's regulatory authority, or the INA, Defendants deny the allegations in Paragraph 11.

12. The allegations in Paragraph 12 consist of Plaintiff's characterization of information on USCIS's public website related to the H-1B and master's cap limits and DHS's regulations, which speak for themselves. To the extent that the allegations mischaracterize the information on the website or DHS's regulatory authority, Defendants deny the allegations in Paragraph 12.

13. The allegations in Paragraph 13 consist of Plaintiff's characterization of DHS's regulations pertaining to the H-1B nonimmigrant visa petition process, which speak for themselves. To the extent that the allegations mischaracterize this process or DHS's regulatory authority, Defendants deny the allegations in Paragraph 13.

14. Defendants admit that Plaintiff submitted a FOIA request to USCIS for information relating to the H-1B lottery. Plaintiff's FOIA request speaks for itself. The remaining allegations of this paragraph contain Plaintiff's allegations concerning the FOIA, which consist of legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 14.

**PLAINTIFF'S FOIA REQUEST AND
DEFENDANTS FAILURE TO COMPLY WITH FOIA**

15. Defendants admit that the USCIS's National Records Center (NRC) received a FOIA request dated November 30, 2014, which requested information relating to USCIS's operating procedures for the administration of the H-1B visa process. Plaintiff's FOIA request speaks for itself.

16. Defendants admit that USCIS acknowledged receipt of Plaintiff's FOIA request by letter dated December 4, 2014, and that the request was assigned case number COW2014000817. Defendants further admit that the letter notified Plaintiff that pursuant to 5 U.S.C. § 552(a)(6)(B), the statutory time limits for processing the request could not be met because of unusual circumstances, and that it would be necessary to extend the time limit for processing by ten working days due to the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

17. Defendants admit that USCIS notified the Plaintiff by letter dated April 14, 2015 that the agency had completed review of all responsive records, and had identified 521 pages that were responsive to Plaintiff's request. Defendants further admit that USCIS released 166 pages in their entirety, released 228 pages in part, and withheld 127 pages in full. The last sentence of Paragraph 17 consists of Plaintiff's characterization of the released records, documents which speak for themselves. To the extent that a response is required, Defendants deny Plaintiff's characterization.

18. Defendants admit that on June 12, 2015, Plaintiff administratively appealed the Defendants's April 14, 2013 determination. The Plaintiff's administrative appeal speaks for itself.

19. Defendants admit that Plaintiff's administrative appeal challenged the agency's application of FOIA Exemptions (b)(3), (b)(4), and (b)(5).

20. Defendants admit that Plaintiff's administrative appeal challenged the agency's search for responsive records "that describe how USCIS tracks and counts unused H-1Bs for each fiscal year and takes into account such unused numbers during the appropriate fiscal year in accordance with 8 C.F.R. § 214.2(h)(8)(ii)(C)." Defendants deny the remaining allegations in Paragraph 20.

21. Defendants admit that Plaintiff's administrative appeal requested a *Vaughn* index, but deny that Plaintiff is entitled to a *Vaughn* index at the administrative stage of processing Plaintiff's FOIA request.

22. Defendants admit that USCIS acknowledged receipt of Plaintiff's administrative appeal by letter dated July 16, 2015, and that the request was assigned control number APP2015001099.

23. Defendants admit that USCIS notified the Plaintiff by letter dated July 21, 2015 that after careful consideration of Plaintiff's appeal, the agency had made the determination to release 218 additional pages to Plaintiff, of which 217 pages were released in part and 1 page was released in full. Defendants further admit that the pages contained redacted information pursuant to 5 U.S.C. §§ 552 (b)(4), (b)(5) and (b)(6). The last sentence of Paragraph 23 consists of Plaintiff's characterization of the released records, documents which speak for themselves. To the extent that a response is required, Defendants deny Plaintiff's characterization.

24. Defendants admit that Plaintiff has exhausted all administrative remedies with respect to its FOIA request dated November 30, 2014.

25. Paragraph 25 consists of legal conclusions, to which no response is required. To the extent that a response is deemed required, Defendants deny the allegations in Paragraph 25.

FIRST CAUSE OF ACTION

**Violation of the Freedom of Information Act for
Failure to Conduct and Adequate Search**

26. Defendants incorporate by reference their responses to Paragraphs 1-25.

27. Paragraph 27 consists of legal conclusions, to which no response is required. To the extent that a response is deemed required, Defendants deny the allegations in Paragraph 27.

28. Paragraph 28 consists of legal conclusions, to which no response is required. To the extent that a response is deemed required, Defendants deny the allegations in Paragraph 28.

SECOND CAUSE OF ACTION

**Violation of the Freedom of Information Act for
Failure to Disclose Agency Records**

29. Defendants incorporate by reference their responses to Paragraphs 1-25.

30. Paragraph 30 consists of legal conclusions, to which no response is required. To the extent that a response is deemed required, Defendants deny the allegations in Paragraph 30.

31. Paragraph 31 consists of legal conclusions, to which no response is required. To the extent that a response is deemed required, Defendants deny the allegations in Paragraph 31.

REQUESTS FOR RELIEF

The “Wherefore” clause contains Plaintiff’s prayer for relief, to which no response is required. To the extent a response is deemed required, Defendants deny that Plaintiff is entitled to the relief requested in Paragraphs a-f of the “Wherefore” clause, or any other relief for the claims alleged in the Complaint.

Defendants deny each and every allegation of the Complaint not specifically and expressly admitted herein.

Dated: August 1, 2016

Respectfully submitted,

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