

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

MATTHEW L. HOPPOCK

5949 Nieman Road

P.O. Box 3886

Shawnee, KS 66203

Plaintiff,

Case No. _____

v.

**UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES**

20 Massachusetts Ave., NW,

Washington, DC 20001,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Matthew L. Hoppock brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, against Defendant United States Citizenship and Immigration Services (“USCIS”) to compel Defendant to produce records responsive to Plaintiff’s FOIA requests.

INTRODUCTION

1. Between June 2018 and July 2018, Plaintiff, an immigration attorney, filed three FOIA requests (“the Requests”) with USCIS seeking information regarding the U.S. government’s efforts to systematically strip U.S. citizens of their citizenship. Over the last three years, there has been a significant increase in the number of denaturalization cases brought by the government, producing a chilling effect among naturalized U.S. citizens and immigrants on a path to citizenship. Yet, the government has provided little to no information about who they are targeting with these efforts, what the parameters are for investigations into naturalized citizens, and how many

resources are being put into this denaturalization operation. The purpose of the Requests is to obtain more information about the federal government's draconian and constitutionally questionable practices surrounding denaturalization.

2. Although over a year has elapsed since Plaintiff submitted the Requests, Defendant has refused to provide a single responsive document to Plaintiff. Therefore, Defendant has improperly withheld responsive agency records and failed to comply with FOIA's statutory deadlines in violation of the FOIA statute.

3. Plaintiff brings this action to compel Defendant to immediately process and release to Plaintiff all responsive records that they have unlawfully withheld.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This Court also has subject matter jurisdiction over this action and personal jurisdiction over all parties pursuant to 5 U.S.C. § 552(a)(4)(B).

5. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B) ("Under the FOIA, an agency may be sued. . . in the District of Columbia") and 28 U.S.C. § 1391(e), because a substantial portion of the events giving rise to this action occurred in this District, and because Defendant maintains records and information subject to the Requests in this District.

PARTIES

6. Plaintiff Matthew L. Hoppock is an immigration attorney and advocate based in Shawnee, Kansas. He has represented immigrants on a wide range of immigration issues in immigration court, the Board of Immigration Appeals, and federal courts across the country. He has also represented clients in denaturalization proceedings in federal court.

7. Defendant USCIS is an agency of the United States Government and is headquartered at 20 Massachusetts Avenue, NW, Washington, DC 20001. USCIS is a component of the U.S. Department of Homeland Security (“DHS”) and is an agency within the meaning of 5 U.S.C. § 552(f)(1). Among other duties, USCIS is responsible for referring cases for civil revocation of naturalization, which is the subject of the records requests. USCIS has possession, custody, and control of certain public records to which the Plaintiff seeks access.

STATUTORY FRAMEWORK

8. “The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). The D.C. Circuit has also recognized that “Congress’s purpose in enacting FOIA was to achieve greater transparency in support of open government.” *Judicial Watch, Inc. v. U.S. Dep’t of Homeland Sec.*, 895 F.3d 770, 783 (D.C. Cir. 2018).

9. To further this purpose, the FOIA statute, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public, unless a statutory exemption applies.

10. Agencies have the burden “to act in good faith and exercise due diligence to make records available as quickly as possible, or invoke an exemption, and to improve their records management systems to enable prompt responses without routine judicial involvement.” *Judicial Watch, Inc.*, 895 F.3d at 783.

11. Under FOIA, an agency must respond to a FOIA request within twenty (20) working days after receipt of a request, notifying the requestor of the agency’s determination whether or not to fulfill the request, providing reasons for its determination, and informing the requester of the right to appeal the agency’s determination. 5 U.S.C. § 552(a)(6)(A)(i). An agency

must similarly respond to an appeal of the agency's determination within twenty (20) working days of its receipt. 5 U.S.C. § 552(a)(6)(A)(ii).

12. In "unusual circumstances," an agency may postpone its response to a FOIA request or appeal, but it must provide notice and "the date on which a determination is expected to be dispatched." 5 U.S.C. § 552(a)(6)(B). Even under "unusual circumstances," an agency may not obtain an extension of more than ten (10) working days. 5 U.S.C. § 552(a)(6)(B)(i).

13. In response to a FOIA request, an agency, after engaging in a reasonable search for responsive records, including of any field offices that may possess relevant materials, must disclose in a timely manner all records that do not fall within nine narrowly construed statutory exemptions. 5 U.S.C. § 552(a)(3)(A); § 552(b)(1)-(9).

14. A FOIA requestor is deemed to have exhausted his or her administrative remedies if an agency fails to comply with the statutory time limits for responding to a request. 5 U.S.C. § 552(a)(6)(C)(I).

15. A district court "has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

FACTUAL ALLEGATIONS

Denaturalization

16. Since 2016, denaturalization cases have grown dramatically. The government has filed twice as many denaturalization cases in 2017 and 2018 as the average number of denaturalization cases for the prior twelve years.¹

¹ See Seth Freed Wessler, *Is Denaturalization the Next Front in the Trump Administration's War on Immigration?*, N.Y. TIMES (Dec. 19, 2018), available at <https://www.nytimes.com/2018/12/19/magazine/naturalized-citizenship-immigration-trump.html>

17. There is a fear that this number is expected to rise in the near future: USCIS intends to refer approximately 1,600 cases to the Department of Justice for prosecution;² and in June 2018, then-Director of USCIS, L. Francis Cissna announced the institution of a new office dedicated to reviewing and referring cases to the Justice Department for denaturalizing U.S. citizens.³

18. There are additional concerns that U.S. citizens who immigrated from specific countries are a primary target of these denaturalization policies. The recent denaturalization efforts focus on individuals from “special interest countries,” which the Department of Homeland Security defines as “countries that are of concern to the national security of the United States.”⁴ News outlets have reported that individuals being denaturalized by this administration disproportionately originate from Muslim-majority countries.⁵

(“From 2004 to 2016, denaturalization cases filed by [the Office of Immigration Litigation in the Department of Justice] and by United States attorneys have averaged 46 each year. In each of the last two years, prosecutors filed nearly twice that many cases.”).

² Press Release, Dep’t of Justice Off. Pub. Affairs, *Justice Department Secures First Denaturalization As a Result of Operation Janus* (Jan. 9, 2018), available at <https://www.justice.gov/opa/pr/justice-department-secures-first-denaturalization-result-operation-janus>; Press Release, Dep’t of Justice Off. Pub. Affairs, *United States Files Denaturalization Complaints in Florida, Connecticut and New Jersey Against Three Individuals Who Fraudulently Naturalized After Having Been Ordered Deported Under Different Identities* (Sept. 19, 2017), available at <https://www.justice.gov/opa/pr/united-states-files-denaturalization-complaints-florida-connecticut-and-new-jersey-against>.

³ Amy Taxin, *US launches bid to find citizenship cheaters*, AP NEWS (Jun. 11, 2018), available at <https://apnews.com/1da389a535684a5f9d0da74081c242f3>.

⁴ Office of Inspector General, DEP’T OF HOMELAND SECURITY, *Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records*, n. 2 (Sept. 26, 2016), available at <https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/2016/OIG-16-130-Sep16.pdf>.

⁵ See Wessler, *supra* note 1 (“Of the civil denaturalization cases that have so far been filed by the Office of Immigration Litigation under the Trump Administration, roughly 10 percent have been against people from three countries — Yemen, Somalia and Iran — that are included in Trump’s ban of Muslim nations. But people from these countries make up just over 1 percent of foreign-born people in the United States.”).

19. Disclosure of the requested information will contribute significantly to the public understanding of government operations and activities regarding its program to denaturalize United States citizens. The requested information potentially impacts over 20 million naturalized citizens in this country as well as the millions of immigrants on the pathway to citizenship.

20. Very little is currently known about the government's efforts to denaturalize citizens, and therefore, the information requested is of great interest to the general public.

Plaintiff's FOIA Requests

Request 1

21. On June 13, 2018, Plaintiff submitted a FOIA request to Defendant requesting that Defendant produce: "Any memoranda authored or signed by L. Francis Cissna mentioning the words 'denaturalization' or 'denaturalize' between January 1, 2017 and the date this request is processed." *See* Request 1, Ex. A. The request further specifically asked for the memorandum listed in a Washington Post news article.⁶ *Id.*

22. Plaintiff received an acknowledgement letter dated June 20, 2018 from Defendant confirming receipt of Plaintiff's FOIA request on June 15, 2018 and assigning the request the control number COW2018000712. *See* Ex. B. In this letter, Defendant stated that the "statutory time limits for processing [Plaintiff's] request cannot be met because of unusual circumstances, and it will be necessary to extend the time limits for processing beyond the ten working days" but the agency failed to give a timeline for when the request would be processed. *Id.*

⁶ *See* Nick Miroff, *Scanning immigrants' old fingerprints, U.S. threatens to strip thousands of citizenship*, WASHINGTON POST (Jun. 13, 2018), available at https://www.washingtonpost.com/world/national-security/scanning-immigrants-old-fingerprints-us-threatens-to-strip-thousands-of-citizenship/2018/06/13/2230d8a2-6f2e-11e8-afd5-778aca903bbe_story.html.

23. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to determine whether to comply with Plaintiff's FOIA request within twenty (20) working days after receipt of the request and to notify Plaintiff immediately of its determination, the reasons therefore, and the right to appeal any adverse determination. Accordingly, Defendant's determination of Plaintiff's FOIA request was due by July 16, 2018.

24. Even in "unusual circumstances," an agency can obtain at most an extension of ten (10) working days. 5 U.S.C. § 552(a)(6)(B)(i). Therefore, Defendant's determination of Plaintiff's FOIA request was due by July 30, 2018 at the latest.

25. As of the date of this Complaint, over 400 working days later, Defendant has not produced the requested documents or made a determination on Plaintiff's FOIA request.

26. Because Defendant has failed to comply with the statutory time limit with respect to this FOIA request, Plaintiff is deemed to have exhausted any and all administrative remedies with respect to that request, pursuant to 5 U.S.C. § 552(a)(6)(C).

Request 2

27. On July 8, 2018, Plaintiff submitted a FOIA request to Defendant requesting that Defendant search e-mail accounts of twelve USCIS employees for three keywords—denaturaliz*,⁷ operation janus, or operation second look. *See* Request 2, Ex. C. The FOIA request further sought records describing the processing of the request. *Id.*

⁷ As stated in the request, the asterisk (*) designated the standard use of "wildcards" in the search for responsive records, so "denaturalize*" would return the terms "denaturalize," "denaturalization," "denaturalized," et cetera. Plaintiff also offered to include variations of the term if the agency is unable to search for wildcards. *See* Ex. C.

28. Plaintiff sought “expedited processing” under 6 C.F.R. § 5.5(e)(1) and a full fee waiver pursuant to both 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k) (public interest waivers).

29. Plaintiff received a letter dated July 16, 2018 from Defendant confirming receipt of Plaintiff’s FOIA request on July 9, 2018 and assigning the request the control number COW2018000831. *See* Ex. D. Defendant sought “a 10-day extension for [Plaintiff’s] request pursuant to 5 U.S.C. § 552(a)(6)(B).” *Id.* Defendant denied Plaintiff’s request for a fee waiver. *Id.*

30. On July 20, 2018, Defendant sent an additional letter, denying Plaintiff’s request for expedited processing of the request on the grounds that Plaintiff does not “qualify under any category pursuant to 6 C.F.R. Part 5 § 5.5(e)(3).” *See* Ex. E. Defendant granted Plaintiff a “conditional” fee waiver contingent on a review of a sampling of responsive documents. *Id.*

31. On July 20, 2018, Plaintiff immediately appealed the both the denial of expedited processing and the grant of a “conditional” fee waiver. *See* Ex. F.

32. On October 29, 2018, Defendant denied the appeal with regards to expedited treatment without citing to any of the issues that Plaintiff raised on appeal.⁸ *See* Ex. G. Defendant also stated that there “will be no fees associated with the FOIA response.” *Id.*

33. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to determine whether to comply with Plaintiff’s FOIA request within twenty (20) working days after receipt of the request and to notify Plaintiff immediately of its determination, the reasons therefore, and the right to appeal any adverse determination. Accordingly, Defendant’s determination of Plaintiff’s FOIA request was due by August 6, 2018 at the latest.

⁸ Defendant’s letter states: “Please be advised that information regarding *[description]* in my judgment is not sufficient reason to process your request out of turn. (See, *[cite case law, if applicable]*).” Ex. G (emphasis added).

34. Even if Defendants are granted 10 extra days for “unusual circumstances,” their determination of the request was due by August 20, 2018.

35. As of the date of this Complaint, over 390 working days later, Defendant has not produced the requested documents or made a determination on Plaintiff’s FOIA request.

36. Because Defendant has failed to comply with the statutory time limit with respect to this FOIA request, Plaintiff is deemed to have exhausted any and all administrative remedies with respect to that request, pursuant to 5 U.S.C. § 552(a)(6)(C).

Request 3

37. On July 9, 2018, Plaintiff submitted a FOIA request to Defendant, requesting that the Defendant produce:

- a. “Any lease agreement for the offices described in multiple recent news reports in Los Angeles, where the USCIS’s efforts to denaturalize US citizens will be focused”;
- b. “The record referenced in the Miami Herald article linked above that describe the ‘algorithm’ used to select the ‘700,000 files’ the agency is now reviewing for denaturalization”; and
- c. Records describing the processing of the request.

See Request 3, Ex. H.

38. Plaintiff sought “expedited processing” under 6 C.F.R. § 5.5(e)(1) and a full fee waiver pursuant to both 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k) (public interest waivers).

39. Plaintiff received an acknowledgement letter dated July 31, 2018 from Defendant confirming receipt of Plaintiff’s FOIA request on July 9, 2018 and assigning the request the control

number COW2018000712. *See* Ex. I. Defendant denied expedited processing of the request and granted a conditional fee waiver. *Id.*

40. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to determine whether to comply with Plaintiff's FOIA request within twenty (20) working days after receipt of the request and to notify Plaintiff immediately of its determination, the reasons therefore, and the right to appeal any adverse determination. Accordingly, Defendant's determination of Plaintiff's FOIA request was due by August 6, 2018 at the latest.

41. As of the date of this Complaint, over 390 working days later, Defendant has not produced the requested documents or made a determination on Plaintiff's FOIA request.

42. Because Defendant has failed to comply with the statutory time limit with respect to this FOIA request, Plaintiff is deemed to have exhausted any and all administrative remedies with respect to that request, pursuant to 5 U.S.C. § 552(a)(6)(C).

CAUSES OF ACTION

COUNT I

Violation of the Freedom of Information Act 5 U.S.C. § 552(a) Request 1

43. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if set forth fully herein.

44. Plaintiff has exhausted all administrative remedies with respect to Request 1 under 5 U.S.C. § 552(a)(6)(C)(i).

45. Plaintiff has a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A), to the records he requested, and there is no legal basis for Defendant's failure to disclose them.

46. Upon receiving Plaintiff's Request 1, Defendant was obligated under 5 U.S.C. § 552(a) to promptly conduct a reasonable search for records responsive to Request 1 and to produce any responsive records.

47. As of the date of this Complaint and in violation of the deadlines set forth in 5 U.S.C. § 552(a)(6), Defendant has failed to disclose and release records in violation of 5 U.S.C. § 552(a).

48. Defendant has not identified any legal basis for their failure to timely conduct a reasonable search for, and to produce, responsive records.

49. The failure by Defendant to conduct reasonable searches for records responsive to Request 1 and to produce responsive records violates 5 U.S.C. § 552(a) and the regulations promulgated thereunder.

COUNT II
Violation of the Freedom of Information Act
5 U.S.C. § 552(a)
Request 2

50. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if set forth fully herein.

51. Plaintiff has exhausted all administrative remedies with respect to Request 2 under 5 U.S.C. § 552(a)(6)(C)(i).

52. Plaintiff has a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A), to the records he requested, and there is no legal basis for Defendant's failure to disclose them.

53. Upon receiving Plaintiff's Request 2, Defendant was obligated under 5 U.S.C. § 552(a) to promptly conduct a reasonable search for records responsive to Request 2 and to produce any responsive records.

54. As of the date of this Complaint and in violation of the deadlines set forth in 5 U.S.C. § 552(a)(6), Defendant has failed to disclose and release records in violation of 5 U.S.C. § 552(a).

55. Defendant has not identified any legal basis for their failure to timely conduct a reasonable search for, and to produce, responsive records.

56. The failure by Defendant to conduct reasonable searches for records responsive to Request 2 and to produce responsive records violates 5 U.S.C. § 552(a) and the regulations promulgated thereunder.

COUNT III
Violation of the Freedom of Information Act
5 U.S.C. § 552(a)
Request 3

57. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if set forth fully herein.

58. Plaintiff has exhausted all administrative remedies with respect to Request 3 under 5 U.S.C. § 552(a)(6)(C)(i).

59. Plaintiff has a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A), to the records he requested, and there is no legal basis for Defendant's failure to disclose them.

60. Upon receiving Plaintiff's Request 3, Defendant was obligated under 5 U.S.C. § 552(a) to promptly conduct a reasonable search for records responsive to Request 3 and to produce any responsive records.

61. As of the date of this Complaint and in violation of the deadlines set forth in 5 U.S.C. § 552(a)(6), Defendant has failed to disclose and release records in violation of 5 U.S.C. § 552(a).

62. Defendant has not identified any legal basis for their failure to timely conduct a reasonable search for, and to produce, responsive records.

63. The failure by Defendant to conduct reasonable searches for records responsive to Request 3 and to produce responsive records violates 5 U.S.C. § 552(a) and the regulations promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Matthew L. Hoppock respectfully prays that this Court:

- A. Declare that Defendant USCIS's withholding of the records requested is unlawful;
- B. Order Defendant USCIS to immediately conduct a full, adequate, and expedited search and make the requested records available to Plaintiff;
- C. Enjoin Defendant USCIS from continuing to withhold any and all non-exempt records responsive to the Requests;
- D. Grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- E. Grant Plaintiff such other relief as the Court deems just and proper.

Dated: February 5, 2020

Respectfully submitted,

/s/ Sirine Shebaya
Sirine Shebaya (D.C. Bar No. 1019748)
Amber Qureshi*
National Immigration Project of the
National Lawyers Guild
2201 Wisconsin Ave, NW, Suite 200
Washington, DC 20007
Tel: (202) 656-4788
sirine@nlpnl.org
amber@nlpnl.org

**application for pro hac vice admission forthcoming*