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10 UNITED STATES DISTRICT COURT FOR THE  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO/OAKLAND DIVISION  
13

14 PANGEA LEGAL SERVICES,

15 Plaintiff,

16 v.

17 U.S. CITIZENSHIP AND IMMIGRATION SERVICES,  
18

19 Defendant.  
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Case No. \_\_\_\_\_

**Complaint for Declaratory  
and Injunctive Relief Under  
the Freedom of Information  
Act**

**INTRODUCTION**

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2 1. Plaintiff Pangea Legal Services (Pangea) brings this action against U.S.  
3 Citizenship and Immigration Services (USCIS) under the Freedom of Information Act (FOIA), 5  
4 U.S.C. § 552, to compel the disclosure of records regarding USCIS’ adjudications of Form I-730,  
5 Refugee/Asylee Relative Petition (I-730 Petition). Individuals within the United States who hold  
6 either refugee or asylee status file I-730 Petitions on behalf of their spouse or unmarried  
7 child(ren) under the age of 21. Approval of an I-730 Petition permits the family member of the  
8 refugee/asylee to immigrate to the United States or, if already present, to legalize his or her  
9 status. Pangea’s FOIA request was filed on March 10, 2020 and has been pending for nearly  
10 three months. The statutory deadline for the agency to respond to Pangea’s FOIA request has  
11 expired and USCIS has failed to make a determination on the request in violation of FOIA.  
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13  
14 2. Pangea filed its FOIA request in the wake of USCIS’ unexpected delays in  
15 processing I-730 Petitions filed by Pangea on behalf of their asylee and refugee clients, reports of  
16 similar unexpected delays and referrals to Immigration and Customs Enforcement (ICE) by other  
17 immigration practitioners in the San Francisco Bay Area, and information shared by local USCIS  
18 officials with the Northern California Chapter of the American Immigration Lawyers  
19 Association regarding a 2019 USCIS policy change regarding adjudications, which, upon  
20 information and belief, USCIS has not made publicly available. With the records sought through  
21 the request, Pangea hopes to better understand USCIS’ adjudication of I-730 Petitions to assist  
22 their current and future asylee and refugee clients and their families, all of whom are desperate to  
23 be reunited with their families and/or legalize the status of their family members. Pangea also  
24 intends to share relevant records with other legal service providers representing similarly situated  
25 individuals. Pangea aims to make the records publicly available on its website in order to  
26 contribute to public understanding of how USCIS adjudicates I-730 Petitions.  
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**JURISDICTION AND VENUE**

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2 3. This Court has jurisdiction under 5 U.S.C. § 552, *et seq.* (FOIA statute), 28  
3 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

4 4. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1)  
5 because this is a civil action in which Defendant is a federal agency; Plaintiff’s principal place of  
6 business is located in this District; and there is no real property involved in this action.

7  
8 5. Defendant acknowledged receipt of Pangea’s FOIA request. On April 30, 2020,  
9 USCIS asked whether Pangea would narrow the FOIA request, which Pangea did that same day.  
10 Defendant has not made a determination with respect to the narrowed request. Defendant’s  
11 failure to make a determination within the statutory time period constitutes a constructive denial  
12 of Plaintiff’s FOIA request. Thus, Plaintiff is deemed to have exhausted its administrative  
13 remedy. 5 U.S.C. § 552(a)(6)(C)(i).  
14

15 **INTRADISTRICT ASSIGNMENT**

16 6. The claims of Plaintiff Pangea Legal Services arise in the county of San  
17 Francisco, in the city of San Francisco. Therefore, assignment to the San Francisco Division of  
18 this Court is proper under N.D. Local Rule 3-2(d).

19 **PARTIES**

20  
21 7. Plaintiff Pangea Legal Services is a tax-exempt, not-for-profit immigrant legal  
22 services organization under Section 501(c)(3) of the Internal Revenue Code, with its principal  
23 place of business at 350 Sansome Street, Suite 650, San Francisco, California 94101. At the time  
24 this Complaint is filed, Pangea has a staff of 12 attorneys, one community advocate, and one  
25 paralegal. Pangea represents over 300 clients facing deportation in removal proceedings before  
26 an immigration judge or in summary removal proceedings before a DHS officer, including cases  
27 on appeal before the Board of Immigration Appeals or the federal appeals courts. Pangea also  
28

1 represents asylees and refugees who are applying for affirmative immigration benefits. Pangea  
2 estimates that it represents approximately 20 clients who currently have I-730 Petitions pending  
3 before USCIS, and will file dozens more I-730 Petitions on behalf of clients in the years ahead.

4 8. Defendant USCIS is a component agency of the Department of Homeland  
5 Security (DHS) and is an agency within the meaning of 5 U.S.C. § 552(f)(1). Among other  
6 duties, USCIS is responsible for adjudicating I-730 Petitions. USCIS has in its possession,  
7 custody, and control the records requested by Plaintiff.

9 **LEGAL BACKGROUND**

10 ***FOIA***

11 9. FOIA requires each agency, upon a request for records: (a) to conduct a search  
12 reasonably calculated to uncover all responsive documents; (b) to make the records available in  
13 the form or format requested if they are readily reproducible in that format; and (c) to promptly  
14 make available responsive records. 5 U.S.C. § 552(a)(3)(A)-(C).

15  
16 10. If a FOIA request “was misdirected within DHS, the receiving component’s FOIA  
17 office shall route the request to the FOIA office of the proper component(s).” 6 C.F.R. § 5.4(c).

18 11. FOIA also requires the agency to make a determination of whether it will comply  
19 with the request within 20 business days. 5 U.S.C. § 552(a)(6)(A)(i); 6 C.F.R. § 5.6(c).

20  
21 12. If the agency finds that unusual circumstances apply, it must request, by written  
22 notice, no more than an additional 10 business days to issue its determination. 5 U.S.C.  
23 § 552(a)(6)(B)(i).

24 13. “In determining which records are responsive to a request, [an agency] ordinarily  
25 will include only records in its possession as of the date that it begins its search. If any other date  
26 is used, the component shall inform the requester of that date.” 6 C.F.R. § 5.4(a).

27 14. If an agency fails to comply with the time periods set forth in the statute, the  
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1 requester is “deemed to have exhausted his administrative remedies” and may seek judicial  
2 review. 5 U.S.C. § 552(a)(6)(C)(i). The agency will not be permitted to assess search fees if it  
3 fails to comply with the applicable time limits. 5 U.S.C. § 552(a)(4)(A)(viii)(I); 6 C.F.R.  
4 § 5.11(d)(2).

### 6 *I-730 Petitions*

7 15. The I-730 Petition allows individuals admitted to the United States as refugees or  
8 individuals granted asylum (asylees) in the United States, who were the principal applicants for  
9 their family, to petition for the same status for their spouse and/or unmarried child(ren) under the  
10 age of twenty-one (21) if the refugee admission or asylum grant occurred within the past two  
11 years. *See generally* 8 U.S.C. § 1157(c)(2) (refugees); 8 C.F.R. § 207.7 (refugees); 8 U.S.C.  
12 § 1158(b)(3) (asylees); 8 C.F.R. § 208.21 (asylees); *see also I-730, Refugee/Asylee Relative*  
13 *Petition*, USCIS, (last visited June 1, 2020), <https://www.uscis.gov/i-730>.

14 16. A separate I-730 Petition must be filed for each qualifying family member for  
15 whom the refugee or asylee petitions. 8 C.F.R. § 207.7(d); 8 C.F.R. § 208.21(c).

16 17. According to the I-730 Form Instructions, approval of the I-730 Petition for a  
17 spouse and/or child(ren) abroad does not guarantee visa issuance. *See Instructions for Form I-*  
18 *730*, USCIS, (last visited June 1, 2020), <https://www.uscis.gov/i-730>. The overseas individual  
19 must go through the immigrant visa process, including meeting other admissibility requirements.  
20 *See Follow-to-Join Refugees and Asylees*, U.S. Dep’t of State, (last accessed June 1, 2020),  
21 [https://travel.state.gov/content/travel/en/us-visas/immigrate/follow-to-join-refugees-and-](https://travel.state.gov/content/travel/en/us-visas/immigrate/follow-to-join-refugees-and-asylees.html)  
22 [asylees.html](https://travel.state.gov/content/travel/en/us-visas/immigrate/follow-to-join-refugees-and-asylees.html) (detailing process for obtaining visa following I-730 approval); 8 U.S.C.  
23 § 1157(c)(2).

24 18. Likewise, approval of an I-730 Petition filed by an asylee for a spouse and/or  
25 child(ren) within the United States does not guarantee asylum status. The spouse or child(ren)  
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1 must not be ineligible for asylum under 8 U.S.C. § 1158(b)(2)(A)(i)-(v). 8 C.F.R. § 208.21(a).

2 19. If the spouse or child of an asylee or refugee is in the United States and USCIS  
3 approves the I-730 Petition, the individual is eligible for employment authorization. 8 C.F.R.  
4 § 207.7(f); 8 C.F.R. § 208.21(c).

5 20. Beneficiaries of approved I-730 Petitions may apply to adjust their status to that  
6 of a lawful permanent resident after having been physically present in the United States for at  
7 least one year after receiving refugee or asylee status. *See generally* 8 U.S.C. § 1159; 8 C.F.R.  
8 § 209.  
9

10 **FACTUAL ALLEGATIONS**

11 **Pangea's FOIA Request**

12 21. On December 5, 2019 and February 6, 2020, the Northern California Chapter of  
13 the American Immigration Lawyers Association met with USCIS officials from the San  
14 Francisco Field Office of USCIS. At the December 5, 2019 meeting, reference was made to a  
15 March 2019 change in USCIS' standard policy and procedures for adjudicating I-730 Petitions.  
16 At the February 6, 2020 meeting, a memorandum regarding I-730 adjudications was discussed,  
17 although USCIS officials did not produce a copy.  
18

19 22. Pangea filed its FOIA request in the wake of USCIS' unresponsiveness regarding  
20 questions about the referenced memorandum and alleged policy change in adjudication of I-730  
21 Petitions, including for beneficiaries with prior removal orders. Pangea has several clients who  
22 are beneficiaries of pending I-730 Petitions and who have prior removal orders. In some of these  
23 cases, USCIS already has found that these beneficiaries demonstrated a reasonable fear of  
24 persecution or torture upon removal to their country of origin, and one has been granted  
25 withholding of removal by an immigration judge. Nevertheless, USCIS has not adjudicated the I-  
26 730 Petitions of which they are the beneficiaries, and Pangea's efforts to inquire about the  
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1 adjudication process with the USCIS San Francisco Field Office have been unsuccessful. In  
2 addition, in early 2020, several other immigration practitioners in the San Francisco Bay Area  
3 also reported that USCIS had not adjudicated I-730 Petitions their offices had filed where the  
4 beneficiary had a prior removal order.

5 23. On information and belief, USCIS’s adjudication of I-730 Petitions, including  
6 delays and referrals to ICE, departs from prior policy and practice.

7 24. On March 10, 2020, Pangea submitted a FOIA request via electronic mail to  
8 DHS, USCIS’ National Records Center, and the DHS Office of Inspector General.

9 25. The request seeks:

10 . . . disclosure of any and all internal guidance relating to the processing of I-730  
11 petitions, including, but not limited to internal policies, procedures, protocols,  
12 guidance, training materials, and memorandums relating to the processing of I-730  
13 petitions[; and]

14 . . . disclosure of any and all internal guidance relating to the processing of I-730  
15 petitions for beneficiaries with prior orders of removal, including, but not limited to  
16 internal policies, procedures, protocols, guidance, training materials, and  
17 memorandums relating to the processing of I-730 petitions.

18 Exhibit A, at 1.

19 26. The request further indicated that Pangea seeks the specified records “for the  
20 period between January 1, 2018 and the date of the final response to this request.” *Id* at 2.

21 27. Pangea’s FOIA request was received by DHS, USCIS’ National Records Center,  
22 and the DHS Office of Inspector General on March 10, 2020 as it was delivered by electronic  
23 mail. *Id.* at 1.

24 28. On March 23, 2020, DHS acknowledged receipt of the FOIA request on March  
25 10, 2020 and informed Pangea that, “[d]ue to the subject matter of [the] request,” it was  
26 “transferring this request to the FOIA Officer for the U.S. Citizenship and Immigration  
27 Services.” Exhibit B.

1           29.     On April 1, 2020, USCIS acknowledged receipt of the March 10, 2020 FOIA  
2 request, issued FOIA control number COW2020000433 for the request, and invoked the 10  
3 business-day unusual circumstances extension pursuant to 5 U.S.C. § 552(a)(6)(B). Exhibit C.

4           30.     On April 2, 2020, USCIS acknowledged receipt of DHS' March 23, 2020 transfer  
5 of the March 10, 2020 FOIA request, issued FOIA control number COW2020000426 for the  
6 transferred request, and again invoked the 10 business-day unusual circumstances extension  
7 pursuant to 5 U.S.C. § 552(a)(6)(B). Exhibit D.

8           31.     On April 30, 2020, a paralegal with USCIS' National Records Center contacted  
9 Pangea with respect to the transferred request, FOIA control number COW2020000426, by  
10 telephone and email to inquire whether Pangea would be willing to narrow the FOIA request.  
11

12           32.     That same day, Pangea responded by email that it would be willing to narrow the  
13 FOIA request to records seeking:

14                   copies of all internal DHS guidance, trainings, policies and memoranda used in the  
15 processing of I-730 petitions for beneficiaries with prior orders of removal in the  
16 time frame of January 1, 2018 to the date of the final response to this request.

17 Exhibit E.

18           33.     On May 1, 2020, the paralegal with USCIS' National Records Center responded  
19 by email that she would "respond to the offices performing the search for records with the  
20 clarification statement [Pangea] provided and using the time frame of **January 1, 2018 to**  
21 **March 3, 2020** to fulfill [the] request." Exhibit F (emphasis in original). The email claimed that,  
22 according to 6 C.F.R. § 5.4(a), USCIS "uses a 'cut-off' date to delineate the scope of a FOIA  
23 request by treating records created after that date as not responsive to that request," and therefore  
24 USCIS "will only include records in the possession of this agency as of March 3, 2020, the date  
25 we began the search for records." *Id.* The March 3, 2020 cut-off date is clearly erroneous as  
26 Pangea had not filed its FOIA request until March 10, 2020.  
27  
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1 34. On May 8, 2020, the DHS Office of Inspector General acknowledged receipt of  
2 the FOIA request on March 10, 2020 and informed Pangea that it did not maintain the requested  
3 records. Exhibit G. DHS Office of Inspector General is *not* a defendant to this action.

4 35. To date, Pangea has received no further correspondence from USCIS regarding its  
5 narrowed request.  
6

7 36. As of June 1, 2020, according to USCIS' online web portal, located at  
8 first.uscis.gov/#/check-status, which allows a requester to check the status of a pending FOIA  
9 request: (a) Pangea's request to USCIS' National Records Center (FOIA control number  
10 COW2020000433) was submitted on March 25, 2020, its place in the processing queue is 1,331  
11 of 1,410, and the estimated completion date is October 7, 2020; and (b) Pangea's request to  
12 DHS, which DHS later transferred to USCIS (FOIA control number for COW2020000426)  
13 (referenced as a referral FOIA request) was submitted on March 23, 2020, its place in the  
14 processing queue is 1,327 of 1,410, and the estimated completion date is October 5, 2020.  
15

16 37. As of the date of this complaint, after the expiration of the statutory time period  
17 for a response, USCIS has failed to notify Pangea (a) of any determination regarding the  
18 requests, including the scope of any responsive records USCIS intends to produce or withhold;  
19 or (b) whether USCIS will produce the requested records or demonstrate that the requested  
20 records are lawfully exempt from production.  
21

22 **CAUSES OF ACTION**

23 **COUNT ONE**

24 **Violation of FOIA, 5 U.S.C. § 552**

25 **Failure to Conduct an Adequate Search for Responsive Records**

26 38. Plaintiff incorporates the allegations in the paragraphs above as though fully set  
27 forth here.  
28

1 39. Defendant is obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search  
2 for records responsive to Plaintiff’s narrowed FOIA request.

3 40. Plaintiff has a legal right to obtain such records, and no legal basis exists for  
4 Defendant’s failure to search for them.

5 41. There is no basis for Defendant to limit cut off its search of records within its  
6 possession as of March 3, 2020 given that Plaintiff did not file its FOIA request until March 10,  
7 2020.

8 42. At a minimum, Defendant is obligated to search for records “in its possession as of  
9 the date that it begins its search.” 6 C.F.R. § 5.4(a).

10 43. Defendant’s online portal indicates that the agency has not begun a search of its  
11 records. Given the online portal indicates that Plaintiff’s narrowed FOIA request is 1,331 and 1,327  
12 in a queue of 1,410 requests, Defendant has not yet begun to process Plaintiff’s request.

13 44. Defendant’s failure to conduct a reasonable search for records responsive to  
14 Plaintiff’s narrowed FOIA request violates, at a minimum, 5 U.S.C. § 552(a)(3)(C), as well as the  
15 regulations promulgated thereunder.

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18 **COUNT TWO**  
19 **Violation of FOIA, 5 U.S.C. § 552**  
20 **Failure to Disclose Responsive Records**

21 45. Plaintiff incorporates the allegations in the paragraphs above as though fully set  
22 forth here.

23 46. Defendant is obligated under 5 U.S.C. § 552(a)(3) to promptly produce records  
24 responsive to Plaintiff’s narrowed FOIA request.

25 47. Plaintiff has a legal right to obtain such records, and no legal basis exists for  
26 Defendant’s failure to disclose them.

27 48. Defendant’s failure to disclose all responsive records violates, at a minimum, 5  
28

1 U.S.C. § 552(a)(3)(A), as well as the regulations promulgated thereunder.

2 **COUNT THREE**  
3 **Violation of FOIA, 5 U.S.C. § 552**  
4 **Failure to Timely Respond**

5 49. Plaintiff incorporates the allegations in the paragraphs above as though fully set  
6 forth here.

7 50. Defendant is obligated under 5 U.S.C. § 552(a)(6)(A)(i) to promptly produce  
8 records responsive to Plaintiff's FOIA request.

9 51. There is no basis for Defendant's online portal to indicate that Pangea's request to  
10 USCIS' National Records Center (FOIA control number COW2020000433) was submitted on  
11 March 25, 2020 when Plaintiff filed its FOIA request with USCIS' National Records Center by  
12 electronic mail on March 10, 2020 and it was received by the agency on that date.

13 52. There is no basis for Defendant's online portal to indicate that Pangea's request to  
14 DHS, which DHS later transferred to USCIS (FOIA control number for COW2020000426)  
15 (referenced as a referral FOIA request) was submitted on March 23, 2020 when Plaintiff filed its  
16 FOIA request with DHS by electronic mail on March 10, 2020 and it was received by the agency  
17 on that date.

18 53. Regardless whether the receipt date was March 10, 2020, the date Plaintiff  
19 emailed the request, or whether the receipt date was March 25 or March 23, 2020, the dates the  
20 online portal incorrectly lists, Defendant has not made a determination on Plaintiff's FOIA  
21 request within the statutory time period under FOIA.

22 54. Plaintiff has a legal right to obtain such records, and no legal basis exists for  
23 Defendant's failure to disclose them.

24 55. Defendant's failure to disclose all responsive records within the statutory time  
25 period violates, at a minimum, 5 U.S.C. §§ 552(a)(3)(A) and (a)(6)(A), as well as the regulations  
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1 promulgated thereunder.

2 **PRAYER FOR RELIEF**

3  
4 WHEREFORE, Plaintiff prays that this Court grant the following relief:

- 5 (1) Assume jurisdiction over this action;
- 6 (2) Declare that Defendant’s failure to make determinations on Plaintiff’s
- 7 FOIA request within the statutory time frame violates the FOIA and the
- 8 regulations promulgated thereunder;
- 9 (3) Declare that Defendant’s failure to promptly produce records responsive
- 10 to Plaintiff’s request violates FOIA and the regulations promulgated
- 11 thereunder;
- 12 (4) Order Defendant to expeditiously process and disclose all responsive,
- 13 nonexempt records, and enjoin Defendant from improperly withholding
- 14 records;
- 15 (5) Award costs and reasonable attorney fees incurred under 5 U.S.C.
- 16 § 552(a)(4)(E), and any other applicable law; and
- 17 (6) Grant such further relief as the Court deems just and proper.
- 18
- 19

20 Dated: June 1, 2020

21 Respectfully submitted,

22 By: *s/ Trina Realmuto*

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