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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MIRSAD HAJRO, JAMES R. MAYOCK

Plaintiffs,

v.

UNITED STATES CITIZENSHIP
AND IMMIGRATION SERVICES,
T. DIANE CEJKA, Director
USCIS National Records Center,
ROSEMARY MELVILLE,
USCIS District Director of San Francisco,
MICHAEL CHERTOFF, Secretary
Department of Homeland Security,
MICHAEL B. MUKASEY, Attorney General
Department of Justice
Defendants

Case No. CV 08 1350 RMW

**FIRST AMENDED
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

I. INTRODUCTION

Plaintiffs respectfully submit this First Amended Complaint for Declaratory and Injunctive Relief. Plaintiffs amend the original complaint as of right pursuant to Federal Rule of Procedure 15(a) (permitting amendment of pleading "once as a matter of course at any time before a responsive pleading is served.") The original complaint was filed on March 10, 2008.

This is an action under the Freedom of Information Act, 5 U.S.C. 552, as

1 *amended*, (“FOIA”) to order the production of agency records related to Plaintiff
2 Hajro which have been improperly withheld from him. This lawsuit also seeks
3 injunctive relief to enforce the strict time requirements under FOIA. Finally,
4 this action seeks to enforce the terms of a nationwide settlement agreement
5 related to FOIA entered into between Plaintiff Mayock and Defendants and their
6 predecessors for the benefit of aliens such as Plaintiff Hajro.

7 8 **II. PARTIES**

9 1. Plaintiff, Mirsad Hajro is a lawful permanent resident and resides in
10 San Jose, California. His alien registration number is A77 428 444. He
11 previously was the plaintiff in *Hajro v. Gonzales* No. C 06-7827 JW.

12 2. James R. Mayock is an immigration attorney who resides in San
13 Anselmo, California. He practices immigration law in San Francisco,
14 California.

15 3. Defendant United States Citizenship And Immigration Services
16 (“USCIS”) is an agency within the Department of Homeland Security which has
17 the custody and control of alien registration files. USCIS is also charged by law
18 with the duty of adjudicating N-400 applications for naturalization under
19 8 U.S.C. §1430 (a). USCIS is an agency within the meaning of 5 U.S.C. §552(f).

20 4. Defendant T. Diane Cejka is sued in her official capacity as the
21 Director of the USCIS National Records Center. The National Records Center
22 (“NRC”) is the central repository of the agency’s alien files and records
23 responds to FOIA requests for copies of these records. The NRC also is the
24 office which has possession of the records Plaintiffs seek.

25 5. Defendant Rosemary Melville is sued in her official capacity as the
26 District Director of the USCIS San Francisco District Office. The District

1 Director has oversight responsibilities over the San Jose Field Office where
2 Plaintiff Hajro's naturalization appeal is pending. In addition, the San
3 Francisco District Office was named in the original settlement agreement which
4 is a subject of this lawsuit.

5 6. Defendant Michael Chertoff is sued in his official capacity as the
6 Secretary of the Department of Homeland Security¹. In this capacity he has
7 responsibility for the administration and enforcement of the immigration laws
8 pursuant to 8 U.S.C. §1103(a) including the accurate, efficient and secure
9 processing of immigration benefits.

10 7. Defendant Michael B. Mukasey is sued in his official capacity as the
11 Attorney General of the United States and is charged with the authority and
12 duty to direct, manage, and supervise all employees and all files and records of
13 the Department of Justice. The Department of Justice signed a nationwide
14 settlement agreement on May 21, 1992 which is a subject of this lawsuit.

15 16 **III. JURISDICTION**

17 8. This Court has jurisdiction over this action pursuant to 5 U.S.C.
18 §552(a)(4)(B) (Freedom Of Information Act), 5 U.S.C. §551 *et seq.*, 5 U.S.C. §
19 555(b), §702, §704 and §706 (Administrative Procedure Act), and 28 U.S.C.
20 §1331 (federal question) as this action arises under the Freedom of Information
21 Act. 5 U.S.C. §552 *et seq.*

22 9. This Court has jurisdiction to enforce the settlement agreement
23 reached in *Mayock v. Immigration And Naturalization Service*, Civil No. C-85-

24
25 ¹Since March 1, 2003, the Department of Homeland Security is the
26 agency responsible for implementing the Immigration and Nationality Act. See
27 6 U.S.C. §271(b)(5) and 6 U.S.C. § 557.

1 5169-CAL (N.D. Cal), (“the Settlement Agreement”).

2 10. The aid of the Court is invoked under 28 USC §§ 2201 and 2202,
3 authorizing a declaratory judgment.

4 **IV. VENUE**

5 11. Venue is proper in the Northern District of California since a
6 substantial part of the events or omissions giving rise to the claim occurred in
7 Northern California.

8 **V. REMEDY SOUGHT**

9 12. Plaintiff Hajro seeks to have the Court compel Defendants to
10 provide him with a copy of all withheld material from his alien registration file
11 (78 pages in full, and 8 pages in part) pursuant to his FOIA request.

12 13. Plaintiffs seek to have the Court issue an order directing Defendants
13 to amend “Track Three” processing of FOIA requests (see ¶20) to comply with
14 the Settlement Agreement’s procedures for expedited processing.

15 14. Plaintiffs seek to have the Court issue an order directing Defendants
16 to amend “Track Three” processing of FOIA requests (see ¶20) to provide for
17 priority processing upon proof that substantial due process rights of the
18 requestor would be impaired by the failure to process immediately.

19 15. Plaintiffs seek a permanent injunction requiring Defendants to:
20 A) provide a copy of a requestor’s file within the twenty day time limit
21 mandated in 5 U.S.C. §552(a)(6)(A);
22 B) give written notice if a twenty day extension of time is needed in unusual
23 circumstances as mandated by §552(a)(6)(B);
24 C) establish a procedure to advise a requestor of his/her right and the
25 procedures to appeal the decision if a request for expedited processing is
26 denied.

VI. STATEMENT OF FACTS

Plaintiff James Mayock

16. Plaintiff Mayock has filed several FOIA requests on behalf of his clients seeking copies of their alien registration files. It has taken more than 20 days for Defendants to produce the records in these cases.

17. Plaintiff Mayock was the plaintiff in *Mayock v. I.N.S.*, 714 F. Supp 1558 (N.D. Cal.1989), rev'd and remanded *sub nom. Mayock v. Nelson*, 938 F. 2d 1006 (9th Cir. 1991).

18. As a result of the litigation in that case, Plaintiff Mayock entered into a Settlement Agreement with Defendants and their predecessors². (*Exhibit A*).

19. Under the terms of the Settlement Agreement:

Expedited Processing for Demonstrated Exceptional Need or Urgency

A requestor who demonstrates, consistent with applicable guidances and law, an "exceptional need or urgency", shall have his/her request processed out of turn on an "expedited" basis. The currently applicable guidance...provides that FOIA offices are to grant such treatment when the requestor demonstrates that:

- a. an individual's life or personal safety would be jeopardized by the failure to process a request immediately; or
- b. substantial due process rights of the requestor would be impaired by the failure to process immediately, and the information sought is not otherwise available.

Procedures for Expedited Processing

²The Settlement Agreement is published in a law review article: "*Freedom Of Information Act Response Deadlines: Bridging The Gap Between Legislative Intent And Economic Reality*" by Eric Sinrod, *The American University Law Review*, Winter 1994 , Volume 43, Number 2, p. 325.

1 A request for expedited processing which demonstrates either of
2 the above circumstances shall be processed immediately.

3 A request which fails to meet the above criteria shall be denied
4 expedited processing and shall be processed on the appropriate
5 track. A requestor must be notified in writing of the decision not to
6 grant the request for expedited treatment, and advised of his/her
7 right and the procedures to appeal the decision...

8 20. Currently, Defendants use a multi track system for responding to
9 FOIA requests, consisting of three tracks:

10 *Track One:*³ Simple requests.

11 *Track Two:*⁴ Complex inquiries that normally necessitate additional search and
12 review time.

13 *Track Three:*⁵ Expedited processing for individuals scheduled for a hearing
14 before an immigration judge.

15 21. Tracks One and Two were implemented on April 29, 1992. (*Exhibit B*).

16 22. "Track Three" was implemented on March 30, 2007. (*Exhibit C*)

17 23. On January 26, 2008, pursuant to paragraph 10 of the Settlement
18 Agreement, Plaintiff Mayock sent a notification of breach of the Settlement
19 Agreement to the District Director of the USCIS San Francisco District Office.
20 (*Exhibit D*)

21 ³"Track 1 is for less complex requests that can be processed in 20
22 working days or less." 72 Fed. Reg. 9017 (2/28/07)

23 ⁴"Track 2 is for complex requests that require more than 20 working days
24 to process and that include searching and line-by-line review of numerous
25 pages of information." 72 Fed. Reg. 9017 (2/28/07)

26 ⁵Referred to as the "Notice To Appear" track. 72 Fed. Reg. 9017(2/28/07)

1 24. Plaintiff Mayock has received no reply to this letter.

2 25. On information and belief, FOIA requests are no longer processed
3 by local districts, such as the San Francisco District Office.

4 26. Plaintiff Mayock was not notified by Defendants of this change of
5 procedure under the Settlement Agreement and is unaware of the exact date
6 that this change in practice occurred.

7 27. Currently, all FOIA requests for files of aliens compiled by USCIS
8 are processed in one centralized location at the National Records Center in
9 Lee's Summit, Missouri.

10 28. On January 26, 2008, Plaintiff Mayock also sent a notification of
11 breach to the Director of the National Records Center of the Department of
12 Homeland Security. (*Exhibit D*)

13 29. Plaintiff Mayock has received no reply to this letter.

14
15 Plaintiff Mirsad Hajro

16 30. Plaintiff Hajro is a beneficiary under the Settlement Agreement.

17 31. Plaintiff Hajro applied for naturalization on November 6, 2003 under
18 8 U.S.C. § 1430(a). (*Exhibit E*)

19 32. Plaintiff Hajro was interviewed on March 4, 2004 at the USCIS Field
20 Office in San Jose, California.

21 33. Plaintiff Hajro made several inquiries about the status of his
22 citizenship application and was informed each time that his application could
23 not be acted upon because the FBI background name check was pending.

24 34. Plaintiff Hajro filed a Petition For Hearing On Naturalization
25 Application Under 8 U.S.C. §1447(b) *in pro per* on December 21, 2006.

26 35. The case was assigned to the Honorable James Ware. (*Hajro v.*

1 *Gonzales* C 06-7827 JW).

2 36. On or about August 24, 2007, the parties filed a joint “Stipulation
3 For Remand and Dismissal” stating that “the necessary name check and FBI
4 background check investigations have been completed, and that USCIS is now
5 ready to complete the adjudication and issue a decision on the Plaintiff’s
6 application for Naturalization.”

7 37. Pursuant to this stipulation, Judge Ware dismissed the case
8 without prejudice on August 30, 2007. (*Exhibit F*)

9 38. Plaintiff Hajro’s application for naturalization was denied on October
10 9, 2007 based on alleged evidence in his alien registration file. (*Exhibit G*)

11 39. Plaintiff Hajro filed an appeal of this decision under 8 U.S.C. §1447(a)
12 on or about November 9, 2007 and requested a hearing on Form N-336.
13 (*Exhibit H*) By law, USCIS must schedule a review hearing before an
14 immigration officer, within a reasonable period of time not to exceed 180 days
15 from the date upon which the appeal is filed. 8 CFR § 336.2(b)

16 40. Plaintiff Hajro filed a FOIA request for a copy of his alien registration
17 file on November 19, 2007. (*Exhibit I*)

18 41. Plaintiff Hajro specifically requested expedited processing pursuant
19 to the Settlement Agreement.

20 42. Plaintiff Hajro’s FOIA request was accompanied by a letter from his
21 lawyer dated November 7, 2007 which explained that Plaintiff Hajro needed a
22 copy of the file to see the alleged evidence upon which the denial was based
23 and prepare his appeal. (*Exhibit J*)

24 43. Since substantial due process rights of the requestor would be
25 impaired by the failure to process immediately, and the information sought was
26 not otherwise available, the letter argued that this request qualified for

1 expedited processing under the terms of the Settlement Agreement.

2 44. On November 19, 2007 Defendants issued a letter denying Plaintiff
3 Hajro's request for expedited processing because Plaintiff Hajro is not
4 scheduled for a hearing before an immigration judge. (*Exhibit K*)

5 45. On November 19, 2007 Defendants issued another letter
6 acknowledging receipt of Plaintiff Hajro's FOIA request and placing it on the
7 "complex track". His case number is NRC2007075364. (*Exhibit L*)

8 46. On information and belief, Plaintiff alleges that the processing time
9 for both "Track One" and "Track Two" cases is currently up to 18 months.
10 (*Exhibit M*)

11 47. On information and belief, Plaintiff alleges that the vast majority of
12 requests for alien registration files involve less than 100 pages of material in a
13 single file located at a single location at the National Records Center, and do
14 not require consultation with another agency or the search of other offices.

15 48. After the passage of more than twenty days since Plaintiff Hajro filed
16 his FOIA request, he had not received a copy of his file. Plaintiff Hajro treated
17 this as an adverse determination pursuant to 6 C.F.R. §5.6(c) and 5 U.S.C.
18 §552(a)(6)(A) and filed an administrative appeal of this denial pursuant to 6
19 CFR. §5.9(a)(1) on or about December 26, 2007. (*Exhibit N*)

20 49. On March 10, 2008, Plaintiffs filed their initial Complaint For
21 Declaratory And Injunctive Relief.

22 50. On March 27, 2008, Plaintiff Hajro received Defendants' denial of
23 the appeal of the request for expedited processing. This denial was dated
24 March 21, 2008. (*Exhibit O*).

25 51. On March 27, 2008, Plaintiff Hajro received a response to his FOIA
26 request. Defendants provided Plaintiff Hajro with 356 pages in their entirety

1 and 8 pages were released in part. Defendants withheld 78 pages in full.
2 Defendants' response was dated March 4, 2008 (*Exhibit P*).

3 52. On May 12, 2008 Plaintiff Hajro submitted an appeal of the March 4,
4 2008 decision withholding material from Plaintiff's alien registration file.
5 (*Exhibit T*) The appeal stated in part:

6 My client is awaiting the scheduling of a hearing on the denial of
7 his naturalization application under Section 336 of the
8 Immigration & Nationality Act. This denial was based on the fact
9 that my client allegedly falsely testified that he had no foreign
10 military service when questioned at his adjustment of status
11 interview on November 13, 2000 in Boise, Idaho...

12 In the 364 pages provided, the government has provided no
13 evidence of this alleged testimony regarding foreign military
14 service. Since the government has denied my client's application
15 for naturalization based on this alleged testimony, one must
16 assume that some evidence of this testimony exists in the file,
17 otherwise the denial would be based on no evidence. For this
18 reason, we are seeking all of the withheld material (78 pages in
19 full, and 8 pages in part) to see if this withheld material contains
20 any such evidence. In particular, we need to see the interviewing
21 officer's notes taken at the interview on November 13, 2000.
22 Reliance on any such "secret evidence" to deny my client's
23 application for naturalization would be a violation of my client's
24 constitutional right to Due Process. For this reason, if any
25 evidence exists of this alleged testimony, it must be disclosed.

26 We do not insist on the releasing of all withheld material under the
27 following conditions: If the government determines that only some
28 pages of the withheld material contains such evidence, we will
accept these pages as long as the government confirms that no
other such evidence exists. In the alternative, we will accept a
written confirmation from the government that no such evidence
exists in any of the withheld material.

53. More than twenty days have passed since this appeal was filed and
no reply has been received. Plaintiff Hajro has treated this as a denial of his
appeal pursuant to 5 U.S.C. §552(a)(6)(A).

54. The delays in responding to Plaintiff Hajro's FOIA request are not
attributable to Plaintiff Hajro.

55. On May 13, 2008 Plaintiff Hajro filed his brief in the underlying

1 appeal of the denial of his citizenship. (*Exhibit Q*) As of this date, Plaintiff is
2 awaiting the scheduling of this appeal hearing pursuant to 8 U.S.C. §1447(a)
3 and 8 CFR § 336.2.

4 56. Plaintiff Hajro has been and will continue to be irreparably harmed
5 because of the unreasonable delay of Defendants in providing the information
6 requested under the Freedom Of Information Act because without a complete
7 copy of the file, Plaintiff Hajro's attorney has not been able to prepare his
8 appeal adequately.

9 57. Plaintiff Hajro has exhausted the applicable administrative remedies
10 with respect to the FOIA request to USCIS.

11 12 **VII. FIRST CAUSE OF ACTION**

13 58. Defendants' current multi track policy allows expedited processing
14 only in cases for aliens scheduled for a hearing before an immigration judge.
15 (*Exhibit R*). This violates the Settlement Agreement in that it does not provide a
16 procedure for a requestor to demonstrate that either A) their life or personal
17 safety would be jeopardized by the failure to process a request immediately or
18 B) substantial due process rights would be impaired by the failure to process
19 immediately in cases other than immigration judge hearings.⁶

20 59. Defendants have undermined the fundamental interests protected

21
22 ⁶Examples of such cases include, but are not limited to: appeals of
23 denials of citizenship under 8 U.S.C. §1447, appeals to the Board of
24 Immigration Appeals under 8 C.F.R. §1003.3 (See *Exhibit S, Declaration of*
25 *Robert Pauw*), appeals to the Administrative Appeals Office under 8 C.F.R.
26 §103.3, appeals to the Legalization Appeals Office under 8 C.F.R. §245a.2(p),
responses to "Requests for Evidence" under 8 CFR §103.2(b)(8), and persons
with final orders of deportation filing a motion to reopen or reconsider under 8
C.F.R. §1003.2.

1 by the Settlement Agreement by gutting its essential due process protections
2 for aliens who need copies of their files in order to have due process for
3 appeals, motions to reopen, and fair hearings in situations *other than hearings*
4 *before an immigration judge*.

5 60. Plaintiffs allege that both "Track Three" and 6 C.F.R. §5.5(d) violate
6 the Settlement Agreement in that they do not provide a requestor for expedited
7 processing an opportunity to demonstrate that substantial due process rights
8 would be impaired by the failure to process immediately, and the information
9 sought is not otherwise available.

10 61. In this case, the information sought is not otherwise available
11 because there is no discovery in immigration proceedings.

12 13 **VIII. SECOND CAUSE OF ACTION**

14 62. The November 19, 2007 denial of expedited processing of Plaintiff
15 Hajro's FOIA request violated the Settlement Agreement in that 1) Plaintiff
16 Hajro demonstrated that substantial due process rights (i.e. the right to a fair
17 hearing under 8 U.S.C. 1447(a)) would be impaired without access to the
18 evidence used to deny his citizenship application and 2) the November 19,
19 2007 denial failed to advise Plaintiff Hajro of his right or any procedures to
20 appeal the decision as required by the Settlement Agreement.

21 22 **IX. THIRD CAUSE OF ACTION**

23 63. The failure to provide Plaintiff Hajro with the requested material, i.e.
24 a copy of his alien registration file, within 20 days of his request violated 5
25 U.S.C. §552(a)(6)(A) and 6 C.F.R. §5.6(b).

X. FOURTH CAUSE OF ACTION

64. The failure to notify Plaintiff Hajro of the “unusual circumstances” which prevented the agency from processing his request within the 20 day statutory limit and the failure to notify him of the date by which processing of his request could be expected to be completed violated 6 C.F.R. § 5.5(c)(1).

65. Plaintiff Hajro alleges that Defendants cannot demonstrate “unusual circumstances” as defined in 5 U.S.C. § 552(a)(6)(B) to extend the twenty day statutory time limit in Plaintiff Hajro’s case.

XI. FIFTH CAUSE OF ACTION

66. Plaintiffs allege that Defendants have a pattern or practice of failing to comply with the time requirements set forth in 5 U.S.C. § 552(A), (B), (C).

XII. SIXTH CAUSE OF ACTION

67. Defendants’ action in withholding the requested information was arbitrary and capricious under 5 U.S.C. § 551 *et seq.*, 5 U.S.C. § 555(b), § 702, § 704 and § 706, the Administrative Procedure Act.

68. Defendants have willfully and unreasonably delayed and refused to provide Plaintiffs with the information requested both under FOIA and the terms of the Settlement Agreement.

69. Plaintiff Hajro has a right to a copy of the requested documents under both the Settlement Agreement and 5 U.S.C. § 552(a)(3).

70. There is no legal basis for Defendants’ failure to provide Plaintiff Hajro a copy of the requested material in a timely manner.

71. The withheld material from Plaintiff’s alien registration file is not exempt from disclosure under the Freedom of Information Act.

XIII. SEVENTH CAUSE OF ACTION

72. Withholding such evidence from Plaintiff violates Plaintiff's due process rights because it prevented Plaintiff's attorney from adequately preparing his brief on appeal. Continued withholding of such evidence violates Plaintiff's right to a fair hearing and fundamental fairness.

XIV. EIGHTH CAUSE OF ACTION

73. Defendants' "Track Three" policy violates the Fifth Amendment guarantee of Equal Protection under the United States Constitution. Aliens whose substantial due process rights would be impaired by failure to process immediately are treated arbitrarily under this policy and the distinction created lacks a rational basis. The policy creates two classes of aliens both of whom require expedited processing of their FOIA requests to ensure due process in the treatment of their immigration cases, except for the fact that members of one class are in removal proceedings.

XV. NINTH CAUSE OF ACTION

74. On February 28, 2007 Defendants announced in the Federal Register a new "Track Three" policy for processing FOIA requests effective March 30, 2007. (*Exhibit C*) This new policy constituted a substantive rule that departed from prior policy and practice.

75. Defendants implemented this rule without providing a general notice of proposed rule making and a period for public comment, even though the new policy represents a significant change from the Mayock Settlement Agreement and has had an adverse impact on individuals not in removal hearings who were previously allowed expedited processing under the Mayock Settlement

1 Agreement.

2 76. Defendants' failure to provide a general notice of proposed rule
3 making and public comment period prior to implementing the new "Track
4 Three" policy violates the Administrative Procedure Act, 5 U.S.C. §553.

5
6 **XVI. PRAYER**

7 77. WHEREFORE, Plaintiffs pray this Court:

8 (A) Find that Defendants' multi track policy is in violation of the terms of
9 the Settlement Agreement in that it does not provide priority treatment for
10 cases where the requestor demonstrates that 1) an individual's life or personal
11 safety would be jeopardized by the failure to process a request immediately; or
12 2) substantial due process rights of the requestor would be impaired by the
13 failure to process immediately.

14 (B) Order Defendants to amend "Track Three" to comply with the terms of
15 the Settlement Agreement concerning the procedures for Expedited Processing
16 of FOIA requests so that all aliens (not just those scheduled for a hearing
17 before an immigration judge) who can demonstrate that substantial due
18 process rights would be impaired by the failure to process immediately, are
19 considered for expedited processing.

20 (C) Order Defendants to amend "Track Three" processing of FOIA
21 requests to provide for priority processing upon proof that substantial due
22 process rights of the requestor would be impaired by the failure to process
23 immediately.

24 (D) Find that 6 C.F.R. §5.5(d) violates the Settlement Agreement in that
25 this regulation does not provide a requestor for expedited processing an
26 opportunity to demonstrate that substantial due process rights would be

1 impaired by the failure to process immediately.

2 (E) Find that Defendants are in violation of the Freedom Of Information
3 Act by failing to comply with the time requirements set forth in 5 U.S.C. §
4 552(a)(6)(A), (B), and (C).

5 (F) Issue a permanent injunction requiring Defendants to 1) provide a
6 copy of a requestor's file within the twenty day time limit mandated in 5 U.S.C.
7 §552(a)(6)(A); 2) give written notice if a twenty day extension of time is needed
8 in unusual circumstances as mandated by §552(a)(6)(B); establish a procedure
9 to advise a requestor of his/her right and the procedures to appeal the decision
10 if a request for expedited processing is denied.

11 (G) Find that "Track Three" violates the equal protection of the laws as
12 guaranteed by the Fifth Amendment of the United States Constitution.

13 (H) Find that Defendants violated the Administrative Procedure Act, 5
14 U.S.C. §553, in failing to provide a general notice of proposed rule making and
15 a period for public comment period prior to implementing "Track Three".

16 (I) Find that the failure to provide Plaintiff Hajro with the requested
17 material within 20 days of his request violated 5 U.S.C. §552(a)(6)(A) and
18 6 C.F.R §5.6(b).

19 (J) Find that the failure to provide notification of the "unusual
20 circumstances" which prevented the agency from processing Plaintiff Hajro's
21 request within the 20 day statutory limit and the failure to notify him of the
22 date by which processing of his request can be expected to be completed
23 violated 6 CFR § 5.5(c)(1).

24 (K) Find that Defendants' denial of Plaintiff Hajro's request violated 5
25 U.S.C. §552(a)(6)(E) in that the denial failed to provide for expeditious
26 consideration of an administrative appeal of the denial of expedited processing.

1 (L) Find that the agency action in this case was “arbitrary and
2 capricious”.

3 (M) Order Defendants to provide Plaintiff Hajro with a complete copy of
4 the withheld material from his alien registration file; or

5 (N) Conduct an in camera review of the withheld material. 1) If the Court
6 determines that none of the withheld material contains any evidence of “false
7 testimony” by Plaintiff Hajro, then make a factual finding to this effect. 2) If the
8 Court determines that some of the pages of the withheld material contains
9 evidence related to the government’s claim of “false testimony”, then order the
10 government to release only this evidence and make a factual finding that no
11 other such evidence exists.

12 (O) Award Plaintiff reasonable attorney’s fees and costs of court and

13 (P) Grant such other relief at law and in equity as the Court may deem
14 just and proper.

15
16 DATED: June 10, 2008

17 _____
18 _____ /s/ _____
19 Kip Evan Steinberg
20 Attorney for Plaintiffs HAJRO & MAYOCK
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LIST OF EXHIBITS

(pp. 1-84)

- A The Settlement Agreement
- B Policy on Priority for Processing FOIA/PA Requests dated April 29, 1992
- C Announcement of “Track Three” in Federal Register: 72 FR 9017 (February 28, 2007)
- D Notification of Breach letter dated January 26, 2008
- E Receipt for naturalization application filed November 6, 2003
- F Judge Ware’s Order dismissing 1447(b) lawsuit August 30, 2007
- G Denial of naturalization application dated October 9, 2007
- H Form N-336 requesting a hearing to appeal denial
- I FOIA request mailed November 8, 2007
- J Letter dated November 7, 2007 requesting expedited processing attached to FOIA request
- K Letter dated November 19, 2007 denying expedited processing of FOIA request
- L Letter dated November 19, 2007 acknowledging receipt of FOIA request and placing it on the “complex track”
- M Samples of “Track One” and “Track Two” FOIA cases showing current backlog up to 18 months
- N FOIA appeal dated December 23, 2007
- O Defendants’ three track system for processing FOIA requests as described on website USCIS.gov
- P Defendants’ denial of Plaintiff Hajro’s appeal of the request for

1 expedited processing dated March 21, 2008.

2 Q Cover letter for Defendants' FOIA response dated March 4, 2008.

3 R Plaintiff Hajro's appeal brief in the 8 U.S.C. §1447(a) proceedings
4 contesting the denial of his citizenship application, filed May 13,
5 2008.

6 S Declaration of attorney Robert Pauw.

7 T FOIA appeal dated May 12, 2008
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