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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 PVT** **OPPOSITION TO MOTION TO DISMISS FOR LACK OF JURISDICTION** **Date: February 10, 2009** **Time: 10 a.m.**

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ARGUMENT

This brief will address each of Defendants' arguments and demonstrate that this Court has subject matter jurisdiction.

A. The 1992 Settlement Agreement Has Not Been Superceded By Statute

This Court can enforce the 1992 Settlement Agreement. The Electronic Freedom of Information Amendments of 1996, Pub. L. 104-231, 110 Stat. 3048 ("EFOIA") did not supercede the Settlement Agreement.

1. History of Expedited Processing under FOIA

A. The Position of the Courts

Because of chronic delays in FOIA processing by agencies, the courts have long recognized the need for priority processing "where exceptional need or urgency is shown". *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605, 616 (D.C. Cir. 1976) First in - first out processing of FOIA requests based on date of filing is the norm, however, federal courts have the discretion to create a priority preference in processing. *Exner v. FBI*, 542 1121, 1123 (9th Cir. 1976)

The "exceptional need or urgency" standard for expedited processing is well established in case law: *Cleaver v. Kelley*, 427 F. Supp. 80, 81-82 (D.D.C. 1976) (Eldrige Cleaver's need for records to be used in his upcoming criminal trial constituted an exceptional and urgent need requiring expedited

processing); *Ray v. Dep't of Justice*, 770 F. Supp. 1544, 1550-1551 (S.D. Fla. 1990) (plaintiff's request for information needed in pending deportation hearings constituted urgent need and should be given priority processing); *Florida Rural Legal Services v. U.S. Dept. Of Justice*, No. 87-1264 (S.D. Fla. Feb. 10, 1988) (cited in *Ray, supra,* at 1550) (Urgent need found and priority processing ordered where a legal organization requested information from INS to assist aliens in filing applications for lawful immigration status); *Lisee v CIA*, 741 F. Supp. 988, 989 (D.D.C. 1990) ("The types of cases in which the requisite urgency has been established involve circumstances where the requester has no opportunity or ability to influence or control the events which created the urgency"); *Edmond v. U.S. Attorney's Office*, 959 F. Supp 1 (D.D.C. 1997) (no exceptional need or urgency since there was no time sensitive need for the documents); *Mayock v. INS*, 714 F. Supp 1558 (N.D. Cal 1989) (Priority processing ordered due to urgent need for information in pending deportation hearings) rev'd and remanded *sub nom. Mayock v. Nelson*, 938 F. 2d 1006 (9th Cir. 1991) (for additional fact finding)

B. The Position Of The Government

The Department of Justice ("DOJ") Office of Information and Privacy published guidance on "When to Expedite FOIA Requests" in 1983 (See First Amended Complaint "FAC", Exh. B at 21A)[1] The DOJ adopted the *Open America* standard of "exceptional need or urgency" and interpreted this to mean that FOIA processing should be expedited in the case of a threat to life or safety or a showing of a loss of substantial due process rights. The Immigration and

[1]http://www.usdoj.gov/oip/foia_updates/Vol_IV_3/page3.htm

Naturalization Service ("INS") issued a Memorandum on April 29, 1992 which also set forth this guidance. (See FAC Exh. B at 17-20) The DOJ also represented this as their position before the courts: See, e.g., *Mayock v. Nelson*, 938 F. 2d 1006, 1008 (9th Cir. 1991); *Morrow v. FBI*, 2 F.3d 642, 644 (5th Cir. 1993).

C. The Settlement Agreement

As a result of the Mayock litigation, Plaintiff Mayock entered into a Settlement Agreement with the government in 1992. The Settlement Agreement states:

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

This language mirrored the "exceptional need or urgency" standard on expedited processing set forth in the 1983 DOJ FOIA Update guidance on "When to Expedite FOIA Requests".

2. The Electronic Freedom of Information Amendments of 1996

In 1996 Congress passed the EFOIA Amendments[2] which strengthened

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[2]A "redlined" version of FOIA reflecting the 1996 amendments is available at http://www.usdoj.gov/oip/foia_updates/Vol_XVII_4/page2.htm

the rights of requestors vis-a-vis agencies and placed greater demands on agencies to ensure more timely responses. [3]

In addition to the laundry list of improvements to FOIA listed in footnote three, EFOIA also required agencies to issue regulations authorizing "expedited access" for requestors who demonstrate a "compelling need" for a speedy response. The government argues that EFOIA superceded the Settlement

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[3]The 1996 Amendments:

- Doubled the time limit for agency response from ten to twenty working days.
- Clarified that routine, predictable agency backlogs of FOIA requests do not constitute "exceptional circumstances," unless the agency can demonstrate reasonable progress in efforts to reduce its backlog.
- Encouraged agencies to utilize multi-track, rather than just "first-in, first-out" processing of FOIA requests.
- Required an agency to negotiate with a requestor to limit the scope of a request or arrange an agreed-upon time frame for processing the request, when the request cannot be processed in timely fashion under the "unusual circumstances" extension provision.
- Required agencies, in denying FOIA requests, to make reasonable efforts to estimate the volume of any denied material and provide such estimates to the requestor.
- Required additional information in the agencies' annual reports to Congress regarding their implementation of FOIA, and required availability of such reports to the public by computer telecommunications or other electronic means.
- Required agencies to make publicly available, upon request, any reference materials or guides concerning requesting information from such agencies.
- Clarified the definition of "record" to include those kept in electronic format.
- Clarified the term "search" to expressly include the electronic review of agency records.
- Required the creation of "electronic reading rooms" to make records created after Nov. 1, 1996 available on an agency's website.
- Required agencies to provide information to requesters in the form requested, including electronic forms.

Agreement and, implicitly, the *Open America* standard of "exceptional need or urgency"[4] and therefore limits expedited processing of all cases, no matter how long they are pending, to the statutory definition of "compelling need" in 5 U.S.C.§552(a)(6)(E)(v)[5]. Plaintiffs argue that both the Settlement Agreement and *Open America* standard survived EFOIA. [6]

A. The *Open America* standard of "exceptional need or urgency" survived EFOIA

As noted above, Congress' intent in passing EFOIA was to expand the public's access to government documents and to respond to agency complaints that the ten day response time was too short. Plaintiffs submit that Congress did not intend to expand the rights of FOIA applicants in every other area of EFOIA but reduce their rights when it came to requests for expedited processing. This is illogical and goes against the spirit of reform in EFOIA.

One of the purposes of EFOIA was to ensure agency compliance with statutory time limits. Aware of agency complaints that ten days was unrealistic and too short a time period, Congress expected that most cases would be processed within the newly expanded response time of twenty days. Now that the statutory response time was being expanded to twenty days[7],

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[4] (I) life or personal safety would be jeopardized; (II) substantial due process rights would be impaired.

[5](I) pose an imminent threat to life or physical safety; (II) urgent need for the news media to inform the public about government activity.

[6]EFOIA did not overturn *Open America*, but clarified its holding with respect to the exceptional circumstances-due diligence exception in 5 U.S.C. § 552(a)(6)(C). Senate Report 104-272 at pp. 28-29.

[7]Thirty days are possible with the ten day extension allowed in "unusual circumstances" under 5 U.S.C. §552(a)(6)(B). Legacy INS provided a ten day response period. 8 C.F.R. §103.10(c).

Congress wanted to be sure that in those rare urgent cases where even twenty days would be too long to wait, there was a mechanism in the law to quickly identify and process those cases expeditiously. Plaintiffs respectfully submit that the new "compelling need" test was created to provide a mechanism of relief for cases that were so urgent that they could not wait the statutory period of twenty days.

To accept the government's position, one would have to believe that Congress intended to expand requestor's FOIA rights in all the areas listed above except expedited processing. Under the government's reading, no longer could FOIA applicants request expedited processing due to "exceptional need or urgency" even when the government has failed to meet EFOIA's statutory deadlines for the production of documents. The new "compelling need" test provides no relief for aliens who need time sensitive information from their alien registration files even where delay would result in harm to substantial due process rights[8] such as *Proyecto San Pablo v INS,* 2001 WL 36167472 (D. Ariz.) *4, opinion on remand from *Proyecto San Pablo v INS*, 189 F.3d 1130 (9th Cir. 1999) or *Florida Rural Legal Services v. U.S. Dept. Of Justice*, No. 87-1264 (S.D. Fla. Feb. 10, 1988), (cited in *Ray, supra,* at 1550). To conclude that Congress intended to diminish requestor's rights in this way would be inconsistent with the thrust of EFOIA.

B. The Settlement Agreement survived EFOIA

The government claims that EFOIA superceded the Settlement Agreement.

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[8]Plaintiff Hajro is one such alien. He requested a copy of his alien registration file on an expedited basis in order to prepare his citizenship appeal. See FAC Exh. H-K. This was necessary because there is no right to discovery in immigration proceedings. FOIA is the sole method available to aliens to obtain information from the government.

This Agreement expressly adopted the "exceptional need or urgency" standard. The government agreed to provide expedited processing upon a showing that substantial due process rights would be impaired. Defendants claim that they are no longer bound to do so. Despite the government's litigation position in this regard, the government simultaneously maintains the "exceptional need or urgency" standard today: See:

1) 22 C.F.R. §171.12(b)(1) ("impair substantial due process rights")(State Department);

2) 28 CFR §16.5(d)(iii)("the loss of substantial due process rights") (Department of Justice)

3) Department Of Justice Freedom Of Information Act Reference Guide - May 2006 ("loss of substantial due process rights")(Exhibit "A")

4) "How To Submit A FOIA/PA Request" ("loss of substantial due process rights")(Department of Justice Executive Office for Immigration Review, "E.O.I.R.")(Exhibit "B") http://www.usdoj.gov/eoir/efoia/foiafact.htm).

5)"exceptional need or urgency" - U.S. Department of State Freedom Of Information Act Annual Report For Fiscal Year 2007 (Exhibit "C");

6) "exceptional need or urgency" - U.S. Department of Justice Freedom Of Information Act (FOIA) Annual Report For Fiscal Year 2007 (Exhibit "D");

7) "exceptional need or urgency" - U.S. Department of Homeland Security Privacy Office 2007 Annual Freedom of Information Act Report to the Attorney General of the United States. (Exhibit "E")

Today, both the State Department and the Department of Justice provide for expedited processing where the applicant can show a loss of substantial due process rights. The Departments of State, Justice, and Homeland Security state in their annual reports that they use the "exceptional need or urgency"

standard. The Settlement Agreement does the same thing.

The Settlement Agreement was not superceded by EFOIA. It was complemented by EFOIA. This Court has subject matter jurisdiction to decide this legal issue.

3. 5 U.S.C. §552(6)(E)(i)(II)

Plaintiffs make the following argument in the alternative: Assuming *arguendo* that the Court agrees with the government that EFOIA replaced the "exceptional need or urgency" standard with the new "compelling need" standard, Plaintiffs argue that the Settlement Agreement still survives intact. This is because 5 U.S.C. §552(6)(E)(i)(II) gives agencies "'latitude to expand the criteria for expedited access' beyond cases of 'compelling need'") *Al-Fayed v. CIA*, 254 F.3d 300 at 307 n.7(D.C. Cir. 2001)(quoting H.R. Rep. No. 104-795, at 26.) Plaintiffs alternatively argue that the Department of State, the Department of Justice, and the Department of Homeland Security have expanded the criteria for expedited access beyond cases of compelling need by maintaining the "exceptional need or urgency" standard as previously discussed above. This expansion is permitted under 5 U.S.C. §552(6)(E)(i)(II). The Settlement Agreement, signed by the Department of Justice in 1992 and inherited by the Department of Homeland Security in 2003, survived EFOIA intact because it embodies the "exceptional need or urgency" standard that still is utilized by these Departments today pursuant to 5 U.S.C. §552(6)(E)(i)(II).[9] This Court has subject matter jurisdiction to decide this legal issue.

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[9]"Some agencies, such as the Department of Justice, already employ expedited access procedures that, in some respects, have a broader criteria for expedited access than contained in Section 7... (fn 39) The Department of Justice's procedures for expedited access permits it if a delay would result in the loss of substantial due process rights and the information sought is not otherwise available in a timely manner." H.R. Report No. 104-795 at 26.

B. Plaintiff Mayock Has Standing

Plaintiff Mayock has standing for three reasons: First, he has standing as one of the parties and signers of the Settlement Agreement to seek a declaratory judgment as to the continued legal validity of the Settlement Agreement. Second, he has standing as a lawyer on behalf of his injured clients. Third, he has standing as a member of the public to seek injunctive relief for failure of USCIS to promulgate "Track Three" as a regulation pursuant to notice and receipt of public comment.

1. The Settlement Agreement

Defendants claim that the Settlement Agreement has been superceded by the 1996 FOIA amendments and therefore "(e)nforcement of the 1992 Settlement Agreement is outside the bounds of this Court's jurisdiction." (Def. Motion p.6) Basically, Defendants claim that the Settlement Agreement is null and void today. Plaintiff Mayock has a legally protected interest in the continued validity of the Settlement Agreement. By refusing to recognize the Settlement Agreement as valid, Defendants have effectively destroyed a legally protected interest. Plaintiff Mayock has standing to redress this harm. As one of the parties and signers of the Settlement Agreement, Plaintiff Mayock has standing to seek a declaratory judgment as to the continued validity and existence of the Settlement Agreement.

2. As A Lawyer On Behalf Of His Injured Clients

Plaintiff Mayock has submitted FOIA requests on behalf of several clients. The evidence in this case will show that, in all of these cases, USCIS has exceeded the legal response time of twenty days to provide the requested records. The government cites *Gilmore v. U.S. Dept. Of Energy*, 33 F. Supp 2d 1184 (N.D. Cal 1998) for the proposition that a plaintiff has standing to bring a

pattern and practice claim under FOIA "concerning delay in responding to *his* requests." (Def. Motion at 8.) However, a lawyer has standing to sue on behalf of his injured clients. *Mayock v. I.N.S.*, 714 F. Supp 1558 (N.D. Cal.1989), rev'd and remanded on other grounds *sub nom. Mayock v. Nelson*, 938 F. 2d 1006 (9th Cir. 1991). See also, *Immigrant Assistance Project of Los Angeles v. I.N.S.,* 306 F. 3d 842, 867 (9th Cir. 2002). Plaintiff Mayock has standing to bring a pattern and practice lawsuit alleging that Defendants routinely exceed the twenty day legal response period in FOIA on behalf of his injured clients.

Gilmore supports Plaintiff Mayock's case for standing. Both Mr. Gilmore and Plaintiff Mayock's clients received untimely responses to their FOIA requests. The Court found this to be " a separate injury to the requesting party" *Gilmore* at 1187, and stated that "an agency's failure to comply with the FOIA's time limits is, by itself, a violation of the FOIA, and is an improper withholding of the requested documents." *Id.* at 1187 This is true "even if the requested documents could be properly withheld." *Id.* at 1187. The Court concluded that "Because the documents were improperly withheld, this Court has jurisdiction over Gilmore's claim that the DOE has a pattern or practice of untimely responses to FOIA requests." *Id.* at 1188.

The Court's discussion on standing is also instructive:

> …Congress intentionally set harsh time limits for agencies to respond to FOIA requests because it recognized that information is often useful only if it is timely…The DOE's failure to process Gilmore's FOIA request in a timely manner was itself an injury - an invasion of a legally protected interest…Congress has made it clear that a person filing a FOIA request has a concrete interest in prompt processing of that request…Gilmore has shown that the threat of ongoing injury to him can be redressed by an injunction requiring the DOE to adhere more closely to the FOIA time limitations. Thus, the constitutional requirements for standing have been met. *Id.* at 1189

Defendants are correct that Gilmore was not asserting any third party

rights. He was asserting his own. However, as previously mentioned, the courts have allowed lawyers to assert the third party rights of their clients in pattern and practice cases. Therefore, the third party argument is a red herring.

Finally, "(f)or purposes of evaluating a motion to dismiss, the court must presume all factual allegations of the complaint to be true and draw all reasonable inferences in favor of the nonmoving party." *Ward v. Chanana*, 2008 WL 5383582 (N.D. Cal. 2008) *2. (internal citation omitted) The Complaint states that Plaintiff Mayock has filed several FOIA requests on behalf of his clients seeking copies of their alien registration files and it has taken more than twenty days for Defendants to produce the records in those cases. (FAC ¶16) Therefore, for the purposes of this motion, the Court must presume this allegation to be true. As Plaintiff Mayock's clients' FOIA requests are processed in an untimely manner, they suffer an injury which can be redressed by an injunction. Because Plaintiff Mayock is an attorney, he has standing to seek this redress by means of a pattern and practice lawsuit.

3. As A Member Of The Public

The Freedom Of Information Act is chiefly concerned about providing the public access to government records. Congress was so concerned about the public having a voice in this process that it incorporated a legal requirement of notice and public comment directly into the statute. 5 U.S.C. §§ 552(6)(D) and (E). Plaintiff Mayock was deprived of his ability to comment on "Track Three" and raise the issues presented in this lawsuit, thereby perhaps avoiding the necessity of a lawsuit, by Defendants' failure to promulgate "Track Three" as a regulation pursuant to notice and receipt of public comment. He has standing as a member of the public to redress this harm.

C. The Court Has Jurisdiction To Determine If USCIS Violated The APA And FOIA

Defendants violated the Administrative Procedure Act when they implemented "Track Three" by failing to provide a public comment period. Defendants also violated the Freedom of Information Act for the same reason.

1. The APA

As correctly noted by Defendants in their motion at page 8, "(T)he APA requires agencies to follow certain procedures when it decides to issue a rule, including: (1) publishing notice of the proposed rule-making in the Federal Register, 5 U.S.C.§553(b); (2) providing a period for interested persons to comment on the proposed rule, which comments will be considered by the agency prior to adopting the rule, id. at § 553(c); and (3) publishing the adopted rule not less than thirty days before its effective date..." id. at § 553(d)

Here, USCIS did not publish a "Proposed Rule" in the Federal Register. Instead, USCIS published a "Notice" in the Federal Register on February 28, 2007 stating "This notice is effective March 30, 2007". 72 FR 9017 (02/28/07) This "notice" failed to provide for a period of public comment. In acting this way, the agency violated the APA because it failed to "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments..." id. at § 553(c). [10]

[10]Plaintiff's ninth cause of action is not based on a failure to publish "Track Three" in the Federal Register but on the lack of a period for public comment. As members of the public, plaintiffs were adversely affected by the lack of a public comment period because they were deprived of the opportunity to participate in the rule making through submission of written data, views, or arguments such as those issues raised in this lawsuit.

2. FOIA

This action by USCIS also violated the Freedom of Information Act. This Act states:

> Each agency may promulgate regulations, *pursuant to notice and receipt of public comment*, providing for multitrack processing of requests for records... 5 U.S.C. §552(6)(D) (emphasis added)
>
> Each agency shall promulgate regulations, *pursuant to notice and receipt of public comment*, providing for expedited processing of requests for records... 5 U.S.C. §552(6)(E) (emphasis added).

DHS' promulgation of FOIA regulations did not release USCIS from its statutory obligation to promulgate regulations with notice and comment for its adoption of multitrack processing. DHS published a general regulation allowing its component agencies to adopt multitrack processing of which USCIS is one. 6 C.F.R. §5.5(b)[11] However once USCIS chose to adopt and implement a multitrack system, the FOIA statute required USCIS to promulgate its own regulations, pursuant to notice and public comment. 5 U.S.C. §552(a)(D). It failed to do this.[12]

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[11]Plaintiffs maintain that 6 C.F.R §§5.5 (b) and (d) violate FOIA because they were not promulgated "pursuant to notice and receipt of public comment". See 68 FR 4056 (01/27/03) (Exhibit "F") stating that "notice and public procedure are impracticable, unnecessary and contrary to public interest pursuant to 5 U.S.C. §553(b)(B). However, an agency can use this "good cause" exemption "except when notice or hearing is required by statute". 5 U.S.C. §553(b). In this case, "notice or hearing" was required by a statute. That statute was FOIA. 5 U.S.C.§ §552(a)(6)(D) and (E). Plaintiffs request permission to amend their complaint to seek an injunction requiring Defendants to initiate a notice and comment procedure pursuant to 5 U.S.C.§ §552(a)(6)(D) and (E) and the APA.

[12]There are two relevant regulations: 6 C.F.R. §5.5(d) (previously discussed) and 8 C.F.R. §103.8: "Sections 103.8, 103.9, and 103.10 of this part comprise the Service regulations under the Freedom of Information Act. 5 U.S.C. §552. These regulations supplement those of the Department of Justice, 28 CFR Part 16, Subpart A." Here Legacy INS adopted, by reference,

DHS also promulgated a regulation providing for expedited processing. 6 C.F.R. §5.5(d). USCIS was permitted to adopt its own expedited processing guidelines under 6 C.F.R §5.1(a)(2) but was not free to escape the statutory mandate of promulgating such change, i.e. "Track Three", as a regulation pursuant to notice and public comment. 5 U.S.C. §552(a)(E)

The Court has jurisdiction to determine if this action by USCIS violated the APA and FOIA.

D. The FOIA claims against Defendants other than USCIS

This Court should not dismiss the claims against Defendants other than USCIS since this is a pattern and practice case, and not just a request for individual records under the FOIA. The cases cited by Defendants at page nine of their motion stand for the general proposition that in actions arising under the FOIA, the proper defendants are federal departments and agencies and not individual employees of federal agencies. However, none of those cases were pattern and practice cases. In such cases, agency heads and individual officers should be able to be sued in their official capacity, if they are alleged to have engaged in a pattern and practice of illegal conduct.

When a FOIA lawsuit concerns issues such as challenging exemptions or the adequacy of a search it makes sense that the only defendant should be the agency. But when a FOIA lawsuit alleges a pattern and practice of violations of

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the DOJ regulation on expedited processing including 28 CFR §16.5(d)(iii)("the loss of substantial due process rights"). Plaintiffs do not know if USCIS considers itself subject to 8 C.F.R. §§103.8,9, and 10 although they remain on the books. The continued existence of these regulations in 8 C.F.R. six years after the creation of the Department of Homeland Security is confusing to the public, at the very least, and provides additional support for the argument that "Track Three" should have been published as a proposed regulation.

law, the alleged wrongdoers should be able to be sued in their official capacity as is the case in any other context.

Even if the Court disagrees and applies the general rule to this pattern and practice case, at a minimum, the Court should not dismiss Defendants Chertoff and Mukasey. Plaintiffs respectfully submit that as the heads of the Department of Homeland Security and the Department of Justice, the Court should assume that these individuals and agencies are synonymous for the purposes of the case. Although this point was not directly addressed in *Mayock v. Nelson*, 938 F.2d 1006 (9th Cir. 1991), the defendants in the appeal were Alan C. Nelson, Commissioner of the Immigration and Naturalization Service, and David N. Ilchert, District Director and were treated by the Court as synonymous with the agency.

E. The Court Should Not Dismiss the Attorney General or the Secretary of Homeland Security

Defendants claim that the 1992 settlement agreement was superceded by the 1996 FOIA amendments. Because the Department of Justice signed the Settlement Agreement[13] and issues exist as to the implementation and improper termination of the settlement agreement by the Department of Justice, the Attorney General, as head of this department, is a proper defendant in this case. Although the Department of Homeland Security succeeded to the responsibilities of Department of Justice in implementing the Immigration and Nationality Act effective March 1, 2003 [14], Plaintiffs believe that the evidence they are attempting to obtain through discovery will show that both agencies historically have had a role in the implementation, execution, and improper termination of the Settlement Agreement. Therefore, the heads of both these

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[13]FAC, Exh. A

[14]6 U.S.C. §§ 271(b)(5), 557.

departments, Michael Chertoff and Michael Mukasey, are proper defendants and should not be dismissed.

CONCLUSION

This Court has subject matter jurisdiction. Plaintiff Mayock has standing. The ninth cause of action should not be dismissed. None of the defendants should be dismissed.

January 19, 2009

_____/s/_____
KIP EVAN STEINBERG
Attorney for Plaintiffs