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Attorney for Plaintiffs MIRSAD HAJRO and JAMES R. MAYOCK

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

**INTERROGATORIES
UNDER RULE 33, FEDERAL
RULES OF CIVIL
PROCEDURE**

PLEASE TAKE NOTICE, that the plaintiffs require of the defendants, answers to the following interrogatories within the time prescribed by law:

1. Do you contend that USCIS consistently processes all FOIA requests "on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier" as stated on page two of the Department of

1 Homeland Security 2007 Annual Freedom of Information Act Report to the
2 Attorney General? (See Attachment One)

3
4 2. Please explain in particular detail the legal standard and criteria of
5 “exceptional need or urgency” identified on page two of the Department of
6 Homeland Security 2007 Annual Freedom of Information Act Report to the
7 Attorney General?

8
9 3. Do you contend that The Department of Homeland Security’s application of
10 the legal standard for expediting processing of a FOIA request upon a showing
11 of “exceptional need or urgency”, as that phrase is used on page two of the
12 Department of Homeland Security 2007 Annual Freedom of Information Act to
13 the Attorney General of the United States, applies the same criteria as the
14 government’s stated position to the Ninth Circuit in *Mayock v. Nelson*, 938 F.
15 2d 1006 at 1008 (9th Cir. 1991) that “a showing of genuine urgency warrants
16 priority over pending requests...” If your answer is negative, explain in detail
17 any and all differences in the criteria applied which support your answer.

18
19 4. If you contend that “Track Three” is not the only procedure USCIS utilizes to
20 expedite FOIA cases, please describe in detail any and all other procedures
21 USCIS utilizes to expedite FOIA cases.

22
23 5. Do you contend that the “compelling need” standard set forth in 5 U.S.C.
24 §552(a)(6)(E) and the standard or criteria of “exceptional need or urgency”
25 identified on page two of the Department of Homeland Security 2007 Annual
26 Freedom of Information Act Report to the Attorney General are identical legal

standards? If your answer is negative, please explain in detail any and all differences between these two legal standards as applied to FOIA requests for expedited processing.

6. Please identify the legal standard and any other criteria applied by USCIS in determining whether a FOIA request will receive expedited processing when it has been pending beyond the 20 day period set forth in 5 U.S.C. §552(a)(6)(A).

7. If you contend that USCIS no longer follows the former policy of the Department of Justice and Immigration and Naturalization Service (reproduced as Attachment Two and also at pages 17 to 21b of Exhibit “B” of the First Amended Complaint) that FOIA/PA offices are to grant expedited treatment “when the requestor demonstrates that: ...substantial due process rights of the requester would be impaired by the failure to process immediately, and the information sought is not otherwise available”, please provide the date USCIS ceased to follow this policy.

8. Do you contend that a request for a copy of an alien registration file to be used to prepare for an 8 U.S.C. §1447(a) appeal of denial of citizenship does not demonstrate exceptional need or urgency?

9. Do you contend that a request for a copy of an alien registration file to be used to prepare for an appeal of denial of legalization to the Legalization Appeals Office under 8 C.F.R. §245a.2(p) does not demonstrate exceptional need or urgency?

1 10. Please identify each provision of the Mayock settlement agreement with
2 which USCIS no longer complies.

3
4 11. If you contend that the Mayock settlement agreement is no longer effective,
5 please state the date the Mayock settlement agreement ceased to be in effect.

6
7 12. State the average USCIS processing time for “Track One” and “Track Two”
8 FOIA cases for each of the past three calendar years ending in 2007.

9
10 13. If you contend there were “unusual circumstances” (5 U.S.C.
11 §552(a)(6)(B)) or “exceptional circumstances” (5 U.S.C. §552(a)(6)(C)) which
12 prevented USCIS from processing plaintiff Hajro’s FOIA request within the 20
13 day statutory limit per (5 U.S.C. §552(a)(6)(A)), please state whether the
14 circumstances were “unusual” or “exceptional” or both and describe said
15 circumstances in detail.

16
17 14. Please state the percentage of FOIA cases processed by USCIS within the
18 20 day statutory time period set forth in 5 U.S.C. §552(a)(6)(A)(i) during each of
19 the past three calendar years ending in 2007.

20
21 15. For those cases which exceeded the 20 day statutory response period in
22 each of the past three calendar years ending in 2007, please describe any
23 “exceptional circumstances” that existed with respect to USCIS as referred to in
24 5 U.S.C. §552(a)(6)(C).

25
26 16. Please provide the percentage of FOIA cases during each of the past three
27

1 calendar years ending in 2007 in which USCIS gave written notice as provided
2 in 5 U.S.C. §552(a)(6)(B) that a 10 day extension of time was needed due to
3 “unusual circumstances”. If this percentage cannot be determined do you
4 contend that such written notice was given in the majority of cases?
5

6 17. Of those FOIA cases in which USCIS requested an extension of time up to
7 ten days to respond due to “unusual circumstances” as per 5 U.S.C. §552
8 (a)(6)(B), provide the percentage of cases during each of the past three calendar
9 years ending in 2007 in which USCIS notified the requestor “of the date by
10 which processing of the request could be expected to be completed” pursuant
11 to 6 C.F.R. 5.5(c)(1). If this percentage cannot be determined do you contend
12 that such written notice was given in the majority of cases?
13

14 18. Please provide the percentage of FOIA cases denied expedited processing
15 by USCIS for each of the past three calendar years ending in 2007.
16

17 19. For any FOIA case which was denied expedited processing since March 30,
18 2007, state the basis of the request and the basis for the denial.
19

20 20. Please state the percentage of cases in each of the past three calendar years
21 ending in 2007 in which USCIS provided notice of the determination of whether
22 it would provide expedited processing within ten days after the date of the FOIA
23 request as provided in 5 USC §552(a)(6)(E)(ii)(I). If this percentage cannot be
24 determined do you contend that such a determination was made within ten
25 days after the date of the request in the majority of cases?
26

1 21. Please state the percentage of cases in each of the past three calendar years
2 ending in 2007 in which USCIS provided expeditious consideration of the
3 administrative appeal from the denial of expedited processing as provided in 5
4 USC §552(a)(6)(E)(ii)(II). If this percentage cannot be determined do you
5 contend that USCIS provided expeditious consideration of the administrative
6 appeal in the majority of cases?

7
8 22. If you contend that the implementation of "Track Three" was not covered
9 by the "notice and comment" requirement of 5 U.S.C. §552(a)(6)(E)(i), please
10 state the legal and factual basis of your contention.

11
12 23. For each request for admission served with these interrogatories that is
13 not an unqualified admission, state the number of the request and all facts and
14 law upon which you base your response.

15
16 24. Please identify all documents that support your contention that plaintiff
17 Hajro was specifically asked about foreign military service at the adjustment of
18 status interview on November 13, 2000.

19
20 25. Provide the number of cases in calendar year 2007 in the following
21 categories:

- 22 a) appeals of denials of citizenship under 8 U.S.C. §1447(a)
23 b) appeals to the Legalization Appeals Office under 8 C.F.R. §245a.2(p)
24 c) appeals to the Board of Immigration Appeals under 8 C.F.R. §1003.3
25 d) appeals to the Administrative Appeals Office under 8 C.F.R. §103.3
26 e) deferred inspections under 8 C.F.R. §235.2
27

1 f) requests for evidence under 8 C.F.R. §103.2(b)(8)

2 g) motions to reopen filed by persons with final orders of deportation under 8
3 C.F.R. §1003.2.

4
5 December 8, 2008

KIP EVAN STEINBERG
Attorney for Plaintiffs