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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

**Requests For Admission
Under Rule 36,
Federal Rules Of Civil
Procedure**

PLEASE TAKE NOTICE, the plaintiffs in this case call upon and require the defendants to admit or deny, for the purposes of this case only, and subject to all exceptions to admissibility in evidence, the following facts:

1. USCIS has failed to comply with the twenty day response period specified in 5 U.S.C. §552(a)(6)(A)(i) in the majority of cases during each of the past three calendar years ending in 2007.

1 2. The only procedure USCIS utilizes to expedite FOIA requests is what USCIS
2 refers to as “Track Three” processing.

3
4 3. USCIS does not provide a process for expediting processing upon a showing
5 of “exceptional need or urgency” as that phrase is used on page two of the
6 Department of Homeland Security 2007 Annual Freedom of Information Act to
7 the Attorney General of the United States.

8
9 4. 8 C.F.R. § 5.6(d) does not allow for expediting processing upon a showing of
10 “exceptional need or urgency” as that phrase is used on page two of the
11 Department of Homeland Security 2007 Annual Freedom of Information Act
12 Report to the Attorney General of the United States.

13
14 5. USCIS will not expedite a FOIA request based on a showing that substantial
15 due process rights of the requester would be impaired by the failure to process
16 immediately, and the information sought is not otherwise available.

17
18 6. The Mayock settlement agreement is still in effect.

19
20 7. Defendants never notified plaintiff Mayock that defendants had terminated
21 the provisions of the Mayock settlement agreement and considered it no longer
22 effective.

23
24 8. USCIS failed to process plaintiff Hajro’s FOIA request (NRC2007075364)
25 within the 20 day period specified in 5 U.S.C. §552(a)(6)(A)(i).

1 9. USCIS did not request or provide notice of an extension of time to respond
2 to plaintiff Hajro's FOIA request due to any of the "unusual circumstances" set
3 forth in 5 U.S.C. §552(a)(6)(B).

4
5 10. USCIS did not provide notice of the determination of whether to process
6 plaintiff Hajro's request for expedited processing within ten days of the request
7 as set forth in 5 U.S.C. §552(a)(6)(E)(ii)(I).

8
9 11. USCIS did not provide expeditious consideration of plaintiff Hajro's
10 administrative appeal of the denial of his request for expedited processing as
11 set forth in 5 U.S.C. §552(a)(6)(E)(ii)(II).

12
13 12. USCIS has had a practice of failing to comply with the time requirements
14 set forth in 5 U.S.C. §552(a)(6)(A)(i) in the majority of cases for each of the past
15 three calendar years ending in 2007.

16
17 13. USCIS has had a practice of failing to comply with the time requirements
18 set forth in 5 U.S.C. §552(a)(6)(A)(ii) in the majority of cases for each of the past
19 three calendar years ending in 2007.

20
21 14. For those cases in which USCIS has exceeded the twenty day period of
22 specified in 5 U.S.C. §552(a)(6)(A)(i), USCIS has had a practice of failing to
23 comply with the requirements set forth in 5 U.S.C. §552(a)(6)(B)(i) to provide
24 written notice of "unusual circumstances" for an extension of time in the
25 majority of cases for each of the past three calendar years ending in 2007.

1 15. USCIS has had a practice of failing to comply with the requirement to
2 “notify the requestor in writing of the unusual circumstances and of the date
3 by which processing of the request can be expected to be completed” as set
4 forth in 6 C.F.R. §5.6(c)(1) in the majority of cases for each of the past three
5 calendar years ending in 2007.

6
7 16. USCIS implemented “Track Three” without providing a general notice of
8 proposed rulemaking and a period for public comment.

9
10 17. USCIS’ legal standard for expediting processing of a FOIA request upon a
11 showing of “exceptional need or urgency” as that phrase is used on page two of
12 the Department of Homeland Security 2007 Annual Freedom of Information Act
13 to the Attorney General of the United States is the same as the Department of
14 Justice’s legal standard for expediting FOIA requests upon a showing of
15 “exceptional need or urgency” for expediting processing of a FOIA request as
16 that phrase is used in Section III. B. (6) of the U.S. Department of Justice
17 Freedom of Information Act (FOIA) Annual Report For Fiscal Year 2007. (See
18 Attachments One and Two)

19
20 18. The Department of Homeland Security’s application of the legal standard
21 for expediting processing of a FOIA request upon a showing of “exceptional
22 need or urgency”, as that phrase is used on page two of the Department of
23 Homeland Security 2007 Annual Freedom of Information Act to the Attorney
24 General of the United States, applies the same criteria as the government’s
25 stated position to the Ninth Circuit in *Mayock v. Nelson*, 938 F. 2d 1006 at
26 1008 (9th Cir. 1991) that “a showing of genuine urgency warrants priority over

1 pending requests...”

2
3 December 8, 2008

KIP EVAN STEINBERG
Attorney for Plaintiffs