

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Urban Justice Center,

Plaintiff,

-against-

U.S. Citizenship and Immigration Services,

Defendant.

____CV____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff Urban Justice Center (“UJC” or “Plaintiff”), by and through its *pro bono* counsel at Cleary Gottlieb Steen & Hamilton LLP, brings this action against Defendant U.S. Citizenship and Immigration Services (“USCIS” or “Defendant”) and hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, seeking to compel USCIS to release records related to its implementation of an “Alert” that appeared on USCIS’s website on or around December 30, 2019 (the “Alert”) pertaining to USCIS’s processing of applications for U nonimmigrant status (“U-Visa”), an immigration benefit available to noncitizen victims of certain crimes who help law enforcement with the investigation or prosecution of the crimes committed against them.

2. UJC’s Domestic Violence Project (“DVP”) filed a FOIA request for these records on March 10, 2020 (the “FOIA Request”), but USCIS has failed to provide a timely determination as to whether it will furnish or withhold the requested records. USCIS’s implementation of the Alert has caused extreme hardship to UJC and its clients. As a result, UJC brings this action to obtain both a prompt determination concerning the FOIA Request and disclosure of the requested records.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

4. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

5. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B), because Plaintiff has its principle place of business in the Southern District of New York.

PARTIES

6. UJC is a nonprofit organization based in New York, New York. UJC's DVP helps domestic violence survivors and their children live free of violence and abuse. To do so, UJC's DVP provides, among other services, free legal consultation and representation to domestic violence survivors seeking immigration relief. In fiscal year 2019, UJC's DVP attorneys filed more than 50 U-Visa applications on behalf of UJC's clients. In addition, UJC's DVP attorneys regularly provide training programs to educate immigrant communities and legal practitioners about immigration law and practice, including with respect to U-Visa applications.

7. Defendant USCIS is a component of the U.S. Department of Homeland Security and is charged with processing and adjudicating U-Visa applications. *See* 8 C.F.R. 214.14(c)(1). USCIS is an agency within the meaning of 5 U.S.C. § 552(f)(1) and has custody and control over the records Plaintiff seeks.

STATEMENT OF FACTS

A. Overview of U-Visas

8. Congress created U-Visas in the Battered Immigrant Women Protection Act of the

Violence Against Women Act of 2000, which is found within the Victims of Trafficking and Violence Protection Act of 2000. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513(b), 114 Stat. 1464, 1534-35 (2000) (codified at 8 U.S.C. § 1101(a)(15)(U)).

9. An individual is eligible for a U-Visa if he or she is the victim of a qualifying criminal activity, including domestic violence; has suffered substantial physical or mental harm as a result; and has been helpful to law enforcement in the investigation or prosecution of the criminal activity suffered. 8 U.S.C. § 1101(a)(15)(U)(i).

10. When an individual receives a U-Visa, he or she is entitled to lawfully live and work in the United States for a period of four years. 8 C.F.R. § 214.14(g)(1); *id.* § 214.14(c)(7); *id.* § 214.14(f)(7). In addition, an individual with a U-Visa becomes eligible to apply for lawful permanent residence in the United States (*i.e.*, a green card) after he or she has held the U-Visa and been physically present in the United States for at least three years. 8 U.S.C. § 1255(m)(1); 8 C.F.R. § 245.24(b).

11. Congress created the U-Visa to serve two interrelated goals: (1) to “facilitate the reporting of crimes to law enforcement officials by . . . victimized[] and abused [noncitizens] who are not in lawful immigration status” and (2) to “offer[] protection to victims of such offenses in keeping with the humanitarian interests of the United States.” Victims of Trafficking and Violence Protection Act of 2000 § 1513(a)(2)(A)-(B), 114 Stat. at 1533-34.

B. U-Visa Application Process

12. USCIS has sole jurisdiction over U-Visa applications. 8 C.F.R. § 214.14(c)(1). To apply for a U-Visa, a crime victim must send USCIS a Petition for U Nonimmigrant Status on

Form I-918 (“Form I-918”) and initial evidence. 8 U.S.C. § 1184(p)(1); 8 C.F.R. § 214.14(c)(1).

13. This initial evidence must include a U Nonimmigrant Status Certification on Form I-918, Supplement B (“U-Visa Certification”) signed by a judge or a designated official at a federal, state, or local law enforcement agency. 8 U.S.C. § 1184(p)(1); 8 C.F.R. § 214.14(c)(2). This U-Visa Certification confirms, among other things, that the U-Visa applicant is a victim of a qualifying crime and has been helpful in the judge’s or law enforcement agency’s investigation or prosecution of that crime. 8 C.F.R. § 214.14(c)(2).

14. In addition to applying for a U-Visa for him or herself, a crime victim may also apply for a derivative U-Visa for certain qualifying family members. To do so, the crime victim must send USCIS a Petition for Qualifying Family Member of U-1 Recipient on Form I-918, Supplement A (“Form I-918 Supplement A”) for each family member for whom the crime victim seeks a derivative U-Visa. 8 U.S.C. § 1101(a)(15)(U)(ii); 8 C.F.R. § 214.14(f).

C. U-Visa Receipt Process

15. On information and belief, when USCIS receives a crime victim’s Form I-918 or Form I-918 Supplement A, USCIS “check[s]” the application “for completeness.” Form I-918 Instructions at 15 (Apr. 24, 2019), <https://www.uscis.gov/i-918> (“Form I-918 Instructions”).

16. If USCIS accepts the Form I-918 or Form I-918 Supplement A, USCIS sends the crime victim a Notice of Action on Form I-797C acknowledging USCIS’s receipt of the application “as of the actual date of receipt.” 8 C.F.R. § 103.2(a)(7)(i).

17. Pursuant to 8 C.F.R. § 103.2(a)(7)(ii), USCIS may reject a Form I-918 or Form I-918 Supplement A in only three situations: if the application is not (i) “[s]igned with [a] valid signature, (ii) “[e]xecuted,” and/or (iii) “[f]iled in compliance with the [governing] regulations.” *Id.* § 103.2(a)(7)(ii).

18. If USCIS rejects a Form I-918 or Form I-918 Supplement A for any of these three reasons, the rejected application “will not retain a filing date.” *Id.*; *see also* Form I-918 Instructions at 15 (“A petition or supplement is not considered properly filed until accepted by USCIS.”). In other words, if USCIS rejects an application pursuant to 8 C.F.R. § 103.2(a)(7)(ii), USCIS will not acknowledge the rejected application as received.

19. Although 8 C.F.R. § 103.2(a)(7)(ii) provides an exclusive, rather than an exemplary, list of reasons for which USCIS may reject a Form I-918 or Form I-918 Supplement A, on or around April 16, 2020, USCIS updated its Policy Manual¹ to purport to empower USCIS officers to reject applications for additional, unknown, and unspecified reasons. *See* USCIS, Policy Manual, Vol. 1, Part B, Chapter 6 (Apr. 24, 2020), <https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-6> (stating that a USCIS officer may reject an application for reasons that “may include, but are not limited to,” those deriving from 8 C.F.R. § 103.2(a)(7)(ii)).

D. The Alert

20. The Form I-918 and Form I-918 Supplement A both consist of a number of questions and corresponding blank fields in which the crime victim may provide an answer to each question. For example, Question 1.a on the Form I-918 asks the crime victim’s last name. Next to that question is a blank field where the crime victim can provide his or her response to that question.

21. USCIS has published and posted on its website written instructions for completing the Form I-918 and Form I-918 Supplement A. *See* Form I-918 Instructions. These instructions are incorporated into the regulations governing the submission of a Form I-918 and Form I-918

¹ USCIS’s Policy Manual “is to be followed by all USCIS officers in the performance of their duties but it does not remove their discretion in making adjudicatory decisions.” USCIS, Policy Manual, About the Policy Manual (Apr. 24, 2020), <https://www.uscis.gov/policy-manual>.

Supplement A. 8 C.F.R. § 103.2(a).

22. The Form I-918 and Form I-918 Supplement A instructions explicitly direct applicants to leave certain application fields blank either when a question does not apply to the crime victim or his or her family member or when the crime victim does not know the answer to the question. *See, e.g.*, Form I-918 Instructions at 4 (“Provide your U.S. Social Security Number. If you do not have a U.S. Social Security Number or do not know it, leave this space blank.”).

23. Despite these instructions, on or around December 30, 2019, USCIS posted the following Alert² to its webpage:

Alert: We may reject your Form I-918 or your Form I-918 Supplement A if you leave a field blank, unless the field is optional. Optional fields include the safe mailing address as well as fields you should only complete if you answered yes to a previous question. You must provide a response to all other questions, even if the response is “none,” “unknown” or “n/a.” We will reject a Form I-918 or a Form I-918 Supplement A that has, for example, an empty field for middle name, for current immigration status, or for information pertaining to a spouse or child.

24. On information and belief, USCIS has rejected and refused to acknowledge as received multiple Forms I-918 and Forms I-918 Supplement A filed by or on behalf of crime victims on the basis that the person completing the Form I-918 and/or Form I-918 Supplement A allegedly did not comply with the Alert.

25. On information and belief, USCIS has also rejected and refused to acknowledge as received multiple Forms I-918 and Forms I-918 Supplement A even when the person completing the application did in fact complete all application fields but answered one or more of the fields with one of the Alert’s suggested responses (*e.g.*, “n/a”) rather than another of the Alert’s suggested responses (*e.g.*, “none”).

² USCIS subsequently amended the Alert to include information pertaining to the public charge ground of inadmissibility, which is not at issue in Plaintiff’s FOIA Request. *See* USCIS, I-918, Petition for U Nonimmigrant Status, <https://www.uscis.gov/i-918> (last updated Feb. 21, 2020).

E. The Consequences of USCIS's Rejection of a Form I-918

26. In many instances, the date on which USCIS acknowledges a crime victim's Form I-918 as received directly impacts the substantive rights of the crime victim and/or his or her qualifying family members. Specifically, if USCIS rejects or otherwise refuses to acknowledge a Form I-918 as received, the crime victim and/or his or her qualifying family members may suffer irreparable harm in the following primary ways:

27. First, the crime victim may lose his or her ability to apply for and obtain a U-Visa. For a crime victim to qualify for a U-Visa, USCIS must receive his or her Form I-918 and initial evidence, including the U-Visa Certification, within six months of the date on which the judge or designated law enforcement official signed the U-Visa Certification. 8 C.F.R. § 214.14(c)(2)(i).

28. Thus, if USCIS rejects or otherwise refuses to acknowledge a crime victim's Form I-918 as received, the crime victim will be precluded from applying for and obtaining a U-Visa using the U-Visa Certification signed by the judge or designated law enforcement official if the U-Visa Certification's six month validity expires.

29. Second, if USCIS rejects or otherwise refuses to acknowledge a crime victim's Form I-918 as received, the crime victim may lose his or her ability to seek a derivative U-Visa for all or some of his or her qualifying family members.

30. A qualifying family member only becomes eligible for a derivative U-Visa if and when the crime victim receives a U-Visa. 8 C.F.R. § 214.14(f)(1). As a result, if USCIS's rejection of a Form I-918 precludes the crime victim from applying for and obtaining a U-Visa for him or herself, the rejection will also preclude the crime victim from applying for and obtaining a derivative U-Visa for his or her qualifying family members.

31. Separately, if USCIS rejects or otherwise refuses to acknowledge a crime victim's

Form I-918 as received, the crime victim may lose his or her ability to seek a derivative U-Visa for certain family members. This is because the category of family members for whom a crime victim may request a derivative U-Visa depends upon the age of both the crime victim and the family member on the date that USCIS acknowledges the crime victim's Form I-918 as received.

32. If the crime victim is under 21 years of age on the date USCIS acknowledges the Form I-918 as received, the crime victim may request a derivative U-Visa for four categories of family members: his or her (i) spouse, (ii) unmarried children under 21 years of age on the date USCIS acknowledges the Form I-918 as received, (iii) parents, and/or (iv) unmarried siblings under 18 years of age on the date USCIS acknowledges the Form I-918 as received. 8 U.S.C. § 1101(a)(15)(U)(ii)(I); *id.* § 1184(p)(7); C.F.R. § 214.14(a)(10).

33. In contrast, if the crime victim is 21 years of age or older on the date USCIS acknowledges the Form I-918 as received, the crime victim may only request a derivative U-Visa for two categories of family members: his or her (i) spouse and/or (ii) unmarried children under 21 years of age on the date USCIS acknowledges the Form I-918 as received. 8 U.S.C. § 1101(a)(15)(U)(ii)(II); *id.* § 1184(p)(7)(A); 8 C.F.R. § 214.14(a)(10).

34. Thus, if USCIS rejects or otherwise refuses to acknowledge a 20-year-old crime victim's Form I-918 as received, the crime victim may be precluded from applying for and obtaining a U-Visa for his or her parents or siblings if the crime victim is unable to resend the Form I-918 to USCIS such that USCIS acknowledges the Form I-918 as received before the crime victim's 21st birthday.

35. Separately, if USCIS rejects or otherwise refuses to acknowledge a crime victim's Form I-918 as received, the crime victim may be precluded from applying for and obtaining a U-Visa for his or her sibling if the crime victim is unable to resend the Form I-918 to USCIS such

that USCIS acknowledges the Form I-918 as received before the sibling's 18th birthday.

36. Finally, if USCIS rejects or otherwise refuses to acknowledge a crime victim's Form I-918 as received, the crime victim may be precluded from applying for and obtaining a U-Visa for his or her child if the crime victim is unable to resend the Form I-918 to USCIS such that USCIS acknowledges the Form I-918 as received before the child's 21st birthday.

37. Third, if USCIS rejects or otherwise refuses to acknowledge as received a crime victim's Form I-918 and/or Form(s) I-918 Supplement A, the crime victim and/or his or her family member(s), respectively, will lose their opportunity to promptly qualify for and receive government-funded health insurance.

38. Under New York State law, immigrants who are permanently residing under color of law ("PRUCOL") qualify for Medicaid, and a U-Visa receipt notice affords PRUCOL status. Office of Health Ins. Programs, N.Y. State Dep't of Health, Documentation Guide, Citizenship and Immigrant Eligibility for Health Coverage in New York State 11 (Mar. 3, 2008), https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/08ma009att.pdf.

39. Therefore, if USCIS rejects or otherwise refuses to acknowledge as received a crime victim's Form I-918 and/or Form(s) I-918 Supplement A, the crime victim and/or his or her family member(s), respectively, will lose the ability to promptly qualify for and receive a critical health benefit to which they otherwise would be entitled.

40. Fourth, if USCIS rejects a crime victim's Form I-918, that crime victim will be forced to wait an increasingly longer period of time for USCIS to begin adjudicating the application and potentially grant the crime victim a U-Visa.

41. Every fiscal year, USCIS may award only 10,000 U-Visas to crime victims.³ 8 U.S.C. § 1184(p)(2)(A); 8 C.F.R. § 214.14(d)(1). USCIS has reached this statutory cap every year since 2010, and by the end of the first quarter of 2020, more than 153,000 Forms I-918 were pending. USCIS, Number of Form I-918, Petition for U Nonimmigrant Status by Fiscal Year, Quarter, and Case Status Fiscal Years 2009-2020 (Apr. 20, 2020), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2020_qtr1.pdf.

42. Over the past five years, the amount of time it takes USCIS to consider and begin adjudicating a crime victim's U-Visa application has steadily increased. As of April 2015, it took USCIS eight months to begin adjudicating a crime victim's Form I-918. Office of the Citizenship & Immigration Servs. Ombudsman, U.S. Dep't of Homeland Sec., Annual Report 2015, at 64 (2015), https://www.dhs.gov/sites/default/files/publications/cisomb/cisomb_2015-annual-report-to-congress.pdf. However, as of May 2020, it now takes USCIS more than four and a half years to begin adjudicating a crime victim's Form I-918. USCIS, Check Case Processing Times (Form I-918), <https://egov.uscis.gov/processing-times/> (last visited May 12, 2020).

43. On information and belief, USCIS generally adjudicates U-Visa applications on a "first in, first out" basis. *See id.* ("We generally process cases in the order we receive them[.]"). As USCIS has acknowledged, "[i]f filing trends continue, the pending queue and associated processing times [for U-Visa applications] will continue to grow significantly." USCIS, U Visa Filing Trends 3 (2020), https://www.uscis.gov/sites/default/files/USCIS/statistics/Mini_U_Report-Filing_Trends_508.pdf. Thus, if USCIS rejects or otherwise refuses to acknowledge a crime

³ This numerical limitation applies only to principal U-Visas and not to derivative U-Visas awarded to crime victims' spouses, children, parents, and siblings. 8 U.S.C. § 1184(p)(2)(B).

victim's Form I-918 as received, the crime victim will be subjected to exponentially longer application processing times for each day that passes before USCIS acknowledges the Form I-918 as received.

F. The FOIA Request

44. After USCIS posted the Alert on its website, USCIS rejected a Form I-918 that an attorney at UJC's DVP filed on behalf of a domestic violence victim. USCIS rejected the Form I-918 solely on the basis that the UJC attorney allegedly failed to comply with the Alert by leaving certain fields on the Form I-918 blank.

45. After USCIS rejected the Form I-918 filed by the UJC attorney, the UJC attorney completed all of the fields that USCIS had identified in its rejection notice and resent the Form I-918 to USCIS. However, USCIS rejected the Form I-918 for a second time solely on the basis that the UJC attorney allegedly failed to comply with the Alert.

46. Although USCIS did not reject the Form I-918 filed by the UJC attorney for a reason specified in 8 C.F.R. § 103.2(a)(7)(ii), on information and belief, USCIS has failed to acknowledge the Form I-918 as received.

47. More than six months have now passed since the judge or designated law enforcement official signed the U-Visa Certification accompanying the Form I-918 filed by the UJC attorney. As a result, USCIS's rejection of the Form I-918 pursuant to the Alert will preclude UJC's client from applying for and obtaining a U-Visa using the U-Visa Certification already signed by the judge or designated law enforcement official.

48. UJC is gravely concerned by the Alert, USCIS's opaque and arbitrary enforcement thereof, and the harm the Alert may cause to vulnerable crime victims, including those who have suffered domestic violence. Indeed, USCIS's unannounced yet immediate implementation of the

Alert has already jeopardized the safety, health, and wellbeing of UJC's clients and their qualifying family members.

49. USCIS's utilization of the Alert to reject U-Visa applications filed by attorneys in UJC's DVP has also diverted UJC's limited organizational resources away from other services that are desperately needed by UJC's clients at any time, but particularly during the COVID-19 pandemic. *See, e.g.,* Ashley Southall, *Why a Drop in Domestic Violence Reports Might Not Be a Good Sign*, N.Y. Times (Apr. 17, 2020), <https://www.nytimes.com/2020/04/17/nyregion/new-york-city-domestic-violence-coronavirus.html> (describing "how social distancing and stay-at-home orders have fueled incidents of domestic violence in New York City").

50. Given these concerns, UJC's DVP filed the FOIA Request with USCIS on March 10, 2020 to gain a better understanding of USCIS's implementation and enforcement of the Alert.

The FOIA Request seeks:

- i. any and all records issued or used by USCIS to notify, train, and/or instruct mailroom personnel and/or other individuals who process Forms I-918 and/or Forms I-918 Supplement A (whether or not such mailroom personnel and/or other individuals are USCIS employees) regarding the implementation and/or enforcement of the Alert, including but not limited to any guidance concerning which answers ("none," "unknown," or "n/a") are appropriate responses to which fields on the Form I-918 and/or Form I-918 Supplement A;
- ii. any and all template Notice(s) of Action and/or other correspondence created or used by USCIS for rejecting a Form I-918 and/or a Form I-918 Supplement A based on an applicant's alleged failure to comply with the Alert;
- iii. any and all statistics regarding the number of Forms I-918 and/or Forms I-918 Supplement A that USCIS has rejected based on an applicant's alleged failure to comply with the Alert;
- iv. any and all records issued or used by USCIS to train and/or instruct individuals processing and/or adjudicating Forms I-918 and/or Forms I-918 Supplement A regarding the receipt date that USCIS has assigned or will assign to a Form I-918 and/or Form I-918 Supplement A that has been re-filed after it was previously rejected for allegedly failing to comply with the Alert;

- v. any and all records issued or used by USCIS to train and/or instruct individuals adjudicating Forms I-918 and/or Forms I-918 Supplement A concerning U-Visa Certifications that have expired as a result of USCIS's implementation of the Alert;
- vi. any and all records issued or used by USCIS to train and/or instruct individuals adjudicating Forms I-918 and/or Forms I-918 Supplement A concerning derivatives who have turned 21 years old and therefore have aged-out of relief as a result of USCIS's implementation of the Alert;
- vii. any and all records indicating when the Alert was posted on USCIS's website; and
- viii. any and all records indicating when the Alert took effect.

See Letter from Kyle Dandelet to USCIS (Mar. 9, 2020) (attached as Ex. A).

51. The FOIA Request defines the term "records" to include, but not be limited to:

documents, data, files, audiotapes, videotapes, correspondence, letters, e-mails, e-mail attachments, faxes, phone transcripts, phone recordings, guidance, guidelines, training materials, training manuals, templates, standards, advisories, procedures, protocols, instructions, directives, orders, rules, evaluations, memoranda, reports, agreements, notes, manuals, technical specifications, analyses, studies, informal notes or memoranda, meeting minutes, meeting notes, meeting summaries, meeting agendas, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing annotations or marginal notations, whether preserved in electronic or written form.

G. USCIS's Insufficient Response to the FOIA Request

52. FOIA "adopts as its most basic premise a policy strongly favoring public disclosure of information in the possession of federal agencies." *Halpern v. F.B.I.*, 181 F.3d 279, 286 (2d Cir. 1999). In furtherance of this purpose, FOIA imposes strict deadlines on federal government agencies to provide responsive documents to FOIA requests. 5 U.S.C. § 552(a)(6)(A).

53. Specifically, an agency must comply with a FOIA request by issuing a "determination" within twenty business days after receipt of the request. *Id.* § 552(a)(6)(A)(i). An agency may be entitled to one ten-day extension of time to respond to a request if it provides written notice to the requester explaining that "unusual circumstances" exist that warrant

additional time. *Id.* § 552(a)(6)(B).

54. A “determination” must “be more than just an initial statement that the agency will generally comply with a FOIA request and will produce non-exempt documents and claim exemptions in the future.” *Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm’n*, 711 F.3d 180, 188 (D.C. Cir. 2013) (Kavanaugh, J.).

55. Rather, to make a determination, “the agency must at least: (i) gather and review the documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the ‘determination’ is adverse.” *Id.*⁴

56. Where an agency fails to make a determination within the relevant statutory time period, the requester shall be deemed to have exhausted administrative remedies and may file suit in federal court. 5 U.S.C. § 552(a)(6)(C)(i).

57. In this case, USCIS acknowledged receipt of the FOIA Request in a letter dated March 27, 2020. Letter from Jill A. Eggleston to Kyle Dandeleit (Mar. 27, 2020) (attached as Ex. B). In this letter, USCIS invoked a ten-day extension for providing a determination in response to the FOIA Request. *Id.* at 2.

58. More than thirty business days have now elapsed since USCIS received the FOIA Request, but USCIS has not provided UJC’s DVP a determination with respect to the FOIA Request. Thus, under 5 U.S.C. § 552(a)(6)(C)(i), UJC is deemed to have exhausted the applicable administrative remedies with respect to the FOIA Request.

⁴ See also *Nat’l Day Laborer Organizing Network v. U.S. Immigration & Customs Enf’t*, 236 F. Supp. 3d 810, 814 n.9, 818 (S.D.N.Y. 2017) (noting that the Court of Appeals for the Second Circuit has not addressed what constitutes a “determination” and applying the standard set forth in *Citizens for Responsibility & Ethics in Washington*).

59. In light of the extreme hardship that USCIS's implementation of the Alert has caused to both UJC and its clients, UJC now seeks the Court's intervention pursuant to 5 U.S.C. § 552.

CAUSE OF ACTION

(Failure to Make a Timely Determination and Disclose and Release
Records Responsive to Plaintiff's FOIA Request)

60. Plaintiff UJC re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 59 of this complaint.

61. Plaintiff has received no correspondence from Defendant USCIS that contains the determination required by 5 U.S.C. § 552(a)(6)(A)(i).

62. Defendant's failure to respond within the statutory time limit violates 5 U.S.C. § 552(a)(6)(A).

63. Defendant has violated Plaintiff's right to USCIS records under 5 U.S.C. § 552.

REQUESTED RELIEF

WHEREFORE, Plaintiff UJC respectfully requests that this Court provide the following relief:

A. Declare that Defendant USCIS violated FOIA by failing to produce a timely determination in response to Plaintiff's FOIA Request;

B. Enjoin Defendant from withholding records responsive to Plaintiff's FOIA Request;

C. Order Defendant to immediately and expeditiously search for and disclose the records requested in Plaintiff's FOIA Request within a reasonable time limit set by the Court;

D. Order that this case be expedited in light of Defendant's non-cooperation with

Plaintiff's FOIA Request;

E. Award Plaintiff's costs and reasonable attorneys' fees as provided by 5 U.S.C. § 552(a)(4)(E); and

F. Grant such other and further relief as this Court may deem just and proper.

Dated: May 12, 2020
New York, New York

Respectfully submitted,

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