

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

TAGBA ABISSI
22009 Broadway Avenue
Clarksburg MD

AYE KHINE
MAUNG NYUNT
3A Baldwin Avenue
Daly City CA 94105

RICA GATORE
9826 Matson Road
Middle River MD 21220

MAMADOU BADIANE
1315 Clifton St NW
Washington DC 20036

LOUISE TRAUMA CENTER LLC
1234 Mass Ave NW
Washington DC 20005-4556

FREE BURMA SOCIETY LLC
21128 Stonecrop Pl
Ashburn VA 20147-5456

Plaintiffs

v.

Civil Action No. 23-

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES
5900 Capital Gateway Drive
Mail Stop 220
Camp Springs MD 20588-0009

Defendant

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is a Freedom of Information Act [FOIA] case, concerning people who suffered harm in their homelands and who came to America to seek asylum. The defendant agency has treated these people unfairly.

2. The Fourth Circuit has shown solicitude for asylum seekers, and has often reversed lower courts that ignored evidence: “When a man’s life is on the line, he is entitled to know that the court deciding his claim reviewed all his evidence, understood it, and had a cogent, articulable basis for its determination that his evidence was insufficient. The BIA and IJ both failed to provide such a cogent, articulable basis here.” *Rodriguez-Arias v. Whitaker*, 915 F.3d 968, 971 (4th Cir. 2019)(Immigration Judge ignored extensive evidence of “appallingly violent conditions” in El Salvador).

3. In *Chen v. Garland*, 72 F. 4th 563, 571 (4th Cir. 2023) the Court reversed lower courts that did not “even refer to” reports of “widespread and alarming state-sanctioned persecution of Christians throughout China- surveillance, harassment, detention, and violent abuse that can culminate in death.”

4. There is no discovery in immigration court. It is legal for the government to ambush asylum applicants in that court, by using documents written by asylum officers. So, the asylum applicant is very desirous of getting those documents *before* the immigration court proceeding. The only way to get them is through the FOIA process.

5. The Freedom of Information Act [FOIA] “is to be construed broadly to provide information to the public in accordance with its purposes.” *Ethyl Corp. v. EPA*, 25 F.3d 1241, 1245 (4th Cir. 1994). Exemptions “are to be narrowly construed.” *Am. Mgmt. Servs. v. Dep’t of the Army*, 703 F.3d 724, 728 (4th Cir. 2013).

6. “FOIA is grounded in the fundamental principle of public access to Government documents... The statute provides a mechanism for citizens to obtain official information long shielded unnecessarily from public view and attempts to create a judicially enforceable public right to secure such information from possibly unwilling official hands.” *Coleman v. Drug Enforcement Admin.*, 714 F.3d 816, 828 (4th Cir. 2013)[cleaned up].

JURISDICTION

7. This Court has both subject matter jurisdiction over this action and personal jurisdiction over Defendant pursuant to 5 U.S.C. § 552(a) (4) (B) and 28 U.S.C. § 1331. This Court has jurisdiction to grant declaratory and other necessary relief pursuant to 28 U.S.C. § 2201-02.

VENUE

8. Venue is appropriate under 5 U.S.C. § 552(a) (4) (B), and 28 U.S.C. § 1391, because Defendant is located here.

PARTIES

9. Plaintiff Tagba Abissi is a native and citizen of the country of Togo. He came to the United States, applied for asylum, and was interviewed by an asylum officer. He made a FOIA request for documents written by the officer.

10. Ms. Khine and Mr. Nyunt are husband and wife, from Burma. They came to the United States, applied for asylum, and were interviewed by an asylum officer. They made a FOIA request for documents written by the officer.

11. Plaintiff Rica Gatore is a native and citizen of the country of Burundi. She came to the United States, applied for asylum, and was interviewed by an asylum officer. She made a FOIA request for documents written by the officer.

12. Plaintiff Mamadou Badiane is a native and citizen of the country of Senegal. He came to the United States, applied for asylum, and was interviewed by an asylum officer. He made a FOIA request for documents written by the officer.

13. Plaintiff Louise Trauma Center, LLC, is a nonprofit organization dedicated to raising awareness about immigrant women who have suffered from gender-based violence such as female genital mutilation (FGM), rape, domestic violence, and forced marriage. It helps these women seek asylum. It publicizes and educates. It sets forth new asylum cases, briefs, reports, and analysis on the law surrounding these women and their issues. It has made FOIA requests in the past, and will continue to make FOIA requests in the future.

14. Plaintiff Free Burma Society LLC, is a nonprofit organization dedicated to assisting the people of Burma, especially those who suffer due to their pro-democracy political opinion. It publicizes and educates. It sets forth new asylum cases, briefs, reports, and analysis on the law surrounding these women and their issues. It has made FOIA requests in the past, and will continue to make FOIA requests in the future.

15. Defendant is an agency within the meaning of 5 U.S.C. § 552(e) and 701(b) (1), and is in possession and/or control of the records requested by each Plaintiff.

FIRST CAUSE OF ACTION: Mr. Abissi

16. Plaintiffs repeat, re-allege, and incorporate by reference the allegations contained in all paragraphs set forth above.

17. Plaintiff Tagba Abissi is a native and citizen of the country of Togo. He came to the United States, applied for asylum, and was interviewed by an asylum officer.

18. The officer wrote an Assessment of the case, wherein he cited to sources he deemed reliable. The assessment is dated December 27, 2013.

19. Mr. Abissi asked Louise Trauma Center LLC to make a third-party request for the assessment, and for other records. That request was made.

20. Defendant USCIS ["CIS"] received that request on February 10, 2023 and assigned the following tracking number to it: NRC 2023 043 369.

21. CIS released the first several paragraphs of the Assessment, along with a CIS letter, dated March 3, 2023, to Louise Trauma Center LLC.

22. CIS did not release the entire assessment. CIS did not release many paragraphs. CIS did not release the sources cited in the assessment.

23. CIS did not give the real reasons why it refused to release the entire assessment to plaintiffs.

24. CIS believes, and will inform the Court later, that the "deliberative process privilege" is the real, and only, reason why it need not disclose the entire assessment.

25. However, CIS has not yet informed plaintiffs of this belief.

26. CIS should have mentioned the deliberative process privilege in its March 3d letter.

27. CIS believes, and will inform the Court later, that it will suffer "harm" if the entire assessment is released.

28. However, CIS has not yet informed plaintiffs of this belief.

29. CIS should have mentioned this belief in its March 3d letter.

30. Via an agency declaration, CIS will later explain and describe, using several sentences, the type of harm it claims it will suffer.

31. However, CIS has not yet informed plaintiffs of such explanation and description.

32. CIS should have given that explanation and description in its March 3d letter.

33. CIS will not suffer any harm if the entire assessment is released.

CIS RELEASED TWO ENTIRE ASSESSMENTS IN OCTOBER 2023

34. A co-plaintiff in this case, Mr. Mamadou Badiane, a native and citizen of Senegal, applied for asylum and CIS wrote two assessments about his case.

35. In response to his FOIA request, CIS released both assessments in October 2023.

36. These assessments cite sources: Department of State reports and [http. janes.ihs.com](http://janes.ihs.com).

37. There is no important difference between Mr. Badiane and Mr. Abissi.

38. CIS voluntarily released assessments for Mr. Badiane; this shows that CIS will not suffer any harm. CIS has not, in fact, suffered any harm, from those releases. This means that CIS will suffer no harm if the assessment for Mr. Abissi is released.

39. This inconsistency shows that CIS is arbitrary and capricious.

CIS MUST "IMMEDIATELY" INFORM THE REQUESTER OF "THE REASONS" FOR CIS ACTIONS

40. The agency has the duty to "immediately" notify the requester of "the reasons" for the action of the agency. 5 U.S.C. § 552(a)(6)(A)(i)(I) provides that each agency "shall immediately notify the person making such request of...the reasons therefor."

41. "An agency must ordinarily notify a requester of its 'determination and the reasons therefor' within 20 business days of receiving a FOIA request. 5 U.S.C. § 552(a)(6)(A)(i)."

Manivannan v. Department of Energy, National Energy Technology Laboratory, 843 Fed.Appx. 481, 483 (4th Cir. 2021).

42. "The" reasons means "the real" reasons. It means the agency must inform the requester in simple terms why the agency acted as it did. It means the agency should not confuse the requester by discussing exemptions that are not applicable.

CIS MUST “IMMEDIATELY” INFORM THE REQUESTER
OF THE “HARM” THAT CIS FEARS

43. Congress amended the FOIA, effective June 30, 2016. Before the amendment, an agency could assert an exemption, and withhold documents, even if the agency would suffer no harm. Congress was concerned that agencies were overusing exemptions, particularly the “deliberative process privilege.” Congress adopted the FOIA Improvement Act in part out of “concerns that some agencies [were] overusing FOIA exemptions that allow, but do not require, information to be withheld from disclosure.” S. Rep. No. 4, 114th Cong., 1st Sess. 2 (2015); *see also* H.R. Rep. No. 391, 114th Cong., 2d Sess. 9 (2016) (“[T]here is concern that agencies are overusing these exemptions to protect records that should be releasable under the law.”). Congress was particularly concerned with increasing agency overuse and abuse of Exemption 5 and the deliberative process privilege. H.R. Rep. No. 391, at 9–10 (“The deliberative process privilege is the most used privilege and the source of the most concern regarding overuse.”); *see also* S. Rep. No. 4, at 3. *Reporters Committee for Freedom of the Press v. Federal Bureau of Investigation*, 3 F.4th 350, 369, (D.C.Cir., 2021).

44. Congress added the distinct foreseeable harm requirement to foreclose the withholding of material unless the agency can “articulate both the nature of the harm [from release] and the link between the specified harm and specific information contained in the material withheld.” H.R. Rep. No. 391, at 9.² Agencies cannot rely on “mere ‘speculative or abstract fears,’ or fear of embarrassment” to withhold information. S. Rep. No. 4, at 8. Nor may the government meet its burden with “generalized assertions[.]” *Reporters Committee for Freedom of the Press v. Federal Bureau of Investigation*, 3 F.4th 350, 369, (C.A.D.C., 2021).

45. So, Congress enacted 5 U.S.C. § 552(a)(8)(A), which provides:

“An agency shall withhold information under this section only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); ...and [the agency shall] consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and take reasonable steps necessary to segregate and release nonexempt information.”

5 U.S.C. § 552(a)(8)(A) imposes several duties upon the agency:

- 1] the agency must “reasonably” foresee harm. Harm that is remotely foreseeable is not sufficient.
- 2a] the agency must identify “an interest” protected by subsection b. An agency may have an “interest” in avoiding criticism, for example. But such an interest is not protected by subsection (b). *Pavement Coatings Technology Council v. United States Geological Survey*, 995 F.3d 1014, 1022, (C.A.D.C., 2021)
- 2b] The D.C. Circuit phrased this duty as requiring the agency to make a “particularized inquiry into what sort of foreseeable harm would result from the material's release.” *Reporters Committee for Freedom of the Press v. Federal Bureau of Investigation*, 3 F.4th 350, 369, note 2 (C.A.D.C., 2021). “Fear of embarrassment” is not a legitimate harm. “Speculative or abstract fears” are insufficient. *Id.*
- 3] the agency must explain how disclosure would harm that interest.
- 4] the agency “must consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible;” and
- 5] the agency must “take reasonable steps necessary to segregate and release nonexempt information.”

Transgender Law Center v. Immigration and Customs Enforcement, 46 F.4th 771, 782 (C.A.9 (Cal.), 2022)

46. The second sentence of the letter dated March 3, 2023 states:

“We have considered the foreseeable harm standard when reviewing the record set and have applied the FOIA exemptions as required by the statute and the Attorney General’s guidance.”

47. The March 3d letter does not state that CIS would suffer harm if the redacted material were released.

48. CIS believed then, and believes now, that it would suffer harm if the material were released.

49. CIS believed then, and believes now, that it would suffer harm of a particular type if the material were released.

50. The March 3d letter does not describe the particular type of harm that CIS fears.

51. CIS will inform plaintiffs, and the Court, about the harm it fears later on, during this litigation.

52. If CIS is able to discuss and describe harm during this lawsuit, why couldn't it do so on March 3d? Why shouldn't CIS inform the requester immediately about the harm?

53. The March 3d letter states: "You have the right to file an administrative appeal within 90 days of the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision."

How can the requester make a meaningful appeal under these circumstances?

54. The March 3d letter is deficient. The requester is not informed that CIS fears any harm. The requester is not informed about the particular type of harm that is feared. The requester is not able to make a targeted argument to CIS. Any administrative appeal on this issue will be denied.

55. CIS is thwarting the right of FOIA requesters to make meaningful administrative appeals. CIS is wasting the time of requesters. CIS is wrongfully delaying the release of information to requesters.

56. The purpose of the FOIA is not merely to inform the requester of the agency's conclusion that a particular document is exempt from disclosure ... but to afford the requester an opportunity to intelligently advocate release of the withheld documents and to afford the court an

opportunity to intelligently judge the contest.” *Transgender Law Center v. Immigration and Customs Enforcement*, 46 F.4th 771, 782 (C.A.9 (Cal.), 2022)

57. One purpose of administrative appeals is to encourage agencies to re-consider. Perhaps a requester could convince the agency of its error; then no lawsuit is needed! The resources of the court would not be wasted.

58. No agency should hide its real reasons during the administrative process, and only reveal them to requesters who file lawsuits.

**THE MARCH 3D LETTER CONFUSES AND MISLEADS THE REQUESTER
BECAUSE IT MENTIONS THE PRIVACY ACT**

59. The March 3d letter mentions section (d)(5) of the Privacy Act.

60. The Privacy Act has nothing to do with this case. Referring to it confuses and misleads the requester.

**THE MARCH 3D LETTER CONFUSES AND MISLEADS THE REQUESTER
BECAUSE IT MENTIONS EXEMPTIONS THAT DO NOT APPLY**

61. The March 3d letter suggests that the assessment is privileged because it “was prepared in contemplation of litigation.”

62. The assessment was not prepared in contemplation of litigation, and CIS knew this at the time, and knows it now.

63. The March 3d letter suggests that the assessment is privileged because it is a “confidential communication between attorney and client.”

64. The assessment is not a confidential communication between attorney and client, and CIS knew this at the time, and knows it now.

THE MARCH 3D LETTER VIOLATES THE FOIA BECAUSE IT USES THE WORD "MAY."

65. The March 3d letter says that the withheld information "may" consist of certain things, such as litigation materials, or client confidences.

66. Plaintiff requested the assessment. CIS has the assessment, and can read it. CIS knows exactly what is in it, and what is not in it. CIS knows that litigation materials and client confidences have nothing to do with the assessment.

67. CIS should not state that certain things "may" be in the withheld material. CIS should inform the requester, immediately, as to what actually *is* in the material.

68. Plaintiff is invited to make an administrative appeal. Plaintiff is encouraged to spill ink on subjects that are a waste of time: litigation and client confidences. It is an abuse of the administrative process to give false and misleading information to the requester.

69. The March 3d letter confuses, and misleads the requester by stating that certain exemptions are "applicable," when, in fact, they are not.

70. For the convenience of the reader, here is page one of the March 3d letter:

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010



U.S. Citizenship
and Immigration
Services

March 3, 2023

ELLA CLEVELAND
LOUISE TRAUMA CENTER LLC
1234 MASSACHUSETTS AVE NW, APT 1023
DCA, DC 20005

Dear ELLA CLEVELAND:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request for ~~FOIA~~
~~FOIA~~ received in this office on February 10, 2023 regarding the Asylum Officer Notes.

We have considered the foreseeable harm standard when reviewing the record set and have applied the FOIA exemptions as required by the statute and the Attorney General's guidance. We have completed the review of all documents and have identified 11 pages that are responsive to your request. Enclosed are 9 pages released in their entirety and 2 pages released in part. We have reviewed and have determined to release all information except those portions that are exempt pursuant to 5 U.S.C. § 552a (d)(5) of the Privacy Act and 5 U.S.C. § 552 (b)(5) of the FOIA.

The following exemptions are applicable:

Exemption (b)(5) provides protection for inter-agency or intra-agency memorandums or letters, which would not be available by law to a party other than an agency in litigation with the agency. The types of documents and/or information that we have withheld under this exemption may consist of documents containing pre-decisional information, documents or other memoranda prepared in contemplation of litigation, or confidential communications between attorney and client.

Exemption (d)(5) of the PA permits the government to withhold all documents or information, which are compiled in reasonable anticipation of a civil action or proceeding. This extends to any records compiled in anticipation of civil proceedings, whether prepared by attorneys or lay investigators.

As a result of discussion between agency personnel and a member of our staff, as a matter of administrative discretion, we are releasing computer codes found on system screen prints previously withheld under exemption b(2). There may be additional documents that contain discretionary releases of exempt information. If made, these releases are specifically identified in the responsive record. These discretionary releases do not waive our ability to invoke applicable FOIA exemptions for similar or related information in the future.

The enclosed record consists of the best reproducible copies available. Certain pages contain marks that appear to be blacked-out information. The black marks were made prior to our receipt of the file and are not information we have withheld under the provisions of the FOIA or PA.

You have the right to file an administrative appeal within 90 days of the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. You may file an administrative FOIA appeal to USCIS at: USCIS FOIA/PA Appeals Office, 150 Space Center Loop, Suite 500, Lee's Summit, MO 64064-2139. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison for assistance at:

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CIS WILL NOT SUFFER HARM IF THE ENTIRE ASSESSMENT IS RELEASED

CIS will not suffer any harm if the entire assessment is released.

The agency released entire assessments from 1998 to 2005. It suffered no harm during this time.

CIS will not suffer any harm if the sources in the assessment are released.

In January 2021: CIS released two sources from an assessment: www.28toomany.org and www.Ecoi/net/en.

Asylum officers should not use unreliable sources.

From 1990 to 1995, asylum officers were obligated to give information they considered, to applicants, as stated in 8 CFR §208.12. Officers had to reveal sources to applicants. CIS suffered no harm during this time.

From 1998-2005, the agency freely disclosed entire assessments to applicants, and suffered no harm during this time.

Asylum officers are instructed that Assessments are read by many persons outside of the agency: ICE Assistant Chief Counsels, who at times give assessments to Immigration Judges; the Board of Immigration Appeals and federal courts; the Department of State, the FBI, contractors, and members of Congress.

The contents of assessments are very similar to the contents of NOIDs.

CIS voluntarily releases entire NOIDS every day, and has done so for decades, and has suffered no harm.

The contents of Records of Determination are very similar to the contents of assessments.

CIS voluntarily releases Records of Determination every day, and has done so for decades, and has suffered no harm.

The contents of Notices of Intent to Terminate [NOITs] are very similar to the contents of assessments.

CIS voluntarily releases NOITs every day, and has done so for decades, and has suffered no harm.

Effective May 2022, for certain asylum applicants, the agency releases both the “asylum officer’s written decision” as well as “any unclassified information considered by the asylum officer in the written decision.” *See* 8 C.F.R. §§ 208.9(f), 1240.17. The entire decision is released. All information “considered” by the officer is released. The agency does not claim it suffers harm from such disclosures. If no harm there, no harm concerning sources and assessments.

Judges are reversed when they use unreliable sources.

In *Diaz-Ortiz v. Garland*, 23 F. 4th 1, 20-22 (1st Cir. 2022) the Immigration Judge relied upon a “Gang Assessment Database.” This source was deemed unreliable, and the case was remanded. In *Badasa v. Mukasey*, 540 F. 3d 909 (8th Cir. 2008), the Immigration Judge cited Wikipedia in a decision: an appellate court then criticized that source and the judge. A “red notice” issued by INTERPOL was deemed unreliable in *Tatintsyan v Barr*, 799 Fed. Appx. 965, 967 (9th Cir. 2020). In *Todorovic v. Att’y Gen.*, 621 F.3d 1318, 1326 (11th Cir. 2010) the judge relied on impermissible stereotypes about gays.

So too should asylum officers.

The Agency Has A History Of Arbitrarily Changing Its Policies

1. Sources were revealed in 1990, but then hidden in 1995

8 C.F.R. § 208.12(a), in the year 1990, required officers to reveal sources to the applicant. But in 1995, that regulation was amended, and no longer has such a requirement. So, from 1990 to 1995, applicants had the right to inspect material relied upon by asylum officers, even if the material was not included in the Assessment. CIS does not claim it suffered harm during those years, when material was inspected. CIS does not explain why it changed its policy in 1997. An agency may not “depart from a prior policy *sub silentio*.” *American Wild Horse Preservation Campaign v. Perdue*, 873 F.3d 914, 923 (D.C. Cir. 2017). An agency changing its course must explain that prior policies “are being deliberately changed, not casually ignored.” *Id.* [cleaned up]. In *Grace v. Barr*, 965 F.3d 883, 900 (D.C. Cir. 2020), a case involving asylum seekers, the government did not even argue it had provided a reasoned explanation for a change in policy. The Court therefore found the change to be “arbitrary and capricious.”

2. In 1998, CIS changed its policy again: entire assessments, including sources, were disclosed

The agency released entire assessments, including sources, from 1998 to 2005. The decision to release entire assessments is evidence of the fact that no harm results. An agency does not normally harm itself on a voluntary basis. The agency does not claim it suffered harm during this time period.

3. The agency changed its policy again in 2005, and hid assessments in their entirety

Without any study or analysis, the agency reverted back to its policy of no

disclosure of any part of an assessment, in 2005. An agency may not “depart from a prior policy *sub silentio*.” *American Wild Horse Preservation Campaign v. Perdue*, 873 F.3d 914, 923 (D.C. Cir. 2017). An agency that does that is arbitrary and capricious.

4. *In May 2022, the agency changed its policy again!*

CIS voluntarily changed its policies in May 2022, concerning certain asylum applicants: it shall disclose many items, including “*all* non-classified documentation considered by the asylum officer, [and] the asylum officer’s written decision...” to certain asylum applicants in court. [emphasis added]. This shows that CIS will not suffer harm when those documents are released..

The Department of Homeland Security and the Department of Justice published new rules, effective May 31, 2022, for certain asylum applicants. Some applicants are in regular removal proceedings; others, to whom these rules apply, are in “expedited” removal proceedings.

David L. Neal, Director of EOIR, a component of the Department of Justice, published guidance on August 26, 2022: *DM 22-08*.

<https://www.justice.gov/eoir/book/file/1529081/download> [last accessed on September 27, 2022].

At page 3, Mr. Neal instructs: “No later than the initial master hearing, DHS must serve the respondent [many items, including] all non-classified documentation considered by the asylum officer, [and] the asylum officer’s written decision...” [citing amended 8 C.F.R. section 208.9 (f) and 8 C.F.R. section 1240.17]

There is no need to file a FOIA request. All rejected asylum applicants are given the materials, automatically. The applicants shall be given “all unclassified information considered by the asylum officer.” This would include sources.

The applicant shall be given the “decision” of the asylum officer. The entire decision, not just part. CIS has voluntarily adopted these new rules. CIS will not suffer any harm upon disclosure of the Assessment in the instant case.

PLAINTIFF HAS EXHAUSTED ALL ADMINISTRATIVE REMEDIES

Each plaintiff has exhausted all administrative remedies.

CIS denied the administrative appeal of plaintiffs.

Via a letter dated April 13, 2023, the agency stated it “considered the foreseeable harm standard” and “applied” it, in determining that no more information could be released.

The April 13th letter does not explain what the “harm” was.

CIS knew then, and it knows now, what “harm” it considered. Later, in this lawsuit, CIS will explain in some detail what harm it considered.

CIS should have given this explanation to plaintiffs *before* it made them file an administrative appeal.

CIS informed the plaintiff that he “may seek judicial review.”

CIS expects the requester to seek judicial review of a decision, about which the requester knows very little.

The only way for the requester to get more information, and accurate information, is to file a complaint in court.

CIS is forcing requesters to file lawsuits. CIS is imposing unnecessary burdens on the court and on requesters.

For the convenience of the reader, here is page one of that letter

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Attn: FOIA/PA Appeals Office
P.O. Box 648010
Lee's Summit, MO 64064-8010



U.S. Citizenship
and Immigration
Services

April 13, 2023

ELLA CLEVELAND
LOUISE TRAUMA CENTER, LLC
1234 MASSACHUSETTS AVE NW, STE 1023
WASHINGTON, DC 20005

Dear ELLA CLEVELAND:

You appealed the action of the National Records Center regarding your request for access to records pertaining to the Asylum officer notes for ~~SSI~~, dated March 9, 2023.

After careful consideration of your appeal, I have decided to affirm the decision of the National Records Center. The National Records Center properly withheld certain information that is protected from disclosure and not appropriate for discretionary release.

We have considered the foreseeable harm standard when reviewing the record set and have applied the standard in determining that no additional information can be released or segregated.

In your appeal letter, you requested a Vaughn index; however, at this stage a Vaughn index is not given or required. See *Vaughn v. Rosen*, 484 F. 2d 820 (D.C. Cir. 1973). Your request to itemize and justify each item of the information withheld is denied. You are not entitled to such a listing at the administrative stage of processing Freedom of Information Act (FOIA) requests and appeals. See *Judicial Watch v. Clinton*, 880 F.Supp. 1, 11 (D.D.C. 1995). Since what you seek is outside the responsibilities of this office, I cannot assist you in this matter.

If you are dissatisfied with our action on your appeal, you may seek judicial review in accordance with 5 U.S.C. § 552(a)(4)(B).

The Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal Agencies. The OGIS does not have the authority to handle requests made under the Privacy Act of 1974. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
Telephone: (202) 741-5770 or (877) 684-6448
Email: OGIS@nara.gov

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105. Plaintiff has the legal right under FOIA to obtain all of the records requested. No legal basis exists for this defendant's failure to make the records available.

106. Defendant has violated the FOIA, 5 U.S.C. §§ 552(a) in many ways, as described above.

107. Plaintiff has exhausted all the necessary administrative remedies.

SECOND CAUSE OF ACTION: Ms. Khine/Mr. Nyunt

108. Plaintiffs repeat, re-allege, and incorporate by reference the allegations contained in all paragraphs set forth above.

109. Plaintiffs Khine and Nyunt are husband and wife, and are from Burma. They came to the United States, applied for asylum, and were interviewed by an asylum officer.

110. The officer wrote an Assessment of the case, wherein he cited to sources he deemed reliable. The assessment is dated December 4, 2019.

111. Plaintiffs asked Louise Trauma Center LLC to make a third-party request for the assessment, and for other records. That request was made.

112. Defendant USCIS ["CIS"] received that request on February 11, 2023 and assigned the following tracking number to it: NRC 2023 044 837.

113. CIS released the first several paragraphs of the Assessment, along with a CIS letter, dated March 8, 2023, to Louise Trauma Center LLC.

114. CIS did not release the entire assessment. CIS did not release many paragraphs. CIS did not release the sources cited in the assessment.

115. CIS did not give the real reasons why it refused to release the entire assessment to plaintiffs.

116. The facts concerning these plaintiffs are very similar to the facts concerning plaintiff Mr. Abissi.

117. Plaintiffs repeat, re-allege, and incorporate by reference the allegations contained in all paragraphs set forth above.

118. Where the facts of these plaintiffs are different from Mr. Abissi, plaintiffs will explain.

119. The March 8th letter does not mention the Privacy Act.

120. The March 8th letter, concerning Exemption (b)(5), contains the same confusing language as is found in the Abissi letter..

For the convenience of the reader, here is page one of the March 8th letter:

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010



U.S. Citizenship
and Immigration
Services

~~XXXXXXXXXXXX~~

March 8, 2023

ELLA CLEVELAND
LOUISE TRAUMA CENTER LLC
1234 MASS AVE NW, #1023
WASHINGTON, DC 20005

Dear ELLA CLEVELAND:

This letter is in response to your request for records under the Freedom of Information Act (FOIA) or Privacy Act (PA), which was received in this office on February 11, 2023 regarding ~~XXXXXXXXXXXX~~.

We have considered the foreseeable harm standard when reviewing the record set and have applied the FOIA exemptions as required by the statute and the Attorney General's guidance. We have completed the review of all documents and have identified 270 pages that are responsive to your request. Enclosed are 213 pages released in their entirety and 32 pages released in part. We are withholding 25 pages in full. In our review of these pages, we have determined they contain no reasonably segregable portion(s) of non-exempt information. We have reviewed and have determined to release all information except those portions that are exempt pursuant to 5 U.S.C. § 552 (b)(3), (b)(5), (b)(6), (b)(7)(c), and (b)(7)(e) of the FOIA.

The following exemptions are applicable:

Exemption (b)(3) provides protection for information specifically exempted from disclosure by statute, provided that such statute establishes particular criteria for withholding or refers to particular types of matter to be withheld. The statute which allows us to withhold this information pursuant to (b)(3) is 8 U.S.C. 1202(f) of the Immigration and Nationality Act.

Exemption (b)(7)(E) of the FOIA provides protection for records or information for law enforcement purposes which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. The types of documents and/or information we have withheld could consist of law enforcement systems checks, manuals, checkpoint locations, surveillance techniques, and various other documents.

Exemption (b)(5) provides protection for inter-agency or intra-agency memorandums or letters, which would not be available by law to a party other than an agency in litigation with the agency. The types of documents and/or information that we have withheld under this exemption may consist of documents containing pre-decisional information, documents or other memoranda prepared in contemplation of litigation, or confidential communications between attorney and client.

Exemption (b)(6) permits the government to withhold all information about individuals in personnel, medical and similar files where the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, drivers' licenses, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal.

Exemption (b)(7)(C) provides protection for personal information in law enforcement records, which

18 - a

PLAINTIFF HAS EXHAUSTED ALL ADMINISTRATIVE REMEDIES

121. Each plaintiff has exhausted all administrative remedies.

122. CIS denied the administrative appeal of plaintiffs, via a letter dated March 30, 2023.

123. That letter admonishes the requester to state “the reasons the requestor believes the determination was erroneous.”

124. That letter does not mention “harm;” nor does it mention (b)(5).

For the convenience of the reader, here is page one of that letter:

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Attn: FOIA/PA Appeals Office
P.O. Box 648010
Lee's Summit, MO 64064-8010



U.S. Citizenship
and Immigration
Services

~~1-800-375-5283~~

March 30, 2023

ELLA CLEVELAND
LOUISE TRAUMA CENTER, LLC
1234 MASS AVENUE, NW, #1023
WASHINGTON, DC 20005

Dear ELLA CLEVELAND:

Re: NRC2023044837

You appealed the action of the National Records Center regarding your request for access to records pertaining to ~~XXXXXXXXXX~~, dated March 21, 2023.

The Department of Homeland Security's FOIA regulations provide that FOIA appeals "should clearly identify the component determination [] that is being appealed and should contain the reasons the requestor believes the determination was erroneous." See 6 C.F.R. § 5.8(a)(1).

Your purported appeal is presented as a list of questions instead of specifying what portions of USCIS's FOIA response you are appealing and the bases for your appeal. My function is limited to the review of records that have been denied pursuant to the Freedom of Information Act or the Privacy Act (FOIA/PA). Accordingly, I will decline to answer your interrogatories because questions posed as a FOIA appeal are not presented as a proper administrative appeal. See *Judicial Watch, Inc. v. Dep't of State*, 177 F. Supp. 3d 450, 456 (D.D.C. 2016) (finding that "[a] question is not a request for records under FOIA and an agency has no duty to answer a question posed as a FOIA request"); see also *Jean-Pierre v. Bureau of Prisons*, 880 F. Supp. 2d 95, 103 (D.D.C. 2012) (concluding that a request for objective pieces of information, such as "who gave the order" and "on what day," are not "cognizable under FOIA, because they ask questions calling for specific pieces of information rather than records"); *Frank v. Dep't of Justice*, 941 F. Supp. 4, 5 (D.D.C. 1996) (finding FOIA does not require an agency to create a document that answers plaintiff's questions").

If you are dissatisfied with our action on your appeal, you may seek judicial review in accordance with 5 U.S.C. § 552(a)(4)(B).

The Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal Agencies. The OGIS does not have the authority to handle requests made under the Privacy Act of 1974. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
Telephone: (202) 741-5770 or (877) 684-6448
Email: OGIS@nara.gov

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125. Plaintiff has the legal right under FOIA to obtain all of the records requested. No legal basis exists for this defendant's failure to make the records available.

126. Defendant has violated the FOIA, 5 U.S.C. §§ 552(a) in many ways, as described above.

127. Plaintiff has exhausted all the necessary administrative remedies.

THIRD CAUSE OF ACTION: Ms. Gatore

128. Plaintiffs repeat, re-allege, and incorporate by reference the allegations contained in all paragraphs set forth above.

129. Plaintiff Rica Gatore is native and citizen of the country of Burundi. She came to the United States, applied for asylum, and was interviewed by an asylum officer.

130. On August 28, 2014, the officer wrote an Assessment of the case, wherein he cited to sources he deemed reliable.

131. The officer gave reasons for his decision in the Assessment.

132. Ms. Gatore made a FOIA request for that Assessment, and for other records. She asked Louise Trauma Center LLC to make a third-party request for those records.

133. Defendant USCIS ["CIS"] received that request on March 15, 2021 and assigned this tracking number to it: NRC 2021 044 907 to it.

134. CIS released the first several paragraphs of the Assessment, along with a CIS letter, dated May 10, 2021, to Louise Trauma Center LLC.

135. CIS did not release the entire assessment. CIS redacted many paragraphs. CIS redacted the sources cited in the assessment.

136. CIS did not release the sources cited in the Assessment.

137. The May 10th letter states: “You specifically requested a copy of the complete assessment written by the Asylum Officer...”

138. The May 10th letter does not mention “foreseeable harm.” It does not mention “harm.”

139. The letter does not state that CIS would suffer harm if the redacted material were released.

140. CIS believed then, and believes now, that it would suffer harm if the material were released.

141. CIS believed then, and believes now, that it would suffer harm of a particular type if the material were released.

142. The letter does not describe the particular type of harm that CIS fears.

143. CIS will inform plaintiffs, and the Court, about the harm it fears later on, during this litigation.

144. The May 10th letter does not mention the deliberative process privilege.

145. The facts concerning this plaintiff are very similar to the facts concerning plaintiff Mr. Abissi.

146. Plaintiffs repeat, re-allege, and incorporate by reference the allegations contained in all paragraphs set forth above. Where the facts of these plaintiffs are different from Mr. Abissi, plaintiffs will explain.

147. The May 10th letter does not mention the Privacy Act.

148. The May 10th letter, concerning Exemption (b)(5), contains the same confusing language as is found in the Abissi letter..

For the convenience of the reader, here are pages one and two of the letter:

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010



U.S. Citizenship
and Immigration
Services

~~NR620210-12907~~

May 10, 2021

Ella Cleveland
Louise Trauma Center LLC
1234 Mass Ave NW #1023
Washington, DC 20005

Dear Ella Cleveland:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office on March 15, 2021 regarding ~~Rita Castro~~. You specifically requested a copy of the complete assessment written by the Asylum Officer; a copy of all Orders of the Immigration Judge; and, a copy of her complete file.

We have completed the review of all documents and have identified 586 pages that are responsive to your request. Enclosed are 522 pages released in their entirety and 59 pages released in part. We are withholding 5 pages in full. In our review of these pages, we have determined they contain no reasonably segregable portion(s) of non-exempt information. We have reviewed and have determined to release all information except those portions that are exempt pursuant to 5 U.S.C. § 552 (b)(3), (b)(5), (b)(6), (b)(7)(c), and (b)(7)(e) of the FOIA.

The following exemptions are applicable:

Exemption (b)(6) permits the government to withhold all information about individuals in personnel, medical and similar files where the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, drivers' licenses, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal.

Exemption (b)(3) provides protection for information specifically exempted from disclosure by statute, provided that such statute establishes particular criteria for withholding or refers to particular types of matter to be withheld. The statute which allows us to withhold this information pursuant to (b)(3) is 8 U.S.C. 1202(f) of the Immigration and Nationality Act.

Exemption (b)(3) permits withholding of records or information if a law specifically exempts the material from disclosure, including the disclosure of which would be detrimental to security of transportation. The statute allows us to withhold this information pursuant to 49 U.S.C. 114(r) of the Aviation and Transportation Security Act.

Exemption (b)(7)(E) of the FOIA provides protection for records or information for law enforcement purposes which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. The types of documents and/or information we have withheld could consist of law enforcement systems checks, manuals, checkpoint locations, surveillance techniques, and various other documents.

Exemption (b)(5) provides protection for inter-agency or intra-agency memorandums or letters, which would not be available by law to a party other than an agency in litigation with the agency. The types of

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~~XXXXXXXXXXXX~~

Page 2

documents and/or information that we have withheld under this exemption may consist of documents containing pre-decisional information, documents or other memoranda prepared in contemplation of litigation, or confidential communications between attorney and client.

Exemption (b)(7)(C) provides protection for personal information in law enforcement records, which could reasonably be expected to constitute an unwarranted invasion of personal privacy. We have withheld information relating to third-party individuals. The types of documents and/or information that we have withheld could consist of names, addresses, identification numbers, telephone numbers, fax numbers, or various other documents that are considered personal.

As a result of discussion between agency personnel and a member of our staff, as a matter of administrative discretion, we are releasing computer codes found on system screen prints previously withheld under exemption b(2). There may be additional documents that contain discretionary releases of exempt information. If made, these releases are specifically identified in the responsive record. These discretionary releases do not waive our ability to invoke applicable FOIA exemptions for similar or related information in the future.

The enclosed record consists of the best reproducible copies available. Certain pages contain marks that appear to be blacked-out information. The black marks were made prior to our receipt of the file and are not information we have withheld under the provisions of the FOIA or PA.

You have the right to file an administrative appeal within 90 days of the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. You may file an administrative FOIA appeal to USCIS at: USCIS FOIA/PA Appeals Office, 150 Space Center Loop, Suite 500, Lee's Summit, MO 64064-2139. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison, Terri White, for assistance at:

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010
Telephone: (800) 375-5283
E-Mail: FOIAPAQuestions@uscis.dhs.gov

A FOIA Public Liaison is an agency official to whom FOIA requesters can raise concerns about the service the requester has received from the agency's FOIA Office. FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal Agencies. The OGIS does not have the authority to handle requests made under the Privacy Act of 1974. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001

21-b

PLAINTIFF HAS EXHAUSTED ALL ADMINISTRATIVE REMEDIES

149. Each plaintiff has exhausted all administrative remedies.

150. CIS denied the administrative appeal of plaintiffs, via a letter dated June 23, 2021.

151. That letter does not mention “harm.”

152. That letter repeats language about (b)(5) that was found in the May 10th letter.

Here is the June 23rd letter:

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Attn: FOIA/PA Appeals Office
P.O. Box 548010
Lee's Summit, MO 64064-8010



U.S. Citizenship
and Immigration
Services

~~APP2021001024~~

June 23, 2021

Ella Cleveland
Louise Trauma Center, LLC
1234 Mass Avenue, NW, #1023
Washington, DC 20005

Dear Ella Cleveland:

This letter is in response to your letter dated May 13, 2021 that appeals the May 10, 2021 response of the U.S. Citizenship and Immigration Services (USCIS), National Records Center (NRC), regarding the Freedom of Information Act (FOIA) request for access to records pertaining to ~~Pearl Gates~~.

The Department of Homeland Security's FOIA regulations provide that FOIA appeals "should clearly identify the component determination [] that is being appealed and should contain the reasons the requestor believes the determination was erroneous." See 6 C.F.R. § 5.8(a)(1). In your appeal, you have posed a number of questions regarding the Agency's response, but your appeal does not clearly identify the determination(s) that is/are being appealed. As best I can discern, it appears that you are appealing that the Agency failed to comply with 5 U.S.C. § 552(a)(6)(A)(i), specifically, that it has not provided you with "the real reasons" for any withheld records.

With regards to your claim that the Agency failed to provide you with the "real reasons" for its withholdings, as required by 5 U.S.C. § 552(a)(6)(A)(i), I note that your appeal does not set forth any specific explanations, or legal authority, in support of the claim that the Agency failed to comply with 5 U.S.C § 552(a)(6)(A)(i). Rather, in our review of the NRC's May 10, 2021 response letter, I found that the NRC identified the specific exemptions that were applicable to the withheld records in your request. Moreover, the records themselves, which were produced at the same time as the NRCs May 10, 2021 letter, also reflected the specific exemptions markings that were applicable to the records.

To the extent that your appeal is alleging that the NRC's May 10, 2021 response letter failed to provide sufficient information regarding the withholdings, such as itemized descriptions of any withheld records and/or more detailed justifications for how a particular exemption applies to any withheld records, again, I note that you have not pointed to any legal authority in support of these requirements, which is tantamount to a Vaughn index. On the contrary, it is well settled that, at this stage a Vaughn index is not given or required. See *Vaughn v. Rosen*, 484 F. 2d 820 (D.C. Cir. 1973). Thus, your request to itemize and justify each item of the information withheld is denied. You are not entitled to such a listing or index at the administrative stage of processing FOIA requests and appeals. See *Judicial Watch v. Clinton*, 880 F.Supp. 1, 11 (D.D.C. 1995).

Though your appeal did not specifically identify or allege any records that you believed were improperly withheld, I have nevertheless conducted a review of the Agency's withholdings and have determined to release 24 additional pages to you. Enclosed are 6 pages released in their entirety and 18 pages released in part. Information has been redacted pursuant to 5 U.S.C. § 552 (b)(5), (b)(6), (b)(7)(c), and (b)(7)(e) of the FOIA.

On the remaining pages, I found that the National Records Center properly withheld certain information that is protected from disclosure. This information is not appropriate for discretionary release.

The following exemptions are applicable:

22-a

~~APP3091021024~~

Page 2

Exemption (b)(6) permits the government to withhold all information about individuals in personnel, medical and similar files where the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, drivers' licenses, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal.

Exemption (b)(5) provides protection for inter-agency or intra-agency memorandums or letters, which would not be available by law to a party other than an agency in litigation with the agency. The types of documents and/or information that we have withheld under this exemption may consist of documents containing pre-decisional information, documents or other memoranda prepared in contemplation of litigation, or confidential communications between attorney and client.

Exemption (b)(7)(E) of the FOIA provides protection for records or information for law enforcement purposes which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. The types of documents and/or information we have withheld could consist of law enforcement systems checks, manuals, checkpoint locations, surveillance techniques, and various other documents.

Exemption (b)(7)(C) provides protection for personal information in law enforcement records, which could reasonably be expected to constitute an unwarranted invasion of personal privacy. We have withheld information relating to third-party individuals. The types of documents and/or information that we have withheld could consist of names, addresses, identification numbers, telephone numbers, fax numbers, or various other documents that are considered personal.

If you are dissatisfied with our action on your appeal, you may seek judicial review in accordance with 5 U.S.C. § 552(a)(4)(B).

The Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal Agencies. The OGIS does not have the authority to handle requests made under the Privacy Act of 1974. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
Telephone: (202) 741-5770 or (877) 684-6448
Email: OGIS@nara.gov
Website: ogis.archives.gov

Sincerely,



Alan D. Hughes, Associate Counsel
U.S. Citizenship and Immigration Services

22-b

153. Plaintiff has the legal right under FOIA to obtain all of the records requested. No legal basis exists for this defendant's failure to make the records available.

154. Defendant has violated the FOIA, 5 U.S.C. §§ 552(a), in many ways, as described above.

156. Plaintiff has exhausted all the necessary administrative remedies.

FOURTH CAUSE OF ACTION: Mr. Badiane

157. Plaintiffs repeat, re-allege, and incorporate by reference the allegations contained in all paragraphs set forth above.

158. Plaintiff Mamadou Badiane is native and citizen of the country of Senegal. He came to the United States, applied for asylum, and was interviewed by an asylum officer.

159. The officer wrote an Assessment of the case, wherein he cited to sources he deemed reliable.

160. The officer declined to grant asylum to Mr. Badiane. The officer gave reasons for his decision in the Assessment.

161. Mr. Badiane made a FOIA request for that Assessment, and other documents. He asked Free Burma Society LLC to make a third-party request for those records.

162. Defendant USCIS ["CIS"] received that request on September 1, 2023 and assigned NRC 2023 268 972.

163. CIS released two entire Assessments to Mr. Badiane. One is dated October 17, 2013; the other is dated November 19, 2002.

164. The 2013 assessment cites sources including: *Matter of Buffalino*, 12 I&N Dec. 277 (BIA 1967); 8 C.F.R. section 208.4, and a Department of State report.

165. The 2002 assessment cites sources including: a Department of State report.

166. CIS did not release many other records to Mr. Badiane.

167. Via a letter dated October 10, 2023, CIS made several statements, including

Sentence #2 states: “We have considered the foreseeable harm standard when reviewing the record set and have applied the FOIA exemptions as required by the statute and the Attorney General’s guidance.”

168. CIS does not state it will suffer harm if the records are released; it does not state it will not. CIS does not describe or explain what harm it considered.

169. CIS will not suffer any harm if the records are released.

170. Sentence #5 states: “We are withholding 52 pages in full.”

171. Sentence #6 states: “In our review of these pages, we have determined they contain no reasonably segregable portion(s) of non-exempt information.”

172. Plaintiff does not know what these pages contain. Plaintiff does not know why no portion can be segregated and released.

173. The letter states that these exemptions are applicable: (b)(3) (b)(6) (b)(7)C) and (b)(7)E).

174. The letter states: “You have the right to file an administrative appeal within 90 days of the date of this letter.”

175. Plaintiff cannot make a meaningful administrative appeal because the October 10th letter contains no useful information.

176. Concerning “foreseeable harm,” the plaintiff does not know what “harm” the agency reasonably foresees.

177. Plaintiff does not know if the agency claims it will suffer harm

178. Concerning “segregation,” the plaintiff does not know why the agency cannot segregate out, and release more information.

179. If this plaintiff makes an administrative appeal within 90 days of the date of the letter, the agency will consider the appeal, and deny it. The agency will not explain what “harm” it reasonably foresees. The agency will not explain why it cannot segregate out, and release more information.

180. If this plaintiff makes an administrative appeal, and that appeal is denied, the agency will inform the plaintiff that he can “seek judicial review,” which means he can file a complaint in district court. But if that happens, the agency will argue that

a]the administrative process is not subject to review; and

b] the October 10th letter is not subject to review.

181. Therefore, the only way for the plaintiff to challenge the October 10th letter is to sue now.

182. Under these circumstances, the plaintiff need not exhaust his administrative remedies.

Here is the October 10th letter:

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010



U.S. Citizenship
and Immigration
Services

Control Number: ~~XXXXXXXXXXXX~~

October 10, 2023

Aung SUU
21128 StoneCrop Pl
Ashburn, VA 20147

Dear Aung SUU:

This letter is in response to your request for records under the Freedom of Information Act (FOIA) or Privacy Act (PA), which was received in this office on September 1, 2023, regarding ~~XXXXXXXXXX~~
~~XXXXXXXXXX~~.

We have considered the foreseeable harm standard when reviewing the record set and have applied the FOIA exemptions as required by the statute and the Attorney General's guidance. We have completed the review of all documents and have identified 597 pages that are responsive to your request. Enclosed are 466 pages released in their entirety and 79 pages released in part. We are withholding 52 pages in full. In our review of these pages, we have determined they contain no reasonably segregable portion(s) of non-exempt information. We have reviewed and have determined to release all information except those portions that are exempt pursuant to 5 U.S.C. § 552 (b)(3), (b)(6), (b)(7)(C), and (b)(7)(E) of the FOIA.

The following exemptions are applicable:

Exemption (b)(6) permits the government to withhold all information about individuals in personnel, medical and similar files where the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, drivers' licenses, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal.

Exemption (b)(7)(C) provides protection for personal information in law enforcement records, which could reasonably be expected to constitute an unwarranted invasion of personal privacy. We have withheld information relating to third-party individuals. The types of documents and/or information that we have withheld could consist of names, addresses, identification numbers, telephone numbers, fax numbers, or various other documents that are considered personal.

Exemption (b)(7)(E) of the FOIA provides protection for records or information for law enforcement purposes which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. The types of documents and/or information we have withheld could consist of law enforcement systems checks, manuals, checkpoint locations, surveillance techniques, and various other documents.

Exemption (b)(3) provides protection for information specifically exempted from disclosure by statute, provided that such statute establishes particular criteria for withholding or refers to particular types of matter to be withheld. The statute which allows us to withhold this information pursuant to (b)(3) is 8 U.S.C. 1202(f) of the Immigration and Nationality Act.

There may be additional documents that contain discretionary releases of exempt information. If made,

25-a

PRAYER FOR RELIEF

183. WHEREFORE, each plaintiff prays that judgment be entered in its favor against defendant; and that the Court:

184. Order defendant to promptly disclose all of the requested records;

185. Declare that defendant's inaction and actions violate the FOIA;

186. Award each plaintiff reasonable attorney fees and costs pursuant to 5 U.S. C. §552(a) (4) (E); and

187. Grant all other such relief to each plaintiff as the Court deems proper and equitable.

Respectfully submitted,

/s/ David L. Cleveland
David L. Cleveland
Maryland Bar # 13559
Attorney for Plaintiffs
1220 L Street NW #100
Washington, DC 20005
[202] 812-8684 <1949.david@gmail.com>