

1 Michelle Mendez [REDACTED]
2 Katherine Lewis*
3 CATHOLIC LEGAL IMMIGRATION
4 NETWORK, INC.
5 8758 Georgia Avenue, Suite 850
6 Silver Spring, MD 20910
7 P: 301-565-4800
8 F: 301-565-4824
9 mmendez@cliniclegal.org

6 Elizabeth Willis*
7 Conchita Cruz
8 Swapna Reddy
9 Dorothy Tegeler
10 ASYLUM SEEKER ADVOCACY PROJECT
11 URBAN JUSTICE CENTER
12 40 Rector St., 9th Floor
13 New York, NY 10006
14 P: 646-937-0368
15 F: 646-968-0279
16 liz.willis@asylumadvocacy.org

17 *Attorneys for Plaintiffs*

18 ** Pro hac vice admission granted*

19 **UNITED STATES DISTRICT COURT**
20 **FOR THE [REDACTED]**
21 **[REDACTED]**

22 CATHOLIC LEGAL IMMIGRATION
23 NETWORK, INC.;

24 ASYLUM SEEKER ADVOCACY PROJECT,
25 URBAN JUSTICE CENTER

26 Plaintiffs,

27 v.

28 UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES

Defendant.

No. [REDACTED]

**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

INTRODUCTION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Plaintiffs, Asylum Seeker Advocacy Project at the Urban Justice Center (“ASAP”) and Catholic Legal Immigration Network, Inc. (“CLINIC”), bring this action against U.S. Citizenship and Immigration Services (“USCIS”) to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

2. ASAP and CLINIC collaborate to assist families whom the U.S. Department of Homeland Security (“DHS”) detained and separated at the U.S.-Mexican border and then reunited and released pursuant to the injunction in *Ms. L v. ICE*, Case No. 3:18-cv-00428 (S.D. Cal. filed Feb. 26, 2018). Many of these families are eligible for asylum-related determinations pursuant to the settlement agreement in *Dora v. Sessions*, Case No. 1:18-cv-1938 (D.D.C. filed Aug. 17, 2018). ASAP and CLINIC aim to ensure that these formerly separated families are able to secure long-term counsel for their immigration cases and provide technical assistance to the pro bono attorneys who represent these families.

3. The *Dora* settlement offers a pathway to safety and security for asylum seekers who might otherwise be harmed or killed in their home countries. The only way that ASAP and CLINIC can assess a family’s eligibility for the remedies set forth in the *Dora* settlement is by having access to the family’s complete immigration files. However, many formerly separated parents were released from immigration detention without their immigration documents, and are therefore unaware of the procedural posture of their immigration cases and whether they do, in fact, benefit from the *Dora* settlement.

4. As part of the efforts to assist formerly separated families, ASAP and CLINIC seek to determine the status of their immigration cases by obtaining copies of their immigration files through FOIA requests. As a practical matter, FOIA requests are the only way the parents can ascertain whether they benefit from the potentially life-saving remedies available through the *Dora* settlement.

5. ASAP and CLINIC filed USCIS FOIA requests for the “Alien files” (aka “A files”) of the following nine reunited parents: [REDACTED], [REDACTED]

1 [REDACTED], [REDACTED], [REDACTED], [REDACTED],
2 [REDACTED], [REDACTED], and [REDACTED]. With
3 regard to each request, Plaintiffs sought expedited processing.

4 6. None of the aforementioned parents was released from immigration detention with
5 a complete set of their immigration documents. Without access to these records, these reunited
6 parents cannot fully and fairly participate in the immigration process. Furthermore, Plaintiffs
7 ASAP and CLINIC lack the information necessary to determine whether the parents qualify for
8 relief under the *Dora* settlement.

9 7. USCIS has failed to provide determinations on Plaintiffs' FOIA requests within
10 the time limits provided by FOIA. This lawsuit requests a declaration that USCIS has violated
11 FOIA by withholding documents responsive to Plaintiffs' requests and an order requiring the
12 agency to immediately provide a determination on Plaintiffs' FOIA requests and production of
13 the records sought by a date certain.

14 JURISDICTION AND VENUE

15 8. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and
16 28 U.S.C. § 1331.

17 9. Venue is proper in this district, specifically the [REDACTED]
18 [REDACTED] pursuant to 5 U.S.C. §§ 552(a)(4)(B), 703, and 28 U.S.C. § 1391(e).

19 10. Declaratory relief is appropriate under 28 U.S.C. § 2201.

20 11. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. §
21 552(a)(4)(B).

22 PARTIES

23 12. Plaintiff CLINIC is a 501(c)(3) organization headquartered at 8758 Georgia
24 Avenue, Suite 850, Silver Spring, MD 20910. CLINIC's headquarters are located in Montgomery
25 County, Maryland. CLINIC is the largest nationwide network of nonprofit immigration programs,
26 with approximately 370 affiliates in 49 states and the District of Columbia. The network includes
27

1 faith-based institutions, farmworker programs, domestic violence shelters, ethnic community-
2 focused organizations, libraries and other entities that serve immigrants.

3 13. Plaintiff ASAP is a project of the Urban Justice Center, a 501(c)(3) organization.
4 ASAP works to prevent wrongful deportations by connecting families seeking asylum in the
5 United States to community support and emergency legal aid. Since May 2015, ASAP has
6 prevented the deportation of over 400 refugees in more than 30 states.

7 14. Defendant USCIS is an agency of the U.S. Government and is headquartered at 20
8 Massachusetts Ave., NW, Washington, DC 20001. USCIS is a component of DHS. USCIS has
9 possession, custody, and control of certain records to which Plaintiffs seek access.

10 **STATEMENT OF FACTS**

11
12 15. This case concerns nine FOIA requests submitted to USCIS between February 15,
13 2019 and February 26, 2019 for the “Alien files” (aka “A files”) of formerly separated parents.

14 16. Plaintiffs initially submitted FOIA requests for these parents’ A files on January
15 22, 2019, but USCIS denied the initial requests for not including a verification of identity for the
16 subject of the records. USCIS cited 6 C.F.R. § 5.21 to support this decision, which applies to
17 requests under the Privacy Act, not FOIA. Because the parents are not Lawful Permanent
18 Residents nor citizens, the Privacy Act does not apply in these cases. *See* 5 U.S.C. § 552a(a)(2).
19 Plaintiffs have appealed the denials of the initial FOIA requests to the agency.

20 17. However, due to the urgent nature of the requests, Plaintiffs also sent new FOIA
21 requests for the records of the aforementioned nine parents between February 15, 2019 and
22 February 26, 2019, including a signed Form G-639 (Freedom of Information Act/Privacy Act
23 Request) with each request as a verification of identity. To date, USCIS has yet to produce a
24 single record responsive to the Plaintiffs’ new requests despite over sixty days passing. USCIS’s
25 failure to respond to the February 15 to February 26, 2019 requests is the basis for this complaint.

FOIA Request for the A file of [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

18. On February 15, 2019, Plaintiffs filed a FOIA request for the A file of [REDACTED] to USCIS by email (uscis.foia@uscis.dhs.gov) with an accompanying signed Form G-639.

19. In the FOIA request to USCIS, Plaintiffs sought expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e) based on the Plaintiffs' understanding that [REDACTED] could potentially qualify for relief under the *Dora* settlement agreement.

20. Plaintiffs received an acknowledgement letter dated February 28, 2019 from Defendant USCIS confirming receipt of Plaintiffs' FOIA request, assigning the control number [REDACTED]. In this February 28, 2019 letter, Defendant USCIS indicated that due to the "increasing number of FOIA requests received by this office, we may encounter some delay in processing your request," and noted that they would "need to locate, compile, and review responsive records from multiple offices." Accordingly, Defendant USCIS stated it "will invoke a 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B)."

21. Plaintiffs also received a separate letter dated February 28, 2019 from Defendant USCIS denying the request for expedited processing.

22. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant USCIS was required to determine whether to comply with Plaintiffs' FOIA request within twenty (20) working days after receipt of that request and to notify Plaintiffs immediately of its determination, the reasons therefore, and the right to appeal any adverse determination. Because Plaintiffs submitted the FOIA request on February 15, 2019, and Defendant USCIS invoked a 10-day extension, Defendant's determination of Plaintiffs' FOIA request was due at the latest by April 1, 2019.

23. As of the date of this Amended Complaint, USCIS has failed to: (i) determine whether to comply with Plaintiffs' FOIA request for the A file of [REDACTED]; (ii) notify Plaintiffs of any such determination or the reasons for such determination for the FOIA request; (iii) advise Plaintiffs of the right to appeal any adverse determination of the FOIA

1 request; or (iv) produce the requested records or otherwise demonstrate that the requested records
2 are exempt from production.

3 **FOIA Request for the A file of [REDACTED]**

4 24. On February 15, 2019, Plaintiffs filed a FOIA request for the A file of [REDACTED]
5 [REDACTED] to USCIS by email (uscis.foia@uscis.dhs.gov) with an
6 accompanying signed Form G-639.

7 25. In the FOIA request to USCIS, Plaintiffs sought expedited processing pursuant to
8 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e) based on the Plaintiffs' understanding that [REDACTED]
9 [REDACTED] could potentially qualify for relief under the *Dora* settlement agreement.

10 26. Plaintiffs received an acknowledgement letter dated March 6, 2019 from
11 Defendant USCIS confirming receipt of Plaintiffs' FOIA request, assigning the control number
12 [REDACTED]. In this March 6, 2019 letter, Defendant USCIS indicated that due to the
13 "increasing number of FOIA requests received by this office, we may encounter some delay in
14 processing your request," and noted that they would "need to locate, compile, and review
15 responsive records from multiple offices." Accordingly, Defendant USCIS stated it "will invoke a
16 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B)."

17 27. Plaintiffs also received a separate letter dated March 6, 2019 from Defendant
18 USCIS denying the request for expedited processing.

19 28. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant USCIS was required to
20 determine whether to comply with Plaintiffs' FOIA request within twenty (20) working days after
21 receipt of that request and to notify Plaintiffs immediately of its determination, the reasons
22 therefore, and the right to appeal any adverse determination. Because Plaintiffs submitted the
23 FOIA request on February 15, 2019, and Defendant USCIS invoked a 10-day extension,
24 Defendant's determination of Plaintiffs' FOIA request was due at the latest by April 1, 2019.

25 29. As of the date of this Amended Complaint, USCIS has failed to: (i) determine
26 whether to comply with Plaintiffs' FOIA request for the A file of [REDACTED]; (ii)
27 notify Plaintiffs of any such determination or the reasons for such determination for the FOIA
28

1 request; (iii) advise Plaintiffs of the right to appeal any adverse determination of the FOIA
2 request; or (iv) produce the requested records or otherwise demonstrate that the requested records
3 are exempt from production.
4

5 **FOIA Request for the A file of [REDACTED]**

6 30. On February 19, 2019, Plaintiffs filed a FOIA request for the A file of [REDACTED]
7 [REDACTED] to USCIS by email (uscis.foia@uscis.dhs.gov) with an
8 accompanying signed Form G-639.

9 31. In the FOIA request to USCIS, Plaintiffs sought expedited processing pursuant to
10 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e) based on the Plaintiffs' understanding that [REDACTED]
11 [REDACTED] could potentially qualify for relief under the *Dora* settlement agreement.

12 32. Plaintiffs sought expedited processing based on two regulatory bases: 1) the parent
13 faces the "loss of substantial due process rights," 6 C.F.R. § 5.5(e)(1)(iii)—in particular, the
14 rights accorded by the *Dora* settlement agreement—and 2) "an imminent threat to the[ir] life or
15 physical safety," *id.* § 5.5(e)(1)(i)—deportation to the violence in their home country that they
16 have fled.

17 33. Plaintiffs received an acknowledgement letter dated March 28, 2019 from
18 Defendant USCIS confirming receipt of Plaintiffs' FOIA request, assigning the control number
19 [REDACTED]. In this March 28, 2019 letter, Defendant USCIS indicated that due to the
20 "increasing number of FOIA requests received by this office, we may encounter some delay in
21 processing your request," and noted that they would "need to locate, compile, and review
22 responsive records from multiple offices." Accordingly, Defendant USCIS stated it "will invoke a
23 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B)."

24 34. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant USCIS was required to
25 determine whether to comply with Plaintiffs' FOIA request within twenty (20) working days after
26 receipt of that request and to notify Plaintiffs immediately of its determination, the reasons
27 therefore, and the right to appeal any adverse determination. Because Plaintiffs submitted the
28

1 FOIA request on February 19, 2019, and Defendant USCIS invoked a 10-day extension,
2 Defendant's determination of Plaintiffs' FOIA request was due at the latest by April 2, 2019.

3 35. As of the date of this Amended Complaint, USCIS has failed to: (i) determine
4 whether to comply with Plaintiffs' FOIA request for the A file of [REDACTED]; (ii)
5 notify Plaintiffs of any such determination or the reasons for such determination for the FOIA
6 request; (iii) advise Plaintiffs of the right to appeal any adverse determination of the FOIA
7 request; or (iv) produce the requested records or otherwise demonstrate that the requested records
8 are exempt from production.

9
10 **FOIA Request for the A file of [REDACTED]**

11 36. On February 20, 2019, Plaintiffs filed a FOIA request for the A file of [REDACTED]
12 [REDACTED] to USCIS by email (uscis.foia@uscis.dhs.gov) with an accompanying
13 signed Form G-639.

14 37. In the FOIA request to USCIS, Plaintiffs sought expedited processing pursuant to
15 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e) based on the Plaintiffs' understanding that
16 [REDACTED] could potentially qualify for relief under the *Dora* settlement agreement.

17 38. Plaintiffs received an acknowledgement letter dated April 2, 2019 from Defendant
18 USCIS confirming receipt of Plaintiffs' FOIA request, assigning the control number
19 [REDACTED]. In this April 2, 2019 letter, Defendant USCIS denied the request for expedited
20 processing. Defendant USCIS also indicated that due to the "increasing number of FOIA requests
21 received by this office, we may encounter some delay in processing your request," and noted that
22 they would "need to locate, compile, and review responsive records from multiple offices."
23 Accordingly, Defendant USCIS stated it "will invoke a 10-day extension for your request
24 pursuant to 5 U.S.C. § 552(a)(6)(B)."

25 39. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant USCIS was required to
26 determine whether to comply with Plaintiffs' FOIA request within twenty (20) working days after
27 receipt of that request and to notify Plaintiffs immediately of its determination, the reasons
28

1 therefore, and the right to appeal any adverse determination. Because Plaintiffs submitted the
2 FOIA request on February 20, 2019, and Defendant USCIS invoked a 10-day extension,
3 Defendant's determination of Plaintiffs' FOIA request was due at the latest by April 3, 2019.

4 40. As of the date of this Amended Complaint, USCIS has failed to: (i) determine
5 whether to comply with Plaintiffs' FOIA request for the A file of [REDACTED]; (ii) notify
6 Plaintiffs of any such determination or the reasons for such determination for the FOIA request;
7 (iii) advise Plaintiffs of the right to appeal any adverse determination of the FOIA request; or (iv)
8 produce the requested records or otherwise demonstrate that the requested records are exempt
9 from production.

10
11 **FOIA Request for the A file of [REDACTED]**

12 41. On February 21, 2019, Plaintiffs filed a FOIA request for the A file of [REDACTED]
13 [REDACTED] to USCIS by email (uscis.foia@uscis.dhs.gov) with an
14 accompanying signed Form G-639.

15 42. In the FOIA request to USCIS, Plaintiffs sought expedited processing pursuant to
16 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e) based on the Plaintiffs' understanding that
17 [REDACTED] could potentially qualify for relief under the *Dora* settlement
18 agreement.

19 43. Plaintiffs received an acknowledgement letter dated March 8, 2019 from
20 Defendant USCIS confirming receipt of Plaintiffs' FOIA request, assigning the control number
21 [REDACTED]. In this March 8, 2019 letter, Defendant USCIS indicated that due to the
22 "increasing number of FOIA requests received by this office, we may encounter some delay in
23 processing your request," and noted that they would "need to locate, compile, and review
24 responsive records from multiple offices." Accordingly, Defendant USCIS stated it "will invoke a
25 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B)."

26 44. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant USCIS was required to
27 determine whether to comply with Plaintiffs' FOIA request within twenty (20) working days after
28

1 receipt of that request and to notify Plaintiffs immediately of its determination, the reasons
2 therefore, and the right to appeal any adverse determination. Because Plaintiffs submitted the
3 FOIA request on February 21, 2019, and Defendant USCIS invoked a 10-day extension,
4 Defendant's determination of Plaintiffs' FOIA request was due at the latest by April 4, 2019.

5 45. As of the date of this Amended Complaint, USCIS has failed to: (i) determine
6 whether to comply with Plaintiffs' FOIA request for the A file of [REDACTED]; (ii)
7 notify Plaintiffs of any such determination or the reasons for such determination for the FOIA
8 request; (iii) advise Plaintiffs of the right to appeal any adverse determination of the FOIA
9 request; or (iv) produce the requested records or otherwise demonstrate that the requested records
10 are exempt from production.

11
12 **FOIA Request for the A file of [REDACTED]**

13 46. On February 21, 2019, Plaintiffs filed a FOIA request for the A file of [REDACTED]
14 [REDACTED] to USCIS by email (uscis.foia@uscis.dhs.gov) with an
15 accompanying signed Form G-639.

16 47. In the FOIA request to USCIS, Plaintiffs sought expedited processing pursuant to
17 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e) based on the Plaintiffs' understanding that [REDACTED]
18 [REDACTED] could potentially qualify for relief under the *Dora* settlement agreement.

19 48. Plaintiffs received an acknowledgement letter dated March 8, 2019 from
20 Defendant USCIS confirming receipt of Plaintiffs' FOIA request, assigning the control number
21 [REDACTED]. In this March 8, 2019 letter, Defendant USCIS indicated that due to the
22 "increasing number of FOIA requests received by this office, we may encounter some delay in
23 processing your request," and noted that they would "need to locate, compile, and review
24 responsive records from multiple offices." Accordingly, Defendant USCIS stated it "will invoke a
25 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B)."

26 49. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant USCIS was required to
27 determine whether to comply with Plaintiffs' FOIA request within twenty (20) working days after
28

1 receipt of that request and to notify Plaintiffs immediately of its determination, the reasons
2 therefore, and the right to appeal any adverse determination. Because Plaintiffs submitted the
3 FOIA request on February 21, 2019, and Defendant USCIS invoked a 10-day extension,
4 Defendant's determination of Plaintiffs' FOIA request was due at the latest by April 4, 2019.

5 50. As of the date of this Amended Complaint, USCIS has failed to: (i) determine
6 whether to comply with Plaintiffs' FOIA request for the A file of [REDACTED]; (ii)
7 notify Plaintiffs of any such determination or the reasons for such determination for the FOIA
8 request; (iii) advise Plaintiffs of the right to appeal any adverse determination of the FOIA
9 request; or (iv) produce the requested records or otherwise demonstrate that the requested records
10 are exempt from production.

11
12 **FOIA Request for the A file of [REDACTED]**

13 51. On February 21, 2019, Plaintiffs filed a FOIA request for the A file of [REDACTED]
14 [REDACTED] to USCIS by email (uscis.foia@uscis.dhs.gov) with an
15 accompanying signed Form G-639.

16 52. In the FOIA request to USCIS, Plaintiffs sought expedited processing pursuant to
17 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e) based on the Plaintiffs' understanding that [REDACTED]
18 [REDACTED] could potentially qualify for relief under the *Dora* settlement agreement.

19 53. Plaintiffs received an acknowledgement letter dated March 8, 2019 from
20 Defendant USCIS confirming receipt of Plaintiffs' FOIA request, assigning the control number
21 [REDACTED]. In this March 8, 2019 letter, Defendant USCIS indicated that due to the
22 "increasing number of FOIA requests received by this office, we may encounter some delay in
23 processing your request," and noted that they would "need to locate, compile, and review
24 responsive records from multiple offices." Accordingly, Defendant USCIS stated it "will invoke a
25 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B)."

26 54. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant USCIS was required to
27 determine whether to comply with Plaintiffs' FOIA request within twenty (20) working days after
28

1 receipt of that request and to notify Plaintiffs immediately of its determination, the reasons
2 therefore, and the right to appeal any adverse determination. Because Plaintiffs submitted the
3 FOIA request on February 21, 2019, and Defendant USCIS invoked a 10-day extension,
4 Defendant's determination of Plaintiffs' FOIA request was due at the latest by April 4, 2019.

5 55. As of the date of this Amended Complaint, USCIS has failed to: (i) determine
6 whether to comply with Plaintiffs' FOIA request for the A file of [REDACTED]; (ii)
7 notify Plaintiffs of any such determination or the reasons for such determination for the FOIA
8 request; (iii) advise Plaintiffs of the right to appeal any adverse determination of the FOIA
9 request; or (iv) produce the requested records or otherwise demonstrate that the requested records
10 are exempt from production.

11
12 **FOIA Request for the A file of [REDACTED]**

13 56. On February 25, 2019, Plaintiffs filed a FOIA request for the A file of [REDACTED]
14 [REDACTED] to USCIS by email (uscis.foia@uscis.dhs.gov) with an
15 accompanying signed Form G-639.

16 57. In the FOIA request to USCIS, Plaintiffs sought expedited processing pursuant to
17 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e) based on the Plaintiffs' understanding that [REDACTED]
18 [REDACTED] could potentially qualify for relief under the *Dora* settlement agreement.

19 58. Plaintiffs received an acknowledgement letter dated March 13, 2019 from
20 Defendant USCIS confirming receipt of Plaintiffs' FOIA request, assigning the control number
21 [REDACTED]. In this March 13, 2019 letter, Defendant USCIS indicated that due to the
22 "increasing number of FOIA requests received by this office, we may encounter some delay in
23 processing your request," and noted that they would "need to locate, compile, and review
24 responsive records from multiple offices." Accordingly, Defendant USCIS stated it "will invoke a
25 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B)."

26 59. Plaintiffs also received a separate letter dated March 13, 2019 from Defendant
27 USCIS denying the request for expedited processing.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

60. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant USCIS was required to determine whether to comply with Plaintiffs’ FOIA request within twenty (20) working days after receipt of that request and to notify Plaintiffs immediately of its determination, the reasons therefore, and the right to appeal any adverse determination. Because Plaintiffs submitted the FOIA request on February 25, 2019, and Defendant USCIS invoked a 10-day extension, Defendant’s determination of Plaintiffs’ FOIA request was due at the latest by April 8, 2019.

61. As of the date of this Amended Complaint, USCIS has failed to: (i) determine whether to comply with Plaintiffs’ FOIA request for the A file of [REDACTED]; (ii) notify Plaintiffs of any such determination or the reasons for such determination for the FOIA request; (iii) advise Plaintiffs of the right to appeal any adverse determination of the FOIA request; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

FOIA Request for the A file of [REDACTED]

62. On February 26, 2019, Plaintiffs filed a FOIA request for the A file of [REDACTED] to USCIS by email (uscis.foia@uscis.dhs.gov) with an accompanying signed Form G-639.

63. In the FOIA request to USCIS, Plaintiffs sought expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e) based on the Plaintiffs’ understanding that [REDACTED] could potentially qualify for relief under the *Dora* settlement agreement.

64. Plaintiffs received an acknowledgement letter dated March 29, 2019 from Defendant USCIS confirming receipt of Plaintiffs’ FOIA request, assigning the control number [REDACTED]. In this March 29, 2019 letter, Defendant USCIS denied the request for expedited processing. Defendant USCIS also indicated that due to the “increasing number of FOIA requests received by this office, we may encounter some delay in processing your request,” and noted that they would “need to locate, compile, and review responsive records from multiple

1 offices.” Accordingly, Defendant USCIS stated it “will invoke a 10-day extension for your
2 request pursuant to 5 U.S.C. § 552(a)(6)(B).”

3 65. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant USCIS was required to
4 determine whether to comply with Plaintiffs’ FOIA request within twenty (20) working days after
5 receipt of that request and to notify Plaintiffs immediately of its determination, the reasons
6 therefore, and the right to appeal any adverse determination. Because Plaintiffs submitted the
7 FOIA request on February 26, 2019, and Defendant USCIS invoked a 10-day extension,
8 Defendant’s determination of Plaintiffs’ FOIA request was due at the latest by April 9, 2019.

9 66. As of the date of this Amended Complaint, USCIS has failed to: (i) determine
10 whether to comply with Plaintiffs’ FOIA request for the A file of [REDACTED];
11 (ii) notify Plaintiffs of any such determination or the reasons for such determination for the FOIA
12 request; (iii) advise Plaintiffs of the right to appeal any adverse determination of the FOIA
13 request; or (iv) produce the requested records or otherwise demonstrate that the requested records
14 are exempt from production.

15
16 **Plaintiffs have Constructively Exhausted their Administrative Remedies**

17 67. Because Defendant USCIS has failed to comply with the time limit set forth in 5
18 U.S.C. § 552(a)(6)(A) with respect to the above FOIA requests, Plaintiffs have exhausted any and
19 all administrative remedies with respect to those requests. 5 U.S.C. § 552(a)(6)(C).

20
21 **COUNT 1**

22 (Violation of FOIA, 5 U.S.C. § 552)

23 68. Plaintiffs ASAP and CLINIC re-allege paragraphs 1 through 67 as if fully stated
24 herein.

25 69. Plaintiffs have a legal right under FOIA to obtain the specific agency records
26 sought, and Defendants’ failure to make the requested records promptly available to Plaintiffs has
27 no legal basis.
28

1 70. Defendants' failure to respond to Plaintiffs' requests and to promptly make the
2 records available violates 5 U.S.C. § 552 and applicable regulations promulgated thereunder.

3 71. On information and belief, Defendant currently has possession, custody and
4 control of the requested records.

5 72. Defendant's unlawful withholding of the requested records irreparably harms
6 Plaintiffs and Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to
7 conform their conduct to the requirements of the law. Without access to the records of the above-
8 listed parents, Plaintiffs cannot assess the procedural posture of their cases, which renders it
9 impossible to determine whether they may benefit from the *Dora* settlement.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs respectfully request that the Court:

- 12
- 13 A. Declare that Defendant's failure to respond to Plaintiffs' requests for records is unlawful;
 - 14 B. Order Defendant to conduct a search for any and all records responsive to Plaintiffs'
15 FOIA requests and demonstrate that it employed search methods reasonably likely to lead
16 to the discovery of records responsive to Plaintiffs' FOIA requests;
 - 17 C. Provide for expeditious proceedings in this action;
 - 18 D. Order Defendant to produce, by a date certain, any and all non-exempt records responsive
19 to Plaintiffs' FOIA requests and a Vaughn index of any responsive records withheld under
20 claim of exemption;
 - 21 E. Enjoin Defendant from continuing to withhold any and all non-exempt records responsive
22 to Plaintiffs' FOIA requests;
 - 23 F. Grant Plaintiffs an award of attorneys' fees and other litigation costs reasonably incurred
24 in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
 - 25 G. Grant Plaintiffs such other relief as the Court may deem just and proper.

26 Dated: May 3, 2019

Respectfully submitted,

27 _____/s/
Michelle Mendez
Katherine M. Lewis

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CATHOLIC LEGAL IMMIGRATION NETWORK,
INC.
8758 Georgia Avenue, Suite 850
Silver Spring, MD 20910
P: 301-565-4800
F: 301-565-4824
mmendez@cliniclegal.org
klewis@cliniclegal.org

_____/s/_____
Elizabeth Willis
(signed by Michelle Mendez with permission of
Elizabeth Willis)
ASYLUM SEEKER ADVOCACY PROJECT
URBAN JUSTICE CENTER
40 Rector St., 9th Floor
New York, NY 10006
P: 646-937-0368
F: 646-968-0279
liz.willis@asylumadvocacy.org