

# PLAINTIFF'S EXHIBIT C



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Maine

November 7, 2019

**Via Certified Mail, Return Receipt Requested**

U.S. Citizenship and Immigration Services  
 National Records Center, FOIA/PA Appeal Office  
 150 Space Center Loop, Ste. 500  
 Lee's Summit, MO, 64064-2139  
[uscis.foia@uscis.dhs.gov](mailto:uscis.foia@uscis.dhs.gov)

**RE: Freedom of Information Appeal COW2019500947**

To Whom It May Concern,

Pursuant to 5 U.S.C. § 552(a)(6) and 6 C.F.R. § 5.8(a)(1), this letter appeals the adverse determinations of U.S. Citizenship and Immigration Services (USCIS) to Freedom of Information Act ("FOIA") request COW2019500947, denying expedited processing and withholding responsive records until April 20, 2020. *See* Ex. A (USCIS August 14, 2019 Initial Response); Ex. B (Status of FOIA request, accessed on November 6, 2019). Copies of the original request and related correspondence are attached to this letter. As required by 6 C.F.R. § 5.8(a)(1) and 5 U.S.C. § 552(a)(6)(A)(i)(III)(aa), this appeal is postmarked within 90 working days of USCIS's August 14, 2019 response and is therefore timely.

**BACKGROUND**

The underlying FOIA request was submitted by the American Civil Liberties Union of Maine Foundation ("ACLU of Maine") on July 12, 2019, and was received by USCIS on August 5, 2019.<sup>1</sup> *See* Ex. C ("FOIA Request"); Ex. B. This request sought information pertaining to

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<sup>1</sup> The American Civil Liberties Union of Maine is a non-profit, 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The ACLU of Maine Foundation is a 501(c)(3) organizations that provide legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about the civil rights and civil liberties implications of pending and proposed state and federal legislation, provides analyses of pending and proposed legislation, and mobilizes its members to lobby their legislators. Collectively, the ACLU of Maine and the ACLU of Maine Foundation are

approvals, referrals, and denials of affirmative asylum cases arising out of the Newark Asylum Office<sup>2</sup> and the Boston Asylum Sub-Office<sup>3</sup>, from January 1, 2010 until the present, including, in summary:

- (1) records regarding data and statistical information of affirmative asylum cases handled in the Boston and Newark Asylum Offices, including case file information and records, supervisory decision logs, and related communications; and
- (2) records containing policies, procedures, and objectives of the Boston and Newark Asylum Offices regarding affirmative asylum cases, including, but not limited to, training and explanatory materials, policies and procedures on workload and case management systems, and policies and procedures communicated in approval, referral, and denial notices, including on cases from Maine and cases pertaining to applicants from Angola, Burundi, Democratic Republic of Congo, and Rwanda.

The FOIA request sought expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E), because of the compelling need for access to this information about the Newark and Boston Asylum Offices' handling of affirmative asylum cases. 28 C.F.R. § 16.5(e)(1)(ii). *See* FOIA Request Att. C, at 9-10.

In the August 14, 2019 Initial Response, USCIS denied expedited processing and otherwise stated that the "request is being handled under the provisions of the [FOIA]." Initial Response, Att. A. The Initial Response placed the request "in the complex track (Track 2)" for processing. *Id.* Although USCIS stated that it "may need to contact [the Requester] at a later date to discuss the scope of [the] request," it did not seek any clarification regarding scope. Nor has it done so in the months following. Not only did the Initial Response deny expedited processing, but the USCIS website reflecting the status of the FOIA request states that the estimated completion date for the request is not until April 20, 2020, eight and a half months after USCIS received the request. Att. B.

### ARGUMENT

This appeal challenges USCIS's adverse determinations to deny expedited processing and to withhold records until April 20, 2020. As discussed below, the FOIA Request satisfied the statutory and regulatory standards for expedited processing because there is a compelling need

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referred to as the "ACLU of Maine." The ACLU of Maine is part of the 50-state network of staffed affiliate offices that, along with the ACLU headquarters, forms the nationwide ACLU.

<sup>2</sup> States falling within the Newark Asylum Office's Jurisdiction include Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont, as well as certain counties in New York and Pennsylvania.

<sup>3</sup> States falling within the Boston Asylum Sub-Office's Jurisdiction include Maine, Massachusetts, New Hampshire, and Rhode Island.



for the requested information for people seeking asylum from persecution in their home countries. The ACLU of Maine would publicly disseminate the information, making it available to the public, advocates, and people seeking asylum throughout the region served by the Newark and Boston Asylum Offices. Additionally, by law, many of the requested records should already be publicly posted on the USCIS website, making the eight-month turnaround period particularly unreasonable. *See* 5 U.S.C. § 552(a)(2). Accordingly, we request that USCIS make the requested records available “as soon as practicable.” *See* 5 U.S.C. § 552(a)(6)(E)(iii).

## **I. USCIS Should Grant Expedited Processing for the FOIA Request**

The Initial Response wrongly denied expedited processing for this request, which seeks statistical information, policies, and procedures in the Newark and Boston Asylum Offices. *See* 5 U.S.C. § 552(a)(6)(E) (providing for expedited processing when there is a “compelling need” for the records). As detailed in the FOIA Request, the approval rate for affirmative asylum claims in those offices is disproportionately low compared to other offices around the country. *See* Att. C at 8, 10. This low approval rate translates into denial of asylum to people who have a credible fear of returning to their home country—and who might have been granted asylum had they lived in other regions of the country. As such, asylum applicants and the public as a whole have a strong interest in access to public records showing office statistics, approval and denial rates, and policies and procedures that contribute to those rates.

The Initial Response provided no case-specific reason for denying expedited processing, instead merely reciting the applicable rules on expedited processing. Specifically, “[t]he Department of Homeland Security Freedom of Information Act regulation at 6 C.F.R. § 5.5(e)(1) requires that [the requester] demonstrate that [the] request warrants expedited treatment because it involves”:

- (i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information;
- (iii) The loss of substantial due process rights; or
- (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

Ex. A (quoting 6 C.F.R. § 5.5(e)(1)).<sup>4</sup> The Initial Response noted the right to appeal the denial of expedited processing, and requested, if available, any “additional information . . . for reconsideration” regarding “the nature and degree of (i), (ii), or (iii) of the above categories.”

<sup>4</sup> The Initial Response further noted that requests for expedited processing under (e)(1)(iv) “must be submitted to the Senior Director of FOIA Operations, the Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW STOP-0655, Washington, DC 20598-0655,” but neglected to acknowledge that “[a] component that receives a misdirected request for expedited



As described in the original request, the FOIA Request should be expedited because the ACLU of Maine is an organization “primarily engaged in disseminating information,” and there is “[a]n urgency to inform the public about an actual or alleged government activity.”

*A. The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU of Maine is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>5</sup> Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU of Maine’s work and are among its primary activities. *See ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).<sup>6</sup>

The ACLU of Maine publishes newsletters, news briefings, reports, blogs, and other material that are disseminated to the public, both directly and through the nationwide ACLU. The nationwide ACLU regularly publishes STAND, a print magazine that reports on and analyzes civil liberties-related current events, including information on the state offices. The magazine is disseminated to over 620,000 people. The nationwide ACLU also publishes regular updates and alerts via email to approximately 2.1 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to 1.5 million social media followers (members and non-members). The magazine as well as the email and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.<sup>7</sup>

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processing under the standard set forth in paragraph (e)(1)(iv) of this section *shall forward it immediately* to the DHS Senior Director of FOIA Operations, the Privacy Office, for determination.” *See* 6 C.F.R. § 5.5(e)(2) (emphasis added).

<sup>5</sup> *See also* 6 C.F.R. § 5.5(e)(1)(ii).

<sup>6</sup> Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

<sup>7</sup> *See, e.g., Case Briefs, American Civil Liberties Union of Vermont, Laptop Searches At The Border*, <https://www.acluvt.org/en/news/laptop-searches-border> (updating public on FOIA request and litigation concerning CBP searches of personal electronic devices).



The ACLU also regularly issue press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,<sup>8</sup> and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.<sup>9</sup>

Similarly, the ACLU publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information

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<sup>8</sup> See, e.g., Ed Morin, *Maine ACLU Sues for Access to Information on Bus Immigration Raids*, Maine Public, (May 1, 2018), <https://www.mainepublic.org/post/maine-aclu-sues-access-information-bus-immigration-raids-records-covered-in-a-blog-post>, Emma Bond, *CBP Trying to Hide Bus Passengers' Rights? No Thanks* (July 24, 2019), <https://www.aclumaine.org/en/news/cbp-trying-hide-bus-passengers-rights-no-thanks>; Press Release, American Civil Liberties Union, *U.S. Releases Drone Strike 'Playbook' in Response to ACLU Lawsuit* (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, *Secret Documents Describe Graphic Abuse and Admit Mistakes* (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, *U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit* (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>; Press Release, American Civil Liberties Union, *Justice Department White Paper Details Rationale for Targeted Killing of Americans* (Feb. 4, 2013), <https://www.aclu.org/national-security/justice-department-white-paper-details-rationale-targeted-killing-americans>; Press Release, American Civil Liberties Union, *Documents Show FBI Monitored Bay Area Occupy Movement* (Sept. 14, 2012), <https://www.aclu.org/news/documents-show-fbi-monitored-bay-area-occupy-movement-insidebayareacom>.

<sup>9</sup> Cara DeRose, *Concord can and should refuse warrantless bus raids, says Maine ACLU*, Beacon, July 23, 2019, <http://mainebeacon.com/concord-can-and-should-refuse-warrantless-bus-raids-says-maine-aclu/> (noting that “as a result of the public records request filed by the Maine ACLU, the U.S. Customs and Border Protection agency unearthed training documents that indicate CBP agents usually require consent from bus companies to search or question bus passengers without a warrant”); Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, [https://www.washingtonpost.com/world/national-security/newly-declassified-document-sheds-light-on-how-president-approves-drone-strikes/2016/08/06/f424fe50-5be0-11e6-831d-0324760ca856\\_story.html](https://www.washingtonpost.com/world/national-security/newly-declassified-document-sheds-light-on-how-president-approves-drone-strikes/2016/08/06/f424fe50-5be0-11e6-831d-0324760ca856_story.html) (quoting former ACLU deputy legal director Jameel Jaffer); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About 'Torture' in Its Former Detention Program*, ABC, June 15, 2016, <http://abcnews.go.com/US/newly-released-cia-documents-reveal-torture-detention-program/story?id=39873389> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Device*, Guardian, Mar. 17, 2016, <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler); David Welna, *Government Suspected of Wanting CIA Torture Report to Remain Secret*, NPR, Dec. 9, 2015, <http://www.npr.org/2015/12/09/459026249/cia-torture-report-may-remain-secret> (quoting ACLU project director Hina Shamsi).



obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.<sup>10</sup> The ACLU also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU publishes widely-read blogs where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily.<sup>11</sup> The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See* <https://www.aclu.org/multimedia>. The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, [www.aclu.org](http://www.aclu.org). The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU’s website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.

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<sup>10</sup> *See, e.g.*, ACLU, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; ACLU, *Details Abound in Drone ‘Playbook’ – Except for the Ones That Really Matter Most* (Aug. 8, 2016, 5:30 PM), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; ACLU, *ACLU- Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015, 5:30 PM), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; ACLU, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014, 3:29 PM), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>; ACLU, *ACLU Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government’s “Suspicious Activity Report” Systems* (Oct. 29, 2013), [https://www.aclu.org/sites/default/files/assets/eye\\_on\\_fbi\\_-\\_sars.pdf](https://www.aclu.org/sites/default/files/assets/eye_on_fbi_-_sars.pdf).

<sup>11</sup> *See, e.g.*, Emma Bond, *CBP Trying to Hide Bus Passengers’ Rights? No Thanks* (July 24, 2019), <https://www.aclumaine.org/en/news/cbp-trying-hide-bus-passengers-rights-no-thanks>; *see generally* ACLU of Maine Blog, <https://www.aclumaine.org/en/News> (general news about ACLU of Maine advocacy); ACLU blog, <https://www.aclu.org/blog> (general news about nationwide ACLU advocacy).



The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA requests—the ACLU created an original chart that provides the public and news media with a comprehensive summary index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition, and surveillance.<sup>12</sup> Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act<sup>13</sup>; a chart of original statistics about the Defense Department’s use of National Security Letters based on its own analysis of records obtained through FOIA requests<sup>14</sup>; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.<sup>15</sup>

The ACLU of Maine plans to analyze, publish, and disseminate to the public the information gathered through this Request.

*B. The records sought are urgently needed to inform the public about actual or alleged government activity.*

The requested records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>16</sup> Specifically, the requested records are necessary to inform the public about the disproportionately low approval rate—and disproportionately high referral and denial rates—in the Newark and Boston Asylum Offices. FOIA Request Att. C at 8, 10. As explained in the FOIA Request: “The approval numbers regarding affirmative asylum claims have continued to drop since the Boston Sub-Office’s inception in January 2015 and remain among the lowest in the country, impacting the lives of thousands of asylum seekers across the region and potentially undertaken in violation of national and international law.” FOIA Request, Att. C at 10. “This has established substantial uncertainty within affirmative asylum seekers’ minds because of this significant balance between the success rate for individuals falling within the Boston Asylum Sub-Office’s jurisdiction as compared with asylum seekers within other jurisdictions.”<sup>17</sup>

<sup>12</sup> [https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos\\_2009\\_0305.pdf](https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf).

<sup>13</sup> <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

<sup>14</sup> [https://www.aclu.org/sites/default/files/field\\_document/nsl\\_stats.pdf](https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf).

<sup>15</sup> <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

<sup>16</sup> *See also* 6 C.F.R. § 5.5(e)(1)(ii).

<sup>17</sup> People apply for affirmative asylum when they have suffered from past persecution or a well-founded fear of future persecution in their home country, on account of race, nationality, religion, political opinion, or membership in a particular social group. The low approval rates in



News articles by numerous media outlets confirm the “urgency to inform” the public on this topic. 6 C.F.R. § 5.5(e)(3) (stating “[t]he existence of numerous articles published on a given subject can be helpful to establishing the requirement that there be an “urgency to inform” the public”). Media sources have identified the plummeting approval rate in the Boston Asylum Sub-Office as a matter of public concern. For example, NBC News recently reported on an August 15 letter recording that “[m]ost U.S. asylum officers working in Boston and Newark, New Jersey, have been reassigned to interview migrant asylum-seekers crossing the southwest border, . . . potentially putting asylum applicants in the Northeast at risk.”<sup>18</sup> “The letter explains that as a result of the reassignments, the Newark office will continue to interview a small number of applicants there and the Boston office will not conduct new interviews for the time being.”<sup>19</sup> “Without staff to process their claims, asylum-seekers could face long backlogs for having their asylum applications approved and could lose work permits while they wait.”<sup>20</sup>

Another article discussed the predicament of an asylum applicant from Eritrea living in Portland, Maine, who was “[a]bandoned in the middle of a stack of aging asylum applications” in the Boston Asylum Sub-Office.<sup>21</sup> The article describes the “impasse” at which this applicant found himself, noting that the Boston Asylum Sub-Office “granted asylum applications at one of the lowest rates in the country, a mere 12 percent, in 2018.”<sup>22</sup>

Additional news outlets have covered the issue of decreasing approval rates more generally.<sup>23</sup> Not only are these declining rates of public interest, but they have devastating effects on those who have applied for asylum. See Rachel D. Settlage, *Affirmatively Denied: The*

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the Newark and Boston Asylum Offices present a risk of physical danger for asylum applicants in the region who, if denied asylum, may be forced to return to a dangerous situation in their home countries.

<sup>18</sup> Julia Ainsley, *Letter shows U.S. asylum officers in Newark, N.J., Boston were reassigned to border cases*, NBC News, (August 22, 2019) <https://www.nbcnews.com/politics/immigration/letter-shows-u-s-asylum-officers-newark-boston-were-reassigned-n1045361>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Samantha Hogan, *Stuck in the Stack*, Pine Tree Watch (July 25, 2019), <https://pinetreewatch.org/maine-asylum-seeker-is-stuck-in-the-stack/#:~:targetText=The%20Boston%20asylum%20office%20granted,far%20fewer%20were%20simply%20denied>.

<sup>22</sup> *Id.* A copy of the letter is available at <https://www.documentcloud.org/documents/6320112-USCIS-Email-2019-08-15.html>.

<sup>23</sup> Kate Smith, *Asylum denials hit record-high in 2018 as Trump administration tightens immigration policy*, CBS News (December 4, 2018), <https://www.cbsnews.com/news/asylum-seekers-asylum-denials-hit-record-high-in-2018-as-trump-administration-tightens-immigration-policy-as-the-caravan-arrives/>.



*Detrimental Effects of A Reduced Grant Rate for Affirmative Asylum Seekers*, 27 B.U. Int'l L. J. 61 (2009). Accordingly, the ACLU of Maine has satisfied the requirements for expedited processing of this Request and we respectfully request that USCIS reconsider its denial of expedited processing.

**II. Withholding Responsive Records for More than Eight Months Is Unreasonable, in Violation of 552(a)(2), and, in any event, Violates 552(a)(3)'s Requirement for a Prompt Response**

This appeal also challenges USCIS's decision to withhold the requested records until approximately April 20, 2020. A delay of more than eight months for this FOIA request is unreasonable given that many of the requested records should be publicly posted to the USCIS website without any need for a FOIA request, 5 U.S.C. § 552(a)(2), and, at the very least, all records must be "promptly" available upon request, *id.* § 552(a)(3).

Section 552(a)(2) is FOIA's "reading room provision," and provides one of the FOIA's "affirmative disclosure requirements." *Campaign for Accountability v. U.S. Dep't of Justice*, 278 F. Supp. 3d 303, 314 (D.D.C. 2017) (citing 5 U.S.C. § 552(a)(2)). Under this affirmative disclosure obligation, agencies must make "available for public inspection in an electronic format" specific categories of records, including:

- (A) "final opinions . . . made in the adjudication of cases,"
- (B) "statements of policy and interpretation which have been adopted by the agency and not published in the Federal Register," and
- (C) "administrative staff manuals and instructions to staff that affect a member of the public."

5 U.S.C. § 552(a)(2) (A)-(C). The DHS regulation implementing this provision makes "each component . . . responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records." 6 C.F.R. § 5.2. "Each component shall ensure that posted records and indices are updated on an ongoing basis." *Id.*

Many of the requested records qualify as the types of records that USCIS must make affirmatively available under 552(a)(2). *See* FOIA Request Att. C at 3-7. For instance, Request B seeks "policies" and "procedures" governing the Boston and Newark Asylum Offices' handling of affirmative asylum claims. *Id.* at 4. Regardless of whether these policies are labeled as "statements of policy and interpretation," or "administrative staff manuals and instructions to staff that affect a member of the public," USCIS has an affirmative obligation to make these materials available. Refusing to provide these records until April 2020 or later does not comply with the agency's obligations under 5 U.S.C. § 552(a)(2).

Even for portions of the request that do not neatly fit within section 552(a)(2), USCIS has the obligation to make public records "promptly" available. A delay of more than eight months



does not satisfy this “promptness” requirement. Despite the widespread community impact of its plummeting approval rates, as discussed above, the Boston and Newark Asylum Offices have failed to post or provide relevant statistics, regulations, policies, and procedures clarifying the reasoning behind the current approval, referral, and denial rates. As the Boston and Newark Asylum Offices continue to deny or refer affirmative asylum claims at record rates, the public has an urgent need to understand the reasoning and processes governing these actions.

\* \* \* \* \*

For these reasons, the ACLU of Maine respectfully requests that USCIS conduct an adequate search and disclose all responsive records in an expeditious manner. In the event that USCIS reaches an adverse determination regarding the FOIA Request or this appeal, ACLU of Maine requests a complete list of documents covered by the FOIA Request and a specific indication of and a justification of any records withheld.

ACLU of Maine expects a response to this appeal within 20 working days, as required by 5 U.S.C. § 552(a)(6)(A)(ii).

The requester certifies that the above information is true and correct to the best of the requester’s knowledge and belief. Please contact Emma Bond, by email at [ebond@aclumaine.org](mailto:ebond@aclumaine.org) or phone at (207) 619-8687, if you require any further information or if you have any questions related to this matter.

Sincerely,



Emma Bond  
Staff Attorney  
ACLU of Maine Foundation