

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DEMOCRACY FORWARD FOUNDATION,
1333 H Street NW, 11th Floor
Washington, DC 20005,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF LABOR,
200 Constitution Ave., NW,
Washington, DC 20210,

Defendant.

Case No.

COMPLAINT

1. Plaintiff Democracy Forward Foundation (“Democracy Forward”) brings this action against Defendant the U.S. Department of Labor (“DOL”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). Defendant has failed to respond to Plaintiff’s request for communications and records regarding DOL’s certification program, run by the Wage and Hour Division (“WHD”), of U and T visa applications. Plaintiff therefore respectfully requests that the Court compel Defendant to comply with the FOIA.

2. Both U and T visas are essential protections for crime victims, particularly human trafficking victims. They are also essential tools for law enforcement officers to investigate and prosecute perpetrators of such crimes. The U visa is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. T visa is a temporary immigration benefit that enables certain victims of a severe form of human trafficking to remain

in the United States for a temporary period if they have assisted law enforcement in an investigation or prosecution of human trafficking.

3. DOL has authority to certify U and T visa applications as the law enforcement agency that detected the underlying criminal activity. DOL previously operated a robust program to process such certifications. DOL has effectively abandoned this program, having announced a new certification process that is “likely to prolong the waiting period for visa applicants or discourage workers’ attorneys from seeking the Labor Department’s assistance entirely.”¹ DOL’s change in policy harms human trafficking victims and victims of other serious crimes; and it makes us all less safe by making it harder for criminal law enforcement agencies to investigate and prosecute these crimes.

JURISDICTION AND VENUE

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

5. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

PARTIES

6. Plaintiff Democracy Forward is a not-for-profit organization incorporated under the laws of the District of Columbia, and based in Washington, DC. Democracy Forward works to promote transparency and accountability in government, in part, by educating the public on government actions and policies.

¹Ben Penn, *Trump Wage Chief Adds Visa Hurdles for Trafficking Victims*, Bloomberg Law, July 1, 2019, <https://news.bloomberglaw.com/daily-labor-report/trump-wage-chief-adds-visa-hurdles-for-trafficking-victims>

7. Defendant DOL is a federal agency within the meaning of FOIA, *see* 5 U.S.C. § 552(f)(1), and is headquartered in Washington, DC. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

FACTUAL ALLEGATIONS

8. On November 13, 2019, Plaintiff sent a FOIA request to DOL concerning the status of DOL's certification by WHD of information related to U and T visa applications.

Plaintiff requested the following categories of records from DOL:

1. All guidance, bulletins, directives, addenda, or other forms of instruction from the Wage and Hour Division to regional, district, field, area, or other local offices or staff about the certification or endorsement of an application for a T or U visa.
2. All records reflecting the certification or endorsement of, or decision not to certify or endorse an application for, a T or U visa by the Wage and Hour Division or Department or WHD regional, district, field, area, or other local offices or staff. (Please redact personally identifiable information from such records).

Ex. A at 1.

9. The date range for the request is May 1, 2019, until the date the search was performed.

10. Democracy Forward sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii), which requires waiver of fees if the disclosure is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." *See*

Ex. A at 2-6.

11. By email dated November 14, 2019, DOL acknowledged having received Democracy Forward's FOIA request and having assigned it to WHD with the tracking number

885246. Ex. B.

12. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), DOL was required to determine whether to comply with the FOIA request within twenty business days of receipt of the request and to notify Democracy Forward immediately of their determination, the reasons therefor, and the right to appeal any adverse determination.

13. As of the date of this Complaint, DOL has failed to produce any requested records or to demonstrate that such records are lawfully exempt from production. *See* 5 U.S.C. § 552(a)(6)(C). DOL also has not notified Democracy Forward of the scope of any responsive records it intends to produce or withhold and the reasons for any withholdings, nor the expected time frame for such determination.

CLAIM FOR RELIEF

Count One (Violation of the FOIA, 5 U.S.C. § 552)

14. Democracy Forward repeats and incorporates by reference the foregoing paragraphs as if fully set forth herein.

15. By failing to respond to Democracy Forward's request within the statutorily prescribed time limit, DOL has violated its duties under the FOIA, including but not limited to its duty to conduct a reasonable search for responsive records, and to produce all responsive, reasonably segregable, non-exempt information.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Democracy Forward respectfully requests that the Court:

1. order DOL to conduct searches for any and all records responsive to Democracy Forward's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the FOIA request;

2. order DOL to produce, by a date certain, any and all nonexempt records responsive to Democracy Forward's FOIA request and a *Vaughn* index of any responsive records withheld under a claim of exemption;
3. enjoin DOL from continuing to withhold any and all nonexempt records responsive to Democracy Forward's FOIA request;
4. order DOL to grant Democracy Forward's request for a fee waiver;
5. grant Democracy Forward an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
6. grant any other relief this Court deems appropriate.

Dated: December 19, 2019

Respectfully submitted,

/s/ Robin F. Thurston
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