

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Ashish Patel (a.k.a. Ash Kumar), Soosan
Ladha, and Ash Kumar Academy LLC

Plaintiffs,

v.

JEH JOHNSON, Secretary of the
Department of Homeland Security,
THOMAS S. WINKOWSKI, Acting
Commissioner of U.S. Customs and Border
Protections; JOHN F. KERRY, United
States Secretary of State; JOHN DOE or
JANE DOE, Consul General of United
States, City of London

Defendants.

CASE NO. [Case #]

COMPLAINT

I. INTRODUCTION

1. Plaintiffs bring this action to redress violations of the Administrative Procedure Act (“APA”), the Freedom of Information Act (“FOIA”), Due Process, and the First Amendment of the Constitution. The Defendants have failed to timely respond to Plaintiff’s FOIA requests, and failed to lawfully adjudicate the request for a waiver of grounds of inadmissibility submitted

1 by Plaintiff Ashish Patel.

2 2. Defendants are unlawfully withholding information sought by Plaintiff Mr. Patel,
3 information to which he is entitled and for which no valid disclosure exemption applies.
4 Defendants have failed to comply with the statutory mandates and deadlines imposed by FOIA.

5 3. Defendants' unlawful adjudication of Mr. Patel's request for a waiver violates the
6 APA, Due Process, and the First Amendment rights of the Plaintiffs.

7 **II. Parties**

8 4. Plaintiff Ashish Patel is a citizen of the United Kingdom. He currently resides in
9 London, England. Mr. Patel is a world renowned henna artist.

10 5. Plaintiff Soosan Ladha is a citizen of the United States. She currently resides in
11 Kirkland, Washington State. She is the manager of Ash Kumar Academy LLC, a Washington
12 State corporation. She has invited Ashish Patel to visit the United States and has a First
13 Amendment interest in meeting with and associating with Plaintiff Ashish Patel.

14 6. Plaintiff Ash Kumar Academy LLC is a Washington State corporation, with its
15 principal offices located in Kirkland, Washington. Ash Kumar Academy LLC has a First
16 Amendment interest in meeting with and associating with Plaintiff Ashish Patel.

17 7. Defendant Jeh Johnson, the Secretary of Department of Homeland Security
18 ("DHS"), is the highest ranking official within the DHS. The Secretary of DHS is responsible for
19 the implementation of the Immigration and Nationality Act ("INA") and for ensuring compliance
20 with the applicable federal laws, including the APA and FOIA. Defendant Jeh Johnson is sued in
21 his official capacity.

22 8. Defendant Thomas S. Winkowski, the Acting Commissioner of United States
23 Customs and Border Patrol ("CBP") is the highest ranking official within the CBP. CBP is a
24 component of DHS. The Secretary of CBP is responsible for the implementation of the

1 Immigration and Nationality Act (“INA”) and for ensuring compliance with the applicable
2 federal laws, including the APA and FOIA. Among other duties, CBP is responsible for
3 enforcing immigration laws at and between ports of entry to the United States. CBP is also
4 responsible for adjudicating requests for a wavier of grounds of inadmissibility. CBP has
5 possession and control over the records sought by Mr. Patel’s immigration attorney. Defendant
6 Thomas S. Winkowski is sued in his official capacity.

7 9. Defendant John F. Kerry, Secretary of State, is the highest ranking official within
8 the United States Department of State (“DOS”). The Secretary of State is responsible for the
9 implementation of the INA and for ensuring compliance with applicable federal laws, including
10 the APA and FOIA. The Secretary of State maintains offices inside the United States as well as
11 abroad. DOS has possession and control over the records sought by Mr. Patel’s immigration
12 attorney. Defendant John F. Kerry is sued in his official capacity.

13 10. Defendant John Doe or Jane Do is the Consul General of the United States for
14 London, United Kingdom, and he or she is being sued in his or her official capacity. The Consul
15 General is responsible for issuing nonimmigrant visas and reviewing waiver of ineligibility
16 requests and forwarding his or her recommendations and reasons to the DHS.

17 **III. FACTUAL BACKGROUND**

18 11. Henna art a traditional Indian art form in which a body artist uses a plant dye to
19 form temporary tattoos for religious ceremonies, wedding festivals, and for simple body
20 adornment.

21 12. Plaintiff Ashish Patel is a world renowned henna artist. He has worked with
22 numerous Hollywood celebrities and Bollywood celebrities. He is the holder of Guinness World
23 Records as the world’s fastest henna artist and the world’s leading henna artist. Mr. Patel is the
24 owner and manager of Ash Kumar Academy Ltd, based in London, United Kingdom.

1 13. Prior to December 2011, Mr. Patel visited the United States many times. While in
2 the United States, he visited friends and visited his godparents, networked with U.S. henna
3 artists, and provided free demonstrations of his henna art skills to henna artists. Mr. Patel has not
4 received any compensation in the United States for any of his activities in the United States. Mr.
5 Patel never worked without authorization in the United States and he has never violated his
6 nonimmigrant status in the United States.

7 14. On or about December 15, 2011, Mr. Patel arrived in the United States to visit his
8 friends. He entered the United States on the Visa Waiver Program, 8 U.S.C. §1187.

9 15. On or about February 1, 2012, Mr. Patel drove with a friend from Seattle toward
10 Vancouver, Canada, where he was to give a speech at a makeup art school. When he arrived at
11 the U.S.-Canadian border in Blaine, Washington, the Canadian border patrol officer told Mr.
12 Patel that his car needed to turn around and use a different port of entry into Canada.

13 16. After his car turned around, U.S. CBP officers stopped Mr. Patel and subjected
14 him to inspection, even though Mr. Patel was on his way out of the United States. CBP officers
15 arrested Mr. Patel and sent him to the Northwest Detention Center in Tacoma, Washington.

16 17. On February 3, 2012, Immigration and Customs Enforcement (“ICE”) officers
17 issued an order of removal against Mr. Patel under 8 U.S.C. §1187, alleging that he engaged in
18 unauthorized employment in the United States. The allegation that Mr. Patel had engaged in
19 unauthorized employment had no facially legitimate or bona fide basis.

20 18. Mr. Patel was held in detention at the Northwest Detention Center in Tacoma,
21 WA until February 5, 2012, when he was released from detention. At the time of Mr. Patel’s
22 release, an ICE officer gave Mr. Patel documents stating that Mr. Patel is subject to an order of
23 removal and is banned from returning to the United States for ten years. The ICE officer
24 indicated to Mr. Patel that the ten year ban is not appropriate; he apologized for the ten year ban,

1 stating that sometimes mistakes are made; he added that Mr. Patel should not worry about the
2 ten-year ban because a waiver should easily be approved. After being released, Mr. Patel
3 immediately purchased a return ticket to the United Kingdom and he returned to the United
4 Kingdom the next day.

5 19. As a result of the removal order that was issued against Mr. Patel, he is subject to
6 a ground of inadmissibility under 8 U.S.C. §1182(a)(9). This ground of inadmissibility can be
7 waived pursuant to 8 U.S.C. §1182(d)(3).

8 20. In February 2013, Mr. Patel filed a nonimmigrant visitor visa application with the
9 United States Embassy in London. As part of his visa application, he filed a request for waiver of
10 the ground of ineligibility. Mr. Patel was interviewed by a United States consular officer for his
11 visitor visa at the United States Embassy in London on or about February 12, 2013.

12 21. The procedure for adjudicating a request for a nonimmigrant wavier of
13 ineligibility is for the consular officer to review the wavier application and decide whether to
14 recommend that the waiver be approved. If the consular officer recommends a favorable
15 decision, the consular officer then transfers the recommendation with detailed reasons to
16 Department of Homeland Security ("DHS") for a final decision. The final decision is made by
17 CBP, an agency within DHS. If CBP approves the waiver, then the visa can be issued to the
18 applicant.

19 22. The United States consular office recommended that the waiver requested by Mr.
20 Patel be approved.

21 23. The United States CBP denied the waiver requested by Mr. Patel.

22 24. CBP failed to adjudicate the waiver request in a lawful manner. CBP did not
23 review the evidence submitted by Mr. Patel; did not provide Mr. Patel with notice of any adverse
24 evidence, if there is any; and did not have a facially legitimate or bona fide reason for denying

1 Mr. Patel's request for a waiver.

2 25. On or about June 25, 2013, the Visa Coordination Unit of the United States
3 Embassy sent a letter signed by the Vice Consul to Mr. Patel. The letter stated that although the
4 State Department recommended a favorable decision on the waiver request, DHS disapproved
5 the request. Mr. Patel's nonimmigrant visa application was therefore denied. The letter did not
6 provide any details about the DOS's favorable recommendation or about CBP's reasons for the
7 denial.

8 26. On or about September 30, 2013, Mr. Patel submitted a FOIA request to
9 Defendant CBP, seeking all documents in the possession of DHS relating to Mr. Patel's request
10 for a waiver of ineligibility. As of the date of the filing of this lawsuit, CBP has not responded to
11 Mr. Patel's FOIA request. Mr. Patel has not received any documents or any affirmation that any
12 search has been conducted whatsoever with regard to the FOIA request.

13 27. On or about October 15, 2013, Mr. Patel submitted a FOIA request to Defendant
14 DOS, seeking all documents in the possession of DOS relating to Mr. Patel's request for a waiver
15 of ineligibility. As of the date of this filing of this lawsuit, DOS has not responded to Mr. Patel's
16 FOIA request. Mr. Patel has not received any documents or any affirmation that any search has
17 been conducted whatsoever with regard to the FOIA request.

18 28. Because of the actions described above, Plaintiff Ashish Patel is unable to
19 adequately respond to any adverse evidence that CBP may have for denying his request for a
20 waiver; and he has been barred from entry into the United States in violation of law.

21 29. Because of the actions described above, Plaintiff Soosan Ladha is unable to
22 receive information from Ashish Patel, she is unable to communicate effectively with Mr. Patel,
23 and she is unable to associate with him.

24 30. Because of the actions described above, Plaintiff Ash Kumar LLC is unable to

1 receive the benefit of the endorsements of Ashish Patel and the benefit of his appearance at
 2 seminars, and as a result loses income and profits.

3 IV. JURISDICTION

4 31. This Court has jurisdiction over this action pursuant to 5 U.S.C. §552(a)(4)(B)
 5 (Freedom Of Information Act) and 28 U.S.C. §1331 (federal question). The Administrative
 6 Procedure Act, 5 U.S.C. 551, *et seq.*, applies to this action.

7 V. VENUE

8 32. Venue is proper in the Western District of Washington under 5 U.S.C.
 9 552(a)(4)(B) and 28 U.S.C. § 1391(e). This case is a civil action in which the Defendants are
 10 officers or employees of the United States or an agency thereof. A substantial part of the events
 11 or omissions giving rise to the claim occurred within this judicial district. Plaintiff Ladha and
 12 Plaintiff Ash Kumar LLC reside in Washington State, and this action does not involve real
 13 property.

14 VI. CLAIMS FOR RELIEF

15 COUNT 1 - VIOLATION OF THE FOIA: FAILURE TO PROVIDE RECORDS

16 33. Plaintiffs reallege, as if fully set forth herein, paragraphs 1-30 above.

17 34. The failure of the Defendants to respond to the FOIA requests submitted by
 18 Ashish Patel, and the withholding of the documents requested by Mr. Patel under the FOIA,
 19 constitutes a violation of 5 U.S.C. §552(a)(6)(A) and 6 C.F.R. §5.6(b).

20 COUNT 2 - VIOLATION OF THE FOIA: FAILURE TO PROVIDE WRITTEN NOTICE

21 35. Plaintiffs reallege, as if fully set forth herein, paragraphs 1-30 above.

22 36. The failure of Defendants to notify Mr. Patel of the “unusual circumstances” that
 23 prevented Defendants from processing his FOIA request within the 20-day statutory limit
 24 constitutes a violation of 5 U.S.C. §552(a)(6)(B) and 6 C.F.R. §5.5(c)(1).

COUNT 3 - VIOLATION OF THE APA: UNLAWFUL DELAY

37. Plaintiffs reallege, as if fully set forth herein, paragraphs 1-30 above.

38. By failing to respond to the FOIA requests submitted by Ashish Patel, and by withholding the documents requested, the Defendants have unlawfully withheld and unreasonably delayed agency action, in violation of Administrative Procedure Act, 5 U.S.C. §§702, 704 and 706.

COUNT 4 - VIOLATION OF DUE PROCESS

39. Plaintiffs reallege, as if fully set forth herein, paragraphs 1-30 above.

40. CBP's denial of the request for a waiver submitted by Plaintiff Ashish Patel, without giving consideration to the evidence submitted in support of the waiver and without providing any notification of adverse evidence, constitutes a violation of the Due Process clause of the Constitution.

COUNT 5 - VIOLATION OF THE APA: UNLAWFUL DENIAL OF WAIVER

41. Plaintiffs reallege, as if fully set forth herein, paragraphs 1-30 above.

42. The denial of the request for a waiver submitted by Ashish Patel was arbitrary and capricious, not in accordance with law, and constitutes an abuse of discretion.

COUNT 6 - UNLAWFUL EXERCISE OF DISCRETION

43. Plaintiffs reallege, as if fully set forth herein, paragraphs 1-30 above.

44. CBP's denial of the request for a waiver submitted by Ashish Patel, when there was no facially legitimate or bona fide reason for the denial, constitutes an unlawful exercise of discretion.

COUNT 7 - VIOLATION OF THE FIRST AMENDMENT

45. Plaintiffs reallege, as if fully set forth herein, paragraphs 1-30 above.

46. Defendants' failure to properly adjudicate Plaintiff Ashish Patel's request for a

1 waiver of inadmissibility, and the denial of the requested waiver, violates the First Amendment
 2 rights of the Plaintiffs.

3 **VII. REQUESTED RELIEF**

4 WHEREFORE, Plaintiffs respectfully request that this Court enter Judgment for the following
 5 relief:

- 6 A. Find that Defendants violated 5 U.S.C. §552(a)(6)(A) and 6 C.F.R. §5.6(b) by failing to
 7 provide a timely response to the Plaintiff's FOIA request;
- 8 B. Find that Defendants violated 5 U.S.C. §552(a)(6)(B) and 6 C.F.R. §5.5(c)(1) by failing
 9 to provide notice, within 20 days, of the "unusual circumstances" that prevented
 10 Defendants from processing Plaintiff Ashish Patel's FOIA request;
- 11 C. Order Defendants to conduct an adequate search for agency records responsive to Mr.
 12 Patel's FOIA Requests within ten working days of the date of the Court's Order;
- 13 D. Enjoin Defendants from continuing to withhold any and all nonexempt records
 14 responsive to Mr. Patel's FOIA request;
- 15 E. Order Defendants to produce any and all nonexempt records responsive to Mr. Patel's
 16 requests and to prepare an index of any records alleged to be exempt from FOIA
 17 disclosure within ten working days of the date of the Court's Order;
- 18 F. Grant Mr. Patel a fee waiver for any costs associated with the production and delivery of
 19 documents responsive to his request;
- 20 G. Declare that in denying Mr. Patel's request for a waiver of grounds of inadmissibility, the
 21 Defendants have acted in an unlawful manner, in violation of the Due Process Clause of
 22 the Constitution, and in violation of the First Amendment rights of the Plaintiffs;
- 23 H. Declare that there is no facially legitimate or bona fide reason for the denial of Mr.
 24 Patel's request for a waiver of grounds of inadmissibility;

- 1 I. Order Defendants to reopen Mr. Patel's request for a waiver of grounds of inadmissibility
2 and adjudicate the request in a manner that is in compliance with the United States
3 Constitution, the Administrative Procedure Act, the Immigration and Nationality Act,
4 and the governing regulations;
- 5 J. Award Mr. Patel the costs and reasonable attorney's fees incurred in this action pursuant
6 to 5 U.S.C. §552(a)(4)(E) and/or pursuant to the Equal Access to Justice Act;
- 7 K. Grant such other relief at law and in equity as the Court may deem just and proper.
- 8

9 Respectfully submitted,

10 By: /s/ Robert Pauw
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16 (206) 682-1080

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24 Dated: January 27, 2014