

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

**AMERICAN IMMIGRATION COUNCIL**  
1331 G Street, NW, Suite 200  
Washington, DC 20005-3141

**Plaintiff,**

**v.**

**UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY**  
Office of the General Counsel  
20 Massachusetts Avenue, NW  
Washington, DC 20528

**and**

**UNITED STATES CITIZENSHIP AND  
IMMIGRATION SERVICES**  
Office of the Chief Counsel  
2675 Prosperity Avenue  
Fairfax, VA 20598-2400,

**Defendants.**

**CASE NUMBER** \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**Introduction**

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, seeking disclosure of records concerning individuals' access to legal counsel during their interactions with U.S. Citizenship and Immigration Services ("USCIS"). The American Immigration Council ("AIC") seeks declaratory, injunctive, and other appropriate relief with respect to USCIS's unlawful withholding of these records.

2. Access to counsel is at the very core of our legal system and is integral to ensuring that all noncitizens seeking admission, asylum, or lawful permanent residence, or facing removal are afforded a fair process and a meaningful opportunity to be heard. Without lawyers,

noncitizens confront the daunting and often insurmountable task of navigating a complicated set of immigration statutes, regulations, and court decisions.

3. Under the U.S immigration system, the majority of decisions about the legal status of noncitizens are made not by immigration judges in courtrooms, but by various Department of Homeland Security (“DHS”) officials, including USCIS officers, in interview rooms and offices. These interactions can have dramatic consequences that may include denial of U.S. citizenship, asylum, or other lawful immigration status (such as permanent residency), and may lead to arrest, detention, and removal.

4. Reports from immigration lawyers across the country indicate that USCIS imposes unwarranted limitations on access to counsel. USCIS officers have prevented attorneys from communicating with their clients and from speaking on their clients’ behalf during interviews. In addition, USCIS officers have refused to accept documents proffered by counsel.

5. These limitations, which are not mandated by existing regulations, are fundamentally unfair, and in some cases, violate applicable statutory and regulatory protections. They also undermine the quality and efficiency of immigration decision making. The reported problems were geographically varied and widespread.

6. USCIS’s policies on access to counsel are difficult to ascertain and are arbitrarily applied. As a result, they are a source of great confusion for immigration lawyers, their clients, and the general public. To clarify these policies, the American Immigration Council submitted a FOIA request to USCIS, a DHS agency, in March 2011. USCIS’s failure to turn over requested records violates the FOIA, and is impeding AIC’s efforts to educate the immigration bar regarding the right to counsel and to effectively advocate for justice and fairness for noncitizens in their interactions with USCIS.

**Jurisdiction and Venue**

7. This Court has subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. §§ 701-706 and 28 U.S.C. § 1331. This Court has jurisdiction to grant declaratory and further necessary or proper relief pursuant to 28 U.S.C. §§ 2201-2202 and Federal Rules of Civil Procedure 57 and 65.

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

**The Parties**

9. Plaintiff AIC is a tax-exempt, not-for-profit educational and charitable organization under section 501(c)(3) of the Internal Revenue Code, with its principal place of business at 1331 G Street, Suite 200, in Washington, D.C. Founded in 1987, AIC's mission is to educate the American public about immigrants' contributions to American society, to promote sensible and humane immigration policy, and to advocate for the just and equitable enforcement of immigration laws. AIC's Immigration Policy Center ("IPC") and Legal Action Center ("LAC") help carry out this mission by reaching out to the public and to attorneys practicing in the immigration arena to promote a better understanding of immigration law, policy, and practice. The IPC targets policymakers, the media and advocates using a range of publications, new media, and presentations to inform the public debate on immigration. The LAC undertakes administrative advocacy, impact litigation and education to advance the fair administration of immigration laws. The LAC has historically focused on access to counsel issues by educating the immigration bar about the relevant laws, advocating for fair standards and procedures to remedy ineffective assistance of counsel, and encouraging better access to counsel in proceedings before DHS and its agencies, including USCIS.

10. Defendant DHS is a Department of the Executive Branch of the United States Government and is an agency within the meaning of 5 U.S.C. § 552(f). DHS is responsible for enforcing federal immigration laws. DHS has possession and control over the records sought by AIC.

11. Defendant USCIS is a component of DHS and is an agency within the meaning of 5 U.S.C. § 552(f). USCIS oversees lawful immigration to the United States. As such, USCIS adjudicates a wide range of applications for immigration status in the United States (including lawful permanent residence, asylum, and temporary worker status), as well as applications for U.S. citizenship. USCIS has possession and control over the records sought by AIC.

**AIC's FOIA Request**

12. On March 14, 2011 AIC submitted a FOIA request to USCIS seeking:

[A]ny and all records which have been prepared, received, transmitted, collected and/or maintained by the U.S. Department of Homeland Security and/or U.S. Citizenship and Immigration Services (USCIS), whether issued or maintained by USCIS Headquarters offices, regional offices, district offices, field offices and/or any other organizational structure, and which relate or refer in any way to any of the following:

- Attorneys' ability to be present during their clients' interactions with USCIS;
- What role attorneys may play during their clients' interactions with USCIS;
- Attorney conduct during interactions with USCIS on behalf of their clients;
- Attorney appearances at USCIS offices or other facilities.

A copy of the March 14 letter is attached hereto as Exhibit A.

13. AIC asked that USCIS and DHS waive all fees associated with its FOIA request because disclosure of the records 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 requestor.” 5 U.S.C. § 552(a)(4)(iii). *See* Exhibit A at 3.

14. On April 15, 2011, USCIS acknowledged receipt of AIC’s FOIA request, but made no substantive determination in response to it. A copy of the April 15 letter is attached hereto as Exhibit B.

15. On May 2, 2011, USCIS notified AIC that its request for a fee waiver had been granted. A copy of the May 2 letter is attached hereto as Exhibit C.

16. On July 12, 2011, in response to AIC’s request for information about the status of its FOIA request, USCIS informed AIC that it had “just sent an updated inquiry to the program offices we are requesting records from and asked for an update. They are currently working on gathering and searching for records pertaining to your request.” A copy of the July 12 letter is attached hereto as Exhibit D.

17. Under 5 U.S.C. § 552(a)(6)(A), USCIS was required to make a determination on AIC’s FOIA request within twenty business days. Because it still had not done so nearly five months after the submission of the request, AIC submitted an administrative appeal to USCIS on August 11, 2011, stating that it considered USCIS’s failure to act on its request to be a constructive denial. A copy of the August 11 letter is attached hereto as Exhibit E.

18. On August 16, 2011, USCIS acknowledged that it had not acted on AIC’s request within the statutory time limit. USCIS further stated that “you may, if you choose, treat this letter as a denial of your appeal and bring action in an appropriate federal court.” A copy of the August 16 letter is attached hereto as Exhibit F.

19. AIC has exhausted its administrative remedies.

20. To date, USCIS and DHS have not disclosed agency records responsive to AIC's FOIA request.

21. USCIS and DHS have violated the applicable statutory time limit for the processing of FOIA requests.

22. USCIS and DHS have wrongfully failed to release responsive records to AIC.

### **FIRST CAUSE OF ACTION**

#### **Violation of Freedom of Information Act for Failure to Disclose Responsive Agency Records**

23. AIC repeats, alleges and incorporates the allegations in paragraphs 1-22 as if fully set forth herein.

24. USCIS and DHS are obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for and to produce records responsive to AIC's FOIA request. AIC has a legal right to obtain such records, and no legal basis exists for USCIS's and DHS's failure to search for and disclose them.

25. Defendants' failure to conduct a reasonable search for records responsive to AIC's request and its failure to disclose responsive records violates 5 U.S.C. §§ 552(a)(3)(A), (a)(3)(C), and (a)(6)(A), as well as the regulations promulgated thereunder.

### **SECOND CAUSE OF ACTION**

#### **Violation of the Administrative Procedure Act (APA) for Failure to Timely Respond to Request for Agency Records**

26. AIC repeats, alleges and incorporates the allegations in paragraphs 1-22 as if fully set forth herein.

27. Defendants' failure to timely respond to plaintiff's requests for agency records constitutes agency action unlawfully withheld and unreasonably delayed in violation of the APA,

5 U.S.C. §§ 701-06. Defendants' failure to timely respond is arbitrary, capricious, and an abuse of discretion, not in accordance with law and without observance of procedure required by law, all in violation of the APA.

WHEREFORE, AIC requests that judgment be entered in its favor against Defendants USCIS and DHS, and that the Court:

(a) Declare that Defendants' failure to make a determination with respect to AIC's FOIA request within the statutory time limit and Defendants' failure to disclose responsive records violate FOIA;

(b) Declare that Defendants' failure to timely respond to Plaintiff's requests for agency records violates the APA;

(c) Order Defendants and any of Defendants' departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of Defendants to conduct a reasonable search for records responsive to AIC's FOIA request;

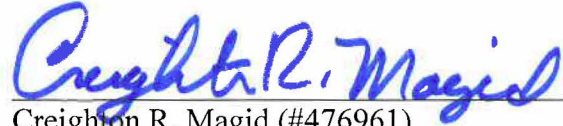
(d) Enjoin Defendants, and any of their departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of Defendants from withholding records responsive to AIC's FOIA request and order them to promptly produce the same;

(e) Award AIC its reasonable attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412; and

(f) Grant all other such relief to AIC as the Court deems just and equitable.

Respectfully submitted,

Dated: November 8, 2011



Creighton R. Magid (#476961)  
DORSEY & WHITNEY LLP  
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Washington, D.C. 20006  
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Melissa Crow (#453487)  
American Immigration Council  
1331 G Street, N.W., Suite 200  
Washington, D.C. 20005  
Telephone: (202) 507-7500  
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[mcrow@immcouncil.org](mailto:mcrow@immcouncil.org)

*Attorneys for Plaintiff*  
*American Immigration Council*





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COMMUNITY EDUCATION CENTER • IMMIGRATION POLICY CENTER • INTERNATIONAL EXCHANGE CENTER • LEGAL ACTION CENTER

**March 14, 2011**

**FOIA Office  
U.S. Citizenship and Immigration Services  
National Records Center, FOIA/PA Office  
P.O. Box 648010  
Lee's Summit, MO 64064-8010**

**Re: Freedom of Information Act Request**

Dear Sir or Madam:

The American Immigration Council (AIC) submits this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. §552, *et. seq.*

**1. RECORDS SOUGHT**

AIC requests any and all records<sup>1</sup> which have been prepared, received, transmitted, collected and/or maintained by the U.S. Department of Homeland Security and/or U.S. Citizenship and Immigration Services (USCIS), whether issued or maintained by USCIS Headquarters offices, regional offices, district offices, field offices and/or any other organizational structure, and which relate or refer in any way to any of the following:

- Attorneys' ability to be present during their clients' interactions with USCIS;
- What role attorneys may play during their clients' interactions with USCIS;
- Attorney conduct during interactions with USCIS on behalf of their clients;
- Attorney appearances at USCIS offices or other facilities.

The above records may include, but are not limited to:

- 1) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client to an interview regarding an I-485, Application to Register for Permanent Resident or Adjust Status, or what role the attorney may play during such questioning;
- 2) Guidance or any information obtained by the agency regarding circumstances under which an attorney may accompany a client to an interview regarding an I-130, Petition for Alien Relative, if the client is the *petitioner*, or what role the attorney may play during such questioning;

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<sup>1</sup> The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training manuals, and studies.

- 3) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client to an interview regarding an I-130, Petition for Alien Relative, if the client is the *beneficiary* of the Petition, or what role the attorney may play during such questioning;
- 4) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning pursuant to the client's I-140, Immigrant Petition for Alien Worker, or what role the attorney may play during such questioning;
- 5) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client to an interview regarding an I-751, Petition to Remove the Conditions of Residence, or what role the attorney may play during such questioning;
- 6) Guidance or any information obtained by the agency regarding circumstances under which an attorney may accompany a client to an interview regarding an N-400, Application for Naturalization, or what role the attorney may play during such questioning;
- 7) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning related to the National Security Entry-Exit Registration System (NSEERS), or what role the attorney may play during such questioning;
- 8) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a minor during any USCIS interview, or what role the attorney may play during such interviews;
- 9) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client to an interview regarding an I-918, Petition for U Nonimmigrant Status, or what role the attorney may play during such interviews;
- 10) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client to an interview regarding an I-914, Application for T Nonimmigrant Status, or what role the attorney may play during such interviews;
- 11) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client to an interview regarding an I-360, Petition for Amerasian, Widow(er), or Special Immigrant, or what role the attorney may play during such interviews;
- 12) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during "credible fear" screenings, or what role the attorney may play during such screenings;

- 13) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during "reasonable fear" screenings, or what role the attorney may play during such screenings;
- 14) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during an asylum interview, or what role the attorney may play during such interviews;
- 15) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning by USCIS regarding any other pending application for benefits, or what role the attorney may play during such questioning;
- 16) Guidance or any information obtained by the agency regarding procedures for notification of attorneys with Form G-28 on file of USCIS's intention to question their clients.

AIC requests that records existing in electronic form be provided in electronic format or on a compact disc. If any of the requested records or information is not in a succinct format, we request the opportunity to view the documents in your offices.

If under applicable law any of the information requested is considered exempt, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

## **2. REQUEST FOR WAIVER OF ALL COSTS**

AIC requests that all fees associated with this FOIA request be waived. AIC is entitled to a waiver of all costs because disclosure of the information 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." 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11 (k) (Records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, AIC has the ability to widely disseminate the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

### **i. Disclosure of the Information Is in the Public Interest**

AIC educates citizens about the enduring contributions of America's immigrants, supports sensible and humane immigration policies that reflect American values, and works to ensure that immigration laws are enacted and implemented in compliance with fundamental constitutional and human rights. AIC's Immigration Policy Center (IPC) and Legal Action Center (LAC) help carry out this mission by reaching out to the general public to promote a better understanding of immigration law, policy and practice. The IPC researches issues related to immigration (such as the impact of immigration on the economy, jobs and crime), and regularly provides information to leaders on Capitol Hill and the media. The LAC works with other immigrants' rights organizations and immigration attorneys across the United States to advance the fair administration of immigration laws. Relevant to this FOIA request, the LAC has historically focused on

access to counsel issues. Specifically, the LAC educates the public about the law surrounding access to counsel for immigrants in removal proceedings, advocates for fair standards and procedures to remedy the effects of ineffective assistance of counsel, and encourages better access to counsel in proceedings before the Department of Homeland Security and its sub-agencies.

Disclosure of the requested information will contribute significantly to public understanding of non-citizens' access to counsel in interactions with ICE. The disclosed records will inform attorneys who represent non-citizens at risk of removal from the United States; the noncitizens themselves; and other members of the public who are concerned with immigration agency proceedings and policies. Because there is no publicly available comprehensive guidance directly governing attorney representation and conduct in interactions with USCIS, the dissemination of these records will significantly inform significantly public understanding of the scope of representation permitted before USCIS. AIC has the capacity and intent to disseminate widely the requested information to the public. To this end, the LAC and the IPC will post the information on the AIC website, a website that is accessible by any member of the public. In addition, the LAC and IPC will publish this information in an LAC report, an LAC newsletter and an IPC blog. The LAC newsletter is directly distributed to 12,000 recipients and the IPC blog is distributed to 25,000 recipients. These publications also are available on the AIC website.

**ii. Disclosure of the Information Is Not Primarily in the Commercial Interest of the Requester**

AIC is a 501(c)(3), tax-exempt, not-for-profit educational, charitable organization. Immigration attorneys, noncitizens and any other interested member of the public may obtain information about counsel-related issues on AIC's frequently updated website. AIC seeks the requested information for the purpose of disseminating it to members of the public who access AIC's website and other AIC publications, and not for the purpose of commercial gain.

Please inform us if the charges for this FOIA production will exceed \$25.00.

Thank you in advance for your response to this request within twenty working days, as FOIA requires. *See* 5 U.S.C. § 552(a)(6)(A)(i). If you have any questions, please feel free to contact me at (202) 507-7505.

Sincerely,



Emily Creighton  
Staff Attorney  
American Immigration Council  
Suite 200  
1331 G Street, NW  
Washington, DC 20005-3141  
Telephone: (202) 507-7505  
Fax: (202) 742-5619  
E-mail: [ecreighton@immcouncil.org](mailto:ecreighton@immcouncil.org)



**U.S. Citizenship  
and Immigration  
Services**

April 15, 2011

**COW2011000252**

Emily Creighton  
AIC  
1331 G Street, NW, Suite 200  
Washington, DC 20005-3141

Dear Emily Creighton:

We received your request on March 31, 2011 for all records which may have been prepared, received, transmitted, or collected which relate or refer in any way to the following:

- Attorneys' ability to be present during their clients' interactions with USCIS;
- What role attorneys may play during their clients' interactions with USCIS;
- Attorney conduct during interactions with USCIS on behalf of their clients;
- Attorney appearances at USCIS offices or other facilities.

Your request is being handled under the provisions of the Freedom of Information Act (5 U.S.C. § 552). It has been assigned the following control number: COW2011000252. Please cite this number in all future correspondence about your request.

We respond to requests on a first-in, first-out basis and on a multi-track system. Your request has been placed in the complex track (Track 2). You may wish to narrow your request to a specific document in order to be eligible for the faster track. To do so, please send a written request, identifying the specific document sought, to the address above. We will notify you if your request is placed in the simple track.

Please note that your request for a fee waiver and/or expedited processing will be addressed in separate correspondence.

This office will be providing your records on a Compact Disc (CD) for use on your personal computer. The CD is readable on all computers through the use of Adobe Acrobat software. A version of Adobe Acrobat will be included on the CD. Your records can be viewed on your computer screen and can be printed onto paper. Only records 15 pages or more are eligible for CD printing. To request your responsive records on paper, please include your COW number and write to the above address Attention: FOIA/PA Officer, or fax them to 816-350-5785.

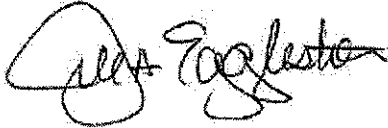
You may check the status of your FOIA request online, at [www.uscis.gov](http://www.uscis.gov). Click on "FOIA Request Status Check" located on the left side of the web page under "Other Services", and follow the instructions. If you have any questions concerning your pending FOIA/PA request, or to check the status of a pending application or petition, please call The National Customer Service Center at 1-800-375-5283. Please be aware that the National Records Center no longer accepts FOIA/PA related questions directly by phone.

COW2011000252

Page 2

All FOIA/PA related requests, including address changes, must be submitted in writing and be signed by the requester. Please include the COW number listed above on all correspondence with this office. Requests may be mailed to the FOIA/PA Officer at the PO Box listed at the top of the letterhead, or sent by fax to 816-350-5785. You may also submit FOIA/PA related requests to our e-mail address at [uscis.foia@dhs.gov](mailto:uscis.foia@dhs.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Jill A. Eggleston", written over a faint, larger version of the same signature.

Jill A. Eggleston  
Director, FOIA Operations



U.S. Citizenship  
and Immigration  
Services

May 2, 2011

COW2011000252

Emily Creighton  
AIC  
1331 G Street, NW, Suite 200  
Washington, DC 20005-3141

Dear Emily Creighton:

This is a response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office relating to Attorneys' ability to be present during their clients' interactions with USCIS on March 31, 2011.

As it relates to your fee waiver request, I have reviewed your letter thoroughly and have determined that for the reasons stated in your request, you qualify for a fee waiver. Therefore, your fee waiver request has been granted.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill A. Eggleston".

Jill A. Eggleston  
Director, FOIA Operations



**U.S. Citizenship  
and Immigration  
Services**

July 12, 2011

COW2011000252

Emily Creighton  
AIC  
1331 G Street, NW, Suite 200  
Washington, DC 20005-3141

Dear Emily Creighton:

This letter is in response to your status request, regarding the Freedom of Information Act request for information about the subject: Attorneys' ability to be present during their clients' interactions with USCIS, received on March 31, 2011. We have just sent an updated inquiry to the program offices we are requesting records from and asked for an update. They are currently working on gathering and searching for records pertaining to your request.

Your request is currently number 253 of 357 pending requests in Track One.

You may check the status of your FOIA request online, at [www.uscis.gov](http://www.uscis.gov). Click on "FOIA Request Status Check" located on the left side of the web page under "Other Services", and follow the instructions. If you have any questions concerning your pending FOIA/PA request, or to check the status of a pending application or petition, please call The National Customer Service Center at 1-800-375-5283. Please be aware that the National Records Center no longer accepts FOIA/PA related questions directly by phone.

All FOIA/PA related requests, including address changes, must be submitted in writing and be signed by the requester. Please include the control number listed above on all correspondence with this office. Requests may be mailed to the FOIA/PA Officer at the PO Box listed at the top of the letterhead, or sent by fax to (816) 350-5785. You may also submit FOIA/PA related requests to our e-mail address at [uscis.foia@uscis.dhs.gov](mailto:uscis.foia@uscis.dhs.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Jill A. Eggleston".

Jill A. Eggleston  
Director, FOIA Operations





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August 11, 2011

Jill A. Eggleston  
Director, FOIA Operations  
U.S. Citizenship and Immigration Services  
National Records Center, FOIA/PA Office  
P.O. Box 648010  
Lee's Summit, MO 64064-8010  
E-mail: [uscis.foia@dhs.gov](mailto:uscis.foia@dhs.gov)

Re: Freedom of Information Act Request Reference Number COW2011000252

Dear Ms. Eggleston:

We are in receipt of your letter dated April 15, 2011, acknowledging receipt of our March 14, 2011, FOIA request for all records prepared, received, transmitted, collected and/or maintained by the U.S. Department of Homeland Security and/or U.S. Citizenship and Immigration Services (USCIS) which relate or refer in any way to any of the following:

- Attorneys' ability to be present during their clients' interactions with USCIS;
- What role attorneys may play during their clients' interactions with USCIS;
- Attorney conduct during interactions with USCIS on behalf of their clients; and
- Attorney appearances at USCIS offices or other facilities.

It has been nearly four months since you acknowledged receipt of our FOIA request. On July 12, in response to a status inquiry from our office, you indicated by letter that USCIS is working on processing our request, but that our request is currently number 253 of 357 pending requests in Track One.

When a party submits a FOIA request, the agency has 20 business days to determine whether to produce records responsive to the request. 5 U.S.C. § 552(a)(6)(A)(i). In unusual circumstances, this deadline may be extended for a maximum of ten additional business days. 5 U.S.C. § 552(a)(6)(B)(i). When an agency fails to meet the response times required by FOIA, requesting parties may deem the agency's delay a denial of the FOIA request and appeal the denial. *See, e.g., Ruotolo v. Dep't of Justice*, 53 F.3d 4, 8 (2d Cir. 1995) ("[A]dministrative remedies are 'deemed exhausted' if the agency fails to comply with the 'applicable time limit' provisions of the FOIA."); *Voinche v. Fed. Bureau of Investigation*, 999 F.2d 962, 963 (5th Cir. 1993) ("If an

[www.americanimmigrationcouncil.org](http://www.americanimmigrationcouncil.org)

agency has not complied within the statutory time limits of a FOIA request, the requestor shall be deemed to have exhausted his administrative remedies and [may] bring suit.”).

You have failed to respond to our FOIA request within the twenty days provided under the FOIA statute. Accordingly, please consider this letter an appeal of your constructive denial of our FOIA request.

Sincerely,

A handwritten signature in cursive script, reading "Emily Creighton". The signature is written in black ink and is positioned above the typed name and contact information.

Emily Creighton  
Staff Attorney  
American Immigration Council  
Suite 200  
1331 G Street, NW  
Washington, DC 20005-3141  
Telephone: (202) 507-7505  
Fax: (202) 742-5619  
E-mail: [ecreighton@immcouncil.org](mailto:ecreighton@immcouncil.org)



**U.S. Citizenship  
and Immigration  
Services**

August 16, 2011

**APP2011000703**

Emily Creighton  
American Immigration Council  
1331 G Street, NW, Suite 200  
Washington, DC 20005-3141

Dear Emily Creighton:

Re: COW2011000252

You appealed the action of the National Records Center regarding your request for access to records pertaining to Attorneys' ability to be present during their clients' interactions with USCIS, dated March 31, 2011.

We have notified the National Records Center of your communication. Although the Freedom of Information Act authorizes you to treat the failure to act on your request within the specified time limit as a denial thereof, this Office cannot act until there has been an initial determination by the office having jurisdiction of the records. Our function is limited to the review of those records to which access is in fact denied.

In the event that the National Records Center still has not responded to your request at the time you receive this letter, you may, if you choose, treat this letter as a denial of your appeal and bring action in an appropriate federal court. We hope that, in making a decision, you will give sympathetic consideration to the fact that this agency has many requests pending at this time and is making every possible, reasonable effort to process them.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter D. Gregory".

Peter D. Gregory, Chief,  
Commercial & Administrative Law Division  
Department of Homeland Security  
Citizenship and Immigration Services

## CIVIL COVER SHEET

I 11-1971 JEB

JS-44  
(Rev. 2/11 DC)

<b>I (a) PLAINTIFFS</b> AMERICAN IMMIGRATION COUNCIL <hr/> <b>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF</b> (EXCEPT IN U.S. PLAINTIFF CASES) <u>11001</u> <hr/> <b>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)</b> Creighton R. Magid, Esq., Dorsey & Whitney LLP, 1801 K Street, N.W., Suite 750, Washington, D.C. 20006 (202) 442-3555	<b>DEFENDANTS</b> U.S. Department of Homeland Security and U.S. Citizenship and Immigration Services <hr/> <b>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT</b> (IN U.S. PLAINTIFF CASES ONLY) NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF <hr/> Case: 1:11-cv-01971 Assigned To : Boasberg, James E. Assign. Date : 11/8/2011 Description: FOIA/Privacy Act
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<b>II. BASIS OF JURISDICTION</b> (PLACE AN x IN ONE BOX ONLY) <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="radio"/> 1 U.S. Government Plaintiff         </div> <div style="width: 48%;"> <input type="radio"/> 3 Federal Question (U.S. Government Not a Party)         </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input checked="" type="radio"/> 2 U.S. Government Defendant         </div> <div style="width: 48%;"> <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)         </div> </div>	<b>III CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTE</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input checked="" type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTE	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input checked="" type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
	PTF	DFT		PTE	DFT																				
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input checked="" type="radio"/> 4	<input type="radio"/> 4																				
Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5																				
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

## IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place a X in one category, A-N, that best represents your cause of action and one in a corresponding Nature of Suit)

<input type="radio"/> <b>A. Antitrust</b>  <input type="checkbox"/> 410 Antitrust	<input type="radio"/> <b>B. Personal Injury/Malpractice</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> <b>C. Administrative Agency Review</b> <input type="checkbox"/> 151 Medicare Act <b>Social Security:</b> <input type="checkbox"/> 861 HIA ((1395ff)) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>Other Statutes</b> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b>  Any nature of suit from any category may be selected for this category of case assignment.  *(If Antitrust, then A governs)*
<input type="radio"/> <b>E. General Civil (Other)</b> OR <input type="radio"/> <b>F. Pro Se General Civil</b>			
<b>Real Property</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property  <b>Personal Property</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>Bankruptcy</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>Prisoner Petitions</b> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition  <b>Property Rights</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>Federal Tax Suits</b> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<b>Forfeiture/Penalty</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>Other Statutes</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 900 Appeal of fee determination under equal access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

2

<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation)  *(If pro se, select this deck)*	<input checked="" type="radio"/> <b>I. FOIA/PRIVACY ACT</b>  <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

**V. ORIGIN**

- ☒ 1 Original Proceeding  
 ☐ 2 Removed from State Court  
 ☐ 3 Remanded from Appellate Court  
 ☐ 4 Reinstated or Reopened  
 ☐ 5 Transferred from another district (specify)  
 ☐ 6 Multi district Litigation  
 ☐ 7 Appeal to District Judge from Mag. Judge

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 15 U.S.C. § 552, seeking disclosure of records concerning individuals' access to legal counsel during their interactions with U.S. Citizenship & Immigration

**VII. REQUESTED IN COMPLAINT**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$****JURY DEMAND:**

Check YES only if demanded in complaint  
 YES ☐ NO ☒

**VIII. RELATED CASE(S) IF ANY**

(See instruction)

YES



NO



If yes, please complete related case form

DATE

11/8/11

SIGNATURE OF ATTORNEY OF RECORD

Cynthia R. Magid

**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**

Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence Use 11001 to indicate plaintiff is resident of Washington, D.C., 88888 if plaintiff is resident of the United States but not of Washington, D.C., and 99999 if plaintiff is outside the United States
- III. CITIZENSHIP OF PRINCIPAL PARTIES This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II
- IV. CASE ASSIGNMENT AND NATURE OF SUIT The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case.
- VI. CAUSE OF ACTION Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASES, IF ANY If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.