

Federal Judge Orders USCIS to Release Records on Access to Counsel

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This week, a federal district court issued an [opinion](#) [1] highly critical of U.S. Citizenship and Immigration Services' (USCIS) handling of a Freedom of Information Act (FOIA) request submitted by the American Immigration Council (AIC) for records relating to noncitizens' access to counsel. The Court ordered USCIS to turn over records that it previously had refused to produce.

Most decisions about immigration status—including whether to grant lawful permanent residence, asylum or citizenship—are made by government officials outside the courtroom. Given the significant impact such decisions have on the lives of noncitizens and their families, it is critical that they be allowed to have their private attorneys with them during complex administrative proceedings.

Historically, USCIS has imposed unwarranted restrictions on access to counsel, though in recent months the agency has made significant progress toward addressing these problems. Through its FOIA request, the AIC hopes to shed light on USCIS policies about counsel.

After waiting almost a year for USCIS to respond to the request, the AIC's Legal Action Center and co-counsel Dorsey & Whitney LLP filed a FOIA suit on behalf of the AIC, alleging that USCIS had failed to turn over records responsive to the FOIA request. After filing suit, USCIS determined that it had over 2042 pages of documents responsive to the request. However, it withheld 1169 pages and released 418 pages with redactions, claiming FOIA exemptions protected the records from disclosure. In response to the government's motion for summary judgment, the AIC argued that USCIS had not demonstrated the adequacy of its search and had improperly withheld numerous documents not protected under the FOIA exemptions.

The court agreed in large part. In its opinion, the court found that "[t]he affidavit meant to demonstrate the adequacy of USCIS's search for responsive records discloses almost nothing about the search itself." Further, USCIS's attempted justification for withholding records "oscillates between sloppy and misleading." The court concluded that "USCIS must do better." It ordered the government to turn over the improperly withheld records and submit a new affidavit to demonstrate the adequacy of its search for records. Among the records USCIS must produce are PowerPoint slides used to train USCIS employees on how to interact with private attorneys and a memorandum establishing agency policy on the right to counsel for individuals seeking admission as refugees.

- Read more about this FOIA suit at the [Access to Counsel Before DHS](#) [2] page on our website. The new records and affidavit will be posted on this website when USCIS provides them.

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