



November 18, 2025

Submitted via USCIS FOIA ONLINE

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 for Non-Precedent AAO Decisions

Dear FOIA Officer:

The Legal Aid Society, the National Immigration Project, and the American Immigration Council (together, "the Requesters") submit this request for records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, related to Non-Precedent Decisions from the U.S. Citizenship and Immigration Services (USCIS) Administrative Appeals Office (AAO). The Requesters request a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k). The justifications for the fee waiver are set out in detail below.

I. The Requesters

The Legal Aid Society is a 501(c)(3), tax-exempt, non-profit legal services organization, the oldest and largest in the nation, dedicated since 1876 to providing quality legal representation to low-income New Yorkers. It is dedicated to one simple but powerful belief: that no New Yorker should be denied access to justice because of poverty. The Legal Aid Society handles 300,000 individual cases and matters annually and provides a comprehensive range of legal services in three areas: the Civil, Criminal and Juvenile Rights Practices.

The Legal Aid Society's Immigration Law Unit (the "ILU") is a recognized leader in the delivery of free, comprehensive and high-caliber legal services to low-income immigrants in New York City and surrounding counties. Part of the ILU's work consists of representing individuals in various applications for immigration benefits with USCIS, including but not limited to petitions or applications under the Violence Against Women Act, for Special Immigrant Juvenile Status (SIJS), for U nonimmigrant status, for T nonimmigrant status, for Temporary protected Status, and for certificates of citizenship, and in AAO administrative appeals of USCIS application denials.

The National Immigration Project is a national 501(c)(3), tax-exempt, nonprofit organization. Its members and supporters include attorneys, legal workers, law students, judges, jailhouse lawyers, grassroots

advocates, community organizations, and people who have faced detention or deportation and their loved ones. The National Immigration Project provides technical and litigation assistance, participates in impact litigation, provides legal training to the bar and the bench, and regularly publishes practice advisories and community resources on immigration law topics. Through its educational materials, the National Immigration Project provides resources and trainings to thousands of immigration practitioners and community members across the country. One of many focus areas is SIJS. The National Immigration Project regularly produces practitioner-facing materials on SIJS, conducts trainings for practitioners on SIJS-related topics, and provides technical assistance to practitioners on SIJS questions; these resources are informed by recent unpublished AAO decisions on SIJS.

The American Immigration Council is a tax-exempt, not-for-profit education and charitable organization under Section 501(c)(3) of the Internal Revenue Code. The Council strives to strengthen the United States by shaping immigration policies and practices through innovative programs, cutting-edge research, and strategic legal and advocacy efforts grounded in evidence, compassion, justice, and fairness.

II. Background and Purpose of the Request

For years, the AAO posted non-precedent decisions on a webpage specifically dedicated to publishing these types of decisions within weeks of their issuance.¹ Legal representatives, including the Requesters, frequently review these decisions to help clients prepare applications that satisfy USCIS's standards, including those reflected in non-precedent AAO decisions but not in any published policy. Others also review these decisions to discern the latest USCIS adjudication trends in various application types.

Without any announcement or explanation, USCIS stopped posting non-precedent AAO decisions on this webpage as of March 2025, the last non-precedent AAO decision that USCIS posted is dated on or around March 12, 2025—more than eight months ago. The webpage, however, continues to state that these decisions are “typically posted within a month of the decision being rendered.”²

On July 31, 2025, the National Immigration Project submitted a letter to USCIS's public engagement email address, requesting that the agency promptly resume posting all non-precedent AAO decisions on its webpage. The letter is attached and marked as Exhibit A. The National Immigration Project sent a follow-up email on September 5, 2025. The email is attached and marked as Exhibit B. USCIS has not responded to either of those emails.

The Requesters submit this FOIA request to (1) prompt USCIS to resume posting all non-precedent AAO decisions, and (2) inform the public and impacted individuals whether the AAO has implemented a suspension in case adjudications; and (3) analyze and explain to the public why the agency silently stopped providing this information to the public. In light of the myriad changes in immigration law and policy under the Trump Administration,³ practitioners need to understand current agency guidance and

¹ Administrative Appeals Office, U.S. Citizenship and Immigration Services, AAO Non-Precedent Decisions, <https://www.uscis.gov/administrative-appeals/aao-decisions/aao-non-precedent-decisions> (last visited Nov. 18, 2025).

² *Id.*

³ For an overview of some of these changes, see *The Trump Administration's 2025 Changes to Immigration Law*, New York City Bar Association, last updated June 16, 2025, <https://www.nycbar.org/reports/the-trump-administrations-early-2025-changes-to-immigration-law/?back=1>.

practices—including through access to the latest non-precedent AAO decisions—to navigate a rapidly changing legal landscape.

III. Records Requested

The Requesters hereby request that USCIS produce the following records:

1. All non-precedent AAO decisions issued since March 1, 2025. Additionally, Requester ask that USCIS publish AAO decisions going forward. Requesters ask that USCIS publish these decisions proactively on the webpage already created by the agency to house these records. Timely proactive disclosure of these decisions is required as they constitute “final opinions...made in the adjudication of cases.” 5 U.S.C. § 552(a)(2)(A).
2. Since January 20, 2025, records of guidance or instructions received or issued by members of AAO staff about the agency’s practice of posting non-precedent AAO decisions on the AAO decision webpage or other pages on USCIS’s website. These records include instructions issued in communications such as correspondence, emails, memoranda, Teams messages or other communication methods, as well as records such as standard operating procedures, training materials, protocols, meeting notes, or guidance. Requesters seek production of those records under 5 U.S.C. § 552(a)(3).

The Requesters ask that any records that exist in electronic form be provided electronically in their native file format, if possible. Alternatively, the Requesters ask that records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and that the records be provided in separate, *Bates*-stamped files. Please produce with the records any metadata and load files. If codes are employed, please also produce any documents in your possession explaining the codes employed, and what they signify.

If it is your position that Records exist that are responsive to this request, but that these Records (or portions of these Records) are exempt from disclosure, 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. In addition, please provide the nonexempt portions of the Records.

IV. Request for Fee Waiver

Requesters are nonprofit organizations that work on behalf of immigrant communities, ask that the agency waive all fees associated with this request, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 CFR § 5.11(k). A fee waiver is warranted because the records sought will contribute to the public’s understanding of USCIS adjudication trends—a federal government activity—and the release of the information is not in the commercial interest of the Requesters.

1. The records requested concern government operations and activities. 6 CFR § 5.11(k)(2)(i).

As described above, the requested records concern USCIS’s AAO decisions in appeals of denials of application for immigration benefits, clearly a government activity.

2. Disclosure of the requested records is “likely to contribute” to an understanding of government operations and activities. 6 CFR § 5.11(k)(1)(i), (k)(2)(ii)-(iv).

Disclosure of the requested information will contribute significantly to the public’s understanding of how USCIS adjudicates applications for immigration benefits. The AAO has jurisdiction to review appeals of forty-nine types of applications for benefits, including U-visa applications for victims of crimes, Temporary Protected Status applications, green card applications, and certain business-based applications.⁴ The AAO generally issues non-precedent decisions that apply existing law and policy, and these decisions are binding on the parties.⁵ These final decisions may be “adopted” by the agency to provide policy guidance or may be designated as precedent after consulting with the Attorney General.⁶

However, the precedential value of the AAO’s non-precedent decisions lack transparency. For example, the Immigration and Asylum Resources page of the Villanova University School of Law says that it is not entirely clear whether unreported AAO decisions appear to be non-precedent.⁷ Other materials highlight the general lack of transparency at the AAO. In an *amicus brief* to the U.S. Supreme Court, Professors Alan Morrison and Brian Wolfman outlined several ways in which the AAO lacks transparency about its staffing, structure and decision-making process.⁸

It is certain, however, that AAO non-precedent decisions show the agency’s application of legal precedent in the same way courts, or the Board of Immigration Appeals, do. The AAO reviews these non-precedent decisions to adjudicate cases.⁹ In fact, USCIS’s Adjudicator’s Field Manual clarified that USCIS officers may “consider a non-precedent decision for instructional value in addressing the issue(s) in that same case.”¹⁰ In fact, USCIS itself described AAO non-precedent decisions as “the predominant vehicle for resolving appeals.”¹¹

⁴ U.S. Citizenship and Immigration Services, Administrative Appeals Office, Appeals of Denied Petitions Under the Jurisdiction of the Administrative Appeals Office (AAO) by Form Number, (last visited Nov. 18, 2025) <https://www.uscis.gov/administrative-appeals/appeals-of-denied-petitions-under-the-jurisdiction-of-the-administrative-appeals-office-aao-by-form>.

⁵ *Id.*

⁶ *Id.*

⁷ Charles Widger School of Law, Immigration & Asylum Resources: Administrative Decisions, (last visited Nov. 18, 2025), <https://libguides.law.villanova.edu/immigration/admindecisions>.

⁸ Brief of Professors Alan Morrison and Brian Wolfman as Amici Curiae in Support of Petitioners, Santos Sanchez v. Mayorkas, 593 U.S. 409 (2021) (No. 20-315), https://www.supremecourt.gov/DocketPDF/20/20-315/170456/20210301142216277_210119a%20Amicus%20Brief%20for%20efiling.pdf.

⁹ See In Re: 183560046, https://www.uscis.gov/sites/default/files/err/B2%20-%20Aliens%20with%20Extraordinary%20Ability/Decisions_Issued_in_2021/SEP132021_02B2203.pdf (acknowledging the AAO reviewed its own non-precedent decisions to reach the conclusion in such case even though the decisions are not binding.)

¹⁰ Policy Memorandum from U.S. Citizenship and Immigration Services on Precedent and Non-Precedent Decisions of the Administrative Appeals Office (AAO) (Nov. 18, 2013), https://www.uscis.gov/sites/default/files/document/memos/PM-602-0086-1_AAO_Precedent_and_Non-Precedent_Decisions_Final_Memo.pdf (citing a section of the Adjudicator’s Field Manual).

¹¹ *Id.*

Further, practitioners rely on AAO non-precedent decisions to discern trends in the application of agency precedent.¹² Legal publications have described AAO non-precedent decisions as clarifying certain rules.¹³ In the past, scholars have noted that the AAO, in at least one occasion, showed a deviation from guidelines laid out in a USCIS memorandum about a particular standard used to determine whether a foreign national possessed specialized knowledge for purposes of a visa application in a non-precedent decision.¹⁴

The requested records would shed light on a significant U.S. government operation that the public is currently in the dark about. The requested records will allow legal practitioners to more effectively represent clients in applications for immigration benefits, would allow The Legal Aid Society's ILU to more knowledgeably and effectively represent its clients, and would allow National Immigration Project and the Council to continue educating legal representatives and the public about relevant trends in immigration law. Indeed, USCIS previously made AAO decisions publicly available.

Thus, disclosure of these decisions undoubtedly will likely contribute to the public's understanding of the AAO decisions.

3. Disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.

This request seeks to have the AAO decisions published on the USCIS webpage dedicated to these decisions, which will help the public at large understand AAO adjudications rather than help the individual Requesters.

Even if the agency did not proactively disclose these decisions, Requesters have the capacity and intent to disseminate widely the requested information to the public. See *Judicial Watch, Inc. v. Rossoti*, 326 F.3d 1309, 1301 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained how and to whom it would disseminate the information it received). The Requesters will make the information available on their websites, which is accessible by any member of the public. In 2024, the National Immigration Project's website received 374,892 page views with the top resource garnering 1,397 views. Also in 2024, The Legal Aid Society's website had 2,954,006 page views, with the top resource garnering 45,518 page views.

The American Immigration Council often gathers data, records, and other information about immigration topics of interest to the public from FOIA and other sources, and then analyzes them in blog posts, factsheets, reports, and interactive tools. These tactics support the Council's mission to educate the public on the important and enduring contributions that immigrants make to America

¹² See e.g. Klasko Immigration Law Partners, LLP, *To Extraordinary and Beyond: Strategies for EB-1 Success*, May 28, 2019, <https://www.klaskolaw.com/to-extraordinary-and-beyond-strategies-for-eb-1-success/> (noting the different adjudication outcomes at the AAO applying a legal standard for EB-1 petitions.).

¹³ 17 No. 6 *Immigr. Bus. News & Comment* NL 12 (stating "These case-specific issues aside, the import of this decision is in the AAO's discussion of what it calls the 'misinterpretation and misapplication of the so-called three-for-one' rule.").

¹⁴ Jill E. Family, *Administrative Law Through the Lens of Immigration Law*, 64:3 *Administrative Law Review* 565, 608 (2012), <https://administrativelawreview.org/wp-content/uploads/sites/2/2014/04/Administrative-Law-Through-the-Lens-of-Immigration-Law.pdf>.

and challenge the myths and misinformation that too often dominate the political and public debate around immigration. Through research and analysis, the Council promotes the development of fair and rational immigration policies that reflect fundamental American values. Between January 1 and September 25, 2025, the Council's website received 4.6 million visitors; many Council publications have received tens—if not hundreds—of thousands of views within the past year; and several publications have reached the public at large by shaping immigration coverage in newspapers, television shows, and other traditional media outlets.

Requesters have demonstrated that their intent is to disseminate the information produced from this request widely so that the public can gain the same level of understanding it once had when the agency published the AAO decisions on its website.

4. The request's contribution to public understanding of government operations or activities will be "significant."

Disclosure of the requested records will significantly contribute to the public's understanding of AAO adjudications. Publication of these AAO decisions is the only way by which practitioners and the public at large can track how the AAO applies binding precedent such as its own precedent decisions, BIA decisions, and even decisions from the federal courts. Practitioners who receive AAO non-precedent decisions often post these decisions on their own websites,¹⁵ but the AAO webpage in USCIS' website allows the public to search for decisions and filter them by type of decisions and even key terms. This allows users, interested parties, and the public at large the ability to discern adjudication patterns from similar decisions.

This type of holistic disclosure, as sought by the request, will significantly contribute to the public's understanding of the AAO and its decision-making process. Despite their non-precedential nature, the decisions offer valuable insight into how the agency interprets the law. If not disclosed, these adjudications would constitute a body of "secret law" that courts have said is contrary to Congress' intent when enacting the proactive disclosure provisions of FOIA. *New York Legal Assistance Grp. v. Bd. of Immigr. Appeals*, 987 F.3d 207, 223 (2d Cir. 2021) (citing *N. L. R. B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 153 (1975)).

Thus, records disclosed in response to this request would avoid creating a body of AAO secret law and would contribute significantly to the public's understanding of the AAO's decisions.

5. The Requesters have no commercial interest in the disclosure. 6 CFR § 5.11(k)(1)(ii), (k)(3).

First, Requesters note that the crux of this request seeks that USCIS publish the AAO non-precedent decisions on its website under FOIA's proactive disclosure provisions. 5 U.S.C. § 552(a)(2). If the agency agrees, these decisions would be available to the public free of charge. Requesters' intent, i.e. to have USCIS publish the decisions free of charge, is a strong indication of Requesters' lack of commercial interest in the disclosure.

Alternatively, Requesters satisfy the lack of commercial interest prong because, as tax-exempt, nonprofit educational, charitable, and/or legal services organizations, Requesters have no commercial interest in the information requested. As nonprofit organizations, which by definition have no commercial interest,

¹⁵ See e.g. Klasko, supra n. 11.

Requesters would usually qualify for a fee waiver. See *Am. Ctr. for Law & Justice v. U.S. Dep't of Homeland Sec.*, 573 F. Supp. 3d 78, 84 (D.D.C. 2021).

Rather than furthering any commercial interest, the requested information is sought for the purpose of fulfilling Requesters' missions. Congress intended the FOIA fee waiver provision to encourage "open and accountable government." *Citizens for Responsibility and Ethics in Washington v. U.S. Dep't. of Educ.*, 593 F. Supp. 2d 261, 271 (D.D.C. 2009). Therefore, agencies should "apply the public-interest waiver liberally." *Conklin v. United States*, 654 F. Supp. 1104, 1005 (D. Colo. 1987).

For example, The Legal Aid Society provides high-quality immigration legal representation to low-income New Yorkers. As part of this work, the Legal Aid Society's Immigration Law Unit identifies and tracks trends and emerging issues so that attorneys can quickly respond to policy changes to preserve family integrity. The National Immigration Project uses information obtained through FOIA requests to train attorneys across the country and provide them with timely legal and policy expertise to ensure immigrants have access to the highest quality legal representation. Likewise, the Council's mission is to promote the development of fair and rational immigration policies that reflect fundamental American values and uses transparency and analysis as key strategies to achieve this goal.

For each requester, obtaining the AAO decisions is crucial to their mission and goals. The AAO decisions show the very same trends that the Legal Aid Society seeks to identify to better represent its clients in immigration proceedings. Both the National Immigration Project and the Council provide critical analysis to help explain these trends. Requesters provide legal representation, legal training, and analysis to their core constituency free of charge, or at very low cost, and they do not derive a profit from those services. As such, Requesters have no commercial interest in the disclosure.

6. The public interest in the disclosure outweighs any identified commercial interest Requesters may have in the records sought.

As outlined above, Requesters have no commercial interest that would be furthered by the disclosure. Requesters seek to have the AAO non-precedent decisions made available by the agency free of charge on its own website. Additionally, Requesters enjoy a presumption that they have no commercial interests. See *Am. Ctr. for Law & Justice*, 573 F. Supp. at 84

Assuming *arguendo* that the agency identified a commercial interest, such interest is small in comparison to the public interest in disclosure. In other words, the public interest in disclosing the AAO decisions far outweighs any commercial interest the agency may ascribe to requester. As stated above, AAO non-precedent decisions provide valuable insight into how the agency adjudicates the dozens of types of applications in its jurisdiction, much like courts or other immigration tribunals. Identification of these trends greatly benefits the public because applicants can prepare applications that adhere to these adjudications, providing for a more efficient application process. Further, disclosure of the AAO non-precedent decisions is the only way in which the public can assess whether the AAO, which has been criticized for its lack of transparency, has adopted standards that are contrary to the law or even USCIS's own practice. Requesters, as organizations that regularly use these decisions to educate the legal field, are well positioned to receive and analyze disclosures.

If the fee waiver is denied, Requesters agree to pay an amount not to exceed \$25.00. Please inform us if the charges for this FOIA production will exceed such amount.

V. Production Format

Thank you for your consideration of and prompt response to this request. As mentioned, we kindly request that USCIS notify Requesters via email when the decisions are posted on the agency's website. Requesters ask that productions under 5 U.S.C. § 552(a)(3) in this request be furnished via email at hhshafiqullah@legal-aid.org.

If you have any questions regarding this request, you may contact Requesters at the contact information below.

Sincerely,

/s/ Hasan Shafiqullaqh
Hasan Shafiqullah
Immigration Supervising Attorney
Law Reform Unit
The Legal Aid Society
49 Thomas Street, 5th Floor
New York, NY 10013
(646) 745-7166
hhshafiqullah@legal-aid.org

/s/ Rebecca Scholtz
Rebecca Scholtz
Senior Staff Attorney
National Immigration Project
1763 Columbia Road NW
Suite 175 #896645
Washington DC 20009
(202) 742-4423
rebecca@nipnl.org

/s/ Raul A. Pinto
Raul A. Pinto
Deputy Legal Director, Transparency
American Immigration Council
PMB2026
2001 L Street N.W., Suite 500
Washington, DC 20036
(202) 507-7549
rpinto@immcouncil.org