

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

THE LEGAL AID SOCIETY, NATIONAL  
IMMIGRATION PROJECT OF THE  
NATIONAL LAWYERS GUILD, and  
AMERICAN IMMIGRATION COUNCIL,

Plaintiffs,

Civil Action No. 1:26-cv-1140

v.

U.S. CITIZENSHIP AND IMMIGRATION  
SERVICES, and U.S. DEPARTMENT OF  
HOMELAND SECURITY,

Defendants.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, seeks to compel Defendants U.S. Citizenship and Immigration Services (“USCIS”) and U.S. Department of Homeland Security (“DHS”) to publish on USCIS’s website non-precedent decisions issued by its Administrative Appeals Office (“AAO”) since March 2025, and to resume publication of such decisions going forward. Plaintiffs also seek disclosure of records relating to agency instructions as to the suspension of the publication of such decisions on USCIS’s website.

2. The AAO non-precedent decisions (hereinafter “the decisions”) allow Plaintiffs, other immigration law practitioners, and the public at large to monitor how the agency adjudicates certain applications for immigration benefits.

3. Until approximately March 12, 2025, USCIS routinely published the decisions on the agency’s website, but it has not published any decisions since that time.

4. The decisions are final opinions of the AAO made in the adjudication of cases, and thus subject to proactive disclosure by the agency under 5 U.S.C. § 552(a)(2)(A).

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C § 1331 since this action arises under FOIA against agencies of the United States.

6. Venue lies in this district under 5 U.S.C § 552(a)(4)(B) and the doctrine of pendent venue: Plaintiff The Legal Aid Society's principal place of business is in this district, and Plaintiffs National Immigration Project and American Immigration Council's claims arise from the same FOIA request as the one filed by The Legal Aid Society.

### **PARTIES**

7. Plaintiff The Legal Aid Society is a 501(c)(3), tax-exempt, nonprofit 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, for waivers of inadmissibility, for applications for permission to

reapply for admission after removal, for certificates of citizenship, for applications to replace certificates of naturalization and citizenship, applications to preserve residence for naturalization purposes, and in AAO administrative appeals of USCIS application denials.

8. Plaintiff National Immigration Project of the National Lawyers Guild (“National Immigration Project”) is a national 501(c)(3), tax-exempt, nonprofit organization. Its members and supporters include attorneys, legal workers, 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.

9. Plaintiff American Immigration Council (“the Council”) is a nonprofit educational and charitable organization. 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. It authors factsheets, special reports, and blog posts on proposed and actual immigration policies, some of which shape media coverage in outlets across the nation. It also analyzes immigration data and other government records—including those obtained through FOIA requests like the one at issue in this litigation—in interactive web reports and blog posts. The Council circulates these publications to hundreds of thousands of readers through its website, email newsletters, and social media accounts.

10. Defendant USCIS is a subcomponent of DHS and an agency within the meaning of 5 U.S.C §§ 552(f)(1), 701, and 702. USCIS is the subcomponent tasked with adjudicating applications for various immigration benefits requests filed by or on behalf of noncitizens. The AAO is an office within USCIS that functions as an appellate body that adjudicates appeals of unfavorable USCIS decisions on certain benefits applications filed by or on behalf of noncitizens.

11. Defendant DHS is an agency within the meaning of 5 U.S.C §§ 552(f)(1), 701, and 702. It is the parent agency of USCIS. It “has a decentralized system for responding to FOIA requests” where requests for DHS records are directed to and processed by FOIA offices in USCIS and each of its other individual components. 6 C.F.R. § 5.3(a)(1). DHS rules, policies, and procedures govern USCIS’s processing of FOIA requests. *Id.* § 5.1(a)-(c). As such, DHS has possession, custody, and control of the records that Plaintiffs seek. *Sanchez Mora v. U.S. Customs & Border Protection*, Civil Action No. 24-3136, 2025 WL 1713252, at \*5 (D.D.C. June 18, 2025) (FOIA “requests submitted to a DHS component...must also be understood as submitted to DHS, the parent agency.”).

### **STATEMENT OF FACTS**

#### **A. Until 2025, USCIS Posted New Non-Precedent AAO Decisions on Its Website Within Weeks of Their Issuance.**

12. The AAO is the appellate body within USCIS with jurisdiction to review unfavorable decisions of applications filed by noncitizens for certain categories of immigration benefits.

13. The AAO has appellate jurisdiction over approximately fifty different immigration case types filed with USCIS. The types of applications range in subject matter and include, without limitation: most employment-based immigrant and nonimmigrant visa petitions

(Forms I-140 and I-129); EB-5 immigrant investor petitions (Form I-526) and Regional Center applications (Form I-924); Temporary Protected Status applications (Form I-821); fiancé(e) petitions (Form I-129F); applications for a waiver of inadmissibility (Form I-601); applications for permission to reapply for admission after removal (Form I-212); certain special immigrant visa petitions (Form I-360, except for Form I-360 widower appeals, which are appealable to the Board of Immigration Appeals); orphan petitions (Forms I-600/I-600A and I-800/I-800A); T visa applications for victims of human trafficking (Form I-914), U visa petitions for victims of criminal activity (Form I-918), and the related adjustment of status applications (Form I-485); applications for certificates of citizenship (Form N-600) and applications to replace certificates of naturalization and citizenship (Form N-565); applications to preserve residence for naturalization purposes (Form N-470); and Immigration and Customs Enforcement determinations that a surety bond has been breached.

14. According to USCIS's AAO Appeals Adjudication data, the AAO adjudicated 2,878 appeals during Fiscal Year 2025. U.S. CITIZENSHIP AND IMMIGRATION SERVS., AAO APPEAL ADJUDICATIONS (2025), <https://www.uscis.gov/sites/default/files/document/data/USCIS-and-AAO-Data-for-Publishing-Thru-FY25.pdf>.

15. Generally, the AAO issues its appellate decisions as non-precedent decisions. In limited circumstances, however, the AAO issues precedent decisions to provide guidance to adjudicators and the public on the proper interpretation and administration of immigration law and policy. An AAO decision may be designated as a precedent decision by the joint approval of the DHS Secretary, the Board of Immigration Appeals, and the Attorney General.

16. AAO non-precedent decisions are binding opinions on the parties involved in the case. USCIS's AAO Practice Manual states that parties may not administratively appeal an

unfavorable AAO decision. ADMINISTRATIVE APPEALS OFFICE, U.S. CITIZENSHIP AND IMMIGRATION SERVS., AAO PRACTICE MANUAL § 3.2 (Apr. 18, 2018), <https://www.uscis.gov/administrative-appeals/aao-practice-manual>. Nonetheless, under certain circumstances and particular statutes, parties may seek judicial review of an unfavorable decision.

17. USCIS officers may consider non-precedent decisions for instructional value in addressing the issue(s) in the case at hand. Even though USCIS officers may not rely upon, nor cite to, non-precedent AAO decisions as guidance or legal authority, the agency has described the non-precedent decisions as the “predominant vehicle for resolving appeals.” USCIS, Policy Memorandum PM-602-0086.1 2 (Nov. 18, 2013), [https://www.uscis.gov/sites/default/files/document/memos/PM-602-0086-1\\_AAO\\_Precedent\\_and\\_NonPrecedent\\_Decisions\\_Final\\_Memo.pdf](https://www.uscis.gov/sites/default/files/document/memos/PM-602-0086-1_AAO_Precedent_and_NonPrecedent_Decisions_Final_Memo.pdf).

18. In 2016, USCIS created an online repository on its website publishing the decisions dating back to 2005. As of this filing, the online repository indicates that the decisions are “typically posted within a month of the decision being rendered.” And, for years, USCIS in fact published new AAO non-precedent decisions on the online repository within this timeframe, typically within several weeks of their issuance.

19. In March 2025, Defendants abruptly stopped posting the decisions on the website, without any acknowledgement or explanation. As of this filing, the last posted decision in the repository is dated March 12, 2025.

**B. Plaintiffs Use the Decisions to Advise Clients and Inform Other Practitioners and the Public.**

20. The decisions at issue provide critical information about how the agency applies existing law and policy to the facts of a given case, and Plaintiffs regularly use the decisions in

the preparation of their appeals, to inform clients and practitioners of trends in adjudications, and inform legal challenges to trends that violate the law.

21. Plaintiff The Legal Aid Society relies on these decisions to understand how USCIS is applying existing law and policy to applications and petitions for benefits. The Legal Aid Society reviews the decisions to identify and track trends and emerging issues so that their attorneys can quickly respond, in order to effectively represent its clients. This includes, without limitation, reviewing decisions regarding Violence Against Women Act Form I-360 self-petitions, Form I-918 petitions for U nonimmigrant status (“U visas”), Form I-914 petitions for T nonimmigrant status (“T visas”), and Form I-192 waivers regarding U visas and T visas, particularly in response to USCIS Requests for Evidence or Notices of Intent to Deny and in appeals to the AAO. AAO non-precedent decisions have been particularly useful in providing guidance about how USCIS adjudicates:

- a. “substantial physical and mental abuse” in the context of U visa petitions under 8 U.S.C. § 1101(a)(15)(U)(i)(I) and 8 C.F.R. §§ 214.14(a)(8) and (b)(1);
- b. revocation of an applicant’s U visa under 8 C.F.R. § 214.14(h)(2);
- c. the weight to be given arrests absent convictions or other corroborating evidence, in the adjudication of U visa petitions;
- d. waivers of inadmissibility in the U visa context, under 8 C.F.R. § 212.17;
- e. criminal histories in the U adjustment of status process under 8 U.S.C. § 1255(m);
- f. treatment of noncitizen smuggling in trafficking situations in the T visa context;

- g. waivers of inadmissibility in the T visa context under 8 C.F.R. § 212.16, particularly regarding prostitution and noncitizen smuggling;
- h. waivers of inadmissibility in the T visa adjustment of status context under 8 C.F.R. § 212.18, particularly regarding prostitution and noncitizen smuggling;
- i. trafficking related to intimate partner violence in the T visa context;
- j. physical presence in the United States on account of trafficking, in the T visa context under 8 U.S.C. § 1101(a)(15)(T)(i)(II);
- k. the “clear and convincing evidence” standard for the bona fide marriage exception at 8 U.S.C. 1255(e)(3) where the petitioner married while in immigration removal proceedings, in the VAWA self-petition context under 8 U.S.C. §§ 1154(a)(1)(A) and (B).

22. Plaintiff National Immigration Project also uses the decisions to help practitioners understand the latest adjudicatory practices and interpretation of policies, specifically those relating to applications for Special Immigrant Juvenile Status (“SIJS”). Plaintiff also uses the decisions to conduct training for practitioners on SIJS topics and provides technical assistance to practitioners on SIJS questions. For example, in 2025, National Immigration Project received 79 requests for technical assistance regarding SIJS and unaccompanied children.

23. Plaintiff the Council also uses the decisions to inform practitioners of adjudication trends and other legal issues arising from USCIS’s adjudication of benefit applications. For example, the Council published a Practice Advisory in 2024 on how to bring federal litigation in business immigration cases. The Practice Advisory cited these decisions to advise business immigration practitioners on how to properly submit additional evidence before the AAO. Further, in *MadKudu v. USCIS*, 5:20-CV-02653 (N.D.Cal.), the Council relied on AAO non-

precedent decisions to argue that the agency engaged in a pattern of conduct interpreting that market research analysts did not qualify for the H-1B “specialty occupation” visa category and establish the numerosity element for a class-action lawsuit.

**C. Plaintiffs’ Efforts to Persuade Defendant USCIS to Proactively Disclose the Decisions**

24. On July 31, 2025, Plaintiff National Immigration Project sent a letter to Defendant USCIS via email advising the agency of the suspension in publication of the decisions and requesting that the AAO resume publication of the decisions to the repository on the agency’s website.

25. Defendant USCIS did not respond to the July 31, 2025, letter.

26. On September 5, 2025, Plaintiff National Immigration Project followed up as to the status of its July 31, 2025, letter via email.

27. Defendant USCIS did not respond to the September 5, 2025, email.

28. On November 18, 2025, Plaintiffs jointly filed a request under FOIA (hereinafter the “FOIA Request”) to:

- a. Inform Defendant USCIS that the AAO decisions issued since March 12, 2025, and decisions the AAO may issue in the future, constitute final opinions made in the adjudication of cases and must be proactively disclosed pursuant to 5 U.S.C. § 552(a)(2)(A); and
- b. Request records of instructions issued or received by the AAO since January 20, 2025, regarding the agency’s practice of publishing the decisions in the repository created in USCIS’s website under 5 U.S.C. § 552(a)(3).

Plaintiffs included copies of the July 31, 2025, and September 5, 2025, communications in the request. A true and complete copy of the FOIA Request is attached and marked as *Exhibit A*.

29. Plaintiffs also sought a fee waiver of any fees the agency may impose on the FOIA Request.

30. On November 18, 2025, Defendant USCIS confirmed successful submission of the Plaintiffs' FOIA Request. Plaintiffs obtained confirmation of submission via the USCIS FOIA portal.

31. USCIS designated Plaintiffs' FOIA Request as Tracking No. COW2025009180REQ.

32. On January 14, 2026, Defendant USCIS sent a letter to Requesters acknowledging receipt of the FOIA Request. However, this letter notified the Requesters that USCIS had assigned the request a new Control Number, COW2026000006, instead of proceeding under the previously assigned Control Number. The acknowledgment also invoked FOIA's ten business-day extension to respond to the request.

33. USCIS' January 14, 2026, letter fails to make a determination as to Plaintiffs' request for a fee waiver.

34. As of the date of this filing, Defendants have not provided Plaintiffs with an appropriate determination with regards to the FOIA Request.

35. As of the date of this filing, the AAO has not resumed publication of the decisions at issue or posted any decisions to the repository after March 12, 2025.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF: FAILURE TO PROACTIVELY DISCLOSE RECORDS**

36. Plaintiffs incorporate by reference ¶¶ 1-35.

37. The FOIA states that agencies shall make available for public inspection in an electronic format, "final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases." 5 U.S.C. § 552(a)(2)(A).

38. The AAO non-precedent decisions constitute final opinions under 5 U.S.C. § 552(a)(2)(A).

39. Defendants have an obligation under the statute to make all AAO non-precedent decisions available for public inspection in an electronic format. Specifically, Defendants must publish the decisions issued since March 12, 2025, until the present on USCIS's dedicated webpage so that they are available for public inspection in an electronic format.

40. Defendants must publish all future AAO non-precedent decisions on USCIS's dedicated webpage so that they are available for public inspection in an electronic format.

41. By failing to proactively disclose these decisions, Defendants are in violation of their obligations under FOIA.

**SECOND CLAIM FOR RELIEF: FAILURES TO CONDUCT A REASONABLE SEARCH**

42. Plaintiffs incorporate by reference ¶¶ 1-35.

43. In addition to seeking proactive disclosures of the decisions at issue, Plaintiffs requested production of records relating to Defendants' guidance about its practice of posting the decisions on USCIS' website under 5 U.S.C. § 552(a)(3).

44. Plaintiffs have a legal right under FOIA for Defendants to conduct a reasonable search for records responsive to the Plaintiffs' FOIA Request. 5 U.S.C. § 552(a)(3).

45. Defendants have not conducted reasonable searches for records responsive to these Requests.

46. Defendants' failure to conduct a reasonable search for these records violates FOIA. *Id.*

**THIRD CLAIM FOR RELIEF: FAILURES TO MAKE RESPONSIVE RECORDS PROMPTLY AVAILABLE**

47. Plaintiffs incorporate by reference ¶¶ 1-35.

48. Plaintiffs have a legal right under FOIA to obtain prompt production of all reasonably segregable non-exempt portions of all records sought in Plaintiffs' FOIA Request. 5 U.S.C. § 552(a)(3)(A).

49. Defendants have yet to make any responsive records available to Plaintiffs in response to Plaintiffs' FOIA Requests.

50. Defendants' failure to make these records available to Plaintiffs violates FOIA. *Id.*

**FOURTH CLAIM FOR RELIEF: FAILURE TO AWARD A FEE WAIVER**

51. Plaintiffs incorporate by reference ¶¶ 1-35.

52. Plaintiffs have a legal right to fee waivers on the FOIA Request under FOIA and Defendants' implementing regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k)(1).

53. Defendants' failures to grant Plaintiffs a fee waiver on the FOIA Request violates FOIA and the agencies' implementing regulations.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs respectfully request that this Court grant the following relief:

- a. Assume jurisdiction over the matter;
- b. Order Defendants to make available for public inspection the AAO non-precedent decisions issued since March 12, 2025, until the present in the same format and on the same webpage where USCIS previously published the decisions, in accordance with 5 U.S.C. § 552(a)(2)(A);
- c. Order Defendants to make all future AAO non-precedent decisions publicly available in the same format and on the same webpage where USCIS previously published the decisions, within one month of the decisions being rendered;
- d. Order Defendants to conduct a reasonable search for all records responsive Plaintiffs' FOIA Request in accordance with 5 U.S.C. § 552(a)(3);

- e. Order Defendants to promptly make available to Plaintiffs non-exempt records in their entirety and all reasonably segregable, non-exempt parts of other responsive records;
- f. Review any and all of Defendants' decisions to redact or withhold information in responsive records as exempt from disclosure;
- g. Grant Plaintiffs' fee waivers on their FOIA Request;
- h. Award Plaintiffs costs and reasonable attorneys' fees in this action as provided by 5 U.S.C. § 552(a)(4)(E); and
- i. Grant other such relief as the Court may deem just and proper.

Date: February 10, 2026

Respectfully submitted,

/s/ Hasan Shafiqullah

Raul A. Pinto  
AMERICAN IMMIGRATION COUNCIL  
PMB2026  
2001 L Street N.W., Suite 500  
Washington, DC 20036  
(202) 507-7549  
rpinto@immcouncil.org

Hasan Shafiqullah, Esq.  
THE LEGAL AID SOCIETY  
49 Thomas St., 5th Floor  
New York, NY 10013  
(646) 745-7166  
HShafiqullah@legal-aid.org

Rebecca Scholtz (*pro hac vice* forthcoming)  
NATIONAL IMMIGRATION PROJECT  
30 S. 10<sup>th</sup> St. (c/o Univ. Of St. Thomas  
Legal Services Clinic)  
Minneapolis, MN 55403  
(202) 742-4423  
rebecca@nipnlg.org

*Counsel for Plaintiffs*

# **Exhibit A**



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.<sup>1</sup> 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.”<sup>2</sup>

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,<sup>3</sup> practitioners need to understand current agency guidance and

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<sup>1</sup> 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).

<sup>2</sup> *Id.*

<sup>3</sup> 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.<sup>4</sup> The AAO generally issues non-precedent decisions that apply existing law and policy, and these decisions are binding on the parties.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.”<sup>10</sup> In fact, USCIS itself described AAO non-precedent decisions as “the predominant vehicle for resolving appeals.”<sup>11</sup>

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<sup>4</sup> 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>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

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

<sup>8</sup> 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](https://www.supremecourt.gov/DocketPDF/20/20-315/170456/20210301142216277_210119a%20Amicus%20Brief%20for%20efiling.pdf).

<sup>9</sup> 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](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.)

<sup>10</sup> 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](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).

<sup>11</sup> *Id.*

Further, practitioners rely on AAO non-precedent decisions to discern trends in the application of agency precedent.<sup>12</sup> Legal publications have described AAO non-precedent decisions as clarifying certain rules.<sup>13</sup> 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.<sup>14</sup>

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

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<sup>12</sup> 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.).

<sup>13</sup> 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.").

<sup>14</sup> 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,<sup>15</sup> 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,

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<sup>15</sup> 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.

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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 Shafiqullah  
Hasan Shafiqullah  
Immigration Supervising Attorney  
Law Reform Unit  
The Legal Aid Society  
49 Thomas Street, 5<sup>th</sup> 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

# **Exhibit A**



Rebecca Scholtz <rebecca@nipnl.org>

## Request to Promptly Resume Posting on Website of AAO Non-Precedent Decisions

Rebecca Scholtz <rebecca@nipnl.org>  
To: public.engagement@uscis.dhs.gov  
Bcc: Grayson McGowan <grayson.intern@nipnl.org>

Thu, Jul 31, 2025 at 1:48 PM

Greetings,

Please see the attached letter regarding the posting of non-precedent Administrative Appeals Office decisions on the USCIS website.

Sincerely,  
Rebecca



**Rebecca Scholtz** | she/her  
Senior Staff Attorney  
National Immigration Project  
Tel: (202) 742-4423  
*Based in Minnesota; admitted in Minnesota and New York only*  
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07/31/2025

USCIS Office of Public Engagement  
5900 Capital Gateway Drive  
Camp Springs, MD 20588  
*Sent via email to* [public.engagement@uscis.dhs.gov](mailto:public.engagement@uscis.dhs.gov)

**RE: Request to Promptly Resume Posting on Website of AAO Non-Precedent Decisions**

To Whom It May Concern:

I am a senior staff attorney at the National Immigration Project, and I write to ask USCIS to promptly resume posting on its webpage non-precedent decisions from the Administrative Appeals Office (AAO).

**Background**

The National Immigration Project is a national nonprofit organization that, among other endeavors, 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 our educational materials, we provide resources to thousands of immigration practitioners and community members across the country. One focus area is Special Immigrant Juvenile Status (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. Now, more than ever, practitioners need to understand current agency guidance and practices—including through access to the latest SIJS-related AAO decisions—to navigate a rapidly changing legal landscape.

It recently came to our attention that USCIS has inexplicably and abruptly stopped posting non-precedent AAO decisions on the USCIS website, <https://www.uscis.gov/administrative-appeals/aao-decisions/aao-non-precedent-decisions>. As you can see by visiting the linked webpage, the last non-precedent AAO decision that USCIS posted is dated on or around March 12, 2025—more than four months ago. USCIS’s website, however, states that these decisions are “typically posted within a month of the decision being rendered.” *Id.* USCIS has not publicly acknowledged or provided information regarding the abrupt change to stop promptly posting non-precedent AAO decisions.

**Request**

We respectfully ask that USCIS promptly resume posting all non-precedent AAO decisions on its website. *See* 5 U.S.C. § 552(a)(2) (requirements regarding proactive disclosure of public records in electronic format); 6 CFR § 5.2 (same).

If you have any questions regarding my request, please contact me via email at [rebecca@nipnlq.org](mailto:rebecca@nipnlq.org).

Respectfully,

A handwritten signature in black ink that reads "Rebecca Scholtz". The signature is written in a cursive, flowing style.

Rebecca Scholtz  
Senior Staff Attorney  
National Immigration Project

# **Exhibit B**



Rebecca Scholtz <rebecca@nipnl.org>

## Request to Promptly Resume Posting on Website of AAO Non-Precedent Decisions

Rebecca Scholtz <rebecca@nipnl.org>  
To: public.engagement@uscis.dhs.gov

Fri, Sep 5, 2025 at 12:19 PM

Good afternoon,

I did not receive any response to my July 31 email and letter, below and attached. I would appreciate a prompt acknowledgement of receipt and update.

Sincerely,  
Rebecca



**Rebecca Scholtz** | she/her  
Senior Staff Attorney  
National Immigration Project  
Tel: (202) 742-4423  
*Based in Minnesota; admitted in Minnesota and New York only*  
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On Thu, Jul 31, 2025 at 1:48 PM Rebecca Scholtz <rebecca@nipnl.org> wrote:

Greetings,

Please see the attached letter regarding the posting of non-precedent Administrative Appeals Office decisions on the USCIS website.

Sincerely,  
Rebecca



**Rebecca Scholtz** | she/her  
Senior Staff Attorney  
National Immigration Project  
Tel: (202) 742-4423  
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