

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN IMMIGRATION COUNCIL )  
1331 G Street, N.W., Suite 200 )  
Washington, DC 20005-3141 )

Plaintiff, )

v. )

UNITED STATES DEPARTMENT OF )  
HOMELAND SECURITY )  
Office of the General Counsel )  
20 Massachusetts Avenue, N.W. )  
Washington, DC 20528 )

and )

UNITED STATES IMMIGRATION AND )  
CUSTOMS ENFORCEMENT )  
Office of the Principal Legal Advisor )  
500 12th Street, S.W. )  
Washington, DC 20536, )

Defendants. )

Case: 1:12-cv-00856  
Assigned To : Boasberg, James E.  
Assign. Date : 5/31/2012  
Description: FOIA/Privacy Act

**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. Immigration and Customs Enforcement (“ICE”). The American Immigration Council (“AIC”) seeks declaratory, injunctive, and other appropriate relief with respect to ICE’s unlawful withholding of these records.

2. Under the U.S. immigration system, many decisions impacting noncitizens are made not by immigration judges in courtrooms, but by various Department of Homeland

Security (“DHS”) officials—including ICE officers—in field offices, detention facilities and arrest sites. These interactions can have life-altering consequences.

3. Access to counsel is at the very core of our legal system and is integral to ensuring that all noncitizens facing detention, immigration charges or 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 complicated immigration statutes, regulations, and court decisions unassisted.

4. Reports from immigration lawyers across the country indicate that ICE officers routinely interfere with attorneys’ efforts to represent their clients. They fail to provide or facilitate access to counsel when questioning represented individuals, restrict attorney-client communications in detention facilities, and actively discourage noncitizens from hiring attorneys. These restrictions, which are not mandated by existing regulations, are fundamentally unfair and undermine the quality and efficiency of immigration decision making.

5. ICE’s policies and guidance on access to counsel are difficult to ascertain. 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 Freedom of Information Act request to ICE in March 2011.

6. The FOIA process has been fraught with errors and inefficiencies. After AIC submitted its request, the agency responded that it had no responsive documents, but then on appeal, conceded that its search was inadequate. Yet, to date, ICE has failed to produce a single responsive document. AIC has been forced to file three administrative appeals. These appeals and ICE’s decision to reprocess the same FOIA request as though it were a new request have resulted in additional delay.

7. ICE'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 ICE.

### **Jurisdiction and Venue**

8. This Court has subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) 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.

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

### **The Parties**

10. 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, Washington, DC 20005. 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 ICE.

11. 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.

12. Defendant ICE is a component of DHS and is an agency within the meaning of 5 U.S.C. § 552(f). ICE is the principal investigative arm of DHS and is charged with criminal and civil enforcement of the immigration laws. Among ICE's primary duties are the investigation of persons suspected to have violated the immigration laws and the apprehension, detention, and removal of noncitizens who are unlawfully present in the United States. ICE has possession and control over the records sought by AIC.

#### **AIC's FOIA Request**

13. On March 14, 2011, AIC submitted a FOIA request to ICE seeking:

Any 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. Immigration and Customs Enforcement (ICE), whether issued or maintained by ICE Headquarters offices (including but not limited to the Office of the Assistant Secretary (OAS), Enforcement and Removal Operations (ERO), Homeland Security Investigations (HSI), Management and Administration, Office of the Principal Legal Advisor (OPLA), and the Office of Detention Policy and Planning (ODPP), including any divisions, subdivisions or sections therein); ICE field offices, including any divisions, subdivisions or sections therein; local Offices of Chief Counsel; and/or any other ICE 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 ICE;

- What role attorneys may play during their clients' interactions with ICE;
- Attorney conduct during interactions with ICE on behalf of their clients;
- Attorney appearances at ICE offices or other facilities.

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

14. AIC asked that ICE 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.

15. AIC received two letters dated March 31, 2011 from ICE FOIA Officer Catrina M. Pavlik-Keenan, acknowledging receipt of its request and assigning the request reference number 2011FOIA7112. Both letters invoked a 10-day extension of the 20-day response period pursuant to 5 U.S.C. § 552(a)(6)(B). In one of the letters, ICE stated that it would "charge [AIC] for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters." In the other letter, however, ICE stated that it would hold AIC's fee waiver request in abeyance "pending the quantification of responsive records." Copies of the March 31, 2011 letters are attached as Exhibit B.

16. After waiting nearly five months for a substantive response to its request, on August 11, 2011, AIC filed an administrative appeal of ICE's constructive denial of its FOIA request and restated its request for a fee waiver. A copy of the August 11, 2011 letter is attached as Exhibit C.

17. In response to AIC's administrative appeal, ICE's Office of the Principal Legal Advisor (OPLA) informed AIC by letter dated September 23, 2011 that certain ICE divisions — specifically, OPLA, the Office of Enforcement and Removal Operations, and

Homeland Security Investigations — had been assigned to conduct searches for responsive records. Because the case was “being processed in the order it was received” and any responsive documents would be “processed according to the FOIA upon receipt from the program office,” ICE closed the appeal as moot. The letter stated that “[i]nasmuch as you consider this to be a denial of your appeal, you may obtain judicial review of this decision . . . .” A copy of the September 23, 2011 letter is attached as Exhibit D.

18. Just four days after notifying AIC that the appeal was closed, the FOIA office sent AIC a letter (dated September 27, 2011) stating that it was unable to locate any records responsive to the FOIA request. That letter, signed by FOIA Officer Catrina M. Pavlik-Keenan, stated that “ICE has conducted a comprehensive search of files within the ICE Office of Enforcement and Removal Operations (ERO), the ICE Office of Homeland Security Investigations (HSI) and the ICE Office of the Principal Legal Advisor (OPLA)” for responsive records, but that ICE was “unable to locate or identify any responsive records.” The letter did not reference the administrative appeal. A copy of the September 27, 2011 letter is attached as Exhibit E.

19. On October 27, 2011, AIC appealed this adverse determination. AIC contended that ICE failed to conduct searches in all of the offices identified in the request and that ICE’s failure to uncover any responsive records — in light of the range of specific types of records requested and the nature of ICE’s duties — demonstrated that the search was inadequate. AIC also reiterated its request for a fee waiver. A copy of AIC’s October 27, 2011 appeal letter is attached as Exhibit F.

20. OPLA responded to AIC’s appeal on February 29, 2012. It acknowledged that ICE had failed to search certain program offices and that documents that appeared to be

responsive to AIC's request were available online. Further, the letter stated, "it is likely that additional responsive records may be found in locations the agency has not yet searched."

OPLA remanded the request to the ICE FOIA office for "processing and re-tasking to the appropriate agency/office(s) to obtain any responsive documents." A copy of the February 29, 2012 letter is attached as Exhibit G.

21. By letter dated March 1, 2012, the ICE FOIA office acknowledged receipt of the remanded request. This letter was signed by Catrina M. Pavlik-Keenan, the same FOIA Officer who, in September 2011, had stated that ICE was unable to locate or identify any responsive records. ICE again invoked a 10-day extension of the 20-day response period. Without acknowledging AIC's request for a fee waiver, ICE stated that it would "construe the submission of [AIC's] request as an agreement to pay up to \$25.00" and indicated that it would charge AIC fees as a non-commercial requester under the DHS interim FOIA regulations. ICE stated that it had "queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability." The letter assigned the request a new reference number, 2012FOIA8229. A copy of the March 1, 2012 letter is attached as Exhibit H.

22. Having received no further response to its request, AIC filed an administrative appeal of ICE's constructive denial of its FOIA request on April 27, 2012. AIC also restated its request for a fee waiver. A copy of the April 27, 2012 letter is attached as Exhibit I.

23. In a May 10, 2012 letter, ICE acknowledged receipt of AIC's April 27, 2012 appeal. The letter stated that ICE has received a "high number" of FOIA requests and that it would process "backlogged appeals on a first-in, first-out basis." A copy of the May 10, 2012 letter is attached as Exhibit J.

24. AIC has exhausted its administrative remedies in connection with its FOIA request.

25. Defendants have failed to make reasonable efforts to search for responsive records.

26. Defendants have repeatedly violated the applicable statutory time limit for the processing of FOIA requests.

**Plaintiff's Entitlement to a Waiver of Processing Fees**

27. AIC is entitled to a waiver of processing fees because the disclosure of the information sought through its FOIA request is in the public interest. The disclosed records will educate attorneys who represent noncitizens, the noncitizens themselves, and other members of the public who are concerned about immigration agency policies and procedures. Currently, there is no comprehensive, publicly available guidance governing attorney representation and conduct in interactions with ICE. Thus, the dissemination of these records will significantly advance public understanding of the permissible scope of representation permitted before the agency.

28. AIC has the capacity and intent to disseminate widely the requested information to the public. AIC will post all records it receives on its publicly accessible website, which receives more than 115,000 monthly page views. A summary report of the information also will be published in the LAC newsletter, which is distributed to 12,000 recipients, and will be shared with interested media, advocates, and attorneys.

29. AIC does not seek the requested information for commercial gain, but rather for the purpose of educating immigration attorneys, noncitizens, and other interested members of the public.



## **FIRST CAUSE OF ACTION**

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

30. AIC repeats, alleges and incorporates the allegations in paragraphs 1 through 29 above as if fully set forth herein.

31. Defendants 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 Defendants' failure to search for and disclose them.

32. Defendants' failure to conduct a reasonable search for records responsive to AIC's request 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 Freedom of Information Act for Failure to Grant Plaintiff's Public Interest Fee Waiver Request**

33. AIC repeats, alleges and incorporates the allegations in paragraphs 1 through 29 above as if fully set forth herein.

34. Defendants' denial of AIC's public interest fee waiver request violates 5 U.S.C. § 552(a)(4)(A)(iii) and the regulations promulgated thereunder.

## **PRAYER FOR RELIEF**

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

(a) Declare that Defendants' failure to respond to AIC's FOIA request within the statutory time limit, their failure to search for records responsive to AIC's request, and their failure to disclose such responsive records violate FOIA;

(b) 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 prompt, reasonable search for records responsive to AIC's FOIA request;

(c) Enjoin Defendants and any of Defendants' 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;

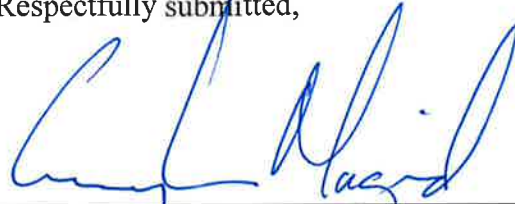
(d) Order Defendants to waive the fees associated with AIC's FOIA request;

(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.

Dated: May 31, 2012

Respectfully submitted,



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1331 G Street, N.W., Suite 200  
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# **Exhibit A**



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

**March 14, 2011**

**FOIA Office  
U.S. Immigration and Customs Enforcement  
800 North Capitol Street, NW  
5th Floor, Suite 585  
Washington, DC 20536**

**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. Immigration and Customs Enforcement (ICE), whether issued or maintained by ICE Headquarters offices (including but not limited to the Office of the Assistant Secretary (OAS), Enforcement and Removal Operations (ERO), Homeland Security Investigations (HIS), Management and Administration, Office of the Principal Legal Advisor (OPLA), and the Office of Detention Policy and Planning (ODPP), including any divisions, subdivisions or sections therein); ICE field offices, including any divisions, subdivisions or sections therein; local Offices of Chief Counsel; and/or any other ICE 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 ICE;
- What role attorneys may play during their clients' interactions with ICE;
- Attorney conduct during interactions with ICE on behalf of their clients;
- Attorney appearances at ICE offices or other facilities.

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

- 1) Results of evaluations or inspections of detention facilities intended to monitor compliance with ICE Performance Based National Detention Standards, particularly as they impact attorneys' access to detained clients. Of particular importance are evaluations that have

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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 materials, and studies.

monitored compliance with standards related to i) telephone access; ii) attorney visitation; iii) transfer; iv) legal rights group presentations; and v) law libraries and legal materials;

2) Guidance or any information obtained by the agency regarding noncitizens' access to counsel during or after worksite or other enforcement actions;

3) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client to an Order of Supervision appointment or what role the attorney may play during that appointment;

4) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning prior to or pursuant to an arrest, including processing and booking, 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 during questioning pursuant to a request for a Stay of Removal or what role the attorney may play during such questioning;

6) 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;

7) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during general questioning by an ICE officer 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 client during questioning related to a Notice to Report for Removal or what role the attorney may play during such questioning;

9) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning pursuant to a request for Deferred Action or what role the attorney may play during such questioning;

10) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning related to participation in the Intensive Supervision Appearance Program (ISAP) or what role the attorney may play during such questioning;

11) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client to a deferred inspection appointment or what role the attorney may play during questioning at a deferred inspection appointment;

12) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning pursuant to an interview

conducted in a jail/ detention facility to determine whether ICE should place a detainer on the individual or what role the attorney should play during questioning at such an interview;

13) Guidance or any information obtained by the agency regarding procedures for notification of attorneys with Form EOIR-28 or G-28 on file of ICE'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. The 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 governing attorney representation and conduct in interactions with ICE, the dissemination of these records will significantly inform public understanding of the scope of representation permitted before ICE. 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 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)



# **Exhibit B**



U.S. Immigration  
and Customs  
Enforcement

March 31, 2011

EMILY CREIGHTON  
AMERICAN IMMIGRATION COUNCIL  
1331 G.STREET, N.W.  
WASHINGTON, DC 20005

Re: 2011FOIA7112

Dear Ms. Creighton :

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated March 14, 2011, and to your request for a waiver of all assessable FOIA fees. Your request was received in this office on March 31, 2011. Specifically, you requested records which relate or refer in any way to any of the following:

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

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner; however, there are currently 1196 open requests ahead of yours.

As it relates to your fee waiver request, your request will be held in abeyance pending the quantification of responsive records. The DHS FOIA Regulations, 6 CFR § 5.11(k)(2), set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations or activities of the government;" (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons; (4) Whether the contribution to

public understanding of government operations or activities will be "significant;" (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor. If any responsive records are located, we will consider these factors in our evaluation of your request for a fee waiver.

In the event that your fee waiver is denied, we shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requestors. As a non-commercial requestor you will be charged 10-cents a page for duplication, although the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate of the searcher. You will be promptly notified once a determination is made regarding your fee waiver request.

Per section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. We will make every effort to comply with your request in a timely manner; however, there are currently 1196 open requests ahead of yours. Nevertheless, please be assured that one of the processors in our office will respond to your request as expeditiously as possible.

Your request has been assigned reference number **2011FOIA7112**. Please refer to this identifier in any future correspondence. You may contact this office at (202) 732-0300 or (866) 633-1182.

Sincerely,



Catrina M. Pavlik-Keenan

FOIA Officer





U.S. Immigration  
and Customs  
Enforcement

March 31, 2011

EMILY CREIGHTON  
AMERICAN IMMIGRATION COUNCIL  
1331 G. STREET, N.W.  
WASHINGTON, DC 20005

**Re: 2011FOIA7112**

Dear Mr. Creighton:

This acknowledges receipt of your March 14, 2011, Freedom of Information Act (FOIA) request to the Immigration and Customs Enforcement (ICE), for records which relate or refer in any way to any of the following:

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

Your request was received in this office on March 31, 2011.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner; however, there are currently 1196 open requests ahead of yours.

Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester you will be charged 10-cents a page for duplication, although the first 100 pages are free, as are the first two hours of search time, after which you will pay the quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2011FOIA7112**. Please refer to this identifier in any future correspondence. You may contact this office at (202) 732-0300 or (866) 633-1182.

Sincerely,

A handwritten signature in black ink, appearing to read "R. You..." with a large flourish at the end.

Catrina M. Pavlik-Keenan  
FOIA Officer

# **Exhibit C**



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

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

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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 that reads "Emily Creighton". The signature is fluid and includes a long, sweeping underline at the end.

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)



# **Exhibit D**

U.S. Department of Homeland Security  
800 N. Capitol St., NW STOP 5009  
Washington, DC 20536-5009



U.S. Immigration  
and Customs  
Enforcement

September 23, 2011

BRIAN YOURISH  
LEGAL ACTION CENTER  
AMERICAN IMMIGRATION COUNCIL  
1331 G ST. NW SUITE 200  
WASHINGTON, DC 20005

RE: OPLA11-256; 2011FOIA7112

Dear Mr. Yourish:

This is in response to your letter dated August 11, 2011 appealing the constructive denial of your Freedom of Information Act (FOIA) request by U.S. Immigration & Customs Enforcement (ICE). Your initial request asked for any and all agency records concerning "attorneys' ability to be present during their clients' interactions with ICE; what role attorneys may play during their clients' interactions with ICE; attorney conduct during interactions with ICE on behalf of their clients; and attorney appearances at ICE Offices or other facilities." You have appealed the constructive denial of this claim based upon ICE FOIA's failure to provide you with a response to your FOIA request within the twenty (20) days provided by statute.

ICE FOIA subsequently has tasked the Office of the Principal Legal Advisor (OPLA), the Office of Enforcement and Removal Operations (ERO), and Homeland Security Investigations (HSI), to conduct searches responsive to your request. Your request is currently being processed in the order it was received, and documents, if they exist, will be processed according to the FOIA upon receipt from the program office. Accordingly, we are administratively closing your appeal as moot.

This decision is the final action of the Department of Homeland Security concerning your FOIA/PA request. Inasmuch as you consider this to be a denial of your appeal, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B) in the United States District Court in the district in which you reside, or in which the agency records are situated, or in the District of Columbia.

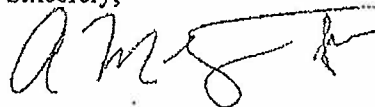
The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at [ogis@nara.gov](mailto:ogis@nara.gov) or call 1-877-684-6448.

[www.ice.gov](http://www.ice.gov)

Exhibit D

Should you have any questions regarding this appeal closure, please contact ICE at [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov). In the subject line of the email please include the word "appeal", your appeal number, which is OPLA11-256, and the FOIA case number, which is 2011FOIA7112.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Mathias", with a horizontal line extending from the end of the signature.

Susan Mathias  
Chief  
Government Information Law Division  
ICE Office of the Principal Legal Advisor  
Department of Homeland Security

# **Exhibit E**



U.S. Immigration  
and Customs  
Enforcement

September 27, 2011

Ms. Emily Creighton  
American Immigration Council  
1331 G Street, NW  
Washington, DC 20005

RE: ICE FOIA Case Number 2011FOIA7112

Dear Ms. Creighton:

This is in response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement, dated March 14, 2011. You have requested copies of records "which relate or refer in any way to any of the following:"

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

Your request has been processed under the FOIA, 5 U.S.C. § 552. ICE has conducted a comprehensive search of files within the ICE Office of Enforcement and Removal Operations (ERO), the ICE Office of Homeland Security Investigations (HSI) and the ICE Office of the Principal Legal Advisor (OPLA) for records that would be responsive to your request. We were unable to locate or identify any responsive records.

Please be advised that the FOIA does not require federal agencies to conduct research projects, answer questions posed as FOIA requests, or attempt to interpret a request that does not identify specific records, but rather is limited to requiring agencies to provide access to reasonably described, nonexempt records.

While an adequate search was conducted, you have the right to appeal the determination that no records exist within ICE that would be responsive to your request. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter to: U.S. Immigration Customs Enforcement, Office of Principal Legal Advisor, U.S. Department of Homeland Security, Freedom of Information Office, 500 12<sup>th</sup> Street, S.W., Stop 5009 Washington, D.C. 20536-5009, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.<sup>1</sup>

If you need to contact our office about this matter, please refer to FOIA case number **2011FOIA7112**. This office can be reached at (202) 732-0600 or (866) 633-1182.

Sincerely,

Handwritten signature in black ink, appearing to read 'MJK FOR'.

Catrina M. Pavlik-Keenan  
FOIA Officer

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<sup>1</sup> 6 CFR § 5.11(d)(4).

# **Exhibit F**

# AMERICAN IMMIGRATION COUNCIL

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

October 27, 2011

U.S. Immigration and Customs Enforcement  
Office of Principal Legal Advisor  
U.S. Department of Homeland Security  
Freedom of Information Office  
500 12th Street, S.W. STOP 5009  
Washington, D.C. 20536-5009

Re: **FOIA Appeal**  
**ICE FOIA Case Number 2011FOIA7112; OPLA11-256**

Dear Sir or Madam:

This letter is an appeal of ICE's adverse determination in relation to the above-referenced FOIA request, which seeks records related to the ability of attorneys to be present during their clients' interactions with ICE in various contexts. ICE's statement that it possesses not one single document responsive to this request indicates beyond any doubt that ICE has failed to conduct an adequate search for responsive records as required by FOIA. The American Immigration Council (AIC) respectfully requests that ICE conduct an adequate search.

AIC submitted a FOIA request to ICE on March 14, 2011 (attached hereto as Exhibit A), which sought any and all records which have been prepared, received, transmitted, collected, or maintained by the U.S. Department of Homeland Security and/or ICE (including any of its subdivisions) that relate in any way to any of the following:

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

AIC's request identified thirteen, non-exhaustive categories of records that would be responsive to this request. *See* Exhibit A at 1-2. Specifically, AIC indicated that responsive records may include but not be limited to:

- 1) Results of evaluations or inspections of detention facilities intended to monitor compliance with ICE Performance Based National Detention Standards, particularly as they impact attorneys' access to detained clients. Of particular

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- importance are evaluations that have monitored compliance with standards related to i) telephone access; ii) attorney visitation; iii) transfer; iv) legal rights group presentations; and v) law libraries and legal materials;
- 2) Guidance or any information obtained by the agency regarding noncitizens' access to counsel during or after worksite or other enforcement actions;
  - 3) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client to an Order of Supervision appointment or what role the attorney may play during that appointment;
  - 4) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning prior to or pursuant to an arrest, including processing and booking, 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 during questioning pursuant to a request for a Stay of Removal or what role the attorney may play during such questioning;
  - 6) 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;
  - 7) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during general questioning by an ICE officer 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 client during questioning related to a Notice to Report for Removal or what role the attorney may play during such questioning;
  - 9) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning pursuant to a request for Deferred Action or what role the attorney may play during such questioning;
  - 10) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning related to participation in the Intensive Supervision Appearance Program (ISAP) or what role the attorney may play during such questioning;

11) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client to a deferred inspection appointment or what role the attorney may play during questioning at a deferred inspection appointment;<sup>1</sup>

12) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning pursuant to an interview conducted in a jail/ detention facility to determine whether ICE should place a detainer on the individual or what role the attorney should play during questioning at such an interview; or

13) Guidance or any information obtained by the agency regarding procedures for notification of attorneys with Form EOIR-28 or G-28 on file of ICE's intention to question their clients.

AIC's letter also sought a waiver of all fees associated with the FOIA request because disclosure of the information AIC sought would be "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of" AIC, which is a tax-exempt charitable and educational institution.

AIC received two letters dated March 31, 2011 from ICE FOIA Officer Catrina M. Pavlik-Keenan acknowledging receipt of its request (attached hereto as Exhibits B and C). One of the letters stated that ICE would "charge [AIC] for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters." The other stated: "As it relates to your fee waiver request, your request will be held in abeyance pending the quantification of responsive records." Neither letter provided any substantive response to AIC's request for records.

ICE provided no further response to AIC's request within the twenty days allowed under 5 U.S.C. § 552(a)(6). AIC construed the lack of response as a constructive denial of its request and filed an administrative appeal on August 11, 2011. In response to the appeal, the Office of the Principal Legal Advisor (OPLA) informed AIC by letter dated September 23, 2011 (attached hereto as Exhibit D) that certain ICE divisions now had been assigned to conduct searches for responsive records. Specifically, the ICE FOIA office had tasked OPLA, the Office of Enforcement and Removal Operations (ERO), and Homeland Security Investigations (HSI) to conduct searches responsive to the request. Because the case was "being processed in the order it was received" and any responsive documents would be "processed according to the FOIA upon receipt from the program office," ICE closed the appeal as moot.

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<sup>1</sup> AIC withdraws this request for records related to deferred inspection interviews to the extent these interviews are conducted by Customs and Border Patrol (CBP) officers and do not involve ICE officers.

Only four days after notifying AIC that the appeal was closed, the FOIA office issued a letter (dated September 27, 2011) stating that ICE was not able to locate any records responsive to AIC's original FOIA request (attached hereto as Exhibit E). That letter, signed by FOIA Officer Catrina M. Pavlik-Keenan, states that "ICE has conducted a comprehensive search of files within the ICE Office of Enforcement and Removal Operations (ERO), the Office of Homeland Security Investigations (HSI) and the ICE Office of the Principal Legal Advisor (OPLA)" for records responsive to AIC's FOIA request, but that these divisions "were unable to locate or identify any responsive records."

ICE has failed to perform an adequate search for responsive records, as required by FOIA. In addition, ICE's correspondence indicates that it has at least implicitly denied AIC's request for a fee waiver. This letter constitutes an appeal of both adverse determinations. This appeal is filed within 60 days of ICE's September 27, 2011 letter, as required by 6 C.F.R. § 5.9.

#### 1. ICE DID NOT CONDUCT AN ADEQUATE SEARCH.

ICE did not conduct an adequate search for records responsive to AIC's comprehensive request for documents related to noncitizens' access to counsel in their interactions with ICE, as required by 5 U.S.C. § 552(a)(3).

An agency must carry out a reasonable search for records responsive to the FOIA request. *See Oglesby v. Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). In responding to a FOIA request, an "agency must search for documents in good faith, using methods that are reasonably expected to produce the requested information." *Concepcion v. U.S. Customs and Border Protection*, 767 F. Supp. 2d 141, 145 (D.D.C. 2011); *see also Steinberg v. U.S. Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994). For several reasons, it is clear that ICE has not met its obligation to conduct a reasonable search.

First, ICE's search was facially incomplete. "To demonstrate the adequacy of its search, [an agency] must show that it searched *all* files likely to contain records responsive" to a FOIA request. *Concepcion*, 767 F. Supp. 2d at 146 (emphasis added). ICE's letter clearly shows that it did not do so. AIC's request sought records maintained by ICE Headquarters offices—specifically by the Office of Detention Policy and Planning (ODPP)—as well as those maintained by field offices and other ICE organizational units. Yet ICE's response letter indicates that ICE only searched "files within the ICE Office of Enforcement and Removal Operations (ERO), the ICE Office of Homeland Security Investigations (HSI) and the ICE Office of the Principal Legal Advisor (OPLA)." ICE's search thus excluded ODPP, which was specifically named in AIC's request, as well as ICE field offices.

Second, ICE's letter states that "FOIA does not require federal agencies to conduct research projects . . . but rather is limited to requiring agencies to provide access

to reasonably described, nonexempt records,” and it thereby implies that AIC’s request did not reasonably describe the records it sought.<sup>2</sup>

FOIA simply requires AIC or any other requester to “reasonably describe[]” the records sought in order to trigger an agency’s obligation of disclosure. 5 U.S.C. § 552(a)(3)(A)(i). AIC’s request described in detail the categories of information and types of records sought, as well as the ICE divisions where responsive records might be located. Indeed, the request described thirteen specific categories of responsive records, detailing precise types of encounters between noncitizens and ICE personnel that are likely to implicate access-to-counsel issues. *See* Ex. A at 1-2. These specific details enabled ICE to carry out a reasonable search for responsive documents, but it failed to do so.

Finally, given the range of specific types of records requested and the nature of ICE’s functions and duties, it is virtually impossible that an adequate search would fail to disclose documents responsive to AIC’s request. According to its website, ICE is the “second largest investigative agency in the federal government” and its primary mission includes enforcement of federal immigration laws as well as apprehension, detention, and removal of aliens. *See* <http://www.ice.gov/about/overview>. Every day, noncitizens all over the country interact with ICE and its agents under circumstances calling for the assistance of legal counsel. In fact, DHS regulations provide that noncitizens have a right to be represented before the agency. *See* 8 C.F.R. § 292.5. Given this, it is simply impossible that ICE undertook a reasonable search and determined that no documents were responsive to AIC’s requests.

Indeed, even a cursory search of ICE’s own website reveals responsive documents ICE has disclosed in response to past FOIA requests; similarly, responsive documents very likely exist but have not been disclosed. Simply entering the phrase “access to counsel” into the search utility at [www.ice.gov](http://www.ice.gov) reveals, for example, a number of reports and audits related to access-to-counsel issues at ICE detention facilities. Such documents are of course only one type among the numerous specific categories of records AIC requested, which include reports, policies, e-mails, manuals, memoranda, training materials, and studies.

This makes clear that ICE could not have undertaken a reasonable search.

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<sup>2</sup> We note that ICE did not decline to undertake a search on the ground that the records were not reasonably described. To the contrary, it claimed to have conducted “a comprehensive search,” thereby demonstrating that it understood what records were sought. AIC nevertheless addresses the issue of reasonable description here because ICE’s response letter may be understood to raise it.

## 2. AIC IS ENTITLED TO A FEE WAIVER.

Under 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), a fee waiver is to be granted when “(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and (ii) Disclosure of the information is not primarily in the commercial interest of the requester.” 6 C.F.R. § 5.11(k). AIC’s request meets both requirements, and in the event responsive records are located, AIC will be entitled to a fee waiver.

### *a. Disclosure of the Information Is In the Public Interest.*

DHS considers four factors, set forth in 6 C.F.R. § 5.11(k), when determining whether disclosure of requested information is in the public interest:

- (1) “Whether the subject of the requested records concerns ‘the operations or activities of the government,’”
- (2) “Whether the disclosure ‘is likely to contribute’ to an understanding of government operations or activities,”
- (3) “Whether disclosure of the requested information will contribute to ‘public understanding’” as opposed to the individual understanding of the requester; and
- (4) “Whether the disclosure is likely to contribute ‘significantly’ to public understanding of government operations or activities.”

As set forth below, AIC meets all four requirements.

#### *1. The subject of the requested records concerns the operations and activities of the government.*

The records AIC seeks plainly concern the operations and activities of the government. ICE is a component of the U.S. Department of Homeland Security, a cabinet-level department of the federal government. It is responsible for enforcement of federal immigration law, including investigation, apprehension, and removal of removable noncitizens. The records AIC seeks relate to ICE’s policies in connection with noncitizens’ access to counsel in interactions with the agency. Such interactions are very clearly “operations and activities” of the government.

#### *2. Disclosure is likely to contribute to an understanding of government operations or activities.*

Disclosure of the records sought by AIC’s request will contribute to a deeper understanding of the role of counsel before ICE.

AIC’s Immigration Policy Center (IPC) and Legal Action Center (LAC) reach out to lawyers and 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. See [www.immigrationpolicy.org](http://www.immigrationpolicy.org). The LAC works with other immigrants' rights organizations and immigration attorneys across the United States to advance the fair administration of immigration laws. See [www.legalactioncenter.org](http://www.legalactioncenter.org). Relevant to this FOIA request, the LAC has historically focused on access-to-counsel issues. Specifically, the LAC provides education about the law surrounding access to counsel for immigrants in removal proceedings, advocates for fair standards and procedures to remedy the harms of ineffective assistance of counsel, and encourages better access to counsel in proceedings before the Department of Homeland Security.

Beyond the limited documents available on ICE's website and the INS Examinations Handbook, AIC is not aware of any publicly available documents explaining how and why ICE limits access to counsel in various settings. Release of such documents will significantly increase understanding of ICE's policies involving counsel.

3. *Disclosure will contribute to public understanding of government operations or activities.*

Disclosure of the requested information will also contribute to "public understanding," as opposed to the understanding of a narrow segment of interested persons. Release of the information to AIC will significantly advance the general public's understanding of CBP's policies toward counsel. AIC has the capacity, legal expertise, and intention to review, analyze, and synthesize this information and make it accessible to a broader public audience. In addition to providing all released information on its website, AIC plans to draft one or more summary reports on the records received in response to its FOIA request.

AIC has the intention and capacity to disseminate such reports by posting them on the AIC website, which contains immigration-related information and news, and is accessible by any member of the public. AIC's website receives more than 58,000 monthly visitors and information available on the website is regularly shared and re-posted on other websites with large audiences, including Altnet, a website with 2.3 million monthly visitors. AIC also will publish the summary reports in the LAC newsletter, which is directly distributed to 12,000 recipients and available to the public on the AIC website. Finally, AIC has regular contact with national print and news media and plans to continue to share information gleaned from FOIA disclosures with interested media.

4. *Disclosure of the requested information will contribute significantly to public understanding of noncitizens' access to counsel in interactions with ICE.*

Disclosure of the requested information will contribute significantly to public understanding of ICE practices related to noncitizens access to legal counsel. This issue is of sufficient importance that a federal regulation, 8 C.F.R. § 292.5(b), has been adopted to address the role of counsel before ICE and other agencies.

Interviews and interactions with ICE officers can be intimidating and confusing, and noncitizens often seek assistance from attorneys to help navigate these encounters. Detention in ICE facilities deprives noncitizens of their liberty and threatens other legal interests, and detainees' access to counsel is according crucial. It is vitally important that noncitizens and attorneys alike understand when and for what reasons access to counsel may be limited before ICE. In addition, U.S. citizens may be subject to the same treatment as noncitizens if an ICE officer questions their citizenship. Citizens accordingly have an equally important stake in understanding ICE policies related to counsel.

The records sought by AIC's FOIA request will inform noncitizens at risk of removal from the United States, noncitizens in ICE custody, the attorneys who represent them, and other members of the public who are concerned with the fairness of immigration agency proceedings and policies. Because there is no publicly available comprehensive ICE guidance governing attorney representation and conduct, the dissemination of these records will significantly improve public understanding of the scope of representation permitted before ICE. The disclosure and dissemination of the requested records also may help explain disparate treatment by ICE of attorneys and their noncitizen clients throughout the country. Finally, this information will inform nonprofit and international organizations interested in the treatment of noncitizens in proceedings before ICE.

*b. Disclosure of the Requested Information is Not Primarily in the Commercial Interest of the Requester.*

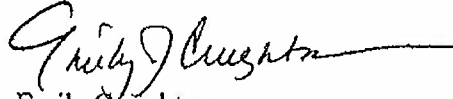
DHS considers two factors, set forth in 6 C.F.R. § 5.11(k)(2), when determining whether disclosure of requested information is primarily in the commercial interest of the requester:

- (1) "Whether the requester has a commercial interest that would be furthered by the requested disclosure"; and
- (2) "Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure," thereby rendering the disclosure "primarily in the commercial interest of the requester."

AIC is a 501(c)(3), tax-exempt, not-for-profit educational and charitable organization. AIC seeks the requested information for the purpose of disseminating it to the public and not for any commercial gain. The LAC has a long record of administrative advocacy concerning issues related to counsel in immigration proceedings. Like all other reports and information available on the AIC website, information about counsel received in response to AIC's FOIA request will be widely distributed to immigration attorneys, noncitizens, and other interested members of the public free of charge. Given that FOIA's fee waiver requirements are to be "liberally construed in favor of waivers for noncommercial requesters," a waiver of all fees is justified in this case. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003).

Please provide a response to this appeal within the twenty days allowed by 5 U.S.C. § 552(a)(6)(A)(2). Thank you for your attention to this matter, and please do not hesitate to contact me if you have questions or would like clarification of any of the requests above.

Very truly yours,



Emily Creighton

Staff Attorney

American Immigration Council

1331 G Street NW, Suite 200

Washington, DC 20005-3141

Telephone: (202) 507-7505

Fax: (202) 742-5619

E-mail: [ecreighton@immcouncil.org](mailto:ecreighton@immcouncil.org)



# Exhibit G

U.S. Department of Homeland Security  
500 12<sup>th</sup> St. SW; STOP 5009  
Washington, DC 20546-5009



U.S. Immigration  
and Customs  
Enforcement

February 29, 2012

EMILY CREIGHTON  
AMERICAN IMMIGRATION COUNCIL  
1331 G. ST. NW  
WASHINGTON, DC 20005

**RE: OPLA12-322, 2011FOIA7112**

Dear Ms. Creighton:

This is in response to your letter dated October 27, 2011, appealing the adverse determination in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request. The initial request asked for records regarding

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

U.S. Immigration and Customs Enforcement (ICE) initially denied your request by returning a search of the ICE Office of the Principal Legal Advisor (OPLA) that did not locate any records. Our analysis follows.

You have indicated there are additional program offices to be searched, including the Office of Detention Policy and Planning. Additionally, you have pointed out that records that appear responsive to your request are also available online. As such, it is likely that additional responsive records may be found in locations the agency has not yet searched. Any issues regarding fees will be addressed upon the location of any responsive records pursuant to a search on remand. We are therefore remanding your appeal to ICE FOIA for processing and re-tasking to the appropriate agency/office(s) to obtain any responsive documents.

[www.ice.gov](http://www.ice.gov)

Exhibit G

Should you have any questions regarding this appeal closure, please contact ICE at [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov). In the subject line of the email please include the word "appeal", your appeal number, which is OPLA12-322 and the FOIA case number, which is 2011FOIA7112.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Mathias", with a long horizontal flourish extending to the right.

Susan Mathias  
Chief  
Government Information Law Division  
ICE Office of the Principal Legal Advisor  
Department of Homeland Security

# Exhibit H



U.S. Immigration  
and Customs  
Enforcement

March 1, 2012

EMILY CREIGHTON  
AMERICAN IMMIGRATION COUNCIL  
1331 G. ST. NW  
WASHINGTON, DC 20005

Re: 2012FOIA8229

Dear Ms. Creighton:

This acknowledges receipt of your March 14, 2011, Freedom of Information Act (FOIA) remanded request to the Immigration and Customs Enforcement (ICE), for records regarding an attorney's ability to be present during their clients' interaction with ICE; what role attorneys may play during their clients' interactions with ICE; attorney conduct during interactions with ICE on behalf of their clients; and attorney appearances at ICE offices or other facilities.. Your request was received in this office on March 1, 2012.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner; however, there are currently 2388 open requests ahead of yours.

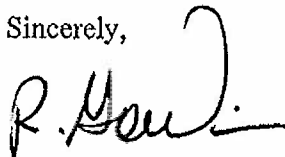
Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester you will be charged 10-cents a page for duplication, although the first 100 pages are free, as are the first two hours of search time, after which you will pay the quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Exhibit H

Your request has been assigned reference number **2012FOIA8229**. Please refer to this identifier in any future correspondence. You may contact this office at (202) 732-0600 or (866) 633-1182. Our mailing address is 500 12th Street, S.W., Stop 5009, Washington, D.C. 20536-5009.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Pavlik-Keenan". The signature is fluid and cursive, with a large initial "P" and "K".

Catrina M. Pavlik-Keenan  
FOIA Officer

A small, stylized handwritten mark or signature in black ink, possibly a flourish or a small signature, located below the typed name.

# **Exhibit I**



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

April 27, 2012

U.S. Immigration and Customs Enforcement  
Office of Principal Legal Advisor  
U.S. Department of Homeland Security  
Freedom of Information Office  
500 12th Street, S.W. STOP 50009  
Washington, D.C. 20536-5009

Re: **FOIA Appeal**  
**ICE FOIA Case Numbers 2011FOIA7112 and 2012FOIA8229;**  
**OPLA11-256**

Dear Sir or Madam:

The American Immigration Council (AIC) is in receipt of a March 1, 2012 letter from the ICE FOIA office, acknowledging receipt of AIC's March 11, 2011 FOIA request. ICE has neither granted nor denied this request, in violation of the time period for response set forth in 5 U.S.C. § 552(a)(6)(A)(i). In addition, ICE has implicitly denied AIC's fee waiver request. Please consider this letter an appeal of the constructive denial of AIC's FOIA request and fee waiver request.

#### **Procedural History of FOIA Request**

AIC submitted a FOIA request to ICE on March 14, 2011 (attached hereto as Exhibit A), which sought any and all records which have been prepared, received, transmitted, collected, or maintained by the U.S. Department of Homeland Security and/or ICE (including any of its subdivisions) that relate in any way to any of the following:

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

AIC's letter also sought a waiver of all fees associated with the FOIA request because disclosure of the information AIC sought would be "likely to contribute significantly to public understanding of the operations or activities of the government and is not



primarily in the commercial interest of AIC, which is a tax-exempt charitable and educational institution.

AIC received two letters dated March 31, 2011 from ICE FOIA Officer Catrina M. Pavlik-Keenan acknowledging receipt of its request (attached hereto as Exhibits B and C). One of the letters stated that ICE would “charge [AIC] for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters.” The other stated: “As it relates to your fee waiver request, your request will be held in abeyance pending the quantification of responsive records.” Neither letter provided any substantive response to AIC’s request for records.

ICE provided no further response to AIC’s request within the twenty days allowed under 5 U.S.C. § 552(a)(6). AIC construed the lack of response as a constructive denial of its request and filed an administrative appeal on August 11, 2011. In response to the appeal, the Office of the Principal Legal Advisor (OPLA) informed AIC by letter dated September 23, 2011 (attached hereto as Exhibit D) that certain ICE divisions now had been assigned to conduct searches for responsive records. Specifically, the ICE FOIA office had tasked OPLA, the Office of Enforcement and Removal Operations (ERO), and Homeland Security Investigations (HSI) to conduct searches responsive to the request. Because the case was “being processed in the order it was received” and any responsive documents would be “processed according to the FOIA upon receipt from the program office,” ICE closed the appeal as moot.

Only four days after notifying AIC that the appeal was closed, the FOIA office issued a letter (dated September 27, 2011) stating that ICE was not able to locate any records responsive to AIC’s original FOIA request (attached hereto as Exhibit E). That letter, signed by FOIA Officer Catrina M. Pavlik-Keenan, states that “ICE has conducted a comprehensive search of files within the ICE Office of Enforcement and Removal Operations (ERO), the Office of Homeland Security Investigations (HSI) and the ICE Office of the Principal Legal Advisor (OPLA)” for records responsive to AIC’s FOIA request, but that these divisions “were unable to locate or identify any responsive records.”

AIC subsequently appealed this adverse determination (attached hereto as Exhibit F). In this appeal, AIC argued that ICE did not conduct an adequate search for responsive records, as required by 5 U.S.C. § 552(a)(3). ICE not only failed to conduct searches in all of the offices specifically named in the request, but ICE’s failure to uncover any responsive records -- particularly in light of the range of specific types of records requested and the nature of ICE’s functions and duties -- demonstrated that the search was inadequate. On February 29, 2012, OPLA issued a response to this appeal (attached hereto as Exhibit G), in which it remanded the request to the ICE FOIA office for reprocessing. On March 1, 2012, the FOIA office issued a letter, signed by FOIA Officer Catrina M. Pavlik-Keenan (attached hereto as Exhibit H), indicating that it had received AIC’s request and that it is invoking a ten day extension for responding to the request under 5 U.S.C. § 552(a)(6)(B). The letter also states that AIC will be charged for duplication costs, at the non-commercial requestor rate, and search fees.

## **I. ICE FAILED TO RESPOND TO AIC'S MARCH 14, 2011 FOIA REQUEST.**

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 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.”). ICE has failed to respond to AIC's FOIA request within the twenty days provided under the FOIA statute and within the ten additional days that it invoked pursuant to 5 U.S.C. § 552(a)(6)(B).

FOIA incorporates a strong presumption in favor of mandatory disclosure of requested records. *Wisconsin Project on Nuclear Arms Control v. Dep't of Commerce*, 317 F.3d 275, 279 (D.C. Cir. 2003) (“FOIA accordingly mandates a ‘strong presumption in favor of disclosure.’”) (quoting *Dep't of Justice v. Ray*, 502 U.S. 164, 173 (1991)). Agencies may deny a FOIA request only when the requested records fall under any of the nine exemptions listed in FOIA. 5 U.S.C. § 552(b)(1)-(9). ICE has not responded to AIC's FOIA request and thus has not applied any of the statutory exemptions to withhold the records requested. Accordingly, AIC is entitled to the requested records.

## **II. AIC IS ENTITLED TO A FEE WAIVER.**

Under 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), a fee waiver is to be granted when “(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and (ii) Disclosure of the information is not primarily in the commercial interest of the requester.” 6 C.F.R. § 5.11(k). AIC's request meets both requirements, and in the event responsive records are located, AIC will be entitled to a fee waiver.

### **A. Disclosure of the Information Is In the Public Interest.**

DHS considers four factors, set forth in 6 C.F.R. § 5.11(k), when determining whether disclosure of requested information is in the public interest:

- (1) “Whether the subject of the requested records concerns ‘the operations or activities of the government,’”
- (2) “Whether the disclosure ‘is likely to contribute’ to an understanding of government operations or activities,”

- (3) “Whether disclosure of the requested information will contribute to ‘public understanding’” as opposed to the individual understanding of the requester; and
- (4) “Whether the disclosure is likely to contribute ‘significantly’ to public understanding of government operations or activities.”

As set forth below, AIC meets all four requirements.

1. *The subject of the requested records concerns the operations and activities of the government.*

The records AIC seeks plainly concern the operations and activities of the government. ICE is a component of the U.S. Department of Homeland Security, a cabinet-level department of the federal government. It is responsible for enforcement of federal immigration law, including investigation, apprehension, and removal of removable noncitizens. The records AIC seeks relate to ICE’s policies in connection with noncitizens’ access to counsel in interactions with the agency. Such interactions are very clearly “operations and activities” of the government.

2. *Disclosure is likely to contribute to an understanding of government operations or activities.*

Disclosure of the records sought by AIC’s request will contribute to a deeper understanding of the role of counsel before ICE.

AIC’s Immigration Policy Center (IPC) and Legal Action Center (LAC) reach out to lawyers and 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. See [www.immigrationpolicy.org](http://www.immigrationpolicy.org). The LAC works with other immigrants’ rights organizations and immigration attorneys across the United States to advance the fair administration of immigration laws. See [www.legalactioncenter.org](http://www.legalactioncenter.org). Relevant to this FOIA request, the LAC has historically focused on access-to-counsel issues. Specifically, the LAC provides education about the law surrounding access to counsel for immigrants in removal proceedings, advocates for fair standards and procedures to remedy the harms of ineffective assistance of counsel, and encourages better access to counsel in proceedings before the Department of Homeland Security.

Beyond the limited documents available on ICE’s website and the INS Examinations Handbook, AIC is not aware of any publicly available documents explaining how and why ICE limits access to counsel in various settings. Release of such documents will significantly increase understanding of ICE’s policies involving counsel.

3. *Disclosure will contribute to public understanding of government operations or activities.*

Disclosure of the requested information will also contribute to “public understanding,” as opposed to the understanding of a narrow segment of interested persons. Release of the information to AIC will significantly advance the general public’s understanding of ICE’s policies toward counsel. AIC has the capacity, legal expertise, and intention to review, analyze, and synthesize this information and make it accessible to a broader public audience. In addition to providing all released information on its website, AIC plans to draft one or more summary reports on the records received in response to its FOIA request.

AIC has the intention and capacity to disseminate such reports by posting them on the AIC website, which contains immigration-related information and news, and is accessible by any member of the public. AIC’s website receives more than 115,000 monthly pageviews (or 1.5 million yearly pageviews) and information available on the website is regularly shared and re-posted on other websites with large audiences, including Alternet, a website with 2.3 million monthly visitors. AIC also will publish the summary reports in the LAC newsletter, which is directly distributed to 12,000 recipients and available to the public on the AIC website. Finally, AIC has regular contact with national print and news media and plans to continue to share information gleaned from FOIA disclosures with interested media.

4. *Disclosure of the requested information will contribute significantly to public understanding of noncitizens’ access to counsel in interactions with ICE.*

Disclosure of the requested information will contribute significantly to public understanding of ICE practices related to noncitizens’ access to legal counsel. This issue is of sufficient importance that a federal regulation, 8 C.F.R. § 292.5(b), has been adopted to address the role of counsel before ICE and other agencies.

Interviews and interactions with ICE officers can be intimidating and confusing, and noncitizens often seek assistance from attorneys to help navigate these encounters. Detention in ICE facilities deprives noncitizens of their liberty and threatens other legal interests, and detainees’ access to counsel is according crucial. It is vitally important that noncitizens and attorneys alike understand when and for what reasons access to counsel may be limited before ICE. In addition, U.S. citizens may be subject to the same treatment as noncitizens if an ICE officer questions their citizenship. Citizens accordingly have an equally important stake in understanding ICE policies related to counsel.

The records sought by AIC’s FOIA request will inform noncitizens at risk of removal from the United States, noncitizens in ICE custody, the attorneys who represent them, and other members of the public who are concerned with the fairness of immigration agency proceedings and policies. Because there is no publicly available comprehensive ICE guidance governing attorney representation and conduct, the dissemination of these records will significantly improve public understanding of the scope of representation

permitted before ICE. The disclosure and dissemination of the requested records also may help explain disparate treatment by ICE of attorneys and their noncitizen clients throughout the country. Finally, this information will inform nonprofit and international organizations interested in the treatment of noncitizens in proceedings before ICE.

**B. Disclosure of the Requested Information is Not Primarily in the Commercial Interest of the Requester.**

DHS considers two factors, set forth in 6 C.F.R. § 5.11(k)(2), when determining whether disclosure of requested information is primarily in the commercial interest of the requester:

- (1) “Whether the requester has a commercial interest that would be furthered by the requested disclosure”; and
- (2) “Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure,” thereby rendering the disclosure “primarily in the commercial interest of the requester.”

AIC is a 501(c)(3), tax-exempt, not-for-profit educational and charitable organization. AIC seeks the requested information for the purpose of disseminating it to the public and not for any commercial gain. The LAC has a long record of administrative advocacy concerning issues related to counsel in immigration proceedings. Like all other reports and information available on the AIC website, information about counsel received in response to AIC’s FOIA request will be widely distributed to immigration attorneys, noncitizens, and other interested members of the public free of charge. Given that FOIA’s fee waiver requirements are to be “liberally construed in favor of waivers for noncommercial requesters,” a waiver of all fees is justified in this case. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003).

Please provide a response to this appeal within the twenty days allowed by 5 U.S.C. § 552(a)(6)(A)(2). Thank you for your attention to this matter, and please do not hesitate to contact me if you have questions or would like clarification of any of the requests above.

Very truly yours,



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

# **Exhibit J**



U.S. Immigration  
and Customs  
Enforcement

May 10, 2012

EMILY CREIGHTON, ESQ.  
AMERICAN IMMIGRATION COUNCIL  
1331 G. ST. NW SUITE 200  
WASHINGTON, DC 20005-3141

Dear Sir or Madam:

The Department of Homeland Security has received your letter appealing the adverse determination of your Freedom of Information Act/Privacy Act (FOIA/PA) request by U.S. Immigration and Customs Enforcement seeking records related to:

1. An attorney's ability to be present during their clients' interactions with ICE;
2. What role attorneys may play during their clients' interactions with ICE;
3. Attorney conduct during interactions with ICE on behalf of their clients;
4. Attorney appearances at ICE offices or other facilities.

Your appeal, dated April 27, 2012, was received on April 30, 2012.

On behalf of the Chief for the Government Information Law Division, we acknowledge your appeal request of **2012FOIA8229** and are assigning it number **OPLA12-501** for tracking purposes. Please reference this number in any future communications about your appeal.

A high number of FOIA/PA requests have been received by the Department. Accordingly, we have adopted the court-sanctioned practice of generally handling backlogged appeals on a first-in, first-out basis.<sup>1</sup> While we will make every effort to process your appeal on a timely basis, there may be some delay in resolving this matter. Should you have any questions concerning the processing of your appeal, please contact ICE FOIA at 1-202-732-0600, or by email at [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Mathias".

Susan Mathias  
Chief  
Government Information Law Division  
ICE Office of the Principal Legal Advisor  
Department of Homeland Security

<sup>1</sup> Appeals of expedited treatment denials will be handled on an expedited basis.