

American Immigration Council, Northwest Immigrant Rights Project: Class action lawsuit seeks to challenge USCIS' failure to respond to FOIA requests for immigration case files

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American Immigration Council
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Northwest Immigrant Rights Project
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WASHINGTON—Three immigration attorneys and two immigrants filed a class action lawsuit today in federal court in San Francisco challenging the Department of Homeland Security and its component agencies' nationwide practice of failing to timely respond to requests for immigration files under the Freedom of Information Act. The lawsuit seeks to afford immigrants and their lawyers with expeditious access to the information contained in their or their clients' immigration files, which is often critical to assessing immigration options in the United States and potential defenses against deportation.

When individuals request their immigration files (known as "A files") under FOIA with U.S. Citizenship and Immigration Services, a component of DHS, the agency must make a determination on the request within 20 business days. USCIS routinely fails to provide requested documents within 20 days, and instead can take months

to respond. USCIS exacerbates these delays by referring certain documents in the immigration files to another DHS component, U.S. Immigration and Customs Enforcement for further review; ICE also routinely fails to make timely determinations on these requests.

USCIS' backlog of FOIA requests more than doubled between FY 2015 and FY 2017. By the end of FY 2018, USCIS reported a backlog of 41,329 pending requests; a number exceeding, by a significant margin, the backlog of any other DHS component. Despite growing backlogs, neither DHS, USCIS, or ICE has allocated the resources necessary to comply with the FOIA.

The complaint in *Nightingale v. USCIS* alleges that routine and excessive delays cause unnecessary emotional and financial hardship for noncitizens left in legal limbo while they wait to obtain records that hold the key to assessing their immigration options in the United States.

Lawyers for the plaintiffs are asking the Court to issue a nationwide injunction ordering USCIS and ICE to make a determination on all pending FOIA requests within 60 business days of the Court's order and to respond to future FOIA requests within the statutory period.

"USCIS and ICE must be accountable to individuals who file FOIA requests for their own immigration case files. These individuals need to have a complete and accurate picture of their immigration history to assess their options and make decisions that often have life-long consequences for themselves and family members," stated Claudia Valenzuela, FOIA attorney at the American Immigration Council.

"The delays prevent our clients from obtaining information they need to move forward with their immigration applications. We are asking the court to enforce the law, which requires timely responses," said Matt Adams, legal director at the Northwest Immigrant Rights Project.