

20-3837
Knight v. USCIS et al.

In the
United States Court of Appeals
For the Second Circuit

August Term, 2021
No. 20-3837

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY,
Plaintiff-Appellee,

v.

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, UNITED
STATES DEPARTMENT OF STATE, UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT,
Defendants-Appellants,

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED
STATES DEPARTMENT OF JUSTICE, UNITED STATES CUSTOMS AND
BORDER PROTECTION,
Defendants.

On Appeal from the United States District Court for the Southern
District of New York

ARGUED: JANUARY 6, 2022
DECIDED: APRIL 6, 2022

Before: JACOBS, RAGGI, and NARDINI, *Circuit Judges*.

Defendants-Appellants United States Citizenship and Immigration Services, United States Department of State, and United States Immigration and Customs Enforcement appeal from three orders of the district court requiring them to produce documents in response to requests from Plaintiff-Appellee the Knight First Amendment Institute at Columbia University under the Freedom of Information Act. The district court (Andrew Carter, *J.*) ordered disclosure of three sets of documents: (1) portions of Volume 9 of the Foreign Affairs Manual; (2) the questions that are used to determine whether to apply the “Terrorism Related Inadmissibility Ground” to applicants for immigration benefits; and (3) a memo titled “ICE Ability to Use 212(a)(3)(C) Foreign Policy Charge.” We hold that the Department of State and United States Citizenship and Immigration Services properly withheld the first two sets of documents under FOIA Exemption 7(E). We therefore REVERSE the orders of the district court requiring disclosure of those materials. With respect to the third, it is unclear whether the agency has already complied fully with the district court’s order, in which case its appeal would be moot. Accordingly, we REMAND to allow the parties to further develop the record.

CATHERINE CRUMP (Megan Graham,
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Policy Clinic, U.C. Berkeley School of Law,
Berkeley, CA, Xiangnong Wang, Carrie
DeCell, Alex Abdo, Jameel Jaffer, Knight
First Amendment Institute at Columbia
University, New York, NY, *on the brief*),

Samuelson Law, Technology & Public
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Berkeley, CA, *for Plaintiff-Appellee.*

ELLEN BLAIN, Assistant United States
Attorney (Sarah S. Normand, Benjamin H.
Torrance, Assistant United States Attorneys
on the brief), *for* Audrey Strauss, United
States Attorney for the Southern District of
New York, New York, NY, *for Defendants-
Appellants.*

WILLIAM J. NARDINI, *Circuit Judge:*

The Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), enacted in 1966, allows citizens to find out what their government is up to. FOIA embodies a strong policy in favor of disclosing materials in response to citizens’ requests. In some circumstances, though, Congress has determined that other interests—such as personal privacy, national security, or foreign policy—outweigh the need for transparency. These circumstances are embodied by a limited set of

statutory exemptions from FOIA's disclosure requirements. This case requires us to determine the scope of one such exemption.

Defendants-Appellants United States Citizenship and Immigration Services ("USCIS"), United States Department of State ("DOS"), and United States Immigration and Customs Enforcement ("ICE") appeal from three orders of the United States District Court for the Southern District of New York (Andrew Carter, *J.*) entered on September 13, 2019, September 23, 2019, and September 13, 2020, requiring them to produce certain documents in response to FOIA requests from the Knight First Amendment Institute at Columbia University ("Knight"). Knight requested documents concerning the agencies' interpretation and implementation of provisions of the Immigration and Nationality Act ("INA") that allow exclusion of aliens from the United States based on the aliens' connections to or endorsement of terrorist activity. The parties have resolved several of Knight's requests, leaving only three sets of documents at issue on

appeal: (1) portions of Volume 9 of the Foreign Affairs Manual; (2) the questions that USCIS uses to determine whether to apply the “Terrorism Related Inadmissibility Ground” to applicants for immigration benefits; and (3) an ICE memo titled “ICE Ability to Use 212(a)(3)(C) Foreign Policy Charge.” We hold that DOS and USCIS properly withheld the first two sets of documents under FOIA Exemption 7(E). With respect to the third, the record is unclear as to whether ICE has already complied fully with the district court’s order, which would render its appeal moot. We therefore remand for further proceedings on that issue.

BACKGROUND

I. Knight’s Freedom of Information Act Request

The INA governs immigration and citizenship in the United States. *See* 8 U.S.C. ch. 12. Section 212 of the INA excludes from admission to the U.S. any alien who “endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or

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