

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICA FIRST LEGAL FOUNDATION,
611 Pennsylvania Avenue S.E., #231
Washington, D.C. 20003,

Plaintiff

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES,
200 Independence Avenue, S.W.
Washington, D.C. 20201

Defendant.

Civil Action No.: 1:23-cv-581

COMPLAINT

1. Plaintiff America First Legal Foundation (“AFL”) brings this action against the United States Department of Health and Human Services (“HHS”) to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Additionally, it may grant declaratory relief pursuant to 28 U.S.C. § 2201, *et seq.*

3. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

4. Plaintiff AFL is a nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal

protection for all Americans, and encourage public knowledge and understanding of the law and individual rights guaranteed under the United States Constitution and the laws of the United States. AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, all to educate the public.

5. Defendant, the U.S. Department of Health and Human Services, is an agency under 5 U.S.C. § 552(f), with its headquarters located at 200 Independence Ave. SW, Washington, D.C., 20201.

FACTS

HHS Care for Unaccompanied Alien Children FOIA

6. On September 23, 2021, AFL submitted a FOIA request to HHS seeking records relating to the Department's Office of Refugee Resettlement ("ORR") care for Unaccompanied Alien Children ("UAC"). A true and original copy of the FOIA request is attached to this complaint at Exhibit A.

7. On September 24, 2021, AFL received an email from HHS which stated that HHS had received AFL's FOIA request. That email is attached to the complaint at Exhibit B.

8. This email assigned AFL's request tracking number 21-F-0208. *Id.*

9. As of the date of filing this complaint, AFL has received no further information related to its request.

10. As of the date of filing, AFL has not received any records responsive to its FOIA request.

HHS Family Endeavors Inc. No-Bid Contract FOIA

11. On August 2, 2021, AFL submitted a FOIA request to the Department of Health and Human Services seeking records related to a no-bid contract awarded to Family Endeavors LLC. A true and original copy of the FOIA request is attached to this complaint at Exhibit C.

12. On August 10, 2021, AFL received an email from HHS containing an acknowledgement of AFL's request. That email is attached to the complaint at Exhibit D.

13. That email assigned the request tracking number 21-F-0186. *Id.*

14. As of the date of filing this complaint, AFL has received no further information related to its request.

15. As of the date of filing this complaint, AFL has not received any records responsive to its request.

CLAIM FOR RELIEF

Violation of FOIA, 5 U.S.C. § 552

16. AFL repeats paragraphs 1–15.

17. AFL properly requested records within the possession, custody, and control of Defendants.

18. For over a year, the Defendant has failed to conduct a reasonable search for responsive records.

19. Moreover, the Defendant failed to disclose any segregable, non-exempt portions of responsive records. *See* 5 U.S.C. § 552(b).

20. The Defendant failed to respond to AFL's requests within the statutory time-period. *See* 5 U.S.C. § 552(a)(6).

21. Accordingly, AFL has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C).

22. The Defendant have violated the FOIA by failing, within the prescribed time limit, to (i) reasonably search for records responsive to AFL's FOIA requests; (ii) provide a lawful reason for the withholding of any responsive records; and (iii) segregate exempt information in otherwise non-exempt responsive records.

RELIEF REQUESTED

WHEREFORE, AFL respectfully requests this Court:

i. Declare that the records sought by these requests, as described in the foregoing paragraphs, must be disclosed pursuant to 5 U.S.C. § 552;

ii. Order the Defendant to conduct searches immediately for all records responsive to AFL's FOIA requests and demonstrate that they employed search methods reasonably likely to lead to the discovery of responsive records;

iii. Order the Defendant to produce by a date certain all non-exempt records responsive to AFL's FOIA requests;

iv. Award AFL attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);
and

v. Grant AFL such other and further relief as this Court deems proper.

March 2, 2023.

Respectfully submitted,

/s/ Jacob Meckler
JACOB MECKLER
D.C. Bar No. 90005210
AMERICA FIRST LEGAL FOUNDATION
611 Pennsylvania Avenue SE #231
Washington, D.C. 20003
Tel.: (972) 861-2132
E-mail: Jacob.meckler@aflegal.org

ANDREW J. BLOCK D.C.
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E-mail: andrew.block@aflegal.org

*Counsel for Plaintiff America First
Legal Foundation*



September 23, 2021

VIA EMAIL – FOIA@acf.hhs.gov

ATTN: Celeste Smith, Chief FOIA Officer
Administration for Children and Families, FOIA Office
330 C Street, SW, 4th Floor
Washington, DC 20201

**Freedom of Information Act Request: Data and Statistics on
Unaccompanied Alien Children**

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

I. Background

An unprecedented number of Unaccompanied Alien Children (UAC)¹ are entering the United States along the southern border, with over 132,000 encounters so far in Fiscal Year 2021.² In July 2021 alone, U.S. Customs and Border Protection (CBP) recorded 18,962 encounters with UAC—a population larger than many towns across the United States. And CBP encountered another 18,847 in August.³ In fact, CBP encountered more UAC in these two months than they did in the entire previous Fiscal Year.⁴

This surge in arrivals brings to the fore problems that have existed for years in the immigration system. This includes the simple fact that—after a flawed and

¹ UAC has the meaning given to it by 6 U.S.C. § 279(g)(2), that is a child under the age of 18, with no lawful status in the United States who does not have a parent or legal guardian with them or in the United States able to care for them.

² See Southwest Border Land Encounters, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last visited September 16, 2021).

³ *Id.*

⁴ *Id.*

insufficient sponsor background check process—the Department of Health and Human Services has no idea what happens with the UAC it places with sponsors. Other than a cursory 30-day check-in after placing a UAC with a sponsor, which may or may not occur, HHS does nothing to ensure the UAC’s safety after placement.⁵ And HHS does nothing to ensure that the sponsors or the UAC comply with their other obligations under the law, such as ensuring that the UAC attends immigration court hearings.⁶ And U.S. Immigration and Customs Enforcement (ICE) does not, either.

Overwhelmingly, sponsors of UAC lack lawful status themselves—and oftentimes are the very same people who paid to have the UAC illegally brought to the United States.⁷ HHS’s placement of those UAC with those sponsors simply completes the last stage of a smuggling cycle by substituting the United States for the smuggling organizations.⁸ And those sponsors have, by the tens of thousands, failed to bring UAC to their immigration court hearings.⁹

Additionally, in other cases, UAC are placed with sponsors who are affiliated with human traffickers, as documented by a January 2016 Senate Report and new media reporting.¹⁰ HHS’s failure to ensure the safety of UAC is particularly egregious in this context.¹¹ This all results in HHS failing to account—even for 30 days—over 30,000 children since January of this year.¹² Yet HHS continues the same practices and largely does not keep ICE informed of any meaningful updates, leaving the

⁵ Stef W. Kight, *Exclusive: Government Can’t Reach One-in-Three Released Migrant Kids*, AXIOS (Sept. 1, 2021), <https://www.axios.com/migrant-children-biden-administration-a597fd98-03a7-415c-9826-9d0b5aaba081.html>.

⁶ *Id.* According to Axios, an HHS spokesperson told them, “While we make every effort to voluntarily check on children after we united them with parents or sponsors and offer certain post-unification services, *we no longer have legal oversight once they leave our custody.*” (Emphasis added).

⁷ John Roberts & Adam Shaw, *Migrant Encounters Over 200,000 Again in August, As Border Surge Continues*, FOX NEWS (September 15, 2021), <https://www.foxnews.com/politics/migrant-encounters-august-border-surge-continues>.

⁸ *Id.*

⁹ U.S. DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, *In Absentia Removal Orders*, available at <https://www.justice.gov/eoir/page/file/1107711/download>.

¹⁰ U.S. Senate Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations, *Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement*, STAFF REPORT (Jan. 28, 2016), <https://www.hsgac.senate.gov/imo/media/doc/Majority%20&%20Minority%20Staff%20Report%20-%20Protecting%20Unaccompanied%20Alien%20Children%20from%20Trafficking%20and%20Other%20Abuses%202016-01-282.pdf>.

¹¹ As a result of HHS’s failure, they have, again, released UAC to “sponsors” who are human traffickers who take the UAC to serve as child labor in the United States. Ben Penn & Ellen M. Gilmer, *U.S. Probes Trafficking of Teen Migrants for Poultry-Plant Work*, BLOOMBERG LAW (Aug. 19, 2021), <https://news.bloomberglaw.com/daily-labor-report/u-s-probes-trafficking-of-teen-migrants-for-poultry-plant-work>.

¹² Since February 2021, CBP has encountered 97,301 UAC. Based on Axios reporting that HHS fails to contact one in three UAC, that means the Biden Administration has lost over 32,000 UAC who have entered the country under the Biden Administration’s open border policies.

enforcement arm of the government blind to real-time information another government agency possesses.

AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, to educate the public. Therefore, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, AFL hereby requests the following records within twenty business days.

II. Requested Records

- A) For UAC who have come into HHS-ORR care since January 20, 2021, records sufficient to show the number of 30-day post-release check-ins or updates completed by ORR, broken down by month and the method by which the check-in was conducted (i.e. in person, telephone, video conference, etc.).
- B) For UAC who have come into HHS-ORR care since January 20, 2021, records sufficient to show the number of check-ins or follow-ups completed after the 30-day check-in.
- C) For UAC who have come into HHS-ORR care since January 20, 2021, records sufficient to show the number of cases in which HHS has provided ICE with an updated address, location, or contact information for a UAC or their sponsor.
- D) For UAC who have come into HHS-ORR care since January 20, 2021, records sufficient to show the number of UAC that ORR has placed with sponsors who lack legal status in the United States.
- E) For UAC who have come into HHS-ORR care since January 21, 2021, the number of children who have tested positive for COVID-19 while in HHS-ORR care, to include the care of a grantee organization, broken down by month.
- F) All records of communications with the Department of Justice's Executive Office of Immigration Review (EOIR) mentioning or referring to UAC appearance rates for court proceedings. The time frame for this request is January 20, 2021, to the date this records request is processed.
- G) All communications with ICE in which HHS alerted ICE that they placed a UAC with a sponsor who lacked lawful status in the United States. The time frame for this request is January 20, 2021, to the date this request is processed

III. Construction and Redactions

Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass 'n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then HHS must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; see also *Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, HHS should produce email and calendar attachments.

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual

custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

IV. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54, AFL requests a waiver of any and all applicable fees. This statute and regulation provide that the agency shall furnish requested records without or at reduced charge if “disclosure of the 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 is not primarily in the commercial interest of the requester.”¹³

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public's understanding of your policies and practices will be enhanced through AFL's analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL's financial interest.

Second, in this case, a fee waiver is appropriate because of the public's right to know what is happening to underage children arriving at the southwest border. The public has always been interested in the treatment of children in refugee or mass migration

¹³ 5 U.S.C. § 552(a)(4)(A)(iii); *see also Cause of Action v. Fed. Trade Comm'n*, 799 F.3d 1108, 1115-19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

situations, and in particular, how they are treated here in the United States. That does not change simply because there has been a change in political leadership and Administration. The public also has a right to know how the government is treating these children, whether it is following, or is able to follow, its own laws and regulations, and who in the government is responsible for tracking children in the country illegally. To date, the information requested has not been released in any form to the public; its release in response to this request will therefore contribute significantly to public understanding of the operations of the government. In addition, as American First Legal is a non-profit, tax-exempt organization as defined by the Internal Revenue Code, it has no commercial interest in making this request.

V. Record Preservation Requirement

We request that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.¹⁴

VI. Production

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis.

If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14th Street NW, 5th Floor, Washington, D.C. 20005.

VII. Conclusion

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at FOIA@aflegal.org. Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

¹⁴ See 36 C.F.R. § 1230.3(b) (“Unlawful or accidental destruction (also called unauthorized destruction) means . . . disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.”); *Chambers v. Dep’t of the Interior*, 568 F.3d 998, 1004-05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); *Judicial Watch, Inc. v. Dep’t of Commerce*, 34 F. Supp. 2d 28, 41-44 (D.D.C. 1998).

Thank you,

/s/ Gene P. Hamilton

Gene P. Hamilton

America First Legal Foundation



AFL FOIA <foia@aflegal.org>

Request Acknowledgement by HHS-ACF

foia@acf.hhs.gov <foia@acf.hhs.gov>
To: foia@aflegal.org

Fri, Sep 24, 2021 at 12:53 PM

Dear Reed Rubinstein,

Case Number 21-F-0208 has been assigned to the request you submitted. In all future correspondence regarding this request please reference case number 21-F-0208.

Regards,
HHS-ACF



August 2, 2021

VIA EMAIL – FOIA@acf.hhs.gov

ATTN: Celeste Smith, Chief FOIA Officer
Administration for Children and Families
FOIA Office
330 C Street, SW, 4th Floor
Washington, DC 20201

Freedom of Information Act Request: No-Bid Contract for Endeavors

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

I. Background

On January 20, 2021—Inauguration Day—Family Endeavors Inc. (“Endeavors”), a registered 501(c)(3) nonprofit from San Antonio, Texas, issued a press release announcing the appointment of Andrew Lorenzen-Strait as the Senior Director for Migrant Services & Federal Affairs.¹ In that press release, Endeavors announced that Mr. Lorenzen-Strait “will lead a nation-wide team of dedicated professionals providing critical social services to migrants, including unaccompanied children, single adults and families.”² It further said that Mr. Lorenzen-Strait would “lead Endeavors’ government affairs effort in the national capital region, advancing our mission and core values through Federal government program development and *procurement opportunities* in the nation’s capital.”³

¹ Endeavors, *Endeavors Names Andrew Lorenzen-Strait as the Senior Director for Migrant Services & Federal Affairs*, <https://www.endeavors.org/press-release/endeavors-names-andrew-lorenzen-strait-as-the-senior-director-for-migrant-services-federal-affairs/> (Jan. 20, 2021).

² *Id.*

³ *Id.* (emphasis added).

Before then, Mr. Lorenzen-Straight served for a brief period as the “Director of Children and Family Services at Lutheran Immigration and Refugee Service.”⁴ And before that, he served at U.S. Immigration and Customs Enforcement; including as the Deputy Assistant Director for Custody Management, and previously as the ICE Public Advocate,⁵ a position that Congress specifically defunded after its creation during the Obama Administration.⁶ And perhaps most notably, news outlets have reported that Mr. Lorenzen-Straight served as an advisor on the Biden Transition Team where he worked on issues related to homeland security and immigration, presumably immediately prior to his official appointment at Endeavors.⁷

As illustrated by the Biden Administration’s actions since inauguration,⁸ the Biden Transition Team worked to reverse the Trump Administration’s secure border policies, instead encouraging more illegal immigration by facilitating the unlawful entry into the United States of family units and unaccompanied alien children. The Biden Transition Team’s policies were designed to circumvent our laws. They have caused unprecedented chaos and human suffering at our southern border and caused increases in crime and COVID-19 transmission within the United States. But Endeavor’s business model depends on ever-growing numbers of illegal immigrants, particularly children.

Roughly two months after Mr. Lorenzen-Straight’s appointment at Endeavors and his service on the Biden Transition Team, the federal government awarded two no-bid contracts worth hundreds of millions of dollars to Endeavors.⁹ The first was reportedly a no-bid contract from Health and Human Services in the amount of \$600 million and the second was from U.S. Immigration and Customs Enforcement in the amount of \$86.95 million. These two contracts alone represent 84 percent of the total monies Endeavors has received in the last five years.¹⁰ These facts were enough to

⁴ *Id.*

⁵ U.S. Immigration and Customs Enforcement, *ICE Announces creation of Public Advocate position*, <https://www.ice.gov/news/releases/ice-announces-creation-public-advocate-position> Feb. 6, 2012).

⁶ Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. No. 113-6, § 567.

⁷ Dave Spunt, Jake Gibson, *DHS Inspector General reviewing huge no-bid contract with company connected to former Biden official*, FOX NEWS (May 31, 2021), <https://www.foxnews.com/politics/dhs-inspector-general-probing-huge-no-bid-government-contract-connected-to-former-biden-official>.

⁸ *See, e.g.*, Exec. Order No. 13,993,86 Fed. Reg. 7,051 (Jan. 25 ,2021); Exec. Order No. 14,010, 86 Fed. Reg. 8,267 (Feb. 5, 2021).

⁹ Anna Giaritelli, *Ron Johnson launches investigation into \$600M worth of no-bid contracts given to group with Biden ties*, WASH. EXAMINER (Apr. 14, 2021), <https://www.washingtonexaminer.com/news/ron-johnson-launches-investigation-600-million-dollar-contracts-group-with-biden-ties>.

¹⁰ USASpending, *Transactions Over Time*, <https://www.usaspending.gov/recipient/d08f478d-4f45-9ac2-451d-4e1f425ee756-P/latest>; ProPublica, *Non-Profit Explorer*, <https://projects.propublica.org/nonprofits/organizations/237223078>.

garner the attention of Senator Ron Johnson, the Ranking Member of the Senate Permanent Subcommittee on Investigations (PSI) and the DHS Inspector General.¹¹

While the Senate PSI was apparently concerned about substantial no-bid contracts awarded to a nonprofit corporation with potential political ties, the contracts also raise dual concerns about both government expenditure responsibility and Endeavors' compliance with the Internal Revenue Code.

First, Endeavors' tax returns identify Intrepid Staffing Services, LLC ("Intrepid"), a taxable for-profit corporation (with both San Antonio, Texas¹² and San Juan, Puerto Rico¹³ locations), as a "disregarded entity" for purposes of federal taxation, which means that Intrepid is fully funded and controlled by Endeavors. Yet despite Intrepid's alleging to the IRS that it is indistinguishable from parent Endeavors, Intrepid applied for and received \$1,000,000 in paycheck protection program ("PPP") funds for 99 employees reported as distinct from Endeavors.¹⁴

Second, according to Endeavors' tax-exempt returns filed with the Internal Revenue Service (IRS), 80% of its total contributions came from the government in 2016, 76% of its 2017 contributions came from the government, 86% of its 2018 contributions are from the government, and 80% of its 2019 revenue came from the government. In each one of these tax years, Endeavors represented to the IRS that it engaged in no lobbying activities. While Endeavors' most recent returns are not available, the hundreds of millions of dollars Endeavors received in 2021 from no-bid contracts came after significant lobbying activities.¹⁵ Given the substantial majority of Endeavors' revenue came from government funds, particularly those from the federal government, one is left to wonder if the \$200,000 spent by Endeavors on lobbying in 2020 originated from the American taxpayers. If so, that would be illegal.¹⁶

¹¹ David Spunt & Jake Gibson, *DHS Inspector General Reviewing Huge No-bid Contract with Company Connected to Former Biden Official*, FOX NEWS (May 31, 2021) <https://www.foxnews.com/politics/dhs-inspector-general-probing-huge-no-bid-government-contract-connected-to-former-biden-official>.

¹² See e.g. Texas Comptroller of Public Accounts, *Taxable Entity Search*, <https://mycpa.cpa.state.tx.us/coa/> (search "intrepid staffing" in "Entity Name").

¹³ See e.g. Government of Puerto Rico, Registry of Corporations and Entities, <https://prcorpfilings.flhst.com/CorpInfo/CorporationInfo.aspx?c=415977-1512>.

¹⁴ ProPublica, Tracking PPP, Intrepid Staffing Services, <https://projects.propublica.org/coronavirus/bailouts/loans/intrepid-staffing-services-3839328002>.

¹⁵ Lobbying Disclosure Act database, https://lda.senate.gov/filings/public/filing/search/?registrant=®istrant_country=®istrant_ppb_country=&client=family+endeavors&client_state=&client_country=&client_ppb_country=&lobbyist=&lobbyist_covered_position=&lobbyist_conviction_disclosure=&lobbyist_conviction_date_range_from=&lobbyist_conviction_date_range_to=&report_period=&report_year=&report_dt_posted_from=&report_dt_posted_to=&report_amount_reported_min=&report_amount_reported_max=&report_issue_area_description=&affiliated_organization=&affiliated_organization_country=&foreign_entity=&foreign_entity_country=&foreign_entity_ppb_country=&foreign_entity_ownership_percentage_min=&foreign_entity_ownership_percentage_max=&search=search (last visited July 30, 2021).

¹⁶ 18 U.S.C. § 1913.

AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, to educate the public. Therefore, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, AFL hereby requests the following records within twenty business days.

II. Requested Records

Unless otherwise indicated, the timeframe for the following requests are January 1, 2020, until the date the records request is processed.

- A. All communications, whether electronic mail, text message, phone message, phone records, or otherwise, between Andrew Lorenzen-Strait and any Health and Human Services, Administration for Children and Families ("HHS-ACF") employee or contractor during the time in which Andrew Lorenzen-Strait has been affiliated with Endeavors.
- B. All communications whether electronic mail, text message, phone message, phone records, or otherwise, between any person affiliated with Endeavors and any HHS-ACF employee or contractor referring or relating to the awarding of a contract or expenditure of HHS funds to Endeavors.
- C. All contract documents between HHS-ACF and "Family Endeavors Inc" or "Endeavors", including any justifications or explanations on why Endeavors received a no-bid contract.
- D. All calendar items reflecting meetings between any HHS-ACF employee or contractor and any person affiliated with Endeavors.
- E. All communications between any HHS-ACF employee or contractor and any person affiliated with Endeavors referring or relating to any of the following: (1) why Endeavors should receive HHS funds; (2) what Endeavors would do with HHS funding; (3) any suggestion that Endeavors should be considered as a recipient for HHS funding; (4) any request by Endeavors, or any person affiliated therewith, to be considered for an award of an HHS contract or funding; (5) any proposal, suggestion, implication, or advocacy, that Endeavors should be considered as a potential recipient of an HHS contract or otherwise awarded HHS funding.
- F. All communications between HHS-ACF employees or contractors and Intrepid Staffing Services, LLC.
- G. All contract documents between HHS-ACF and Staffing Services, LLC.

III. Construction and Redactions

“Endeavors” means Family Endeavors Inc, d.b.a. “Endeavors” located at 6363 De Zavala Road, San Antonio, Texas 78249.

Redactions are disfavored as the FOIA’s exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass 'n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then HHS must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; see also *Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, HHS should produce email and calendar attachments.

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records

Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

IV. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54, AFL requests a waiver of any and all applicable fees. This statute and regulation provide that the agency shall furnish requested records without or at reduced charge if “disclosure of the 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 is not primarily in the commercial interest of the requester.”¹⁷

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public's understanding of your policies and practices will be enhanced through AFL's analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL's financial interest.

¹⁷ 5 U.S.C. § 552(a)(4)(A)(iii); *see also Cause of Action v. Fed. Trade Comm'n*, 799 F.3d 1108, 1115-19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

Second, in this case, a fee waiver is appropriate because of the public's right to know whether a public charity is accurately representing information to the government and whether the federal procurement process is merit-based and fair or politically compromised. To date, the information requested has not been released in any form to the public; its release in response to this request will therefore contribute significantly to public understanding of the operations of the government. In addition, as American First Legal is a non-profit, tax-exempt organization as defined by the Internal Revenue Code, it has no commercial interest in making this request.

V. Record Preservation Requirement

We request that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.¹⁸

VI. Production

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis.

If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14th Street NW, 5th Floor, Washington, D.C. 20005.

¹⁸ See 36 C.F.R. § 1230.3(b) ("Unlawful or accidental destruction (also called unauthorized destruction) means . . . disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records."); *Chambers v. Dep't of the Interior*, 568 F.3d 998, 1004-05 (D.C. Cir. 2009) ("[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act."); *Judicial Watch, Inc. v. Dep't of Commerce*, 34 F. Supp. 2d 28, 41-44 (D.D.C. 1998).

VII. Conclusion

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at FOIA@aflegal.org. Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Thank you,

/s/ Gene P. Hamilton

Gene P. Hamilton

America First Legal Foundation



AFL FOIA <foia@aflegal.org>

21-F-0186 Acknowledgement Letter

foia@acf.hhs.gov <foia@acf.hhs.gov>
To: foia@aflegal.org

Tue, Aug 10, 2021 at 12:30 PM

Case No: 21-F-0186

August 10, 2021

Gene Hamilton
America First Legal Foundation
600 14th St. NW
5th Floor
Washington, DC 20005

Dear Gene Hamilton:

This will acknowledge receipt of your Freedom of Information Act (FOIA) request received by this office. Your request has been assigned a case number based on the time it was received in this office and is being processed as expeditiously as possible. The actual processing time will depend on the complexity of your request and whether sensitive records, voluminous records, extensive search, and/or consultation with other HHS components or other executive branch agencies are involved. There may be a charge for these records and, in some cases, the charges may be substantial.

If you have any questions, please email FOIA@acf.hhs.gov.

Please use the case tracking number at the top of the page when discussing your request.

Sincerely,

Celeste Smith
FOIA Officer
Administration for Children and Families

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Violation of FOIA, 5 U.S.C. 552, failing to conduct a search for responsive records.

VII. REQUESTED IN COMPLAINT	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ JURY DEMAND:	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input type="checkbox"/>
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VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>	If yes, please complete related case form
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DATE: 3/2/2023	SIGNATURE OF ATTORNEY OF RECORD
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.