

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

AMERICA FIRST LEGAL
FOUNDATION,
611 Pennsylvania Ave SE #231
Washington, D.C. 20003

Plaintiff,

v.

DEPARTMENT OF DEFENSE,
1155 Defense Pentagon
Washington, DC 20301-1155

Defendant.

Civil Action No.: 24-964

COMPLAINT

1. Plaintiff America First Legal Foundation (AFL) brings this action against the Department of Defense, to compel compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

JURISDICTION AND VENUE

2. This 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. The 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. The Defendant, the Department of Defense, is an agency under 5 U.S.C. § 552(f), with its headquarters at 1000 Defense Pentagon, Washington DC.

6. The Defendant has possession, custody, and control of the requested records.

BACKGROUND

7. In October 2014, Russian hackers allegedly breached the Executive Office of the President's (EOP) network. Russell Berman, *Did Russia Just Hack the White House?* THE ATLANTIC (Oct. 29, 2014), <https://bit.ly/3Y0WO8r>. Six months later, reports suggested that the White House's unclassified network, which served the entire Executive Office of the President (EOP), had been compromised. Evan Perez, *How the U.S. Thinks Russians Hacked the White House*, CNN (Apr. 8, 2015), <https://cnn.it/3Suoi5h>.

8. In March 2015, former President Obama established a White House Information Technology Director and an Executive Committee for Presidential Information Technology (PITC). Presidential Memorandum — Establishing the Director of White House Information Technology and the Executive Committee for Presidential Information Technology (Mar. 19, 2015), <https://bit.ly/3Kzl9is> [hereinafter “PITC Memo”].

9. One Executive Committee member is the Director of the White House Military Office, a component of the Department of Defense. *See* Ex. 1 at 2.

10. The PITC Memo directs the Defense Secretary to designate or appoint a White House Technology Liaison for the White House Communications Agency and provides that all records created or received by the EOP be stored on systems held at the Department of Defense. *Id.*

11. The PITC Memo created the legal fiction that, although the Department of Defense physically possessed records, they were subject to the President’s exclusive control. *Id.*

12. It stated, “[n]othing in this memorandum may be construed to delegate the ownership, or any rights associated with ownership, of any information resources or information systems, nor of any record, to any entity outside of the EOP.” *Id.* Notably, because the PITC Memo relies upon definitions of information systems and information technology referenced in section 3502 of Title 44 of the United States Code, it may be construed to effectuate presidential control over all EOP records,

which would include components within the EOP subject to FOIA, *e.g.*, the Office of Management and Budget or the U.S. Trade Representative. *Id.*

13. AFL's FOIA request sought access to records reflecting whether the Department of Defense, through its Defense Information Systems Agency or any other component, relied on PITC to preserve records that the President of the United States accessed. Ex. 1 at 4.

14. Evidence produced in litigation against the Obama administration reveals how, in the lead-up to President Obama creating PITC, the White House relied on the Department of Defense to host White House data yet deemed this information to constitute Presidential records despite being in a federal agency's possession. This determination by the Obama administration is reflected in a declaration from a Department of Defense official made in the course of the aforementioned litigation: "in late 2010, the Army Materiel Command (AMC) entered into an agreement with the Executive Office of the President (EOP) to provide certain information and technology support to EOP." Decl. of Dr. Sherry R. Sarratt ¶ 5, *Cause of Action Institute v. Army*, (D.D.C. filed Aug. 10, 2018) (No. 16-1020) (available at <https://bit.ly/3U0Usrb>).

15. Under the aforementioned agreement, the White House directed that "AMC must 'refrain from deleting or modifying any EOP data without express, written direction from EOP.'" *Id.* 8. The government stated, "At no time was EOP data integrated into any other Army records or files, as the data remained partitioned off exclusively for EOP use." *Id.* This 2010 White House agreement, like the 2015

PITC Memo, applies the Presidential Records Act to all EOP data located on Department of Defense servers. *See Memorandum of Agreement Between Executive Office of the President Office of Administration (EOP) and the United States Army Materiel Command (AMC)* (available at <https://bit.ly/4aiRSTj>).

16. Given this factual background, AFL's present FOIA request raises important legal questions. First, in the superseding indictment by the Special Counsel team against former President Trump, it was alleged that "TRUMP was not authorized to possess or retain those classified documents." Superseding Indictment ¶ 4, *United States v. Trump*, (S.D. Fla. July 27, 2023) (No. 23-80101) [hereinafter "SCO Indictment"]. The PITC Memo complicates this allegation because it creates the presumption of the President's "exclusive control" of information provided to him. PITC Memo, *supra*. In other words, the former President may have believed that such exclusive control gave him authority to retain certain documents. Second, the superseding indictment alleged 32 counts of the former President's violating 18 U.S.C. § 793(e). SCO Indictment ¶¶ 92–93. Section 793(e) requires that the former President had "unauthorized possession of" documents related to the national defense. 18 U.S.C. § 793(e). But if such documents were covered by the PITC framework, such possession may have been reasonably authorized in the mind of the former President.

17. Beyond questions surrounding how the PITC framework affected the intent of the former President concerning documents he received are questions regarding what documents are preserved by the Department of Defense. For instance,

the Special Counsel charged the former President with violations of 18 U.S.C. § 1512(c)(1) for allegedly removing official records. SCO Indictment ¶ 100–01. However, if such documents are preserved on Department of Defense servers, then arguably no records removal occurred, or, alternatively, the records are still available to the federal government.

18. A further issue concerns the boxes of documents the former President provided from his home in Mar-a-Lago to the National Archives and Records Administration. Based upon its inspection of those records, the National Archives decided that classified information may have been possessed illegally and made a referral to the Department of Justice. That referral informed the Special Counsel’s case in the Southern District of Florida. However, if the originals of those records are in the possession of the Department of Defense (due to PITC), it would mean the records at Mar-a-Lago — or at least some of them — were mere copies of actual Presidential records and thus excluded from the Presidential Records Act. The Act’s definition of “Presidential records” excludes “extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.” 44 U.S.C. § 2201(2)(B). In this light, the PITC Memo may be the basis for identifying such records as additional copies. If some portion of the records retrieved from Mar-a-Lago and maintained by the Archives were not, in fact, Presidential records, then the National Archives not only obtained those records without legal authority but also may have engaged in significant misfeasance in making a referral to the Department of Justice.

19. AFL's FOIA request also raises important questions about what information accessed by the President or his staff is in the possession of the Department of Defense. If the Department of Defense not only stores and manages records on behalf of the President but also controls whether such records are preserved, then records once thought to be Presidential records may be agency records subject to the Freedom of Information Act. And if the PITC Memo is construed to reflect a President's intent to retain control over records in the possession of the Department of Defense, then the lawfulness of such a memorandum may be a relevant legal question.

AFL'S FOIA REQUEST

20. On January 24, 2024, AFL submitted a FOIA request to the Defense Information Systems Agency, directly addressed to the Requester Service Center for that Department of Defense Component. Ex. 1; *see* 32 C.F.R. § 286.3(a).

21. AFL requested records showing that the Defense Information Systems Agency had a system to preserve records that were accessed by the President. *Id.* at 4.

22. The timeframe for the requested records is from December 31, 2020, to January 21, 2021. *Id.*

23. AFL requested a public interest fee waiver. *Id.* at 5.

24. On March 15, 2024, the Defendant acknowledged the request. Ex. 2.

25. The Defendant assigned the request tracking number "FOIA 24-87." *Id.*

26. As of the date of this filing, the Defendant has not released any responsive records to AFL.

CLAIM FOR RELIEF

Violation of the FOIA, 5 U.S.C. § 552

27. AFL repeats paragraphs 1–26.

28. AFL properly requested records within the possession, custody, and control of the Defendant.

29. The Defendant failed to conduct searches for responsive records.

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

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

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

33. The Defendant has violated the FOIA by failing to reasonably search for records responsive to AFL’s FOIA request and release nonexempt records within the prescribed time limit.

PRAYER FOR RELIEF

WHEREFORE, AFL respectfully requests that this Court:

- i. Declare that the records sought by AFL’s request must be disclosed pursuant to 5 U.S.C. § 552;

- ii. Order the Defendant to search immediately, demonstrating 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 request, accompanied by a Vaughn index of any responsive records or portions of responsive records being withheld under a claim of exemption;
- iv. Order the Defendant to grant AFL's requests for fee waivers;
- v. Award AFL attorneys' fees and costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- vi. Grant AFL such other and further relief as this Court deems proper.

Date: April 4, 2024

Respectfully Submitted,

/s/ Jacob Meckler

Daniel Z. Epstein (D.C. Bar No. 1009132)
Michael Ding (D.C. Bar No. 1027252)
Jacob P. Meckler (D.C. Bar No. 90005210)
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Jacob.Meckler@aflegal.org

*Counsel for the Plaintiff
America First Legal Foundation*

EXHIBIT 1



January 24, 2024

Via email – disa.meade.gc.mbx.foia@mail.mil
Defense Information Systems Agency
ATTN: Headquarters FOIA Requester Service Center
P.O. Box 549
Ft Meade, MD 20755-0549

Freedom of Information Act Request: PITC

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL’s X account has over 207,600 followers, the X account of our Founder and President has over 571,000 followers, and our Facebook page has 199,000 followers.

- I. To cover up Russian hacking, President Obama created a new presumption in presidential records: those received by the President are in his exclusive control.**

In October 2014, hackers believed to be working for the Russian government succeeded in breaching the unclassified network of the Executive Office of the President, which includes the White House Office in addition to agencies like the Office of Management and Budget.¹ Six months later, reports indicative of another breach disclosed that the White House’s unclassified network, which served the entire

¹ Russell Berman, *Did Russia Just Hack the White House?* THE ATLANTIC (Oct. 29, 2014), <https://bit.ly/3Y0WO8r>.

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Washington, DC 20003

320 South Madison Avenue
Monroe, Georgia 30655

Executive Office of the President (EOP), had been compromised.² In between these reports, former president Obama established, via executive action, a White House Information Technology Director and an Executive Committee for Presidential Information Technology (PITC).³ One Executive Committee member is the Director of the White House Military Office, which is a component of the U.S. Department of Defense (DoD). The memorandum makes clear that the Defense Secretary shall designate or appoint a White House Technology Liaison for the White House Communications Agency. This memorandum required that all records created or received by the EOP be stored on systems held at the DoD. The PITC memorandum created the legal fiction that although records were physically possessed by DoD, they were subject to the President's exclusive control.

II. Because of President Obama's executive action, President Trump could reasonably have concluded that all information provided to him in office was within his exclusive control.

The PITC memorandum purported to establish “the President’s **exclusive control** of the information resources and information systems provided to the President, Vice President and EOP.”⁴ To emphasize this notion of control, the memorandum stated, “[n]othing in this memorandum may be construed to delegate the ownership, or any rights associated with ownership, of any information resources or information systems, nor of any record, to any entity outside of the EOP.” The memorandum thus made clear that records sent to EOP systems or records originating on those systems are controlled by the President. Notably, because the PITC memorandum relies upon definitions of information systems and information technology referenced in section 3502 of Title 44 of the United States Code, it effectuates presidential control over all EOP records, which would include components subject to FOIA, e.g., the Office of Management and Budget or the U.S. Trade Representative.

III. Evidence disclosing the PITC system may be favorable to former President Trump, yet the Government may have failed to disclose it.

Federal prosecutors have a duty to learn of “any” favorable evidence known to others acting on the government’s behalf.⁵ Under what is known as *Brady* obligations, prosecutors have an affirmative duty to reveal any evidence material to guilt or punishment.⁶ This duty to disclose sources of exculpatory evidence extends to

² Evan Perez, *How the U.S. Thinks Russians Hacked the White House*, CNN (Apr. 8, 2015), <https://cnn.it/3Suoi5h>.

³ Presidential Memorandum – Establishing the Director of White House Information Technology and the Executive Committee for Presidential Information Technology (Mar. 19, 2015), <https://bit.ly/3Kzl9is>.

⁴ *Id.*, (emphasis added).

⁵ *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

⁶ *Smith v. Sec’y, Dep’t of Corr.*, 2006 WL 4495336, at *2 (11th Cir. Dec. 27, 2006) (per curiam).

evidence beyond the files maintained by the prosecutor's office but also "other branches of government closely aligned with the prosecution."⁷

On June 8, 2023, Special Counsel Jack Smith's team issued an indictment against former President Trump, followed by a superseding indictment on July 27, 2023.⁸ The indictment claims "Trump was not authorized to possess or retain . . . classified documents."⁹ But the former President's compliance with President Obama's PITC memorandum may have created a reasonable belief in President Trump that he, in fact, had such authority. Indeed, the indictment discusses "Classified Information" with reference to a series of Executive Orders but noticeably fails to disclose the obvious ways President Obama's PITC memorandum could change reasonable presumptions or beliefs concerning the ownership and control of information received by the President.

The first 32 counts of the superseding indictment charge violations of 18 U.S.C. § 793(e). Section 793(e) requires that Trump had "unauthorized possession of [a document] relating to the national defense[.]" But if the relevant documents were subject to the scope of PITC, then Trump, pursuant to the memorandum, had exclusive control over the document he received, as opposed to the EOP or any other part of the Federal Government. The PITC memorandum arguably establishes exclusive control of EOP documents in the person of the President.

Additional counts were brought pursuant to 18 U.S.C. § 1512. Section 1512(c)(1) was charged on the theory that President Trump destroyed records with "the intent to impair the object's . . . availability for use in an official proceeding." If, however, any relevant document was subject to the PITC memorandum, then its availability has been unaffected, and it remains in the possession of the United States federal government. Additionally, in order to establish that President Trump destroyed these records with the intent to impair their availability, the United States would need to show that President Trump believed his copies to be the only ones in existence.

Evidence concerning PITC is further relevant to whether Trump met the *mens rea* standard of 18 U.S.C. § 1519, which requires that Trump "knowingly" "alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record." Such knowledge would not exist if the record was subject to the PITC memorandum, as the President would have known such a record was within his exclusive control and, therefore, not a record belonging to the United States. What records relevant to the indictment were subject to the PITC memorandum is thus also relevant to the *mens rea* requirements of charges under 18 U.S.C. §§ 1001(a)(1) and (a)(2).

⁷ *United States v. Safavian*, 233 F.R.D. 12, 17 (D.D.C. 2005).

⁸ Superseding Indictment, *United States v. Trump*, No. 9:23-cr-80101, (S.D. Fla. July 27, 2023).

⁹ *Id.* at ¶¶ 92-93.

Because, under the PITC memorandum, all documents and communications sent or received on the EOP's networks are stored and managed by the DoD on behalf of the President, the physical destruction or removal of a record governed by the PITC typically would not remove it from the custody of the United States government, as the DoD copy would remain. Indeed, the PITC memorandum creates PITC Director's duty to "ensure the effective use of information resources and information systems provided to the President" "and shall have the appropriate authority to promulgate all necessary procedures and rules governing these resources and systems." The PITC Director's opinion as to what records received by Trump were subject to the memorandum is crucially relevant to the former President's potential culpability.

On the other hand, the Presidential Records Act specifically excludes from its scope "extra copies of documents produced only for convenience of reference, when such copies are clearly so identified." Further, any document produced to the President subject to the PITC may constitute the creation of records that were not presidential records, as the originals are held by PITC, the copies provided to President Trump were mere copies, excluded from the definition in the Act. If true, then disclosure is necessary to the extent it would tend to show that the National Archives and Records Administration had no authority to make referrals to law enforcement over records that were not subject to its jurisdiction.

IV. America First Legal is Legally Entitled to the Records

Normally, as a legal matter, records subject to the president's reservation of control are not federal records subject to FOIA. However, the President cannot convert federal records into presidential records to avoid transparency obligations, notwithstanding the extent to which that legal fiction may govern a president's interpretation of the law or legal liability. Records subject to the DoD's search, review, preservation, and production are federal records disclosable under FOIA.

V. Requested Records

In order to ensure records subject to FOIA are not improperly kept from the public, we request access to the following records, which shall be processed as "simple track":

- Any record that tends to show the existence of a practice of DoD preservation of records whose copies were accessed by the President.

The timeframe for this request is from December 31, 2020, to January 21, 2021.

VI. Request for a Public Interest Fee Waiver

We request a waiver of all applicable fees. FOIA and applicable regulations provide that the agency shall furnish requested records without or at a 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.”¹⁰

In this case, a fee waiver is appropriate because of the public’s right to obtain clarity as to the scope and limits of PITC’s authority.¹¹ 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 America 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.

VII. 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.¹²

VIII. Record Production and Contact Information

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. Alternatively, please provide responsive records in native format or in PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003. If a certain portion of responsive records can be produced more readily, we request that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

¹⁰ 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).

¹¹ *See e.g. Am. Oversight v. United States HHS*, 380 F. Supp. 3d 45, 48 (D.D.C. 2019).

¹² *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).

If you have any questions about this request, please contact us by e-mail at FOIA@aflegal.org. Thank you for your attention to this matter.

Thank you in advance for your cooperation.

Sincerely,

/s/ Daniel Z. Epstein

Daniel Z. Epstein

America First Legal Foundation

EXHIBIT 2



DEFENSE INFORMATION SYSTEMS AGENCY

P. O. BOX 549
FORT MEADE, MARYLAND 20755-0549

GC FOIA

March 15, 2024

RE: FOIA 24-87

Transmitted Electronically to:

FOIA@aflegal.org

Dear Mr. Epstein:

Your Freedom of Information Act (FOIA) request was received by the Defense Information Systems Agency (DISA) on January 24, 2024, any record that tends to show the existence of a practice of DoD preservation of records whose copies were accessed by the President. The timeframe for this request is from December 31, 2020, to January 21, 2021.

Your request has been logged as request number "FOIA 24-87". Any further inquiries regarding your request should include that number.

Please address all inquiries regarding your request to:

FREEDOM OF INFORMATION ACT (FOIA) OFFICER
Defense Information Systems Agency
P.O. Box 549
Fort Meade, MD 20755

Or via email to disa.meade.gc.mbx.foia@mail.mil

You will be notified if additional time or information is required to fully process your request.

Sincerely,

/S/

Sharmaine Shorter
FOIA Liaison Officer

CIVIL COVER SHEET

JS-44 (Rev. 11/2020 DC)

I. (a) PLAINTIFFS AMERICA FIRST LEGAL FOUNDATION (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>11001</u> (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS DEPARTMENT OF DEFENSE COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>11001</u> (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
(c) ATTORNEYS (FIRMNAME, ADDRESS, AND TELEPHONE NUMBER) Jacob Meckler America First Legal Foundation 611 Pennsylvania Avenue SE #231 Washington, D.C. 20003	ATTORNEYS (IF KNOWN) N/A

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!																								
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IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
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<input type="radio"/> E. General Civil (Other)		OR	<input type="radio"/> F. Pro Se General Civil	
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)	<u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 <u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act (TCPA) <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)	

<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.)
 Suit to enforce the FOIA, 5 U.S.C. 552.

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 checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: <u>April 4, 2024</u>	SIGNATURE OF ATTORNEY OF RECORD <u>/s/ Jacob Meckler</u>
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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.

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

CLEAR FORM

AMERICA FIRST LEGAL FOUNDATION

Plaintiff

v.

DEPARTMENT OF DEFENSE

Defendant

Civil Action No. **24-964**

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Attorney General Merrick B. Garland
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jacob Meckler
America First Legal Foundation
611 Pennsylvania Avenue SE #231
Washington, D.C. 20003
(202) 964-3721

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 24-964

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

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

CLEAR FORM

AMERICA FIRST LEGAL FOUNDATION

Plaintiff

v.

DEPARTMENT OF DEFENSE

Defendant

Civil Action No. **24-964**

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* U.S. Department of Defense
Freedom of Information Division
1155 Defense Pentagon
Washington , DC 20301-1155

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jacob Meckler
America First Legal Foundation
611 Pennsylvania Avenue SE #231
Washington, D.C. 20003
(202) 964-3721

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 24-964

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

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

CLEAR FORM

AMERICA FIRST LEGAL FOUNDATION

Plaintiff

v.

DEPARTMENT OF DEFENSE

Defendant

Civil Action No. **24-964**

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* U.S. Attorney's Office for the District of Columbia
Civil Process clerk
601 D. St. NW
Washington, D.C. 20530
Email Service to: USADC.servicecivil@usdoj.gov

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jacob Meckler
America First Legal Foundation
611 Pennsylvania Avenue SE #231
Washington, D.C. 20003
(202) 964-3721

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 24-964

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset