

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**America First Legal Foundation**  
611 Pennsylvania Avenue SE #231,  
Washington, DC 20003,

*Plaintiff,*

v.

**Xavier Becerra**, in his official  
capacity as United States Secretary  
of Health and Human Services  
200 Independence Avenue, SW,  
Washington, DC 20201;

**United States Department of  
Health and Human Services**, an  
agency of the United States  
200 Independence Avenue, SW,  
Washington, DC 20201;

**Colleen Shogan**, in her official  
capacity as Archivist of the United  
States  
8601 Adelphi Road  
College Park, MD 20740, and

**National Archives and Records  
Administration**, an agency of the  
United States  
8601 Adelphi Road  
College Park, MD 20740,

*Defendants.*

Case No. 1:24-cv-1092

**COMPLAINT**  
(For Injunctive and Declaratory  
Relief)

INTRODUCTION

1. The Department of Health and Human Services (HHS), and specifically the Centers for Disease Control and Prevention (CDC), have a pattern and practice of removing the emails of employees who separate from employment within as little

as thirty days from the date of separation. Federal law requires that each agency “make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency’s activities.” 44 U.S.C. § 3101.

2. Implementing this provision of the Federal Records Act, the National Archives and Records Administration (NARA) has promulgated regulations and a schedule that HHS (including the CDC) purports to follow. That schedule sets a minimum retention period of 3 years for emails of lower-level employees. *See* General Records Schedule 6.1, Transmittal No. 33, at 22 (Jan. 2023) (available at <https://bit.ly/3FZHgvz>) (“GRS 6.1”); *see* 44 U.S.C. § 2912; 36 C.F.R. §§ 1220.10, 1220.12, 1224.10, 1227.12.

3. Yet when America First Legal (AFL) sent a FOIA request for certain CDC documents, the CDC informed AFL that it removes and destroys all lower-level employees’ emails “30 days after they leave the agency.” Exhibit A at 4.

4. The CDC’s apparent removal of former employees’ emails within 30 days violates the Federal Records Act. The Plaintiff challenges the HHS Secretary’s and Archivist’s failures to fulfill their statutory duties to notify Congress and ask the Attorney General to initiate legal action regarding this violation. The Plaintiff also challenges the adequacy of the CDC’s (and HHS’s) recordkeeping.

### JURISDICTION AND VENUE

5. This Court has jurisdiction under 5 U.S.C. § 704 and 28 U.S.C. § 1331.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (e) because some Defendants reside in this district, and a substantial part of the acts and omissions giving rise to this action took place here.

### PARTIES

7. Plaintiff America First Legal Foundation (AFL) is a nonprofit corporation that promotes government transparency and accountability by gathering official government information, analyzing it, and disseminating it to the public through reports, press releases, media platforms including social media, and by posting government records on its website for use by the public, scholars, and others. Among other things, America First Legal conducts oversight of the Department of Health and Human Services to educate the public about the Department, particularly when the Department fails to meet its statutory obligations and its mission.

8. AFL frequently directs Freedom of Information Act (FOIA) requests to the Department, including a March 13, 2023, request to the CDC regarding its document “LGBTQ Inclusivity in Schools: A Self-Assessment Tool.” That request gave rise to the CDC’s disclosure that it is deleting former employees’ emails in as little as 30 days. AFL cannot obtain the access to responsive documents it is entitled to because of the CDC’s improper removal.

9. Through its FOIA investigations, AFL has uncovered the CDC’s communications with social media platforms to censor speech relating to COVID-19. *See*,

*e.g., AFL Lawsuit Uncovers More Damning CDC Documents Revealing Twitter’s “Partner Support Portal” for COVID-19 Related Censorship and the U.S. Government’s Advancement of “Social Inoculation” Against the “Infodemic”* (Dec. 6, 2022), <https://bit.ly/3vApNb7>; *BREAKING: America First Legal Uncovers How the Biden Administration Coordinated to Use Foreign Intelligence Tactics Against Americans to Censor Speech* (Jan. 26, 2023), <https://bit.ly/4at10ol>.

10. AFL has also uncovered the influence of a radical “equity” agenda on the CDC’s COVID-19 vaccine promotion policy. *AFL Releases More CDC Documents Revealing Bizarre “Equity” Agenda in COVID-19 Vaccination and Slides Discussing the Policy Objective of Injecting Children Even When “Parent Is Not Present”* (Dec. 15, 2022); <https://bit.ly/4aqjaHb>.

11. As of the date of this Complaint, AFL has six other pending lawsuits seeking email records from HHS, the CDC, and other HHS components.<sup>1</sup>

12. HHS and CDC’s failure to use an adequate recordkeeping system imposes irreparable harm on AFL, which cannot obtain information necessary to further its mission absent adequate records. This harm will continue until and unless the agency implements an adequate recordkeeping system with proper email retention policies. Referral of this matter to Congress and the Attorney General is likely to lead

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<sup>1</sup> *AFL v. CDC*, No. 22-978 (D.D.C. filed Apr. 8, 2022) (social media censorship); *AFL v. HHS*, No. 23-581 (D.D.C. filed Feb. 2, 2023) (Unaccompanied Alien Children); *AFL v. FDA*, No. 23-528 (D.D.C. filed Feb. 27, 2023) (puberty blockers); *AFL v. FDA*, No. 23-3680 (D.D.C. filed Dec. 11, 2023) (Hydroxychloroquine and Ivermectin); *AFL v. HHS*, No. 24-439 (D.D.C. filed Feb. 14, 2024) (Assistant Sec’y for Health Adm. Levine); *AFL v. CDC*, No. 24-675 (D.D.C. filed Mar. 8, 2024) (“chestfeeding” [sic]).

to the implementation of an adequate recordkeeping system and proper retention of relevant records.

13. Defendant Xavier Becerra is the Secretary of Health and Human Services. The Plaintiff sues him in his official capacity.

14. Defendant Department of Health and Human Services is the federal agency of the United States in which the CDC is housed.

15. Defendant Colleen Shogan oversees the National Archives and Records Administration. The Plaintiff sues her in her official capacity as Archivist of the United States, the office with statutory responsibility to address unlawful destruction of federal records. *See, e.g.*, 44 U.S.C. §§ 3106, 2912.

16. Defendant National Archives and Records Administration is the federal agency of the United States to which other agencies must report unlawful destruction of federal records. *See, e.g.*, 36 C.F.R. § 1230.14.

### LEGAL FRAMEWORK

17. The Federal Records Act “governs the creation, management and disposal of federal records.” *Armstrong v. Bush*, 924 F.2d 282, 284 (D.C. Cir. 1991). Under the Act, the Archivist determines whether recorded information—“in physical, digital, or electronic form”—is a “record.” 44 U.S.C. § 3301(b). “Due to the importance of maintaining federal records (which are generally accessible to the public through the Freedom of Information Act), the [A]ct strictly limits the circumstances under which records can be removed from federal custody or destroyed.” *Jud. Watch, Inc. v. Kerry*, 844 F.3d 952, 953 (D.C. Cir. 2016). “[R]ecords of the United States Government

may not be alienated or destroyed except” pursuant to the Act. 44 U.S.C. § 3314. The Archivist promulgates schedules by which records “of a specified form or character” can be disposed after “specified periods of time.” *Id.* § 3303a(d). If records are improperly disposed, “valuable federal records could be lost forever.” *Pub. Citizen v. Carlin*, 184 F.3d 900, 902 (D.C. Cir. 1999).

18. The Act requires that the “head of each Federal agency shall make and preserve records containing adequate and proper documentation” of the agency’s functions and decisions “to protect the legal and financial rights of the Government and of persons directly affected by the agency’s activities.” 44 U.S.C. § 3101. Agency heads must also “establish safeguards against the removal or loss of records” that the agency head “determines to be necessary and required by regulations of the Archivist.” *Id.* § 3105.

19. Section 3106 governs the unlawful removal and destruction of records. Section 3106(a) imposes on HHS’s Secretary a notification duty and an enforcement duty:

The head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records the head of the Federal agency knows or has reason to believe have been unlawfully removed from that agency, or from another Federal agency whose records have been transferred to the legal custody of that Federal agency.

20. Section 3106(b) imposes a separate referral duty on the Archivist when the HHS Secretary fails to initiate an enforcement action:

In any case in which the head of a Federal agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action described in subsection (a), or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

21. A plaintiff may “seek to compel the agency head or the Archivist to initiate an enforcement action under the Administrative Procedure Act, 5 U.S.C. § 706(1).” *Am. C.L. Union Found. of Fla. v. U.S. Immigrs. & Customs Enf’t*, No. 1:22-CV-01129 (CJN), 2023 WL 6461053, at \*2 (D.D.C. Aug. 31, 2023) (citing *Kerry*, 844 F.3d at 954).

#### NARA’S CDC INVESTIGATION

22. On February 24, 2020, the National Archives and Records Administration advised the agency records officer for the Department of Health and Human Services Agency for Healthcare Research and Quality of an allegation regarding the unauthorized disposition of records.

23. Specifically, the allegation was that this Agency was improperly deleting the emails of non-Capstone officials sixty days after their employment had ended. *See* Letter from Laurence Brewer, Chief Recs. Officer for U.S. Gov’t, NARA, to Patricia Bosco, Agency Recs. Officer, Agency for Healthcare Rsch. & Quality (Feb. 20, 2020) (available at <https://bit.ly/3Zqi482>).

24. An investigation ensued, and on May 5, 2020, the National Archives wrote a closing letter reciting that the Agency’s mailboxes were managed by the Department’s Office of the Chief Information Officer and that the emails in question had

been removed by the Office of Technology Infrastructure and Operations embedded therein. The National Archives noted that as an interim measure, the Office of Technology Infrastructure and Operations provided the Agency with .pst files for all separated employees and that this process would continue “until a permanent and more comprehensive Departmental solution is put into place.” The National Archives concluded that it would “investigate this matter further” with the Department. *See* Letter from Laurence Brewer, Chief Recs. Officer for U.S. Gov’t, NARA, to Patricia Bosco, Agency Recs. Officer, Agency for Healthcare Rsch. & Quality (May 5, 2020) (available at <https://bit.ly/3Zqi482>).

25. On March 13, 2023, AFL filed a FOIA request for certain CDC documents—as it does routinely. Specifically, AFL requested all records or communications between the CDC and certain interest groups relating to a CDC publication that encouraged teachers to adopt and promote mindsets such as “I cannot assume a student’s gender, gender identity, or sexual orientation,” and encouraged school nurses to “describe anatomy and physiology separate from gender” when “deliver[ing] sexual health information and services,” CDC, LGBTQ INCLUSIVITY AND SCHOOLS: A SELF-ASSESSMENT TOOL (2022) (available at <https://tinyurl.com/3ktepyzb>).

26. In that FOIA process, AFL conferred with CDC personnel to narrow the search to a limited set of custodians. The CDC Freedom of Information Act analyst communicated that only one of the three individuals who worked on the publication



in the CDC Division of Adolescent and School Health (DASH) remained, so any potentially responsive emails from the other two individuals would have been destroyed or removed. Exhibit A at 4.

27. In particular, in responding to AFL's request for confirmation that the CDC had removed or destroyed employee emails, the CDC Freedom of Information Act analyst stated:

That is correct. Unless they were a capstone director/manager etc., it is my understanding all other employees' emails are deleted 30 days after they leave the agency. Thanks.

*Id.*

28. Because this evidence, taken with the National Archives' 2020 investigation and findings, suggested that the Biden Administration and HHS were willfully disregarding their Federal Records Act duties and obligations, AFL sent a complaint letter on March 29, 2023, to HHS's Office of Inspector General outlining this evidence and HHS's legal failures. Exhibit A.

29. AFL emailed a courtesy copy to the NARA Records Management Oversight and Reporting Program. *See* Exhibit A at 3.

30. On May 18, 2023, NARA's Oversight and Reporting Team confirmed to AFL that it opened an unauthorized disposition case (UD-2023-0043) requesting, pursuant to 36 C.F.R. § 1230.16, that the CDC investigate allegations concerning the premature deletion of emails of separated employees. Exhibit B at 2.

31. On the same day, NARA confirmed that it would contact Mark Harper, CDC FOIA Analyst, and review the case. Exhibit B at 1.

32. On April 7, 2023, NARA sent a letter to HHS and CDC stating that “[t]he Department of Human Health Services (HHS) adopted the Capstone approach in 2016 to manage agency emails/email accounts, and all HHS components must follow the recordkeeping requirements in General Records Schedule (GRS) 6.1, Email Managed Under A Capstone Approach.” This statement means that before deleting any former employee’s email account, the CDC did not submit an alternative records schedule to NARA to permit an approach different from what is provided in the GRS. Exhibit C.

33. Thus, NARA requested that the CDC “investigate” the apparent unlawful removal of emails of former employees within 30 days “to determine whether email records of separated employees have been prematurely deleted, and are not being preserved and managed in accordance with GRS 6.1.” The letter asked for “a comprehensive report within 30 days.” *Id.*

34. On February 23, 2024, NARA sent a follow-up letter to HHS and CDC stating that it had reviewed the CDC’s reports in response to AFL’s complaint. According to this letter:

The CDC does not require the preservation of all emails but rather preserves all records from email accounts. CDC’s records management policy instructs all agency personnel to maintain records outside of email accounts in a proper record-keeping system, shared drive, personal drive, or physical format. The CDC instructs individual email account holders to apply retention based on the email’s content value and its applicability to a NARA-approved records schedule.

NARA thus considered the matter “closed.” Exhibit D.

THE GENERAL RECORDS SCHEDULE

35. “Agencies using [GRS 6.1] must apply it to email records.” Exhibit E at 1. That schedule “applies to all email, regardless of how the email messages are managed or what email technology is used,” and “also includes any associated attachments.” *Id.*

36. GRS 6.1 distinguishes between Capstone and non-Capstone officials. “Capstone Officials are senior officials designated by account or position level.” *Id.* at 3. For Capstone officials, GRS 6.1 provides a disposition instruction for emails of “permanent” retention. *Id.* For all “[e]mail[s] and/or other types of electronic messages of all other officials, staff, and contractors,” GRS 6.1 sets a minimum retention period of 3 years for support and/or administrative positions and seven years for all other non-Capstone officials. *Id.* at 5. The seven-year term “applies to the majority of email and other messaging accounts/users within an agency.” *Id.*

37. HHS published an “HHS Policy for Records Management,” which confirms that “HHS has adopted the Capstone approach (GRS 6.1).” § 6.2 (Feb. 2024) (available at <https://perma.cc/D3KF-NU28>). Though HHS’s policy has headings for “Email and Other Electronic Messages of Capstone Officials” and “Email Records of Non-Capstone Officials,” each followed by a hyphen, the policy text is missing:

6.2.3. Email and Other Electronic Messages Managed under the Capstone Approach

HHS has adopted the Capstone approach (GRS 6.1). Under the Capstone approach, HHS manages the disposition of email records and attachments, calendar appointments, tasks, instant messages, text messages, and chat messages that serve a similar purpose as email to facilitate communication and information sharing based on the role of the account user rather than the content of each record. (NOTE: Records under a preservation obligation, such as a litigation hold, must be managed based on record content, so are precluded from being managed under the Capstone approach.)

- a. Email and Other Electronic Messages of Capstone Officials –
- b. Email Records of Non-Capstone Officials –

38. Another HHS component, the National Institutes of Health, explains its adoption of GRS 6.1 for non-Capstone officials as follows: “All work-related email messages sent or received by Non-Capstone Officials, that meet the definition of a Federal record, are eligible for destruction after being maintained for a minimum of seven years, in accordance with GRS 6.1, Item 011.” NIH goes on to explain: “Email accounts for separated employees designated as Non-Capstone Officials must be maintained until the associated email records have met the disposition requirements identified in GRS 6.1, Item 011.” Finally, “Any email, meeting the definition of a Federal record, that is deleted from the email system before having met the disposition requirements is considered an unauthorized destruction of a Federal record and must be reported to NARA.” NIH, *1743-1—Email Records Management* (Mar. 15, 2019) (available at <https://perma.cc/CQL6-3ZLA>).

39. The CDC’s Records Management Policy states, “CDC shall use the mandatory NARA GRS.” *PMG | Records Management – Description*, CDC (available at <https://perma.cc/KQE5-F6H2>) (last visited April 12, 2024) [attached as Exhibit F].

40. The CDC, according to NARA's February 23, 2024, close-out letter, "does not require the preservation of all emails but rather preserves all records from email accounts." Exhibit D at 1.

41. That is a departure from the GRS, which requires preservation of all emails unless NARA approves an alternative. It would appear, then, that NARA approved such a policy after the CDC destroyed their former employees' email accounts (emails included). To be consistent with the GRS, the CDC needs to determine whether former employees' records are "non-records" or "copies" and whether they are subject to immediate disposal. But that was certainly not the CDC's position as of April 2023 when NARA sent its April 7, 2023, inquiry letter. *See* Exhibit C at 1.

42. The GRS referring to "email systems" is GRS 5.1, which only allows immediate destruction "after copying to a recordkeeping system or otherwise preserving." General Records Schedule 5.1, Transmittal No. 28 (July 2017) (available at <https://bit.ly/444rI4w>).

43. While content may not be king in the Capstone approach, nothing authorizes the destruction of records between thirty days and three years after an employee leaves federal employment. *See* NARA, WHITE PAPER ON THE CAPSTONE APPROACH AND CAPSTONE GRS at 7 (April 2015) (available at <https://bit.ly/3Jm5Nfm>) ("email within accounts designated as temporary are eligible for eventual destruction").

44. Despite these apparent policies, the CDC is destroying or removing emails of non-Capstone former employees within 30 days pursuant to some unknown,

unpublished policy in violation of GRS 6.1. This unstated policy is unlawful, is inadequate to ensure access to federal records, and renders the CDC's actual policy arbitrary, capricious, and not in accord with the law.

45. That removal deprived AFL of access to federal records responsive to its FOIA request.

46. CDC's inadequate policy will continue to deprive AFL of access to responsive federal records to its current and future FOIA requests, given that AFL routinely files FOIA requests against CDC and other HHS components.

#### NARA IS BIASED

47. NARA has flipped its position to accommodate the CDC. On May 5, 2020, NARA found that another Department of Health and Human Services component engaged in "the issue of premature deletion of emails of departing employees." See Letter from Laurence Brewer, Chief Recs. Officer for U.S. Gov't, NARA, to Patricia Bosco, Agency Recs. Officer, Agency for Healthcare Rsch. & Quality (May 5, 2020) (available at <https://bit.ly/3Zqi482>).

48. In that unauthorized disposition case, NARA concluded it would "investigate this matter further" with the Department. *Id.*

49. NARA documents evidence of the destruction of federal records by virtually every executive branch department annually. See NARA, *Federal Records Management, Unauthorized Disposition of Federal Records*, <https://bit.ly/3xANvUZ>.

50. In one case involving the FBI, former FBI agent Scott Payne intentionally removed official records from the FBI's custody. According to press reports cited

by NARA, “Sitting in the crates [Mr. Payne] brought home when he retired are the field notes and transcripts of every case he’s worked.” Letter from Lawrence Brewer, Chief Recs. Officer for U.S. Gov’t, NARA, to Teresa Fitzgerald, FBI (Feb. 10, 2022) at 1 (available at <https://bit.ly/3UhoBme>).

51. NARA did not refer Mr. Payne to the Department of Justice for investigation. Instead, it permitted the FBI to “retriev[e] 99 discs from the former employee’s residence, documented that the former employee affirmed that he does not possess any hard copy documents and that the discs are the ‘totality of government records and information in his possession.’” Letter from Lawrence Brewer, Chief Recs. Officer for U.S. Gov’t, NARA, to Teresa Fitzgerald, FBI (March 30, 2022) at 3 (available at <https://bit.ly/3UhoBme>).

52. A former FBI agent who intentionally removed sensitive law enforcement records from a federal agency and held those records for several years is not referred for investigation nor prosecuted.

53. Yet when it comes to a President who transferred records he believed to be personal records or non-records to his home and held those records for a matter of months, NARA decided, without authority, to refer the former President to the Department of Justice for investigation. The Department of Justice then decided to prosecute the former President. *See* Brief of Amicus Curiae America First Legal Foundation in Support of President Trump’s Motion To Dismiss the Indictment Based on The Presidential Records Act, *United States Of America, v. Donald J. Trump, Waltine*

*Nauta, and Carlos De Oliveria* (Case No. 23-80101, S.D. FL) at 1–5, (available at <https://bit.ly/3UiWKSX>) [hereinafter “America First Legal Amicus”].

54. Unlike the cases of unauthorized disposition, where former employees took records and personally retained them after their employment terminated, President Trump transported records from the White House to his personal residence before the end of his term. *Id.* at 6.

55. The Federal Records Act, by its text, expressly authorizes “the Attorney General to institute an action for the recovery of missing records.” *Judicial Watch, Inc. v. NARA*, 845 F. Supp. 2d 288, 302 (D.D.C. 2012).

56. The Archivist is specifically required by statute to request the Attorney General to recover records removed in an unauthorized manner. 44 U.S.C. § 3106(b).

57. The Attorney General did not conduct enforcement actions to recover agency records intentionally removed by Scott Payne or numerous others despite his explicit statutory requirement to do so. *See, e.g.*, Letter from Lawrence Brewer, Chief Recs. Officer for U.S. Gov’t, NARA, to Teresa Fitzgerald, FBI (Aug. 4, 2021) at 2, (available at <https://bit.ly/3UhoK9g>) (“a former FBI analyst ‘removed and retained’ records including materials related to al-Qaeda and Osama bin Laden, and kept them in her home over the course of more than a decade”).

58. The Presidential Records Act contains none of the requirements present in the Federal Records Act concerning NARA’s authority to request action by the Attorney General. *See America First Legal Amicus* at 4–5; *see also Judicial Watch v.*



*NARA*, 845 F. Supp. 2d at 298 (“If [judicial review] is available, why is the PRA entirely silent on the subject? What standard of review would apply? Would there not be a high level of deference ... How could a challenge to a President’s classification decision be litigated without the decision-maker participating as a party to the lawsuit ... what is the statute of limitation that applies?”).

59. The substantial evidence is that Joe Biden, individually, and the Biden Administration, more generally, have repeatedly violated federal records laws. *See, e.g., Press Release, America First Legal Demands the National Archives Make Public Biden’s Vice Presidential Records, Found at His Various Homes and Affiliated Locations* (Mar. 21, 2023), <http://bit.ly/3FW44fl>; Steve Nelson, ‘Boxes of Documents in Boston’ Latest Reveal in Biden Classified Saga, *N.Y. POST* (Feb. 10, 2023), <http://bit.ly/3TQ3vtr>; Victor Nava, *FBI Searched University of Delaware for Classified Biden Documents: Report*, *N.Y. POST* (Feb. 15, 2023), <http://bit.ly/3ZpuLQA>.

60. The Biden Administration has routinely and improperly disposed of federal records throughout the bureaucracy. For instance, the Biden Administration IRS improperly destroyed 64,000 IRS Forms 941—where employers report quarterly withholding for corporate income tax, Social Security, and Medicare. Letter from Lawrence Brewer, Chief Recs. Officer for U.S. Gov’t, NARA, to Tracee Taylor, Agency Records Officer, IRS (June 30, 2021), (available at <https://bit.ly/3JRgXst>).

61. In another HHS component, Congress uncovered alarming evidence that Dr. David Morens—a top advisor to Dr. Anthony Fauci—intentionally subverted

FOIA to shield discussions related to the origins of COVID-19. *Press Release, Wenstrup Reveals Emails from Whistleblower Alleging Additional Attempts by Fauci Advisor to Subvert Transparency About COVID-19 Origins* (Apr. 11, 2024), <https://bit.ly/4cZg7ri>.

#### UNLAWFUL RECORDS REMOVAL OR DESTRUCTION

62. The CDC's removal or deletion of employee emails is the unlawful removal or destruction of federal records. 44 U.S.C. § 3106; 36 C.F.R. § 1230 *et seq.*

63. Defendant Becerra has not initiated action through the Attorney General for the recovery of the missing emails.

64. Defendant Shogan has not requested the Attorney General to initiate an action for recovery or other redress nor notified Congress of such a request.

65. The Defendants' initiation of an enforcement action and enlistment of "the significant law enforcement authority of the Attorney General," *Cause of Action Inst. v. Tillerson*, 285 F. Supp. 3d 201, 205–09 (D.D.C. 2018), is substantially likely to redress AFL's injuries by leading to the recovery of at least some of the records at issue.

66. The removed or deleted emails are likely to be recoverable from the servers on which they have been stored. For instance, GRS 6.1 notes a distinction between "an email archive vs. the live system." Exhibit E at 2.

67. Congress enacted the Federal Records Act to protect the legal rights of persons directly affected by the agency's activities. *See* 44 U.S.C. § 3101.

CLAIMS FOR RELIEF

COUNT I

Administrative Procedure Act; 5 U.S.C. § 706  
Failure to Refer Matter to Attorney General

68. The Plaintiff incorporates the allegations above by reference as if fully set forth herein.

69. When the head of a federal agency “knows or has reason to believe” that federal records “have been unlawfully removed” from agency custody, he has a duty to “initiate action through the Attorney General for the recovery of [the] records.” 44 U.S.C. § 3106(a). If the agency head fails to do so “within a reasonable period of time,” the Archivist must do the same. *Id.* § 3106(b); *see id.* § 2905(a).

70. “If the agency head and the Archivist ignore the statute, private litigants may sue under the Administrative Procedure Act to enforce it.” *Cause of Action Inst. v. Pompeo*, 319 F. Supp. 3d 230, 232–33 (D.D.C. 2018) (citing *Armstrong*, 924 F.2d at 295–96).

71. Defendant Becerra knows or has reason to believe that HHS records have been unlawfully removed, yet he had not initiated any action through the Attorney General for the recovery of those records.

72. A reasonable time has elapsed since Defendant Becerra failed to refer the matter to the Attorney General, and Defendant Shogan also knows or has reason to believe that HHS records have been unlawfully removed. Yet Defendant Shogan also has not initiated any action through the Attorney General for the recovery of those records or notified Congress of such action.

73. By violating 44 U.S.C. § 3106, the Defendants are (a) acting without observance of procedure required by law; and (b) acting in a manner that is arbitrary, capricious, and contrary to law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A), (B) and (D).

74. The Defendants' violations have injured AFL by depriving AFL of access to federal records responsive to its FOIA requests and increasing the likelihood that AFL will be unable to obtain responsive federal records.

75. These injuries to AFL are likely to continue as long as the Defendants fail to adhere to § 3106.

76. Each of these failures to comply with the FRA's requirements constitutes final agency action under the APA. 5 U.S.C. § 706.

COUNT II  
Administrative Procedure Act; 5 U.S.C. § 706  
Adequacy of HHS's Recordkeeping System

77. The Plaintiff incorporates the allegations above by reference as if fully set forth herein.

78. Despite purportedly following GRS 6.1, the CDC, an HHS component, has been removing records in former employees' email accounts within three years and in as little as thirty days.

79. Defendant Becerra, HHS, and CDC have failed to maintain a record-keeping program that provides consistent, effective controls over the maintenance of electronic message records.

80. HHS's and CDC's recordkeeping policies for electronic records in the form of former employees' emails are inadequate, arbitrary, capricious, and otherwise not in accordance with the Federal Records Act.

81. The Defendants' violations have injured AFL by depriving AFL of access to federal records responsive to its FOIA requests and increasing the likelihood that AFL will be unable to obtain responsive federal records.

82. These injuries to AFL are likely to continue as long as Defendant Becerra and HHS continue to use an inadequate recordkeeping program for CDC emails.

83. HHS's failure to comply with the Federal Records Act via its implementation of an inadequate recordkeeping policy constitutes final agency action under the APA. 5 U.S.C. § 706.

#### DEMAND FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that this Court enter judgment in their favor and against the Defendants, and:

- a. Declare the Defendants in violation of the APA and the Federal Records Act;
- b. Declare the Defendants in violation of their nondiscretionary duties under the Federal Records Act to initiate an enforcement action through the Attorney General;
- c. Declare that Defendants Becerra and HHS have maintained an inadequate recordkeeping system under the Federal Records Act;

- d. Issue a preliminary and permanent injunction requiring Defendants to immediately initiate an enforcement action through the Attorney General to recover, retrieve, restore, salvage, or reconstruct federal records unlawfully removed or deleted and to seek any other redress authorized by law;
- e. Issue a preliminary and permanent injunction requiring Defendants Becerra and HHS to maintain an adequate recordkeeping system under the Federal Records Act;
- f. Award AFL costs and reasonable attorneys' fees in this action; and
- g. Grant such other and further relief the Court deems just, proper, or equitable.

Dated: April 17, 2024

Respectfully submitted,

/s/ Michael Ding

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*Counsel for the Plaintiff  
America First Legal Foundation*



March 29, 2023

**Via Electronic Mail**

The Hon. Christi A. Grimm, Inspector General  
Office of Inspector General  
U.S. Department of Health and Human Services  
P.O. Box 23489  
Washington, DC 20026  
Christi.Grimm@oig.hhs.gov

**Request for Investigation: The Centers for Disease Control Unlawfully Destroys Federal Records**

Dear Inspector General Grimm:

America First Legal Foundation 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.

As you may be aware, under the National Archives and Record Administration's General Records Schedule, the emails of non-Capstone officials generally must be preserved for at least seven years, and in no case may agency emails be deleted in fewer than three years.<sup>1</sup> However, it appears that the Centers for Disease Control (CDC) specifically, and the Department of Health and Human Services more generally, have a pattern and practice of unlawfully deleting the emails of employees who separate from employment within as little as thirty days from the date of separation. Accordingly, we request that the Office of Inspector General open an investigation to determine whether the CDC and the Department are unlawfully destroying federal records in violation of Title 44, Chapter 31 of the U.S. Code.

By way of background, on February 24, 2020, the National Archives and Records Administration advised the agency records officer for the Department of Health and Human Services Agency for Healthcare Research and Quality of an allegation regarding the unauthorized disposition of records. Specifically, the allegation was

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<sup>1</sup> National Archives and Records Administration, *General Records Schedule 6.1* (Jan. 2023), <https://bit.ly/3FZHGvz>.

that this Agency was improperly deleting the emails of non-Capstone officials sixty days after their employment had ended.<sup>2</sup> An investigation ensued, and on May 5, 2020, the National Archives wrote a closing letter reciting that the Agency's mailboxes were managed by the Department's Office of the Chief Information Officer and that the emails in question had been deleted by the Office of Technology Infrastructure and Operations embedded therein. The National Archives noted that as an interim measure, the Office of Technology Infrastructure and Operations provided the Agency with .pst files for all separated employees and that this process would continue "until a permanent and more comprehensive Departmental solution is put into place." The National Archives concluded that it would "investigate this matter further" with the Department.<sup>3</sup>

Recently, America First Legal obtained evidence that the CDC deletes the e-mails of non-Capstone officials within *thirty days* after they leave the agency. Responding to our request for confirmation that the CDC had deleted employee emails, a CDC Freedom of Information Act analyst stated:

That is correct. Unless they were a capstone director/manager etc., it is my understanding all other employees' emails are deleted 30 days after they leave the agency. Thanks.<sup>4</sup>

The CDC's destruction of employee e-mails is the unlawful destruction of federal records.<sup>5</sup> By law, the Department's Secretary, Xavier Becerra, is obligated to make and preserve records containing "adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions" of the agency and its components to furnish the information necessary to protect the legal and financial rights of persons directly affected by the agency's activities.<sup>6</sup> Despite notice and an opportunity to cure, he has failed to do so.

Considering the National Archives' 2020 investigation and findings, the evidence suggests, at best, that the Biden Administration willfully disregards its Federal Records Act duties and obligations.<sup>7</sup> Accordingly, an investigation of the CDC, the

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<sup>2</sup> See Letter from NARA Chief Records Officer Laurence Brewer to Patricia Bosco, Agency Records Officer, Agency for Healthcare Research and Quality (Feb. 24, 2020), <https://bit.ly/3Zqi482>.

<sup>3</sup> See Letter from NARA Chief Records Officer Laurence Brewer to Patricia Bosco, Agency Records Officer, Agency for Healthcare Research and Quality (May 5, 2020), <https://bit.ly/3Zqi482>.

<sup>4</sup> E-mail from CDC to AFL (Mar. 20, 2023 at 13:29 EST) Re: Your CDC FOIA Request #23-00880-FOIA. See [Exhibit 1](#).

<sup>5</sup> 44 U.S.C. § 3106; 36 C.F.R. § 1230 *et seq.*

<sup>6</sup> 44 U.S.C. § 3101.

<sup>7</sup> The substantial evidence is that Joe Biden, individually, and the Biden Administration, more generally, have repeatedly violated the Federal Records Act. See, e.g., America First Legal, Press Release, *America First Legal Demands the National Archives Make Public Biden's Vice Presidential Records, Found at His Various Homes and Affiliated Locations* (Mar. 21, 2023), <http://bit.ly/3FW44fl>; Steve Nelson, 'Boxes of documents in Boston' latest reveal in Biden classified saga, N.Y. Post (Feb. 10,



Office of the Chief Information Officer, the Office of Technology Infrastructure and Operations, and the Office of the Secretary is warranted.

Thank you in advance for your attention to this matter.

Sincerely,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation

cc: National Archives and Records Administration, Records Management Oversight and Reporting Program ([UnauthorizedDisposition@nara.gov](mailto:UnauthorizedDisposition@nara.gov))  
Hon. Cathy McMorris-Rogers, Chair, House Committee on Energy and Commerce  
Hon. Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce  
Hon. James Comer, Chairman, House Committee on Oversight and Accountability  
Hon. Jamie Raskin, Ranking Member, House Committee on Oversight and Accountability  
Hon. Robert Aderholt, Chairman, Subcommittee on Labor, Health and Human Services, Education, House Committee on Appropriations  
Hon. Rosa DeLauro, Ranking Member, Subcommittee on Labor, Health and Human Services, Education, House Committee on Appropriations

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2023), <http://bit.ly/3TQ3vtr>; Victor Nava, *FBI searched University of Delaware for classified Biden documents: report*, N.Y. Post (Feb. 15, 2023), <http://bit.ly/3ZpuLQA>; Letter from NARA Chief Records Officer Laurence Brewer to Tracee Taylor, Agency Records Officer (IRS) (June 30, 2021), <https://bit.ly/3JRgXst> (Biden Administration Internal Revenue Service improperly destroyed 64,000 IRS Form 941 employer quarterly withholding reports for corporate income tax, Social Security, and Medicare).



AFL FOIA <foia@aflegal.org>

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## Fwd: Your CDC FOIA Request #23-00880-FOIA

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**Harper, Mark Neville (CDC/OCOO/OD)** <wzj6@cdc.gov>  
To: AFL FOIA <foia@aflegal.org>

Mon, Mar 20, 2023 at 1:29 PM

That is correct. Unless they were a capstone director/manager etc., it is my understanding all other employees' emails are deleted 30 days after they leave the agency. Thanks.

Mark Harper

CDC FOIA Analyst

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**From:** AFL FOIA <foia@aflegal.org>  
**Sent:** Monday, March 20, 2023 1:27 PM  
**To:** Harper, Mark Neville (CDC/OCOO/OD) <wzj6@cdc.gov>  
**Subject:** Re: Your CDC FOIA Request #23-00880-FOIA

Hi Mr. Harper,

Would you please confirm that CDC has since deleted the emails of the other two SMEs in DASH who had worked on the report?

Thanks,

Michael

On Mon, Mar 20, 2023 at 11:51 AM Harper, Mark Neville (CDC/OCOO/OD) <wzj6@cdc.gov> wrote:

Hi Mr. Ding,

Thanks for discussing. As discussed, DASH reports that 3 SMEs worked on the specified report and only one remains at CDC. We discussed AFL narrowing to that one employee. You indicated you wanted to discuss with your leadership. Let me know. Thanks.

Mark Harper

CDC FOIA Analyst

770-488-8154

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**From:** AFL FOIA <foia@aflegal.org>  
**Sent:** Monday, March 20, 2023 10:01 AM  
**To:** Harper, Mark Neville (CDC/OCOO/OD) <wzj6@cdc.gov>  
**Subject:** Re: Your CDC FOIA Request #23-00880-FOIA

Great, talk to you then.

On Mon, Mar 20, 2023 at 9:56 AM Harper, Mark Neville (CDC/OCOO/OD) <wzj6@cdc.gov> wrote:

Yes, I'll be here. Thanks.

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**From:** AFL FOIA <foia@aflegal.org>  
**Sent:** Monday, March 20, 2023 9:44 AM  
**To:** Harper, Mark Neville (CDC/OCOO/OD) <wzj6@cdc.gov>  
**Subject:** Re: Your CDC FOIA Request #23-00880-FOIA

Hi Mark,

I have a meeting this morning at 10 am. Would you be free to talk at 11am instead?

On Mon, Mar 20, 2023 at 6:58 AM Harper, Mark Neville (CDC/OCOO/OD) <wzj6@cdc.gov> wrote:

Good morning. Sorry I missed your call. I was out for a large portion of Friday. Happy to discuss. Can you discuss at 10 am today? What is your phone number? Let me know. Thanks.

Mark harper

CDC FOIA Analyst

770-488-8154

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**From:** AFL FOIA <foia@aflegal.org>  
**Sent:** Friday, March 17, 2023 2:04 PM  
**To:** Harper, Mark Neville (CDC/OCOO/OD) <wzj6@cdc.gov>  
**Cc:** Harper, Mark Neville (CDC/OCOO/OD) <wzj6@cdc.gov>  
**Subject:** Fwd: Your CDC FOIA Request #23-00880-FOIA

Dear Mr. Harper,

We received your response (attached) to the FOIA request we submitted on March 13, 2023. I just tried calling you at 770-488-8154 but could not reach you. Would you please provide me with some times when you will be available to connect next week?

Thank you,

Michael Ding

America First Legal Foundation

----- Forwarded message -----

From: **AFL Info** <info@aflegal.org>  
Date: Fri, Mar 17, 2023 at 1:56 PM  
Subject: Fwd: Your CDC FOIA Request #23-00880-FOIA  
To: AFL FOIA <foia@aflegal.org>

----- Forwarded message -----

From: <MNHarper@cdc.gov>  
Date: Fri, Mar 17, 2023 at 8:38 AM  
Subject: Your CDC FOIA Request #23-00880-FOIA  
To: <info@aflegal.org>

March 17, 2023

Request Number: 23-00880-FOIA

Dear Gene Hamilton:

This is regarding your Freedom of Information Act (FOIA) request of March 13, 2023, for Communications Relating to CDC "LGBTQ Inclusivity in Schools: A Self-Assessment Tool" with Other Organizations.

Please see the attached letter.

Sincerely,  
CDC/ATSDR FOIA Office  
770-488-6399

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**From:** DO NOT REPLY <[unauthorizeddisposition@nara.gov](mailto:unauthorizeddisposition@nara.gov)>  
**Sent:** Thursday, May 18, 2023 1:47 PM  
**To:** Michael Ding  
**Cc:** AFL Info  
**Subject:** Re: CDC's destruction of federal records

Thank you.

Respectfully,

NARA's Oversight and Reporting Team

On Thu, May 18, 2023 at 1:10 PM Michael Ding <[michael.ding@aflegal.org](mailto:michael.ding@aflegal.org)> wrote:

I attached the original FOIA request and CDC's various responses. The communications with Mr. Harper were conducted via email and telephone. Please let me know if you need any additional information. Thank you.

On Thu, May 18, 2023 at 12:23 PM DO NOT REPLY <[unauthorizeddisposition@nara.gov](mailto:unauthorizeddisposition@nara.gov)> wrote:

Good afternoon,

Thank you for your response. We will contact Mark Harper. Can you send us the FOIA request documentation? The initial request and CDC's response to the request.

Respectfully,

NARA's Oversight and Reporting Team

On Thu, May 18, 2023 at 12:16 PM AFL Info <[info@aflegal.org](mailto:info@aflegal.org)> wrote:

Good afternoon,

Thank you for your message. The CDC FOIA Analyst who communicated to me that there were specific "SMEs in DASH who had worked on the report" was Mark Harper. I believe he would be in a better position to identify the names of those specific individuals. His contact information is as follows:

Mark Harper  
CDC FOIA Analyst  
[wzj6@cdc.gov](mailto:wzj6@cdc.gov)  
770-488-8154

Respectfully,

Michael Ding  
America First Legal Foundation

On Thu, May 18, 2023 at 11:29 AM DO NOT REPLY <[unauthorizeddisposition@nara.gov](mailto:unauthorizeddisposition@nara.gov)> wrote:  
Good morning,

On March 29, 2023, NARA received your complaint concerning the alleged unauthorized disposition of CDC records, specifically the premature deletion of emails of separated employees. On April 7, 2023, NARA opened an unauthorized disposition case UD-2023-0043 requesting that CDC investigate this matter in accordance with 36 CFR 1230.16.

To proceed with this case, we request more detailed information regarding America First Legal's FOIA request number 23-00880. Can you provide the names of "the other two SMEs in DASH who had worked on the report"?

Respectfully,

NARA's Oversight and Reporting Team



Office of the Chief  
Records Officer for the  
U.S. Government

***Sent Via Email. No Hard Copy to Follow.***

April 7, 2023

Mary Wilson  
Department of Health and Human Services  
Centers for Disease Control and Prevention  
1600 Clifton Road  
Atlanta GA, 30329

Dear Mary Wilson,

The National Archives and Records Administration (NARA) received an allegation of unauthorized disposition of Centers for Disease Control (CDC) records. On March 29, 2023, NARA received a complaint from the America First Legal Foundation (AFLF) alleging that the CDC has had a pattern and practice of unlawfully deleting the emails of employees who separate from employment within as little as thirty days from the date of separation.

The Department of Human Health Services (HHS) adopted the Capstone approach in 2016 to manage agency emails/email accounts, and all HHS components must follow the recordkeeping requirements in General Records Schedule (GRS) 6.1, Email Managed Under A Capstone Approach. NARA requests that the CDC investigate this allegation to determine whether email records of separated employees have been prematurely deleted, and are not being preserved and managed in accordance with GRS 6.1.

Please provide a comprehensive report within 30 days of this letter in accordance with 36 CFR 1230.16. Your report should include a complete description of the records mentioned in the allegation, including volume and dates of the records, applicable record schedule/disposition authority number, and specific details describing the unauthorized disposition incident. Additionally, please include in your report any salvage, recovery, or restoration efforts, and safeguards that will be implemented to prevent the future unauthorized disposition of such records.

Thank you for your attention to this matter. If you wish to discuss further, please do not hesitate to contact me at [Laurence.Brewer@nara.gov](mailto:Laurence.Brewer@nara.gov).

Sincerely,

A handwritten signature in blue ink that reads "Laurence R. Brewer". The signature is written in a cursive, flowing style.

LAURENCE BREWER  
Chief Records Officer  
for the U.S. Government

Enclosure

cc: Jacquelyn Smith-Simpson, Acting Department Records Officer





Office of the Chief  
Records Officer for the  
U.S. Government

***Sent Via Email. No Hard Copy to Follow.***

February 23, 2024

Mary Wilson  
Department of Health and Human Services  
Centers for Disease Control and Prevention  
1600 Clifton Road  
Atlanta GA, 30329

Dear Mary Wilson,

The National Archives and Records Administration (NARA) received the Centers for Disease Control (CDC) reports in response to the complaint made by the America First Legal Foundation (AFLF), who alleged that the CDC has had a pattern and practice of unlawfully deleting the emails of employees who separate from employment within as little as thirty days from the date of separation.

Your reports indicate that “a review of April 2023 data identified 326 email accounts that met the CDC’s eligibility criteria for disposal. All were found to be compliant with approved guidance (delineated below). Therefore, disposal of email accounts in less than 30 days is not occurring.”

NARA acknowledges that the CDC’s policies and procedures prohibit disposing of separated employees’ email accounts without authorization, and specific criteria must be met before the email accounts of separated employees’ are deleted.

The CDC does not require the preservation of all emails but rather preserves all records from email accounts. CDC’s records management policy instructs all agency personnel to maintain records outside of email accounts in a proper record-keeping system, shared drive, personal drive, or physical format. The CDC instructs individual email account holders to apply retention based on the email’s content value and its applicability to a NARA-approved records schedule.

Based on the information provided, the reporting requirements of 36 CFR 1230.14(a) have been met, and NARA considers this matter closed. I appreciate your attention to this critical matter.

If you have any questions or wish to discuss further, please contact me at  
laurence.brewer@nara.gov.

Sincerely,

A handwritten signature in blue ink that reads "Laurence M. Brewer". The signature is written in a cursive style with a large initial 'L'.

LAURENCE BREWER  
Chief Records Officer  
for the U.S. Government

Cc: Susan Little, Department Records Officer

## **GENERAL RECORDS SCHEDULE 6.1: Email and Other Electronic Messages Managed under a Capstone Approach**

This schedule applies *only* to federal agencies that implement a Capstone approach as described in this GRS. When implementing this GRS, agencies should consult the FAQs about GRS 6.1, Email and Other Electronic Messages Managed under a Capstone Approach. Agencies are reminded that this GRS should not be implemented in isolation and should be supplemented with agency-wide policies and training. Agencies must also incorporate this GRS into agency records management implementation tools, such as manuals and file plans. Agencies adopting a Capstone approach should consult other resources related to email and electronic message management, specifically the Capstone approach available on NARA's [email management page](#).

Agencies must not implement this GRS until obtaining approval of [NARA form 1005 \(NA-1005\), Verification for Implementing GRS 6.1](#). Agencies are required to obtain approval of a resubmitted NA-1005 at least every four years. Additional information, including a link to the form, may be found in the FAQs and in the instructions accompanying the form.

### **GRS Scope**

This GRS provides disposition authority for email records and certain types of electronic messages. Agencies using this GRS must apply it to email records, but may choose to also apply it to the other allowable types of electronic messages outlined below; this must be documented on the NA-1005. Agencies wishing to schedule electronic messages outside the scope of this GRS may submit an agency-specific schedule proposing a different scope.

### **Email**

This GRS applies to all email, regardless of how the email messages are managed or what email technology is used. Email, in the context of this GRS, also includes any associated attachments. This GRS may apply to records affiliated with other commonly available functions of email programs such as calendars/appointments and tasks.

### **Other Types of Electronic Messages**

The GRS does not cover all types of electronic messages. Agencies may choose to use this GRS for instant messages, text messages, and chat messages that serve a similar purpose as email to facilitate communication and information sharing. This includes:

- messages affiliated with email system chat or messaging functions, and where the messages are managed independently from the email;
- messages from messaging services provided on mobile devices; and
- messages from messaging services on third-party applications.

Exclusions to all items below:

- messages affiliated with social media accounts/social media direct messaging services;
- messages affiliated with messaging services provided on video conferencing applications and services;
- voice mail (or similarly recorded) messages;
- messages affiliated with collaboration platforms; and
- messages from messaging systems that are ancillary to the purpose of a larger system (for example, a chat function built into a procurement system).

These records still require NARA-approved disposition authority but are not covered under this GRS. See the GRS 6.1 FAQ for specific examples of the inclusions and exclusions.

### **Additional Scope**

Each agency is responsible for determining the scope of implementation when using Capstone, including, 1) whether implementation is to include only email, or to also include other types of electronic messages; 2) The range of implementation in an organization (agency-wide, specific office, etc.); and 3) the range of implementation regarding email and/or other types of electronic messaging technology and system platforms. Brief information on the scope of an agency's Capstone implementation is also required on the NA-1005.

Agencies are also responsible for defining (and documenting through policy) the official recordkeeping version of email and/or other types of electronic messages to be managed under a Capstone approach, especially when records are captured or retained in multiple locations (e.g., an email archive vs. the live system). Agencies will need to determine the appropriate disposition for other versions of email and other types of records, whether disposable under GRS 5.1, item 020, or as non-record.

Agencies are expected to apply documented selection criteria to cull the records of Capstone officials (permanent accounts) to the greatest extent possible before transfer to NARA. Culling refers to the removal – or otherwise excluding from capture – of nonrecord, personal, or transitory messages and attachments. Culling typically includes the removal of spam, message blasts received (such as agency-wide communications), and personal materials (such as emails or messages to family members not related to agency business). Culling may be manual, automated, or a hybrid of both. Agencies may develop their own policies and procedures for the culling of temporary accounts.

### **Applying this GRS**

When applying this GRS in part, agencies must ensure that all other records are covered by another NARA-approved disposition authority. Agencies NOT managing any of their email or other types of electronic messages under the Capstone approach are still responsible for managing these records by applying NARA-approved records schedules.

If an agency is implementing a Capstone disposition approach different from what is provided in this GRS, the agency must submit a records schedule. For

example, an agency may want to narrow the list of required positions in item 010, use shorter retention lengths for temporary records, or extend the time frame for transfer of permanent records. Agencies who wish to use Capstone for a broader range of electronic messages, specifically those excluded from this GRS, may also submit an agency-specific schedule.

Item	Records Description	Disposition Instruction	Disposition Authority
010	<p><b>Email and other electronic messages of Capstone officials.</b></p> <p>Capstone Officials are senior officials designated by account or position level. This may be by email addresses, whether the addresses are based on an individual's name, title, a group, or a specific program function, and/or by phone number or other identifier for other types of electronic messages. Capstone officials include all those listed on an approved NARA form 1005 (NA-1005), <i>Verification for Implementing GRS 6.1</i>, and <i>must</i> include, when applicable:</p> <ol style="list-style-type: none"> <li>1. The head of the agency, such as Secretary, Commissioner, Administrator, Chairman or equivalent;</li> <li>2. Principal assistants to the head of the agency (second tier of management), such as Under Secretaries, Assistant Secretaries, Assistant Commissioners, and/or their equivalents; this includes officers of the Armed Forces serving in comparable position(s);</li> <li>3. Deputies of all positions in categories 1 and 2, and/or their equivalent(s);</li> <li>4. Staff assistants to those in categories 1 and 2, such as special assistants, confidential assistants, military assistants, and/or aides;</li> <li>5. Principal management positions, such as Chief Operating Officer, Chief Information Officer, Chief Knowledge Officer, Chief Technology Officer, and Chief Financial Officer, and/or their equivalent(s);</li> <li>6. Directors of significant program offices, and/or their equivalent(s);</li> <li>7. Principal regional officials, such as Regional Administrators, and/or their equivalent(s);</li> <li>8. Roles or positions that routinely provide advice and oversight to the agency, including those positions in categories 1 through 3 and 5 through 7, including: General Counsels, Chiefs of Staff, Inspectors General, etc.;</li> <li>9. Roles and positions not represented above and filled by Presidential Appointment with Senate Confirmation (PAS positions); and</li> <li>10. Additional roles and positions that predominantly create permanent records related to mission critical functions or policy decisions and/or are of historical significance.</li> </ol> <p>This item covers emails and/or other types of electronic messages of officials captured during their tenure as a</p>	<p><b>Permanent.</b></p> <p>Cutoff and transfer in accordance with the agency's approved NA-1005, <i>Verification for Implementing GRS 6.1</i>. This will be between 15 and 30 years, or after declassification review (when applicable), whichever is later.</p>	<p>DAA-GRS-2022-0006-0001</p>

<p>Capstone official only. Therefore, records created prior to their designation as a Capstone official (e.g., prior to their promotion/rotation into a Capstone position) are excluded and should be disposed of with other NARA-approved disposition authorities, including - but not limited to - items 011 and 012 of this schedule.</p> <p>This also includes those officials in an acting capacity for any of the above positions longer than 60 days. Agencies may also include individual emails and/or other types of electronic messages from otherwise temporary accounts appropriate for permanent disposition in this category.</p> <p>This item <i>must</i> include all existing legacy email and/or other types of electronic messages that correlate to the roles and positions described above.</p> <p>If a Capstone official has more than one agency-administered account, this item applies to all accounts. If a Capstone official has an email account managed by other staff (such as personal assistants, confidential assistants, military assistants, or administrative assistants), this item applies to those accounts. This item applies to all email and/or other types of messages regardless of the address names and/or phone number(s) used by the Capstone official for agency business, such as nicknames or office title names. Email to or from personal or non-official email and/or other messaging accounts in which official agency business is conducted is also included – a complete copy of these records must be copied or forwarded to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.</p> <p>Please consult the NA-1005 for more information on which positions are included within each category.</p> <p>Not media neutral; applies to records managed in an electronic format only.</p> <p><b>Exclusions:</b> see exclusions under the GRS Scope section above.</p> <p><b>Notes:</b></p> <ol style="list-style-type: none"> <li>1. Cabinet level agencies implementing a Capstone approach that includes their components/operatives must apply the above definition to each component individually. In these cases, each component/operative is considered a separate agency in terms of the above definition of Capstone Officials. A component/operative of a cabinet level agency can implement a Capstone approach independent of their department but must also conform to the entirety of this definition.</li> <li>2. Smaller agencies, micro-agencies or Commissions implementing a Capstone approach may find that some of their Capstone positions fall into several of the categories above and/or that they do not have applicable roles or positions for all categories.</li> </ol>		
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011	<p><b>Email and other types of electronic messages of Non-Capstone officials.</b> Email and/or other types of electronic messages of all other officials, staff, and contractors not included in item 010.</p> <p><b>Note:</b> Agencies <i>only</i> using item 011 and/or item 012 of this GRS may not dispose of any records of officials in item 010, Email and other electronic messages of Capstone Officials, of this GRS without authority from NARA in the form of another GRS or agency-specific schedule. Submission and approval of NA-1005 is still required in these instances to document those being exempted from Capstone.</p> <p>Agencies have discretion to designate individual email messages and/or other types of electronic messages, with their attachments as permanent, or as longer-term temporary records that should be cross-filed elsewhere pursuant to agency policies and business needs.</p>	<p><b>All others except those in item 012.</b> Includes positions and records not covered by items 010 or 012 of this schedule.</p> <p>This item applies to the majority of email and other messaging accounts/users within an agency adopting a Capstone approach.</p> <p>Not media neutral; applies to records managed in an electronic format only.</p> <p><b>Exclusions:</b> see exclusions under the GRS Scope section above.</p>	<p><b>Temporary.</b> Delete when 7 years old, but longer retention is authorized if required for business use.</p>	DAA-GRS-2022-0006-0002
012	<p><b>Support and/or administrative positions.</b> Includes non-supervisory positions carrying out routine and/or administrative duties. These duties comprise general office or program support activities and frequently facilitate the work of federal agencies and their programs. This includes, but is not limited to, roles and positions that: process routine transactions; provide customer service; involve mechanical crafts, or unskilled, semi-skilled, or skilled manual labor; respond to general requests for information; involve routine clerical work; and/or primarily receive nonrecord and/or duplicative email.</p> <p>Not media neutral; applies to records managed in an electronic format only.</p> <p><b>Exclusions:</b> see exclusions under the GRS Scope section above.</p>	<p><b>Support and/or administrative positions.</b> Includes non-supervisory positions carrying out routine and/or administrative duties. These duties comprise general office or program support activities and frequently facilitate the work of federal agencies and their programs. This includes, but is not limited to, roles and positions that: process routine transactions; provide customer service; involve mechanical crafts, or unskilled, semi-skilled, or skilled manual labor; respond to general requests for information; involve routine clerical work; and/or primarily receive nonrecord and/or duplicative email.</p> <p>Not media neutral; applies to records managed in an electronic format only.</p> <p><b>Exclusions:</b> see exclusions under the GRS Scope section above.</p>	<p><b>Temporary.</b> Delete when 3 years old, but longer retention is authorized if required for business use.</p>	DAA-GRS-2022-0006-0003

## Records Management

Description



Related Tools



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### Background

All Federal agencies and Departments are required by Federal law to maintain records management systems that comply with statutory, regulatory, and other legal mandates and guidelines as defined by the National Archives and Records Administration (NARA).

### Overview

The Federal records disposition process is an essential part of the CDC records management program. It conveys legal authority upon CDC/ATSDR to dispose of records in accordance with approved records control schedules approved by NARA. The approved schedules also promote the effective and efficient management of CDC records and ensure that those records which protect the legal rights and interests of the CDC, and the public, are preserved accordingly.

Federal agencies are legally required to obtain disposition authority for all programmatic records whose disposition is not covered in the General Records Schedules (GRS). Agency personnel who dispose of records illegally (without disposal authority or earlier than schedules allow) risk fines and/or imprisonment. If records are destroyed too early essential CDC history may be lost, agencies may not be able to properly respond to Privacy Act (PA) or Freedom of Information Act (FOIA) requests. Records without disposition schedules may not be destroyed and must be preserved until a disposition schedule can be applied to them by NARA. However, proper management and disposition of records limits risk and the potential for unauthorized information leaks.

The management of vital records is part of all Federal agencies' emergency preparedness responsibility and should be a consideration during the design and implementation of any new system. Some goals of implementing such a system are to provide the agency with the ability to:

- Identify and protect the most important of records such as emergency-operating records and records needed to protect legal rights and interests of stakeholders
- Conduct business under emergency operating conditions
- Continue to operate essential services using duplicate vital records when access to facilities may be temporarily compromised
- Promote the resumption of normal business as quickly as possible after an emergency event

For more information on the management of vital records visit the NARA Guidance on Vital Records at <http://www.archives.gov/records-mgmt/vital-records/recovery.html> or contact the CDC Records Officer.

The Management Analysis and Services Office (MASO) role is to plan, coordinate, and provide CDC-wide management and information services in the following areas:

- Setting up files, indexes, and classification schemes
- Obtaining approval of new and revised CDC and ATSDR records control schedules with NARA
- Setting up records inventories
- Retiring records to a Federal Records Center
- Correctly disposing of records
- Identifying permanent historic records
- Creating, maintaining, and disposing of electronic records systems
- Properly destroying sensitive documents and ensure that your office or project meets the legal requirements for managing federal records

For additional information about MASO and the information it provides, please refer to the CDC MASO RM Website at <http://intranet.cdc.gov/maso/RM/rmHome.htm>.

At the CDC all federal records must be maintained in accordance with the retention periods and disposition instructions outlined by the Agency for Toxic Substances and Disease Registry (ATSDR) Records Control Schedule (RCS) and the General Records Schedule (GRS). All personnel at the CDC are



required to maintain records in accordance with these schedules. Any request for variance from these schedules should be brought to the attention of the CDC Records Officer, Management Analysis and Policy Branch (MAPB) of MASO. For more information regarding this policy and schedule visit: <http://intranet.cdc.gov/maso/RM/rmSenior.htm>.

An effective records disposition program is the key to successful records management in Federal agencies. It helps ensure that agencies have the recorded information necessary to conduct Government business, avoid waste, and preserve America's documentary heritage. Developing a records schedule includes reviewing agency functions and recordkeeping requirements, inventorying and evaluating records, preparing disposition instructions, organizing and clearing the schedule internally, and obtaining approval from NARA and, if necessary, from the General Accountability Office (GAO).

Proper implementation involves issuing the approved records schedule as an agency directive, training employees to use it, and carefully applying the schedule's provisions to both permanent and temporary records. The schedule's objective is to ensure the authorized, appropriate, and timely disposition of the agency's records. Besides being developed and implemented, the schedule needs to be reviewed at least annually and updated whenever necessary. For more information on managing electronic records please refer to the NARA Tool Kit at: <http://toolkit.archives.gov/pls/htmldb/f?p=102:1:854440830252666842>

### **Is Your System Scheduled?**

All of CDC shall schedule all electronic records for disposition. The Office of Management and Budget (OMB) has required that all electronic records, including systems and databases, be scheduled by September 20, 2009. The CDC Records Officer, MASO, is coordinating a CDC-wide effort to achieve total compliance by this date. (Please contact the CDC Records Officer for further details.)

CDC shall use the mandatory NARA GRS, particularly GRS 20, "Electronic Records," GRS 23, "Records Common to Most Offices Within Agencies", and GRS 24, "Information Technology Operations and Management Records" as applicable to schedule the disposition of their electronic records and related documentation and indexes. The GRS covers only disposable (temporary) records. GRS 23 covers word processing files, certain administrative databases, and electronic spreadsheets. (See <http://www.archives.gov/records-mgmt/ardor/records-schedules.html> for current GRS).

CDC shall also develop proposed records disposition schedules for electronic records created or received which are not covered by the GRS or which have not previously been scheduled for disposition. This will be done in accordance with the policy and procedures specified in HHS IRM, "Records Management". . This policy also requires the development of records disposition functionalities in electronic recordkeeping system during the design phase of the system.

CDC shall ensure that individuals responsible for the implementation of the agency's records management programs also participate in the development of new or revised programs, processes, systems and procedures, in the information resources strategic planning process, and in defining resources requirements. Records managers will ensure that records disposition is part of modifications of existing programs.

For more information on records schedules refer to the Records Management General Information on the MASO website: <http://intranet.cdc.gov/maso/RM/rmGeneral.htm>

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### **⊕ Best Practices**

See the *Others* section of the *Related Tools* tab

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### **⊕ Practice Activities**

See the *Others* section of the *Related Tools* tab

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CIVIL COVER SHEET

JS-44 (Rev. 11/2020 DC)

<p><b>I. (a) PLAINTIFFS</b>                  AMERICA FIRST LEGAL FOUNDATION</p> <p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>11001</u>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) ATTORNEYS (FIRMNAME, ADDRESS, AND TELEPHONE NUMBER)                  Reed D. Rubinstein, Daniel Z. Epstein, Michael Ding                  (AMERICA FIRST LEGAL FOUNDATION, 611 Pennsylvania Avenue SE #231, Washington, DC 20003, 2029643721); Christopher E. Mills (SPERO LAW LLC, 557 East Bay Street #2251 Charleston, SC 29412</p>	<p><b>DEFENDANTS</b>                  Xavier Becerra, in his official capacity; United States Department of Health and Human Services; Colleen Shogan, in her official capacity; National Archives and Records Administration.</p> <p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____                  (IN U.S. PLAINTIFF CASES ONLY)  <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small></p> <p>ATTORNEYS (IF KNOWN)</p>																								
<p><b>II. BASIS OF JURISDICTION</b>                  (PLACE AN x IN ONE BOX ONLY)</p> <p><input type="radio"/> 1 U.S. Government Plaintiff      <input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="radio"/> 2 U.S. Government Defendant      <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b></p> <table style="width:100%;"> <thead> <tr> <th></th> <th>PTF</th> <th>DFT</th> <th></th> <th>PTF</th> <th>DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td><input type="radio"/> 1</td> <td><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="radio"/> 4</td> <td><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="radio"/> 2</td> <td><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="radio"/> 5</td> <td><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="radio"/> 3</td> <td><input type="radio"/> 3</td> <td>Foreign Nation</td> <td><input type="radio"/> 6</td> <td><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

**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)

<p><input type="radio"/> <b>A. Antitrust</b></p> <p><input type="checkbox"/> 410 Antitrust</p>	<p><input type="radio"/> <b>B. Personal Injury/Malpractice</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Medical Malpractice</p> <p><input type="checkbox"/> 365 Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Product Liability</p>	<p><input type="radio"/> <b>C. Administrative Agency Review</b></p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><u>Social Security</u></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)</p>	<p><input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b></p> <p>Any nature of suit from any category may be selected for this category of case assignment.</p> <p>*(If Antitrust, then A governs)*</p>
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**E. General Civil (Other)**      OR       **F. Pro Se General Civil**

<p><u>Real Property</u></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent, Lease &amp; Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p> <p><u>Personal Property</u></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><u>Bankruptcy</u></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><u>Prisoner Petitions</u></p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Conditions</p> <p><input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement</p> <p><u>Property Rights</u></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 835 Patent – Abbreviated New Drug Application</p> <p><input type="checkbox"/> 840 Trademark</p> <p><input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)</p>	<p><u>Federal Tax Suits</u></p> <p><input type="checkbox"/> 870 Taxes (US plaintiff or defendant)</p> <p><input type="checkbox"/> 871 IRS-Third Party 26 USC 7609</p> <p><u>Forfeiture/Penalty</u></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 430 Banks &amp; Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 462 Naturalization Application</p>	<p><input type="checkbox"/> 465 Other Immigration Actions</p> <p><input type="checkbox"/> 470 Racketeer Influenced &amp; Corrupt Organization</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 485 Telephone Consumer Protection Act (TCPA)</p> <p><input type="checkbox"/> 490 Cable/Satellite TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input checked="" type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p> <p><input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)</p>
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<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <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"/> <b>H. Employment Discrimination</b>  <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 type="radio"/> <b>I. FOIA/Privacy Act</b>  <input 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"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <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"/> <b>L. Other Civil Rights (non-employment)</b>  <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"/> <b>M. Contract</b>  <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"/> <b>N. Three-Judge Court</b>  <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.)**  
 5 U.S.C. § 706 (APA): Count I - Failure to Refer Matter to AG; Count II - Adequacy of HHS’s Recordkeeping System

<b>VII. REQUESTED IN COMPLAINT</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	<b>DEMAND \$</b> <b>JURY DEMAND:</b>	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
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<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form
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DATE: 04/17/2024	SIGNATURE OF ATTORNEY OF RECORD /s/ Michael Ding
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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.

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

America First Legal Foundation

Plaintiff(s)

v.

Xavier Becerra, in his official capacity; United States Department of Health and Human Services; Colleen Shogan, in her official capacity; National Archives and Records Administration.

Defendant(s)

Civil Action No. 1:24-CV-01092

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Xavier Becerra, in his official capacity as United States Secretary of Health and Human Services, 200 Independence Avenue, SW, Washington, DC 20201;

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — 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:

Michael Ding
America First Legal Foundation
611 Pennsylvania Avenue SE #231
Washington, DC 20003

If you fail to respond, judgment by default will 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. 1:24-CV-01092

**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 \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

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:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

America First Legal Foundation

Plaintiff(s)

v.

Xavier Becerra, in his official capacity; United States Department of Health and Human Services; Colleen Shogan, in her official capacity; National Archives and Records Administration.

Defendant(s)

Civil Action No. 1:24-CV-01092

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

United States Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — 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:

Michael Ding
America First Legal Foundation
611 Pennsylvania Avenue SE #231
Washington, DC 20003

If you fail to respond, judgment by default will 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. 1:24-CV-01092

**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)* \_\_\_\_\_  
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Other *(specify)*:

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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:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

America First Legal Foundation

Plaintiff(s)

v.

Xavier Becerra, in his official capacity; United States Department of Health and Human Services; Colleen Shogan, in her official capacity; National Archives and Records Administration.

Defendant(s)

Civil Action No. 1:24-CV-01092

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Colleen Shogan, in her official capacity as Archivist of the United States
8601 Adelphi Road
College Park, MD 20740

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — 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:

Michael Ding
America First Legal Foundation
611 Pennsylvania Avenue SE #231
Washington, DC 20003

If you fail to respond, judgment by default will 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. 1:24-CV-01092

**PROOF OF SERVICE**

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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 \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

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:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

America First Legal Foundation

Plaintiff(s)

v.

Xavier Becerra, in his official capacity; United States Department of Health and Human Services; Colleen Shogan, in her official capacity; National Archives and Records Administration.

Defendant(s)

Civil Action No. 1:24-CV-01092

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — 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:

Michael Ding
America First Legal Foundation
611 Pennsylvania Avenue SE #231
Washington, DC 20003

If you fail to respond, judgment by default will 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. 1:24-CV-01092

**PROOF OF SERVICE**

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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 \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

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:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

America First Legal Foundation

Plaintiff(s)

v.

Xavier Becerra, in his official capacity; United States Department of Health and Human Services; Colleen Shogan, in her official capacity; National Archives and Records Administration.

Defendant(s)

Civil Action No. 1:24-CV-01092

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — 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:

Michael Ding
America First Legal Foundation
611 Pennsylvania Avenue SE #231
Washington, DC 20003

If you fail to respond, judgment by default will 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. 1:24-CV-01092

**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 \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

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:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

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Plaintiff(s)

v.

Xavier Becerra, in his official capacity; United States Department of Health and Human Services; Colleen Shogan, in her official capacity; National Archives and Records Administration.

Defendant(s)

Civil Action No. 1:24-CV-01092

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 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — 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:

Michael Ding
America First Legal Foundation
611 Pennsylvania Avenue SE #231
Washington, DC 20003

If you fail to respond, judgment by default will 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

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Signature of Clerk or Deputy Clerk

Civil Action No. 1:24-CV-01092

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\_\_\_\_\_, a person of suitable age and discretion who resides there,  
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I returned the summons unexecuted because \_\_\_\_\_; or

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My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

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: