

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES
200 Independence Ave., SW
Washington, D.C. 20201

CENTERS FOR MEDICARE AND
MEDICAID SERVICES
7500 Security Boulevard
Baltimore, Maryland 21244

HEALTH RESOURCES AND
SERVICES ADMINISTRATION
5600 Fishers Lane
Rockville, Maryland 20857

Defendants.

Civil Action No. 25-2101

COMPLAINT

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

JURISDICTION AND VENUE

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

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

PARTIES

4. Plaintiff AFL is a nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and encourage public knowledge and understanding of the law and individual rights guaranteed under the United States Constitution and the laws of the United States. AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, all to educate the public.

5. Defendant United States Department of Health and Human Services ("HHS") is an agency under 5 U.S.C. § 552(f), with its offices located at 200 Independence Ave. SW, Washington, D.C. 20201. HHS has possession and control of the records AFL seeks.

6. Defendant Centers for Medicare and Medicaid Services ("CMS") is an agency under 5 U.S.C. § 552(f), with its offices located at 7500 Security Boulevard,

Baltimore, Maryland 21244. CMS has possession and control of the records AFL seeks.

7. Defendant Health Resources and Services Administration (“HRSA”) is an agency under 5 U.S.C. § 552(f), with its offices located at 5600 Fishers Lane, Rockville, Maryland 20857. HRSA has possession and control of the records AFL seeks.

FACTS

8. On April 3, 2023, AFL submitted a FOIA request to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, and the Health Resources and Services Administration seeking records related to the Biden Administration’s infusion of “equity” into federal organ transplant systems. Ex. 1.

HHS FOIA Request

9. On April 3, 2023, HHS confirmed receipt of AFL’s FOIA request and assigned it the tracking number 2023-00632-FOIA-OS. Exs. 2, 3.

10. On April 5, 2023, HHS emailed AFL stating AFL’s FOIA request was “In Progress.” Ex. 4.

11. On April 5, 2023, HHS emailed AFL an acknowledgment letter stating that AFL’s FOIA request was placed in the complex processing track and extended its time to respond to the request by ten days. Ex. 5.

12. As of the date of this filing, AFL has received no further communications and no responsive records from HHS concerning this FOIA request.

CMS FOIA Request

13. On April 4, 2023, CMS confirmed receipt of AFL's FOIA request and assigned it the tracking number 040320237081. Ex. 6.

14. On November 22, 2024, CMS asked if AFL was still interested in its request. Ex. 7 at 1.

15. That same day, AFL confirmed that it remained interested in the requested documents. *Id.* at 2.

16. On February 11, 2025, AFL contacted CMS to request a timeline of when responsive documents would be produced. *Id.* at 2.

17. CMS immediately responded to AFL on February 11, 2025, redirecting AFL to reach out to a new contact at the agency for more information about AFL's request. *Id.* at 2.

18. On February 12, 2025 and February 20, 2025, AFL attempted to contact the CMS FOIA contact at the email address provided by CMS. *Id.* at 2–3.

19. On February 20, 2025, CMS responded to AFL, acknowledging that CMS had a “package of potentially responsive documents that are currently being reviewed for disclosure.” *Id.* at 3.

20. On February 20, 2025, AFL asked CMS if the agency would be willing to produce responsive records on a rolling basis. *Id.* at 3–4.

21. After no response for nearly two months, AFL again emailed CMS on April 17, 2025, requesting an estimated timeline on which AFL could expect to receive

responsive documents and asked once more whether the agency could release documents on a rolling basis after being reviewed. *Id.* at 4.

22. As of the date of filing, AFL has received no further communications and no responsive records from CMS concerning this FOIA request.

HRSA FOIA Request

23. On April 6, 2023, HRSA sent AFL an acknowledgment letter in response to AFL's FOIA request and assigned the request tracking number 04032023F199, shortened in later email correspondence to 23F199. Exs. 8, 9.

24. On April 24, 2023, HRSA contacted AFL to request that AFL and HRSA discuss clarifying the request. Ex. 9.

25. On April 27, 2023, AFL agreed to discuss clarifying the request with HRSA. Ex. 10.

26. AFL and HRSA conferred on July 24, 2024. Exs. 11, 12, 13.

27. On August 14, 2024, AFL agreed to narrow the date range for the request. Ex. 14.

28. On August 15, 2024, HRSA confirmed receipt and told AFL that HRSA would respond the following week with an updated volume of response documents. *Id.*

29. HRSA did not do so.

30. As of the date of filing, AFL has received no further communications and no responsive records from HRSA concerning this FOIA request.

CLAIM FOR RELIEF

Violation of FOIA, 5 U.S.C. § 552

31. AFL repeats and realleges paragraphs 1–30, as if fully set forth herein.

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

33. The Defendants have failed to produce the requested records within the statutory time limit.

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

35. The Defendants have violated the FOIA by failing, within the prescribed time limit, to reasonably search for records responsive to AFL’s FOIA requests and release nonexempt records.

RELIEF REQUESTED

WHEREFORE, AFL respectfully requests this Court:

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

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

iii. Order the Defendants to produce by a date certain all non-exempt records responsive to AFL’s FOIA requests, accompanied by a Vaughn index of any

responsive records or portions of responsive records being withheld under a claim of exemption;

- iv. Order the Defendants to grant AFL's requests for fee waivers;
- v. Award AFL attorney's fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);

and

- vi. Grant AFL such other and further relief as this court deems proper.

Dated: July 1, 2025

Respectfully submitted,

/s/ William Scolinos

William Scolinos (DC Bar No. 90023488)

Robert Crossin (Ind. Bar No. 39340-49)*

AMERICA FIRST LEGAL FOUNDATION

611 Pennsylvania Avenue SE #231

Washington, DC 20003

William.Scolinos@aflegal.org

Bobby.Crossin@aflegal.org

(301) 965-0179

Counsel for America First Legal Foundation

** Pro Hac Vice motion forthcoming*



April 3, 2023

Via PAL

Arianne Perkins, Acting FOIA Officer
FOIA Officer/Director, Freedom of Information and Privacy Acts Division, Hubert
Department of Health and Human Services
H. Humphrey Building, Suite 729H
200 Independence Avenue, SW
Washington, DC 20201

Via FOIA.HRSA.gov

Brian May, FOIA Officer
HRSA Freedom of Information Act Office (FOIA)
Health Resources and Service Administration
5600 Fishers Lane, Room 13N82
Rockville, Maryland 20857
foia@hrsa.gov

Via FOIA.gov

Hugh Gilmore, FOIA Officer
Centers for Medicare & Medicaid Services
North Building, Room N2-20-06
7500 Security Boulevard
Baltimore, MD 21244
FOIA_Request@cms.hhs.gov

FOIA Request: Organ Donation Modernization Initiative

Dear FOIA Officers:

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. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's email list contains over 46,000 unique addresses, our

Twitter page has 55,600 followers, the Twitter page of our Founder and President has over 409,000 followers, our Facebook page has 109,000 followers, and we have another approximately 31,600 followers on GETTR.

I. Background

On February 16, 2023, President Biden continued his radical, racist, and fundamentally anti-American overhaul of every federal function under the guise of “equity” by signing a new “Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.”¹ Among other things, agencies were ordered to “prevent and remedy discrimination, including by protecting the public from algorithmic discrimination,” which it defined as “instances when automated systems contribute to unjustified different treatments or impacts disfavoring people based on their actual or perceived race, color, ethnicity ... or any other classification protected by law.”² When read in context with the ongoing efforts of the Department of Health and Human Services (HHS) to racialize health policy, the new Executive Order signals that the Biden Administration intends to unlawfully alter the Health Resources and Service Administration (HRSA) Organ Procurement and Transplantation Network (OPTN) to make organs for transplant available based on the race of the recipient, not medical need.

A. Biden racializes health policy.

The National Organ Transplant Act of 1984 (the “Act”) created a national system for organ donation and instructed the HHS Secretary to establish and operate the OPTN to administer that system.³ The Act makes no allowance for consideration of race in allocating organs for donation. Rather, it requires the OPTN to maintain “a national list of individuals who need organs” and “establish ... *medical* criteria for allocating organs.”⁴ It further requires each organ donation organization operating under the OPTN allocate organs “according to established *medical* criteria.”⁵ Congress allowed racial factors to be considered *only* within the context of *temporary* “studies and demonstration projects for the purpose of improving procedures for organ donation *procurement and allocation*,” including but not limited to projects to “examine and attempt to increase transplantation among populations with special needs, including children and individuals who are members of racial or ethnic minority groups, and among populations with limited access to transportation.”⁶

¹ Press Release, WHITE HOUSE, *Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (Feb. 16, 2023), <https://tinyurl.com/k4dc9fcx>.

² *Id.*

³ 42 U.S.C. § 274.

⁴ 42 U.S.C. § 274(b)(2)(A)(i) and (B) (emphasis added).

⁵ 42 U.S.C. § 273(b)(3)(E) (emphasis added).

⁶ 42 U.S.C. § 274(b)(2)(N).

On January 20, 2021, President Biden signed Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.”⁷ Among other things, President Biden ordered the HHS Secretary to conduct an Equity Assessment on whether underserved communities and their members face systemic barriers and to produce an equity action plan for addressing those alleged barriers.⁸

On December 3, 2021, HHS’s Centers for Medicare & Medicaid Services (CMS) issued a Request for Information (the “RFI”) to “solicit[] public comments on potential changes to the requirements that transplant programs, organ procurement organizations, and end-stage renal disease facilities must meet in order to participate in the Medicare and Medicaid programs.”⁹ A significant portion of the RFI was focused on perceived inequities “amongst racial and ethnic minorities as compared to White Americans.”¹⁰ When the RFI was published, CMS Administrator Chiquita Brooks-LaSure issued an official statement emphasizing HHS’s “support[for] organ transplants for communities of color, individuals with disabilities and other historically underserved populations.”¹¹

On January 27, 2022, HRSA announced that it was changing how it would report data on organ transplantation to provide more detail about the racial and ethnic background of transplant recipients.¹² And on March 22, 2023, HRSA announced a “Modernization Initiative,” including “a plan to strengthen ... equity ... in the organ donation and transplantation system.”¹³ Since the passage of the Act, the only OPTN contracted with HHS to administer the nation’s organ transplantation network has been the non-profit United Network for Organ Sharing (“UNOS”).¹⁴ The Modernization Initiative specifically seeks to “break up [UNOS] ... as part of an effort to ... address racial inequities.”¹⁵

B. The clear and present danger of race-based audits

As ordered by President Biden, HHS is trying to push through an arbitrary and breathtakingly racist once-in-a-generation overhaul of the nation’s organ transplant

⁷ 86 Fed. Reg. 7,009 (Jan. 25, 2021).

⁸ *Id.* at 7,010.

⁹ 86 Fed. Reg. 68,594 (Dec., 3, 2021).

¹⁰ *Id.* at 68,597.

¹¹ CMS NEWSROOM, *HHS Seeks Public Comments to Advance Equity and Reduce Disparities in Organ Transplantation, Improve Life-Saving Donations, and Dialysis Facility Quality of Care*, (Dec. 1, 2023), <https://tinyurl.com/2ay3c96v>.

¹² HRSA, *Updated race and ethnicity labeling coming to OPTN data reports*, (Jan. 27, 2022), <https://tinyurl.com/yc68eczy>.

¹³ HRSA NEWS ROOM, *HRSA Announces Organ Procurement and Transplantation Network Modernization Initiative*, (Mar. 22, 2023), <https://tinyurl.com/bp7ybarp>.

¹⁴ UNOS, *About*, (retrieved Mar. 31, 2023), <https://tinyurl.com/f9z8zwdx>.

¹⁵ Sheryl Gay Stolberg, *U.S. Organ Transplant System, Troubled by Long Wait Times, Faces an Overhaul*, NEW YORK TIMES, (Mar. 22, 2023), <https://tinyurl.com/3dvhk9vf>.

system.¹⁶ Given the Biden Administration's deep-seated obsession with dividing Americans based on their race, there is a clear and present danger that Biden's HHS, HRSA, and CMS plan to allocate donated organs based on the race of the recipient rather than on medical criteria¹⁷ as Congress has required.

II. Requested Records

AFL requests the following records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a).

- A. For the custodians listed below, all records using any one of the following terms: "discrimination," "discriminatory," "race," "racial," "ethnicity," "color," "BIPOC," "Asian," "Indigenous," "Black," "Brown," or "White" *and* any one of the following terms: "organ," "transplant," "transplantation," "donor," "donation," "Organ Procurement and Transplantation Network," "OPTN," "United Network for Organ Sharing," "UNOS," "equity", or "kidney". The time period for this request is January 20, 2021 to the date this request is processed. Please exclude news articles, press clippings, listserv items, or forwards of the same without substantive commentary.
- B. For the custodians listed below, all records of, regarding, mentioning, or discussing updating race and ethnicity labeling in OPTN data reports.
- C. All records regarding the processing of this request.

III. Custodians

HHS:

- A. Xavier Becerra, Secretary
- B. Andrea Palm, Deputy Secretary
- C. Samuel Bagenstos, General Counsel
- D. Melanie Fontes Rainer, Director for Office for Civil Rights
- E. Rachel L. Levine, Assistant Secretary for Health
- F. Sean McCluskie, Chief of Staff

¹⁶ For example, HHS's racial labeling does not define the categories by reference to any fixed or scientifically discernable criteria. Does a person with three European grandparents and one African grandparent qualify as "Black" for organ allocation? Or must a person cross a DNA threshold of 50.1% to qualify for a transplant? Similarly, does a native-Spanish-speaking person who was born in Cuba or Spain qualify as an "Hispanic", or will HHS steer organs only to Spanish-speaking people from Central and South America?

¹⁷ 42 U.S.C. § 273(b)(3)(E) and 274(B).

Health Resources and Services Administration (HRSA):

- G. Carole Johnson, Administrator,
- H. Diana Espinosa, Principal Deputy Administrator
- I. Jordan Grossman, Deputy Administrator
- J. Garrett Devenney, Chief of Staff
- K. Nisha Patel, Senior Advisor
- L. Michelle Allender, Director, Office of Health Equity
- M. Christine Ramey, Deputy Director, Office of Health Equity
- N. Gopal K. Singh, Senior Health Equity Advisor, Office of Health Equity

Centers for Medicare & Medicaid Services (CMS)

- O. Chiquita Brooks-LaSure, Administrator
- P. Jonathan Blum, Principal Deputy Administrator & Chief Operating Officer
- Q. Erin Richardson, Chief of Staff
- R. John Czajkowski, Deputy Chief Operating Officer
- S. Anita Pinder, Director, Office of Equal Opportunity & Civil Rights
- T. Alaina Jenkins, Deputy Director, Office of Equal Opportunity & Civil Rights
- U. LaShawn McIver, Director, Office of Minority Health
- V. Wanda Finch, Deputy Director, Office of Minority Health

Additional Custodians

- W. All other political appointees assigned to the Office of the Secretary, the Office of the Deputy Secretary, the Health Resources and Services Administration (HRSA), and the Centers for Medicare & Medicaid Services (CMS).
- X. All employees at or equivalent to grade GS-14 and above at the Office of the Secretary, the Office of the Deputy Secretary, the Health Resources and Services Administration (HRSA), and the Centers for Medicare & Medicaid Services (CMS).

IV. Processing

Processing should strictly comply with the processing guidance in the Attorney General's Memorandum on Freedom of Information Act Guidelines.¹⁸ If you have any questions or believe further discussions regarding search and processing will facilitate more efficient production of records of interest to AFL, please do not hesitate to contact me at FOIA@aflegal.org.

¹⁸ U.S. DEP'T JUST. (Mar. 15, 2022), <https://tinyurl.com/4sup7e7f>.

V. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii), 31 C.F.R. § 1.7(k), and 26 C.F.R. § 601.702(f)(2), AFL requests a waiver of all search and duplication fees associated with this request. The requested information specifically concerns identifiable operations and activities of the Federal Government, including how the Department of Health and Human Services and the HRSA are implementing President Biden's executive orders on racial equity, and whether those efforts would implicate the integrity of the country's organ donation system. Because it has not been made public how racial equity would be applied to the allocation of donated organs, disclosure of the requested information would contribute significantly to public understanding. Furthermore, AFL has a demonstrated ability and intention to effectively convey the information broadly to the public; AFL's status as a representative of the news media has been recognized by other agencies for granting fee waivers, including this Department in prior requests, as well as the Departments of Defense, Education, Energy, Justice, Interior, and Homeland Security. Finally, as a non-profit organization, AFL has no identifiable commercial interest, and the request is made entirely to serve the public interest. We are, of course, available to provide additional information in writing or offline in support of this request. If AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

VI. Production

To accelerate the release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

Thank you in advance for your cooperation.

Sincerely,
/s/ James Rogers
James Rogers
America First Legal Foundation



AFL FOIA <foia@aflegal.org>

Status Update for Request #2023-00632-FOIA-OS

1 message

noreply@ains.com <noreply@ains.com>
To: foia@aflegal.org

Mon, Apr 3, 2023 at 2:00 PM

Dear Reed Rubinstein,

The status of your FOIA request #2023-00632-FOIA-OS has been updated to the following status 'Received'. To log into the HHS FOIA Submission Site click on the Application URL below.

<https://requests.publiclink.hhs.gov>

Sincerely,
AINS



AFL FOIA <foia@aflegal.org>

Request Acknowledgement by AINS

noreply@ains.com <noreply@ains.com>

Mon, Apr 3, 2023 at 2:00 PM

To: foia@aflegal.org

Dear Reed Rubinstein,

Request #2023-00632-F0IA-0S has been assigned to the request you submitted. In all future correspondence regarding this request please reference request #2023-00632-F0IA-0S.

Regards,
AINS



AFL FOIA <foia@aflegal.org>

Status Update for Request #2023-00632-FOIA-OS

1 message

noreply@ains.com <noreply@ains.com>
To: foia@aflegal.org

Wed, Apr 5, 2023 at 12:18 PM

Dear Reed Rubinstein,

The status of your FOIA request #2023-00632-FOIA-OS has been updated to the following status 'In Process'. To log into the HHS FOIA Submission Site click on the Application URL below.

<https://requests.publiclink.hhs.gov>

Sincerely,
AINS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Public Affairs
Washington, D.C. 20201

Refer to: Request Number **2023-00632-FOIA-OS**

April 5, 2023

Sent via email:

Reed Rubinstein

foia@aflegal.org

Dear Reed Rubinstein:

This acknowledges receipt of your April 3, 2023, Freedom of Information Act (FOIA) request, submitted to the Department of Health and Human Services (HHS), FOI/Privacy Acts Division concerning **“all records using any one of the following terms: “discrimination,” “discriminatory,” “race,” “racial,” “ethnicity,” “color,” “BIPOC,” “Asian,” “Indigenous,” “Black,” “Brown,” or “White” and any one of the following terms: “organ,” “transplant,” “transplantation,” “donor,” “donation,” “Organ Procurement and Transplantation Network,” “OPTN,” “United Network for Organ Sharing,” “UNOS,” “equity”, or “kidney”. from January 20, 2021 to the present**

A. Xavier Becerra, Secretary

B. Andrea Palm, Deputy Secretary

C. Samuel Bagenstos, General Counsel

D. Melanie Fontes Rainer, Director for Office for Civil Rights

E. Rachel L. Levine, Assistant Secretary for Health

F. Sean McCluskie, Chief of Staff (Date Range for Record Search: From 1/20/2021 To 4/3/2023)”. We received your request on April 3, 2023.

Because you seek records which require a search in another office, “unusual circumstances” apply to your request, automatically extending the time limit to respond to your request for ten additional days. See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2012 & Supp. V. 2017). Further, we estimate needing more than 10 additional days to respond to your request and so, in the next paragraph of this letter we are offering you an opportunity to narrow your request, in case narrowing the request would enable us to respond to the request sooner. The actual time needed to process your request will depend on the complexity of our records search and on the volume and complexity of any material located. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same track. Our current workload is approximately 3000 cases.

Your request is assigned to the complex track. In an effort to speed up our records search, you may wish to narrow the scope of your request to limit the number of potentially responsive records or agree to an alternative time frame for processing, should records be located. You may also wish to await the completion of our records search to discuss either of these options.

I regret the necessity of this delay, but I assure you that your request will be processed as soon as possible. If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact the analyst handling your request, Ray Noussoukpoe at FoiaRequest@PSC.hhs.gov.

If you are not satisfied with any aspect of the processing and handling of this request, you have the right to seek dispute resolution services from:

HHS FOIA/PA Public Liaison
FOI/Privacy Acts Division
Assistant Secretary for Public Affairs (ASPA)
Office of the Secretary (OS)
U.S. Department of Health and Human Services (HHS)

Telephone: (202) 690-7453
E-mail: HHS_FOIA_Public_Liaison@hhs.gov

and/or:

Office of Government Information Services
National Archives and Records Administration
Telephone: 202- 741-5770
Toll-Free: 1-877-684-6448
E-mail: ogis@nara.gov

If you are not already submitting your requests through our Public Access Link (PAL), we recommend all future requests and appeals be submitted through PAL - <https://requests.publiclink.hhs.gov/>. Submitting requests through PAL automatically logs your requests into our tracking system and provides you with a tracking number. Your PAL account will allow you to track the progress of your request, receive your documents directly through the portal, and securely submit privacy-sensitive or business-sensitive documents.

Sincerely yours,



Arianne Perkins
Director, Initial FOIA Requests
FOI/Privacy Acts Division

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C5-11-06
Baltimore, Maryland 21244-1850



Office of Strategic Operations and Regulatory Affairs / Freedom of Information Group

Request has been assigned: Control Number **040320237081** and PIN **MTUA**

4/4/2023

James Rogers
America First Legal Foundaion
320 South Madison Avenue
Monroe, GA 30655

Dear Mr. Rogers:

The purpose of this letter is to acknowledge receipt of your Freedom of Information Act (FOIA) request (5 U.S.C. § 552) and to provide you with a tracking number for your request. Your FOIA request, dated **4/3/2023** was received on **4/3/2023** by the Centers for Medicare & Medicaid Services (CMS). To check the status of your request as it is being processed, please refer to the CMS FOIA website <http://www.cms.gov/apps/FOIA> and enter the control number and PIN (listed above) that have been assigned to your request.

Once we complete our initial analysis of your request, we will initiate a search for responsive records. If however, we determine that your request needs clarification, we will contact you. Additionally, if our searching units advise us that you have requested a voluminous amount of records that require extensive search, production and review, we will contact you to discuss options for narrowing the scope of your request in order to process your request as quickly and efficiently as possible.

Please note that CMS receives a very high volume of FOIA requests. The following unusual circumstances, as defined by Federal FOIA Regulations, may impact our ability to fulfill a FOIA request within 20 business days. These include circumstances such as (1) the request requires us to search for and collect records from multiple components and/or field offices; (2) the request involves a voluminous amount of records that must be located, compiled, transferred to this office, and reviewed. In addition, given our high volume of requests, and in accordance with federal regulations, our processing policy includes factors such as the date of the request as well as the complexity of the request.

The FOIA law assumes that requesters are willing to pay fees up to \$25.00. If estimated fees to process your request exceed \$25.00, we will notify you and may suspend processing until we receive written confirmation that you are willing to pay the estimated fees. Additionally, for requests in which the estimated fees exceed \$250.00, the law authorizes us to collect the fees *in advance* prior to processing the request.

If your request sought a fee waiver or expedited processing, we will send additional communication to provide you with our determination decision(s).

If you are not satisfied with any aspect of the processing and handling of this request, please contact Kenyetta Stringfellow.

You also have the right to seek dispute resolution services from:

Joseph Tripline
CMS FOIA Public Liaison
Centers for Medicare & Medicaid Services
7500 Security Blvd., MS N2-20-16
Baltimore, Maryland 21244-1850
Telephone: (410) 786-5353 fax (443)-380-7260

and/or:

Office of Government Information Services
National Archives and Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001

Telephone: 202-741-5770
Toll-Free: 1-877-684-6448
E-mail: ogis@nara.gov
Fax: 202-741-5769

Sincerely yours,

A handwritten signature in black ink that reads "Joseph Tripline". The signature is written in a cursive, flowing style.

Joseph Tripline
Director, Division of FOIA Analysis – A
Freedom of Information Group



AFL FOIA <foia@aflegal.org>

FOIA-040320237081

9 messages

Mastropaolo, Jason (CMS/OSORA) <Jason.Mastropaolo1@cms.hhs.gov>
To: "foia@aflegal.org" <foia@aflegal.org>

Fri, Nov 22, 2024 at 7:20 AM

Good morning,

This office is presently conducting a review of our pending Freedom of Information Act (FOIA) requests to ascertain if the requested information for the above referenced FOIA

case is still desired. We apologize for the delay in responding to your request. However, because of the increasing number of requests received by the Centers for Medicare &

Medicaid Services (CMS), we found it necessary to adopt the ruling in the case of *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C. Cir. 1976) and exercise

due diligence by following a first-in, first-out FOIA processing.

If you are still interested in receiving the documents, please respond to this email, and we will complete the processing of your request. If we have not received your response within 30 working days from the date of this email, we will assume you are no longer interested in receiving the documents and the case will be administratively closed. Thank you in advance

for your time and consideration on this matter.

Jason Mastropaolo

Jason Mastropaolo

Technical Advisor

Division of FOIA Analysis –A

Freedom of Information Group

Office of Strategic Operations and Regulatory Affairs

Centers for Medicare & Medicaid Services

E-mail: jason.mastropaolo1@cms.hhs.gov

Looking to request Medicare claim records? Check out our [Medicare Beneficiary Claims Portal](#)

Looking to file a FOIA request? Check out our [FOIA.gov Portal](#)

Need more help? Check out our CMS [FOIA Service Center](#)

AFL FOIA <foia@aflegal.org>

Fri, Nov 22, 2024 at 12:35 PM

To: "Mastropaolo, Jason (CMS/OSORA)" <Jason.Mastropaolo1@cms.hhs.gov>

Hi Joseph--

Yes, we would still like to receive the requested documents. Please continue to process our request.

Regards,
America First Legal

[Quoted text hidden]

AFL FOIA <foia@aflegal.org>

Tue, Feb 11, 2025 at 3:38 PM

To: "Mastropaolo, Jason (CMS/OSORA)" <Jason.Mastropaolo1@cms.hhs.gov>

Hi Jason--

I just wanted to check in on this FOIA request. It was submitted almost two years ago. Can you please provide a timeline on when responsive documents will be produced?

Regards,
America First Legal

[Quoted text hidden]

Mastropaolo, Jason (CMS/OSORA) <Jason.Mastropaolo1@cms.hhs.gov>

Tue, Feb 11, 2025 at 3:45 PM

To: AFL FOIA <foia@aflegal.org>

Good afternoon,

Your case is assigned to Ms. Daphney Briscoe. Feel free to reach out to her at Briscoe, Daphney (CMS/OSORA) daphney.briscoe@cms.hhs.gov. Thank you

[Quoted text hidden]

AFL FOIA <foia@aflegal.org>

Wed, Feb 12, 2025 at 8:18 PM

To: daphney.briscoe@cms.hhs.gov

Hi Ms. Briscoe--

I am writing to check on the status of our FOIA request, FOIA-040320237081, which has been outstanding for almost two years now. Can you please provide an update and let us know when you will be producing documents?

Regards,
America First Legal

[Quoted text hidden]

AFL FOIA <foia@aflegal.org>

Thu, Feb 20, 2025 at 12:22 PM

To: daphney.briscoe@cms.hhs.gov

Cc: "Mastropaolo, Jason (CMS/OSORA)" <Jason.Mastropaolo1@cms.hhs.gov>

Dear Ms. Briscoe--

We are writing to check in again on the status of this FOIA request, which is about two years old. It has been 8 days since we sent our prior email, and we have not yet heard from you. Can you please let us know the status of this, and when you will start producing documents? We would appreciate a prompt response. We would prefer to work collaboratively with you to complete this request and avoid the necessity of litigation.

Regards,

America First Legal

[Quoted text hidden]

Briscoe, Daphney (CMS/OSORA) <daphney.briscoe@cms.hhs.gov>
To: AFL FOIA <foia@aflegal.org>
Cc: "Mastropaolo, Jason (CMS/OSORA)" <Jason.Mastropaolo1@cms.hhs.gov>

Thu, Feb 20, 2025 at 12:43 PM

Greetings,

Your case has been assigned to me for response. I have received a package of potentially responsive documents that are currently being reviewed for disclosure to you. Unfortunately, I am unable to provide you an exact date on when you will receive a final response from our office. If during my review, we require any additional assistance from your office we will make contact at that time.

Thank you for your patience,

Daphney Briscoe

Daphney Briscoe

Government Information Specialist

Division of FOIA Analysis - A

Freedom of Information Group

Office of Strategic Operations and Regulatory Affairs

Centers for Medicare & Medicaid Services

E-mail: daphney.briscoe@cms.hhs.gov

Phone: (667) 414-0519

Looking to request Medicare claim records? Check out our [Medicare Beneficiary Claims Portal](#)

Looking to file a FOIA request? Check out our [FOIA.gov Portal](#)

Need more help? Check out our CMS [FOIA Service Center](#)

[Quoted text hidden]

AFL FOIA <foia@aflegal.org>
To: "Briscoe, Daphney (CMS/OSORA)" <daphney.briscoe@cms.hhs.gov>

Thu, Feb 20, 2025 at 3:05 PM

Thank you for the update. To get things moving sooner, would your office be willing to produce documents on a rolling basis? AFL would have no problem with a rolling production.

Regards,
America First Legal
[Quoted text hidden]

James Rogers [REDACTED]@aflegal.org>

Thu, Apr 17, 2025 at 4:48 PM

To: "Briscoe, Daphney (CMS/OSORA)" <daphney.briscoe@cms.hhs.gov>, AFL FOIA <foia@aflegal.org>

Cc: "Mastropaolo, Jason (CMS/OSORA)" <Jason.Mastropaolo1@cms.hhs.gov>, [REDACTED]@aflegal.org>, [REDACTED]
[REDACTED]@aflegal.org>

Good evening--

I just wanted to check in on this again. It has been nearly two months since your last email. Can you please give us an ETA on when you will start producing documents? To speed things up, we would ask that you produce documents on a rolling basis as they become available.

Regards,
James

--
James Rogers
Senior Counsel
America First Legal Foundation
([REDACTED])

[Quoted text hidden]



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Resources and Services
Administration

Rockville, MD 20857

April 6, 2023

Sent via Email

James Rogers
 America First Legal Foundation
 320 South Madison Avenue
 Monroe, GA 30655
FOIA@aflegal.org

Dear James Rogers:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request received by this office on April 3, 2023. Your request has been assigned tracking number 04032023F199. In summary, you request the following records, created between January 20, 2021 and the date that we initiate our record search¹, from the eight Health Resources and Services Administration custodians listed below:

- (1) All records using any one of the following terms: “discrimination,” “discriminatory,” “race,” “racial,” “ethnicity,” “color,” “BIPOC,” “Asian,” “Indigenous,” “Black,” “Brown,” or “White” and any one of the following terms: “organ,” “transplant,” “transplantation,” “donor,” “donation,” “Organ Procurement and Transplantation Network,” “OPTN,” “United Network for Organ Sharing,” “UNOS,” “equity”, or “kidney”. The time period for this request is January 20, 2021 to the date this request is processed, excluding news articles, press clippings, listserv items, or forwards of the same without substantive commentary.
- (2) All records of, regarding, mentioning, or discussing updating race and ethnicity labeling in Organ Procurement and Transplantation Network (OPTN) data reports.
- (3) All records regarding the processing of this request.
- (4) Custodians: Carole Johnson, Administrator; Diana Espinosa, Principal Deputy Administrator; Jordan Grossman, Deputy Administrator; Garrett Devenney, Chief of Staff; Nisha Patel, Senior Advisor; Michelle Allender, Director, Office of Health Equity; Christine Ramey, Deputy Director, Office of Health Equity; and Gopal Singh, Senior Health Equity Advisor, Office of Health Equity.

The FOIA and HHS’s FOIA regulations allow agencies to recover part of the costs of processing FOIA requests. You have been classified in the following manner:

- ☐ Category 1 – Commercial Use Requester. Category 1 requesters are charged for search time, documents review, and duplication.

¹ [https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-5#p-5.24\(d\)](https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-5#p-5.24(d))

- ☐ Category 2 – Media, Educational, and Scientific Requester. Category 2 requesters are charged for duplication only after the first 100 pages.
- ☒ Category 3 – Other Requester. Category 3 requesters are charged for search time (after 2 hours) and duplication (after 100 pages).

Regarding Item 3, any records created after the cut-off date, April 6, 2023, (the date that we initiated our record search, April 6, 2023) will be considered non-responsive to your request.²

You requested that we waive FOIA processing fees. The U.S. Department of Health and Human Services (HHS) FOIA regulation, Section 5.54(a)³ states that requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is:

- (1) In the public interest because it is likely to contribute significantly to public understanding of government operations or activities, and
- (2) Not primarily in the requester's commercial interest.

We determined that your fee waiver request meets the criteria and agree to waive the FOIA processing fees.

Please note that the records you seek are maintained outside of this office and our staff has not yet been able to complete a search to determine whether the Health Resources and Services Administration (HRSA) possesses records that are responsive to your request. Accordingly, we may be unable to comply with the 20 working-day time limit in this case, as well as the 10 additional days provided by the statute.

The actual processing time will depend on the complexity of your request and whether it involves sensitive records, voluminous records, extensive search, and/or consultation with other HHS components or other agencies. We anticipate responding to your request by the close of business on July 5, 2023. You can track the status of your request by entering the tracking number and PIN number WHWW into our portal.⁴

The FOIA and HHS's FOIA regulations are available at the following web addresses:

- FOIA regulations: <http://www.justice.gov/oip/foia-resources>
- HHS's FOIA regulations: <https://www.hhs.gov/foia/statutes-and-resources/index.html>

It is your responsibility to notify our office of any changes in your contact information (i.e., mailing address, telephone numbers, and/or email address). Any returned correspondence due to "unknown address" is considered sufficient reason to close your request.

You may contact this office 20 working-days from the date of this letter to inquire the status of your request. When making an inquiry, please refer to your case number.

² Department of Justice Guide to the FOIA, Procedural Requirements chapter, page 60, Footnote 202

³ [https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-5#p-5.54\(a\)](https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-5#p-5.54(a))

⁴ <https://foia.hrsa.gov/check-status>

James Rogers, 23F199

Page 3

If you are not satisfied with any aspect of the processing and handling of this request, please contact HRSA's FOIA Public Liaison:

Brian A. May
Freedom of Information Act Officer
Telephone: 301-443-1467
Email: FOIA@hrsa.gov

and/or:

Office of Government Information Services
National Archives and Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
Telephone: 202-741-5770
Toll-Free: 1-877-684-6448
Fax: 202-741-5769
Email: ogis@nara.gov

If you have any questions, please do not hesitate to contact me at 301-443-1467 or at FOIA@hrsa.gov.

Sincerely,

Brian A. May
Freedom of Information Act Officer



AFL FOIA <foia@aflegal.org>

HRSA FOIA 23F199 - Request Clarification

HRSA FOIA <FOIA@hrsa.gov>
To: "FOIA@aflegal.org" <FOIA@aflegal.org>

Mon, Apr 24, 2023 at 2:41 PM

Good Afternoon James Rogers:

How are you doing today? We write to request clarification about your FOIA request, HRSA Tracking Number 23F199.

HRSA's Division of Transplantation informed us that the search terms provided are not yielding useful results because our email search feature does not allow connected terms (e.g. "race + organ") and only retrieve emails with that pairing. Instead, the Division of Transplantation searches are producing every mention of a search term, yielding countless emails that have organ, transplant, or transplantation in it but unrelated to what you seek. Further, Division of Transplantation personnel list "Division of Transplantation" in their signature block which yields a lot of non-responsive records. Could we meet this week to discuss your search terms, brainstorm any additional terms, or discuss the nature of your request to determine if we can narrow the scope which may lead to fruitful search? If so, what dates and times work best for you?

Thank you for your time, wishing you a wonderful afternoon.

Sincerely,

Brian

Brian A. May

Freedom of Information Act (FOIA) Officer

Executive Secretariat

Health Resources and Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov

From: Duncan, Ashley (HRSA) <ADuncan@hrsa.gov>
Sent: Thursday, April 6, 2023 10:36 AM
To: FOIA@aflegal.org
Cc: HRSA FOIA <FOIA@hrsa.gov>; Duncan, Ashley (HRSA) <ADuncan@hrsa.gov>
Subject: HRSA FOIA 23F199 - Acknowledgement

Good Morning James Rogers,

Thank you for your interest in HRSA, please find our acknowledgement letter attached to this email. If you have any questions regarding your request, feel free to contact me.

Best Regards,

Ashley Duncan

Student Trainee HRSA

OO/Exec Sec

Phone: (301) 443-4521

Email: ADuncan@hrsa.gov





AFL FOIA <foia@aflegal.org>

HRSA FOIA 23F199 - Request Clarification

AFL FOIA <foia@aflegal.org>

Thu, Apr 27, 2023 at 12:19 PM

To: HRSA FOIA <FOIA@hrsa.gov>, bmay@hrsa.gov

Cc: James Rogers [REDACTED]@aflegal.org>

Dear Mr. May--

My apologies for the delay in getting back to you. Tomorrow (Friday), I am available any time except Noon to 1 pm (EDT). If Friday does not work, then I am available Monday and Tuesday next week, any time except for 10 am to 11 am on both days.

Regards,
James Rogers

[Quoted text hidden]



AFL FOIA <foia@aflegal.org>

HRSA FOIA 23F199: Update, Available to Connect?

4 messages

May, Brian (HRSA) <BMay@hrsa.gov>

Thu, Jun 13, 2024 at 11:08 AM

To: James Rogers [REDACTED]@aflegal.org>, AFL FOIA <foia@aflegal.org>

Cc: "Chancellor, Alexis (HRSA)" <AChancellor@hrsa.gov>

Good Morning James:

Thanks for your patience and apologies for the delay, I traveled to the American Society of Access Professionals National Training Conference last week and have been playing catchup this week.

Your request is currently 36th out of 281 requests in our overall queue and 3rd in my queue. We completed our record search, and I started reviewing the email records to determine responsiveness, it appears that we have a significant amount of false positive hits and potentially a lot of duplicate records. Are you available to connect next week or the following to discuss your request? If so, could you send me your availability to connect over the next few weeks?

If we meet, I'd like to provide you with details about the records that we located and determine whether they are responsive. Additionally, given the volume of potentially responsive records (201.3 GB, potentially 20,130,000 pages), I'd like to develop a production schedule with you, giving you the option to prioritize which records that you would like to receive first. Further, are you interested in receiving attachments to emails? If so, that will likely significantly increase the volume of records that we will need to review/process.

Here's a reference that I used to calculate the potential page count of email records:
<https://www.digitalwarroom.com/blog/how-many-pages-in-a-gigabyte>. If it helps, we can review between 35-50 pages per hour.

Regards,

Brian

Brian A. May

Freedom of Information Act (FOIA) Officer

Executive Secretariat

Health Resources and Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov



From: James Rogers <[REDACTED]@aflegal.org>
Sent: Tuesday, May 28, 2024 7:26 PM
To: May, Brian (HRSA) <BMay@hrsa.gov>; 'AFL FOIA' <foia@aflegal.org>
Subject: Re: [EXTERNAL] Re: HRSA FOIA 23F199 - HRSA's Availability to Meet

Hi Brian--

I am writing to check in on FOIA request 23F199, which we submitted over a year ago. Can you provide an update on the status of this request and when you expect to start producing responsive documents?

Regards,
James

--

James Rogers

Senior Counsel

America First Legal Foundation

(623) 335-7771

On 5/8/2023 10:58 AM, May, Brian (HRSA) wrote:

Hi James:

Thanks for your patience. I shared your availability with the program office and asked if we could make one of your available times today or tomorrow. If we cannot, do any of our available time slots on Wednesday through Friday work for you?

Sincerely,

Brian

Brian A. May

Freedom of Information Act (FOIA) Officer

Executive Secretariat

Health Resources and Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov



From: James Rogers <[REDACTED]@aflegal.org>
Sent: Monday, May 8, 2023 10:34 AM
To: May, Brian (HRSA) <BMay@hrsa.gov>; HRSA FOIA <FOIA@hrsa.gov>; 'AFL FOIA' <foia@aflegal.org>
Subject: Re: [EXTERNAL] Re: HRSA FOIA 23F199 - HRSA's Availability to Meet

The following slots today and tomorrow would work for me:

Today (5/8): 4 pm

Tomorrow (5/9): 12 pm; or 4 pm

Regards,
James

On 5/8/2023 10:30 AM, May, Brian (HRSA) wrote:

Good Morning James:

Thanks for following up; unfortunately, I haven't had an opportunity to review your email (until reviewing this message).

Since we're fast approaching 11 A.M., we're not going to be able to make that time. Is there another time slot that will work today or tomorrow? In turn, I'll ask the program office if they are available.

Brian

Brian A. May

Freedom of Information Act (FOIA) Officer

Executive Secretariat

Health Resources and Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov



From: James Rogers [REDACTED] [@aflegal.org](mailto:[REDACTED]@aflegal.org)
Sent: Monday, May 8, 2023 10:28 AM
To: HRSA FOIA <FOIA@hrsa.gov>; 'AFL FOIA' <foia@aflegal.org>; May, Brian (HRSA) <BMay@hrsa.gov>
Subject: [EXTERNAL] Re: HRSA FOIA 23F199 - HRSA's Availability to Meet

Good morning--

I just wanted to check in on this. Were we going to be able to meet at 11 today? We have not received a Teams invite. If today will not work, May 10 at Noon would be the next available time from your list that works well.

Regards,
James

On 5/5/2023 2:34 PM, James Rogers wrote:

Thanks for getting back to us. May the 8th at 11:00-11:30 would work well.
Could we do that?

Thanks,
James

On 5/5/2023 9:09 AM, HRSA FOIA wrote:

Good Morning James Rogers:

Thank you for your patience while we determined our availability to connect with you next week, do any of the following dates and times work for you?

May 8th: 9:30-10:00 A.M.; 11:00-11:30 A.M.; or 2:30-3:00 P.M.

May 9th: 9:00-9:30 A.M.

May 10th: 9:00-10:00 A.M.; 12:00-1:00 P.M.

May 11th: 10:30-11:00 A.M.

May 12th: 9:00-10:00 A.M.; 1:00-2:30 P.M.

If so, please let me know which date/time and I will send a Microsoft Teams meeting invitation. Have a nice weekend.

Sincerely,

Brian

Brian A. May

Freedom of Information Act (FOIA) Officer

Executive Secretariat

Health Resources and Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov



From: AFL FOIA <foia@aflegal.org>
Sent: Thursday, April 27, 2023 1:20 PM
To: HRSA FOIA <FOIA@hrsa.gov>; May, Brian (HRSA) <BMay@hrsa.gov>
Cc: James Rogers [REDACTED] <[\[REDACTED\]@aflegal.org](mailto:[REDACTED]@aflegal.org)>
Subject: [EXTERNAL] Re: HRSA FOIA 23F199 - Request Clarification

Dear Mr. May--

My apologies for the delay in getting back to you. Tomorrow (Friday), I am available any time except Noon to 1 pm (EDT). If Friday does not work, then I am available Monday and Tuesday next week, any time except for 10 am to 11 am on both days.

Regards,
James Rogers

On Mon, Apr 24, 2023 at 3:42 PM HRSA FOIA <FOIA@hrsa.gov> wrote:

Good Afternoon James Rogers:

How are you doing today? We write to request clarification about your FOIA request, HRSA Tracking Number 23F199.

HRSA's Division of Transplantation informed us that the search terms provided are not yielding useful results because our email search feature does not allow connected terms (e.g. "race + organ") and only retrieve emails with that pairing. Instead, the Division of Transplantation searches are producing every mention of a search term, yielding countless emails that have organ, transplant, or transplantation in it but unrelated to what you seek. Further, Division of Transplantation personnel list "Division of Transplantation" in their signature block which yields a lot of non-responsive records. Could we meet this week to discuss your search terms, brainstorm any additional terms, or discuss the nature of your request to determine if we can narrow the scope which may lead to fruitful search? If so, what dates and times work best for you?

Thank you for your time, wishing you a wonderful afternoon.

Sincerely,

Brian

Brian A. May

Freedom of Information Act (FOIA) Officer

Executive Secretariat

Health Resources and Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov

From: Duncan, Ashley (HRSA) <ADuncan@hrsa.gov>

Sent: Thursday, April 6, 2023 10:36 AM

To: FOIA@aflegal.org

Cc: HRSA FOIA <FOIA@hrsa.gov>; Duncan, Ashley (HRSA) <ADuncan@hrsa.gov>

Subject: HRSA FOIA 23F199 - Acknowledgement

Good Morning James Rogers,

Thank you for your interest in HRSA, please find our acknowledgement letter attached to this email. If you have any questions regarding your request, feel free to contact me.

Best Regards,

Ashley Duncan

Student Trainee HRSA

OO/Exec Sec

Phone: (301) 443-4521

Email: ADuncan@hrsa.gov



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James Rogers [REDACTED]@aflegal.org

Mon, Jul 1, 2024 at 6:58 PM

To: "May, Brian (HRSA)" <BMay@hrsa.gov>, AFL FOIA <foia@aflegal.org>

Cc: "Chancellor, Alexis (HRSA)" <AChancellor@hrsa.gov>, [REDACTED]@aflegal.org>

Hi Brian--

My apologies for the delay in getting back to you. We would love the chance to connect and discuss further our request. Are you free some time on Monday, July 8?

Thanks,
James

—
James Rogers
Senior Counsel
America First Legal Foundation
(623) 335-7771

[Quoted text hidden]

May, Brian (HRSA) <BMay@hrsa.gov>

Tue, Jul 2, 2024 at 3:13 AM

To: James Rogers [REDACTED]@aflegal.org>, AFL FOIA <foia@aflegal.org>

Cc: "Chancellor, Alexis (HRSA)" <AChancellor@hrsa.gov>, [REDACTED]@aflegal.org>

Good Morning James:

No worries, I'm headed out for vacation this morning and will return to the office on Wednesday, July 10, 2024. Can you send me your availability for on or after July 11th?

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

James Rogers [REDACTED]@aflegal.org>

Wed, Jul 17, 2024 at 4:45 PM

To: "May, Brian (HRSA)" <BMay@hrsa.gov>, AFL FOIA <foia@aflegal.org>

Cc: "Chancellor, Alexis (HRSA)" <AChancellor@hrsa.gov>, [REDACTED]@aflegal.org>

Hi Brian--

What is your availability looking like on Friday the 19th?

Thanks,
James

--
James Rogers
Senior Counsel
America First Legal Foundation
(623) 335-7771

[Quoted text hidden]



AFL FOIA <foia@aflegal.org>

HRSA FOIA 23F199: FOIA Officer Availability

2 messages

May, Brian (HRSA) <BMay@hrsa.gov>

Thu, Jul 18, 2024 at 6:21 AM

To: James Rogers [REDACTED]@aflegal.org>, AFL FOIA <foia@aflegal.org>

Cc: "Chancellor, Alexis (HRSA)" <AChancellor@hrsa.gov>, [REDACTED]@aflegal.org>

Good Morning James:

Thanks for your email. I'll be out a ½ day tomorrow (Friday) and a full day (Monday), I'm helping my middle daughter move into her place out-of-state. Here's my availability next week:

Wednesday, 7/24/24: 9 A.M. – Noon; 3 – 4 P.M.

Thursday, 7/25/24: 11 A.M. – Noon

Friday, 7/26/24: 11 A.M. – Noon; 1 – 3:30 P.M.

Regards,

Brian

Brian A. May

Freedom of Information Act (FOIA) Officer

Executive Secretariat

Health Resources and Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov



From: James Rogers <[REDACTED]@aflegal.org>
Sent: Wednesday, July 17, 2024 5:45 PM
To: May, Brian (HRSA) <BMay@hrsa.gov>; 'AFL FOIA' <foia@aflegal.org>
Cc: Chancellor, Alexis (HRSA) <AChancellor@hrsa.gov>; [REDACTED]@aflegal.org>
Subject: Re: [EXTERNAL] Re: HRSA FOIA 23F199: Update, Available to Connect?

Hi Brian--

What is your availability looking like on Friday the 19th?

Thanks,
James

--

James Rogers
Senior Counsel
America First Legal Foundation
(623) 335-7771

On 7/2/2024 4:13 AM, May, Brian (HRSA) wrote:

Good Morning James:

No worries, I'm headed out for vacation this morning and will return to the office on Wednesday, July 10, 2024. Can you send me your availability for on or after July 11th?

Regards,

Brian

Brian A. May
Freedom of Information Act (FOIA) Officer
Executive Secretariat
Health Resources and Services Administration
Phone: 301-443-1467
Email: bmay@hrsa.gov



From: James Rogers [REDACTED]@aflegal.org>
Sent: Monday, July 1, 2024 7:58 PM
To: May, Brian (HRSA) <BMay@hrsa.gov>; 'AFL FOIA' <foia@aflegal.org>
Cc: Chancellor, Alexis (HRSA) <AChancellor@hrsa.gov>; [REDACTED]@aflegal.org>
Subject: [EXTERNAL] Re: HRSA FOIA 23F199: Update, Available to Connect?

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James Rogers
Senior Counsel
America First Legal Foundation
[REDACTED]

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Your request is currently 36th out of 281 requests in our overall queue and 3rd in my queue. We completed our record search, and I started reviewing the email records to determine responsiveness, it appears that we have a significant amount of false positive hits and potentially a lot of duplicate records. Are you available to connect next week or the following to discuss

If we meet, I'd like to provide you with details about the records that we located and determine whether they are responsive. Additionally, given the volume of potentially responsive records (201.3 GB, potentially 20,130,000 pages), I'd like to develop a production schedule with you, giving you the option to prioritize which records that you would like to receive first. Further, are you interested in receiving attachments to emails? If so, that will likely significantly increase the volume of records that we will need to review/process.

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Regards,

Brian

Brian A. May

Freedom of Information Act (FOIA) Officer

Executive Secretariat

Health Resources and Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov



From: James Rogers [REDACTED]@aflegal.org>
Sent: Tuesday, May 28, 2024 7:26 PM
To: May, Brian (HRSA) <BMay@hrsa.gov>; 'AFL FOIA' <foia@aflegal.org>
Subject: Re: [EXTERNAL] Re: HRSA FOIA 23F199 - HRSA's Availability to Meet

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James

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James Rogers
Senior Counsel
America First Legal Foundation
(623) 335-7771

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Sincerely,

Brian

Brian A. May
Freedom of Information Act (FOIA) Officer
Executive Secretariat
Health Resources and Services Administration
Phone: 301-443-1467
Email: bmay@hrsa.gov



From: James Rogers [REDACTED]@aflegal.org>
Sent: Monday, May 8, 2023 10:34 AM
To: May, Brian (HRSA) <BMay@hrsa.gov>; HRSA FOIA <FOIA@hrsa.gov>; 'AFL FOIA' <foia@aflegal.org>
Subject: Re: [EXTERNAL] Re: HRSA FOIA 23F199 - HRSA's Availability to Meet

The following slots today and tomorrow would work for me:

Today (5/8): 4 pm
Tomorrow (5/9): 12 pm; or 4 pm

Regards,
James

On 5/8/2023 10:30 AM, May, Brian (HRSA) wrote:

Good Morning James:

Thanks for following up; unfortunately, I haven't had an opportunity to review your email (until reviewing this message).

Since we're fast approaching 11 A.M., we're not going to be able to make that time. Is there another time slot that will work today or tomorrow? In turn, I'll ask the program office if they are available.

Sincerely,

Brian

Brian A. May

Freedom of Information Act (FOIA) Officer

Executive Secretariat

Health Resources and Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov



From: James Rogers <[REDACTED]@aflegal.org>
Sent: Monday, May 8, 2023 10:28 AM
To: HRSA FOIA <FOIA@hrsa.gov>; 'AFL FOIA' <foia@aflegal.org>; May, Brian (HRSA) <BMay@hrsa.gov>
Subject: [EXTERNAL] Re: HRSA FOIA 23F199 - HRSA's Availability to Meet

Good morning--

I just wanted to check in on this. Were we going to be able to meet at 11 today? We have not received a Teams invite. If today will not work, May 10 at Noon would be the next available time from your list that works well.

Regards,
James

On 5/5/2023 2:34 PM, James Rogers wrote:

Thanks for getting back to us. May the 8th at 11:00-11:30 would work well. Could we do that?

Thanks,
James

On 5/5/2023 9:09 AM, HRSA FOIA wrote:

Good Morning James Rogers:

Thank you for your patience while we determined our availability to connect with you next week, do any of the

following dates and times work
for you?

May 8th: 9:30-10:00
A.M.; 11:00-11:30 A.M.;
or 2:30-3:00 P.M.

May 9th: 9:00-9:30 A.M.

May 10th: 9:00-10:00
A.M.; 12:00-1:00 P.M.

May 11th: 10:30-11:00
A.M.

May 12th: 9:00-10:00
A.M.; 1:00-2:30 P.M.

If so, please let me know which
date/time and I will send a
Microsoft Teams meeting
invitation. Have a nice
weekend.

Sincerely,

Brian

Brian A. May

Freedom of Information Act
(FOIA) Officer

Executive Secretariat

Health Resources and
Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov





From: AFL FOIA <foia@aflegal.org>
Sent: Thursday, April 27, 2023 1:20 PM
To: HRSA FOIA <FOIA@hrsa.gov>; May, Brian (HRSA) <BMay@hrsa.gov>
Cc: James Rogers [REDACTED] <[\[REDACTED\]@aflegal.org](mailto:[REDACTED]@aflegal.org)>
Subject: [EXTERNAL] Re: HRSA FOIA 23F199 - Request Clarification

Dear Mr. May--

My apologies for the delay in getting back to you. Tomorrow (Friday), I am available any time except Noon to 1 pm (EDT). If Friday does not work, then I am available Monday and Tuesday next week, any time except for 10 am to 11 am on both days.

Regards,
James Rogers

On Mon, Apr 24, 2023 at 3:42 PM
HRSA FOIA <FOIA@hrsa.gov> wrote:

Good Afternoon James
Rogers:

How are you doing today?
We write to request
clarification about your FOIA
request, HRSA Tracking
Number 23F199.

HRSA's Division of
Transplantation informed us
that the search terms
provided are not yielding
useful results because our
email search feature does

not allow connected terms (e.g. "race + organ") and only retrieve emails with that pairing. Instead, the Division of Transplantation searches are producing every mention of a search term, yielding countless emails that have organ, transplant, or transplantation in it but unrelated to what you seek. Further, Division of Transplantation personnel list "Division of Transplantation" in their signature block which yields a lot of non-responsive records. Could we meet this week to discuss your search terms, brainstorm any additional terms, or discuss the nature of your request to determine if we can narrow the scope which may lead to fruitful search? If so, what dates and times work best for you?

Thank you for your time, wishing you a wonderful afternoon.

Sincerely,

Brian

Brian A. May

Freedom of Information Act
(FOIA) Officer

Executive Secretariat

Health Resources and
Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov

From: Duncan, Ashley (HRSA)
<ADuncan@hrsa.gov>
Sent: Thursday, April 6, 2023 10:36 AM
To: FOIA@aflegal.org
Cc: HRSA FOIA
<FOIA@hrsa.gov>; Duncan, Ashley (HRSA) <ADuncan@hrsa.gov>
Subject: HRSA FOIA 23F199 - Acknowledgement

Good Morning James Rogers,

Thank you for your interest in HRSA, please find our acknowledgement letter attached to this email. If you have any questions regarding your request, feel free to contact me.

Best Regards,

Ashley Duncan

Student Trainee HRSA

OO/Exec Sec

Phone: (301) 443-4521

Email: ADuncan@hrsa.gov



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James Rogers [REDACTED]@aflegal.org>

Fri, Jul 19, 2024 at 6:48 PM

To: "May, Brian (HRSA)" <BMay@hrsa.gov>, AFL FOIA <foia@aflegal.org>

Cc: "Chancellor, Alexis (HRSA)" <AChancellor@hrsa.gov>, [REDACTED]@aflegal.org>

Could we do Wednesday at 3:30 pm?

Thanks,
James

—
James Rogers
Senior Counsel
America First Legal Foundation
[REDACTED]

[Quoted text hidden]



AFL FOIA <foia@aflegal.org>

[EXTERNAL] Re: HRSA FOIA 23F199: FOIA Officer Availability

1 message

May, Brian (HRSA) <BMay@hrsa.gov>

Wed, Jul 24, 2024 at 5:57 AM

To: James Rogers [REDACTED]@aflegal.org>, AFL FOIA <foia@aflegal.org>

Cc: "Chancellor, Alexis (HRSA)" <AChancellor@hrsa.gov>, [REDACTED]@aflegal.org>

Good Afternoon James:

Thank you for your patience, here is the invitation for us to meet this afternoon at 3:30 P.M. Eastern.

Regards,

Brian

Brian A. May

Freedom of Information Act (FOIA) Officer

Executive Secretariat

Health Resources and Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov



Microsoft Teams Need help?

Join the meeting now

Meeting ID: 243 557 837 481

Passcode: 2vgD8j

Dial in by phone

+1 240-800-7959,,779726393# United States, Bethesda

[Find a local number](#)

Phone conference ID: 779 726 393#

For organizers: [Meeting options](#) | [Reset dial-in PIN](#)

From: James Rogers <[REDACTED]@aflegal.org>
Sent: Friday, July 19, 2024 7:49 PM
To: May, Brian (HRSA) <BMay@hrsa.gov>; 'AFL FOIA' <foia@aflegal.org>
Cc: Chancellor, Alexis (HRSA) <AChancellor@hrsa.gov>; [REDACTED]@aflegal.org>
Subject: [EXTERNAL] Re: HRSA FOIA 23F199: FOIA Officer Availability

Could we do Wednesday at 3:30 pm?

Thanks,
James

--

James Rogers
Senior Counsel
America First Legal Foundation
[REDACTED]

On 7/18/2024 7:21 AM, May, Brian (HRSA) wrote:

Good Morning James:

Thanks for your email. I'll be out a ½ day tomorrow (Friday) and a full day (Monday), I'm helping my middle daughter move into her place out-of-state. Here's my availability next week:

Wednesday, 7/24/24: 9 A.M. – Noon; 3 – 4 P.M.

Thursday, 7/25/24: 11 A.M. – Noon

Friday, 7/26/24: 11 A.M. – Noon; 1 – 3:30 P.M.

Regards,

Brian

Brian A. May

Freedom of Information Act (FOIA) Officer

Executive Secretariat

Health Resources and Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov



From: James Rogers [REDACTED] <[\[REDACTED\]@aflegal.org](mailto:[REDACTED]@aflegal.org)>
Sent: Wednesday, July 17, 2024 5:45 PM
To: May, Brian (HRSA) <BMay@hrsa.gov>; 'AFL FOIA' <foia@aflegal.org>
Cc: Chancellor, Alexis (HRSA) <ACHancellor@hrsa.gov>; [REDACTED] <[\[REDACTED\]@aflegal.org](mailto:[REDACTED]@aflegal.org)>
Subject: Re: [EXTERNAL] Re: HRSA FOIA 23F199: Update, Available to Connect?

Hi Brian--

What is your availability looking like on Friday the 19th?

Thanks,
James

--

James Rogers

Senior Counsel

America First Legal Foundation

[REDACTED]

On 7/2/2024 4:13 AM, May, Brian (HRSA) wrote:

Good Morning James:

No worries, I'm headed out for vacation this morning and will return to the office on Wednesday, July 10, 2024. Can you send me your availability for on or after July 11th?

Brian

Brian A. May

Freedom of Information Act (FOIA) Officer

Executive Secretariat

Health Resources and Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov



From: James Rogers <[REDACTED]@aflegal.org>
Sent: Monday, July 1, 2024 7:58 PM
To: May, Brian (HRSA) <BMay@hrsa.gov>; 'AFL FOIA' <foia@aflegal.org>
Cc: Chancellor, Alexis (HRSA) <AChancellor@hrsa.gov>; [REDACTED] <[REDACTED]@aflegal.org>
Subject: [EXTERNAL] Re: HRSA FOIA 23F199: Update, Available to Connect?

Hi Brian--

My apologies for the delay in getting back to you. We would love the chance to connect and discuss further our request. Are you free some time on Monday, July 8?

Thanks,
James

--

James Rogers

Senior Counsel

America First Legal Foundation



On 6/13/2024 12:08 PM, May, Brian (HRSA) wrote:

Good Morning James:

Thanks for your patience and apologies for the delay, I traveled to the American Society of Access Professionals National Training Conference last week and have been playing catchup this week.

Your request is currently 36th out of 281 requests in our overall queue and 3rd in my queue. We completed our record search, and I started reviewing the email records to determine responsiveness, it appears that we have a significant amount of false positive hits and potentially a lot of duplicate records. Are you available to connect next week or the following to discuss your request? If so, could you send me your availability to connect over the next few weeks?

If we meet, I'd like to provide you with details about the records that we located and determine whether they are responsive. Additionally, given the volume of potentially responsive records (201.3 GB, potentially 20,130,000 pages), I'd like to develop a production schedule with you, giving you the option to prioritize which records that you would like to receive first. Further, are you interested in receiving attachments to emails? If so, that will likely significantly increase the volume of records that we will need to review/process.

Here's a reference that I used to calculate the potential page count of email records: <https://www.digitalwarroom.com/blog/how-many-pages-in-a-gigabyte>. If it helps, we can review between 35-50 pages per hour.

Regards,

Brian

Brian A. May

Freedom of Information Act (FOIA) Officer

Executive Secretariat

Health Resources and Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov



From: James Rogers <[REDACTED]@aflegal.org>
Sent: Tuesday, May 28, 2024 7:26 PM
To: May, Brian (HRSA) <BMay@hrsa.gov>; 'AFL FOIA' <foia@aflegal.org>
Subject: Re: [EXTERNAL] Re: HRSA FOIA 23F199 - HRSA's Availability to Meet

Hi Brian--

I am writing to check in on FOIA request 23F199, which we submitted over a year ago. Can you provide an update on the status of this request and when you expect to start producing responsive documents?

Regards,
James

--

James Rogers
Senior Counsel
America First Legal Foundation
[REDACTED]

On 5/8/2023 10:58 AM, May, Brian (HRSA) wrote:

Hi James:

Thanks for your patience. I shared your availability with the program office and asked if we could make one of your available times today or tomorrow. If we cannot, do any of our available time slots on Wednesday through Friday work for you?

Sincerely,

Brian

Brian A. May
Freedom of Information Act (FOIA) Officer
Executive Secretariat
Health Resources and Services Administration
Phone: 301-443-1467
Email: bmay@hrsa.gov



From: James Rogers <[REDACTED]@aflegal.org>
Sent: Monday, May 8, 2023 10:34 AM
To: May, Brian (HRSA) <BMay@hrsa.gov>; HRSA FOIA <FOIA@hrsa.gov>; 'AFL FOIA' <foia@aflegal.org>
Subject: Re: [EXTERNAL] Re: HRSA FOIA 23F199 - HRSA's Availability to Meet

The following slots today and tomorrow would work for me:

Today (5/8): 4 pm
Tomorrow (5/9): 12 pm; or 4 pm

Regards,
James

On 5/8/2023 10:30 AM, May, Brian (HRSA) wrote:

Good Morning James:

Thanks for following up; unfortunately, I haven't had an opportunity to review your email (until reviewing this message).

Since we're fast approaching 11 A.M., we're not going to be able to make that time. Is there another time slot that will work today or tomorrow? In turn, I'll ask the program office if they are available.

Sincerely,

Brian

Brian A. May
Freedom of Information Act (FOIA) Officer
Executive Secretariat

Health Resources and Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov



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Sent: Monday, May 8, 2023 10:28 AM
To: HRSA FOIA <FOIA@hrsa.gov>; 'AFL FOIA' <foia@aflegal.org>; May, Brian (HRSA) <BMay@hrsa.gov>
Subject: [EXTERNAL] Re: HRSA FOIA 23F199 - HRSA's Availability to Meet

Good morning--

I just wanted to check in on this. Were we going to be able to meet at 11 today? We have not received a Teams invite. If today will not work, May 10 at Noon would be the next available time from your list that works well.

Regards,
James

On 5/5/2023 2:34 PM, James Rogers wrote:

Thanks for getting back to us. May the 8th at 11:00-11:30 would work well. Could we do that?

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On 5/5/2023 9:09 AM, HRSA FOIA wrote:

Good Morning James
Rogers:

Thank you for your patience while we determined our availability to connect with you next week, do any of the following dates and times work for you?

May 8th: 9:30-10:00
A.M.; 11:00-11:30

A.M.; or 2:30-3:00
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A.M.

May 12th: 9:00-10:00
A.M.; 1:00-2:30 P.M.

If so, please let me know
which date/time and I will
send a Microsoft Teams
meeting invitation. Have a
nice weekend.

Sincerely,

Brian

Brian A. May

Freedom of Information Act
(FOIA) Officer

Executive Secretariat

Health Resources and
Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov



From: AFL FOIA <foia@aflegal.org>
Sent: Thursday, April 27, 2023 1:20 PM
To: HRSA FOIA <FOIA@hrsa.gov>; May, Brian (HRSA) <BMay@hrsa.gov>
Cc: James Rogers [REDACTED] <[\[REDACTED\]@aflegal.org](mailto:[REDACTED]@aflegal.org)>
Subject: [EXTERNAL] Re: HRSA FOIA 23F199 - Request Clarification

Dear Mr. May--

My apologies for the delay in getting back to you. Tomorrow (Friday), I am available any time except Noon to 1 pm (EDT). If Friday does not work, then I am available Monday and Tuesday next week, any time except for 10 am to 11 am on both days.

Regards,
James Rogers

On Mon, Apr 24, 2023 at 3:42 PM
HRSA FOIA <FOIA@hrsa.gov>
wrote:

Good Afternoon James
Rogers:

How are you doing today?
We write to request
clarification about your
FOIA request, HRSA
Tracking Number 23F199.

HRSA's Division of
Transplantation informed
us that the search terms
provided are not yielding
useful results because our
email search feature does
not allow connected terms
(e.g. "race + organ") and
only retrieve emails with
that pairing. Instead, the
Division of Transplantation
searches are producing
every mention of a search
term, yielding countless
emails that have organ,
transplant, or
transplantation in it but
unrelated to what you
seek. Further, Division of

Transplantation personnel list "Division of Transplantation" in their signature block which yields a lot of non-responsive records. Could we meet this week to discuss your search terms, brainstorm any additional terms, or discuss the nature of your request to determine if we can narrow the scope which may lead to fruitful search? If so, what dates and times work best for you?

Thank you for your time, wishing you a wonderful afternoon.

Sincerely,

Brian

Brian A. May

Freedom of Information Act
(FOIA) Officer

Executive Secretariat

Health Resources and
Services Administration

Phone: 301-443-1467

Email: bmay@hrsa.gov

From: Duncan, Ashley (HRSA)
<ADuncan@hrsa.gov>
Sent: Thursday, April 6, 2023
10:36 AM
To: FOIA@aflegal.org
Cc: HRSA FOIA
<FOIA@hrsa.gov>; Duncan,
Ashley (HRSA)
<ADuncan@hrsa.gov>
Subject: HRSA FOIA 23F199 -
Acknowledgement

Good Morning James Rogers,

Thank you for your interest in HRSA, please find our acknowledgement letter attached to this email. If you have any questions regarding your request, feel free to contact me.

Best Regards,

Ashley Duncan

Student Trainee HRSA

OO/Exec Sec

Phone: (301) 443-4521

Email: ADuncan@hrsa.gov



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 **invite.ics**
20K

BM

From: Brian (HRSA) May BMay@hrsa.gov
Subject: HRSA FOIA 23F199 - Narrowed Request
Date: August 15, 2024 at 6:07 AM
To: James Rogers [REDACTED]@aflegal.org
Cc: [REDACTED]@aflegal.org

Good Morning, Laura:

Writing to confirm receipt, I'll skim through the records and determine the volume of potentially responsive records next week and circle back with you.

Hope that you have a smooth finish to your work week and a fantastic weekend!

Regards,

Brian

Brian A. May
Freedom of Information Act (FOIA) Officer
Executive Secretariat
Health Resources and Services Administration
Phone: 301-443-1467
Email: bmay@hrsa.gov

HRSA Logo



From: Laura Stell [REDACTED]@aflegal.org>
Sent: Wednesday, August 14, 2024 4:39 PM
To: May, Brian (HRSA) <BMay@hrsa.gov>
Cc: James Rogers [REDACTED]@aflegal.org>
Subject: [EXTERNAL] HRSA FOIA 23F199 - Narrowing Request

Brian,

After our prior discussion, we've decided to narrow the request to be from January 20, 2021 through April 1, 2021. Could you please update our request accordingly and let us know if this will rectify the processing issues we've previously discussed?

Please let us know if there is anything additional you need from us to move forward with these changes.

Thank you.

--

Laura Stell

Attorney
America First Legal

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CIVIL COVER SHEET

JS-44 (Rev. 11/2020 DC)

I. (a) PLAINTIFFS America First Legal Foundation (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>11001</u> (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS U.S. Department of Health and Human Services Centers for Medicare & Medicaid Services Health Resources and Services Administration COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>11001</u> (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>																								
(c) ATTORNEYS (FIRMNAME, ADDRESS, AND TELEPHONE NUMBER) William Scolinos Robert Crossin America First Legal Foundation 611 Pennsylvania Ave SE #231 Washington, DC 20003	ATTORNEYS (IF KNOWN)																								
II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!																								
<div style="display: flex; justify-content: space-between;"> <div> <input type="radio"/> 1 U.S. Government Plaintiff </div> <div> <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) </div> </div> <div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="radio"/> 2 U.S. Government Defendant </div> <div> <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III) </div> </div>	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><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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IV. CASE ASSIGNMENT AND NATURE OF SUIT

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

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

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

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

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Failure of the defendants to comply with 5 U.S.C. § 552

VII. REQUESTED IN COMPLAINT

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 0

JURY DEMAND: YES ☐ NO ☒

Check YES only if demanded in complaint

VIII. RELATED CASE(S) IF ANY

(See instruction)

YES ☐ NO ☒

If yes, please complete related case form

DATE: 7/1/2025

SIGNATURE OF ATTORNEY OF RECORD /s/ William Scolinos

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

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

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

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

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

CLEAR FORM

America First Legal Foundation

Plaintiff

v.

U.S. Department of Health and Human Services, Centers for
Medicare & Medicaid Services, Health Resources and
Services Administration *Defendant*

Civil Action No. 25-2101

SUMMONS IN A CIVIL ACTIONTo: *(Defendant's name and address)*

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES
200 Independence Ave., SW
Washington, D.C. 20201

A lawsuit has been filed against you.

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

William Scolinos
America First Legal Foundation
611 Pennsylvanua Ave SE #231
Washington, DC 20003
william.scolinos@aflegal.org
(301) 965-0179

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

*ANGELA D. CAESAR, CLERK OF COURT*Date: 7/1/2025

Signature of Clerk or Deputy Clerk

Civil Action No. 25-2101

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:

Print

Save As...

Reset

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

CLEAR FORM

America First Legal Foundation

Plaintiff

v.

U.S. Department of Health and Human Services, Centers for
Medicare & Medicaid Services, Health Resources and
Services Administration *Defendant*

Civil Action No. 25-2101

SUMMONS IN A CIVIL ACTIONTo: *(Defendant's name and address)*

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES
200 Independence Ave., SW
Washington, D.C. 20201

A lawsuit has been filed against you.

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

William Scolinos
America First Legal Foundation
611 Pennsylvanua Ave SE #231
Washington, DC 20003
william.scolinos@aflegal.org
(301) 965-0179

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

*ANGELA D. CAESAR, CLERK OF COURT*Date: 7/1/2025

Signature of Clerk or Deputy Clerk

Civil Action No. 25-2101

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☐ 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)*: _____.

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Date: _____

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Printed name and title

Server's address

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

CLEAR FORM

America First Legal Foundation

Plaintiff

v.

U.S. Department of Health and Human Services, Centers for
Medicare & Medicaid Services, Health Resources and
Services Administration

Defendant

Civil Action No. 25-2101

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES
200 Independence Ave., SW
Washington, D.C. 20201

A lawsuit has been filed against you.

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

William Scolinos
America First Legal Foundation
611 Pennsylvanua Ave SE #231
Washington, DC 20003
william.scolinos@aflegal.org
(301) 965-0179

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

ANGELA D. CAESAR, CLERK OF COURT

Date: 7/1/2025

Signature of Clerk or Deputy Clerk

Civil Action No. 25-2101

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

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 _____ on *(date)* _____; or

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

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
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☐ Other *(specify)*: _____.

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Date: _____

Server's signature

Printed name and title

Server's address

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

CLEAR FORM

America First Legal Foundation

Plaintiff

v.

U.S. Department of Health and Human Services, Centers for
Medicare & Medicaid Services, Health Resources and
Services Administration *Defendant*

Civil Action No. 25-2101

SUMMONS IN A CIVIL ACTIONTo: *(Defendant's name and address)*

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES
200 Independence Ave., SW
Washington, D.C. 20201

A lawsuit has been filed against you.

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

William Scolinos
America First Legal Foundation
611 Pennsylvanua Ave SE #231
Washington, DC 20003
william.scolinos@aflegal.org
(301) 965-0179

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

*ANGELA D. CAESAR, CLERK OF COURT*Date: 7/1/2025

Signature of Clerk or Deputy Clerk

Civil Action No. 25-2101

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 _____, 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

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☐ Other *(specify)*: _____.

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Date: _____

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

CLEAR FORM

America First Legal Foundation

Plaintiff

v.

U.S. Department of Health and Human Services, Centers for
Medicare & Medicaid Services, Health Resources and
Services Administration *Defendant*

Civil Action No. 25-2101

SUMMONS IN A CIVIL ACTIONTo: *(Defendant's name and address)*

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES
200 Independence Ave., SW
Washington, D.C. 20201

A lawsuit has been filed against you.

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

William Scolinos
America First Legal Foundation
611 Pennsylvanua Ave SE #231
Washington, DC 20003
william.scolinos@aflegal.org
(301) 965-0179

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

*ANGELA D. CAESAR, CLERK OF COURT*Date: 7/1/2025

Signature of Clerk or Deputy Clerk

Civil Action No. 25-2101

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 _____, 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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☐ I returned the summons unexecuted because _____; or

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