

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

AMERICA FIRST LEGAL FOUNDATION,
611 Pennsylvania Avenue SE #231
Washington, DC 20003

Plaintiff

v.

FEDERAL BUREAU OF INVESTIGATION,
935 Pennsylvania Ave NW
Washington, DC 20535-0001

and

DEPARTMENT OF JUSTICE
950 Pennsylvania Ave NW
Washington, DC 20530-0001

Defendants.

Civil Action No.: 23-2172

COMPLAINT

1. The Plaintiff, America First Legal Foundation (“AFL”), brings this action against the Federal Bureau of Investigation (“FBI”) and the Department of Justice (collectively, “Defendants”) to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

2. Secretary Alejandro Mayorkas’s loss of public confidence has garnered the introduction of several resolutions seeking his impeachment in the 118th Congress. *See, e.g.*, H.R. Res. 8, 118th Cong. (2023); H.R. Res. 89, 118th Cong. (2023); H.R. Res. 411, 118th Cong. (2023); H.R. Res. 470, 118th Cong. (2023); *see also* H.R. Res. 477, 118th Cong. (2023) (authorizing and directing the Committee on the

Judiciary to investigate whether sufficient grounds exist for impeachment); S. Res. 169, 118th Cong. (2023) (expressing the sense of the Senate that he does not have the confidence of the Senate or of the American people to faithfully carry out the duties of his office).

3. Accordingly, AFL brings this action to uncover the FBI background investigations records that may reveal the truth about Secretary Mayorkas's fitness to hold public office.

JURISDICTION AND VENUE

4. 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.*

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

PARTIES

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

7. Defendant FBI is an agency within the meaning of 5 U.S.C. § 552(f), is located within the District of Columbia, and has possession and control of the records AFL seeks.

8. Defendant Department of Justice is an agency within the meaning of 5 U.S.C. § 552(f), is located within the District of Columbia, and has possession and control of the records AFL seeks.

AFL'S FOIA REQUEST

9. On January 6, 2023, AFL submitted a FOIA request to the FBI, seeking records of “the FBI background investigation, Form SF-86, and any supporting security clearance documentation, including waiver forms [completed] by Alejandro Mayorkas or his designees for the purpose of allowing the FBI to conduct a background investigation as part of his nomination[s]” for Secretary of Homeland Security, Deputy Secretary of Homeland Security, Director of the United States Citizenship and Immigration Services, and the United States Attorney for the Central District of California, “as produced to or shared with” Congress. Exhibit A at 4–9.

10. In the request, AFL explained that Privacy Act protections were waived once the records were disclosed to Congress. *Id.* at 4–5; *see also Am. Oversight v. U.S. Dep't of Just.*, 375 F. Supp. 3d 50 (D.D.C. 2019) (showing that the Defendants, in response to another FOIA request, released Attorney General Jeff Sessions’s SF-86 and other records prepared during his background check).

11. AFL requested expedited processing of the request because, *inter alia*, Secretary Mayorkas has “authority over the unprecedented neglect of American borders and his central role in triggering both a massive humanitarian crisis and national security vulnerabilities for every American citizen,” which is a “pressing matter of critical national importance.” *Id.* at 7.

12. AFL also requested expedited processing of the request because “[t]he information contained in Secretary Mayorkas’s previous FBI background investigations is vital to exploring his alleged fitness to hold his current office” in the context of his “impending impeachment.” *Id.* at 8.

13. On January 13, 2023, the FBI responded to AFL’s request, stating that the “records on third party individual(s) [AFL] requested are categorically denied pursuant to FOIA exemptions (b)(6) and (b)(7)(C).” Exhibit A at 11–14.

14. On April 13, 2023, AFL appealed the FBI’s denial. Exhibit A at 1.

15. On June 16, 2023, the Department of Justice affirmed the FBI’s denial of AFL’s request. Exhibit B.

CLAIM FOR RELIEF

Violation of FOIA, 5 U.S.C. § 552

16. AFL repeats paragraphs 1–15.

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

18. The FBI failed to conduct a reasonable search for responsive records.

19. The FBI improperly withheld the responsive records under FOIA pursuant to 5 U.S.C. §§ 552(b)(6) and (b)(7)(C).

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

21. AFL properly appealed the FBI's determination to withhold the responsive records in full.

22. The Department of Justice improperly affirmed the FBI's determination to withhold the responsive records in full.

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

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

RELIEF REQUESTED

WHEREFORE, AFL respectfully requests this Court:

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

ii. Order the 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;
- iv. Award AFL attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);
and
- v. Grant AFL such other and further relief as this Court deems proper.

July 26, 2023.

Respectfully submitted,

/s/ Michael Ding

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