



August 2, 2021

VIA EMAIL – FOIA@acf.hhs.gov

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

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

Dear FOIA Officer:

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

I. Background

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

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

² *Id.*

³ *Id.* (emphasis added).

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

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

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

⁴ *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁶ 18 U.S.C. § 1913.

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

II. Requested Records

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

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

III. Construction and Redactions

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

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

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

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

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

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

IV. Fee Waiver Request

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

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

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

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

V. Record Preservation Requirement

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

VI. Production

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

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

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

VII. Conclusion

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

Thank you,

/s/ Gene P. Hamilton

Gene P. Hamilton

America First Legal Foundation