

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

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AMERICANS FOR PROSPERITY FOUNDATION		)
1310 North Courthouse Road, Suite 700		)
Arlington, VA 22201,		)
		)
Plaintiff,		)
		)
v.		)
	Civil Action No. 22-1140	)
		)
U.S. CITIZENSHIP AND IMMIGRATION SERVICES		)
5900 Capital Gateway Drive		)
Camp Springs, MD 20588-0009,		)
		)
Defendant.		)
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**COMPLAINT**

1. Plaintiff Americans for Prosperity Foundation (“AFPF”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, requesting access to agency records maintained by Defendant United States Citizenship and Immigration Services (“USCIS”).

2. AFPF seeks records about the “Known Employer” pilot project, which USCIS undertook as part of its efforts to improve the process by which employers hire workers through employment-based visa categories.

3. USCIS has neither issued a timely determination on AFPF’s FOIA request nor produced the requested records.

4. The records at issue have significant value that serves the public interest. Although the Known Employer pilot ended in December 2020 and USCIS previously announced its intent to release the results of that project, the agency has yet to disclose anything to the public.

**JURISDICTION AND VENUE**

5. Jurisdiction is asserted pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

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

### **PARTIES**

7. Plaintiff AFPF is a 501(c)(3) nonprofit organization committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society. Among other things, AFPF believes steps should be taken to improve immigration efficiencies and reduce redundant paperwork and procedural burdens on employers and green card/visa applicants. AFPF is therefore investigating USCIS's "Known Employer" pilot. AFPF routinely files and litigates FOIA requests.

8. Defendant USCIS is an agency within the meaning of 5 U.S.C. § 552(f)(1). It is a component of the U.S. Department of Homeland Security. USCIS has possession, custody, and control of agency records to which AFPF seeks access and that are the subject of this Complaint.

### **FACTS**

#### **I. USCIS's Known Employer Pilot Project**

9. In January 2015, USCIS announced its Known Employer pilot as part of the "United States-Canada Beyond the Border" initiative.

10. The purpose of that pilot project was to examine the feasibility of a new adjudicative process for employers seeking to hire workers through employment-based visa categories. Specifically, as compared to current practice that requires the same information about an employer to be submitted with each individual employment-based petition or application, the pilot project permitted participating employers to request that USCIS predetermine eligibility requirements of certain visa categories relating to the employer itself. A "known employer," once approved under the pilot and with limited exceptions, could avoid refiling the same employer-related evidence with each individual petition or application. USCIS hoped the pilot would

improve immigration efficiencies, reduce paperwork burdens, and improve collaboration with other federal agencies, including Customs and Border Protection and the Department of State.

11. USCIS approved a limited number of employers to participate in the pilot.

12. USCIS originally scheduled the pilot to start in March 2016 and terminate in March 2017, but the agency extended the project twice. The pilot finally expired on December 31, 2020.

13. USCIS publicly announced it would release the results of the pilot upon its completion. To date, the agency has not disclosed the official results of the pilot.

## **II. AFPF's March 10, 2022 FOIA Request**

14. By letter, dated March 10, 2022, AFPF submitted a FOIA request to USCIS through the agency's online portal seeking access to "all records reflecting the results of the Known Employer Pilot including but not limited to memorandums, studies, data sets, and/or e-mails."

**Exhibit 1** (internal footnote omitted).

15. AFPF identified the relevant time period as "January 1, 2015, to the present." *Id.*

16. AFPF defined the term "present" as "the date on which the agency begins its search for responsive records." *Id.*

17. AFPF defined the term "record" as "any medium of information storage in the form and format maintained by the agency at the time of the request." *Id.* AFPF explained that "[i]f any portion of a 'record' . . . is responsive to [its] request, then [USCIS] should process and disclose the record in its entirety." *Id.* Thus, "[i]f [USCIS] consider[ed] a medium of information storage to contain multiple records that it believe[d] c[ould] be segmented on the basis of the subject-matter of scope of AFPF's request," it must process all potentially segmented records as responsive. *Id.*

18. AFPF likewise explained that, as far as email chains were concerned, it sought “the entirety of any email chain, any portion of which contains an individual email message responsive to [its] request[.]” *Id.*

19. AFPF clarified it did not seek “daily news clippings or other mass mailings unless there is commentary related to them,” and USCIS could omit such records from the scope of the request. *Id.*

20. AFPF requested a public interest fee waiver and classification as a representative of the news media for fee purposes. *Id.*

21. By letter, dated March 10, 2022, USCIS acknowledged it had received AFPF’s FOIA request and assigned it tracking number COW2022001312. **Exhibit 2.**

22. USCIS indicated it required “clarification . . . regarding the records [AFPF] [is] requesting.” *Id.* The agency asked AFPF to provide “specific information” to assist in the design of a search methodology within “30 working days.” *Id.*

23. In its acknowledgment letter, USCIS failed to indicate whether it had placed AFPF’s request into a “simple” or “complex” processing queue. *See id.* It also failed to provide an estimated date of completion or to invoke an extension of its response date due to unusual circumstances. *See id.*

24. By email, dated March 10, 2022, AFPF provided USCIS with the requested “clarification”:

The USCIS website has a page dedicated to the now-closed Known Employer Pilot program, which was run by USCIS until it ended in December 2020: <https://www.uscis.gov/archive/known-employer-pilot>. On that page, USCIS says that the agency will “**publicly announce**” the results of the pilot: “After completing the pilot, DHS plans to publicly announce the results and, if the project is successful, seek to institute a permanent program open to all eligible employers.” [USCIS] d[id] not identify any specific records custodians, the type of report, or what data sets would be available. [AFPF’s] request seeks the “results” of the

program referenced on the USCIS website in whatever format they exist. This may require the FOIA Office to consult Subject Matter Experts within the department.

**Exhibit 3.**

25. USCIS automatically confirmed receipt of AFPP's March 10, 2022 email. *See*

**Exhibit 4.**

26. By e-mail, dated April 4, 2022, AFPP requested an update on the processing of its FOIA request. **Exhibit 5.**

27. USCIS provided a response on the same day and explained that AFPP's "request is currently number 1577 of 1653 pending requests." **Exhibit 6.**

28. As of April 25, 2022, USCIS's online portal indicates the estimated completion date for AFPP's request is May 18, 2022. **Exhibit 7.**

29. USCIS has not issued any determinations on AFPP's fee-related requests.

30. USCIS has not provided any further substantive update on the processing of AFPP's request. The agency has neither issued a determination nor produced responsive records.

**COUNT I**

**Violation of the FOIA: Failure to Comply with Statutory Requirements**

31. AFPP repeats all of the above paragraphs.

32. The FOIA requires an agency to accept and process any request for access to agency records that (a) "reasonably describes such records," and (b) "is made in accordance with published rules stating the time, place, fees, . . . and procedures to be followed[.]" 5 U.S.C. § 552(a)(3)(A).

33. The FOIA also requires an agency to respond to a valid request within 20 business days or, in "unusual circumstances," within 30 business days. *Id.* § 552(a)(6)(A)–(B). If an agency requires additional time to process a request, the FOIA mandates it provide the requester with "an

opportunity to arrange . . . an alternative time frame for processing the request[.]” *Id.* § 552(a)(6)(B)(ii).

34. AFPF’s FOIA request here seeks access to agency records maintained by USCIS. The request reasonably describes the records sought and otherwise complies with the FOIA and applicable regulations.

35. USCIS has failed to issue a determination on or promptly produce agency records responsive to the FOIA request at issue within the applicable time limits.

36. USCIS has also failed to comply with the FOIA because it never “arrange[d] . . . alternative time frame[s]” for responding to AFPF’s request and never actively invited AFPF to negotiate “alternative” response deadlines.

37. AFPF has exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C).

### **RELIEF REQUESTED**

WHEREFORE, Plaintiff AFPF respectfully requests and prays that this Court:

- a. Order Defendant USCIS to process AFPF’s FOIA request and issue a determination within 20 business days of the date of the Order;
- b. Order Defendant USCIS to produce all agency records responsive to AFPF’s FOIA request promptly upon issuing the determination;
- c. Maintain jurisdiction over this case until Defendant USCIS complies with the Order and, if applicable, adequately justifies its treatment of all responsive records;
- d. Award AFPF its costs and reasonable attorney fees incurred here pursuant to 5 U.S.C. § 552(a)(4)(E); and
- e. Grant such other relief as the Court may deem just and proper.

Dated: April 26, 2022

Respectfully submitted,

/s/ Ryan P. Mulvey

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D.C. Bar No. 1024362

Eric R. Bolinder

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