

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

AMERICAN IMMIGRATION)	
LAWYERS ASSOCIATION)	
)	
Plaintiff,)	
)	
v.)	No. 1:10-cv-01224 (EGS)
)	
UNITED STATES DEPARTMENT OF)	
HOMELAND SECURITY <i>et al.</i> ,)	
)	
Defendants.)	

**PLAINTIFF’S RESPONSE TO DEFENDANTS’ STATEMENT
OF MATERIAL FACTS NOT IN GENUINE DISPUTE AND
PLAINTIFF’S STATEMENT OF GENUINE MATERIAL ISSUES**

Plaintiff responds as follows to numbered paragraphs of Defendants’ Statement of Material Facts Not In Genuine Dispute:

22. Plaintiff denies that USCIS broadly interpreted the February 6 Request, in view of Defendants’ identification of only six pages of responsive documents in connection with that request and the lack of identification of other documents falling within the scope of the February 6 Request for example as identified in the *Vaughn* Index accompanying the Declaration of Jill A. Eggleston dated June 23, 2010 and filed on June 24, 2010 in *TechServe Alliance v. Napolitano* (D.D.C. Docket No. 1:10-cv-00353-HHK).

43. Denied. Reasonably segregable information was not released. Compare, for instance, the H-1B Petition Fraud Referral Sheet as produced by Defendants in redacted form (Exhibit 11, Dkt. No. 23-14) and as publicly available (Exhibit 15, Dkt. No. 23-18). The H-1B Petition Fraud Referral Sheet includes information relating to

several primary fraud or technical violation(s) indicators which are readily available in the public domain as a result of public release by USCIS, including, the gross income of a company, the number of employees, the number of years the company has been in existence, and the occupation of the petitioner. *See* BFCR Report at p. 15 (Exhibit 2, Dkt. No. 23-5). Such information is discrete and reasonably segregable in the H-1B Petition Fraud Referral Sheet but was not released.

47. Plaintiff denies that USCIS partially reversed its decision on October 26, 2010, because the letter from USCIS concerning the same is dated October 27, 2010. Plaintiff also denies that USCIS partially reversed its decision to withhold both the Neufeld Memorandum and the H-1B Petition Fraud Referral Sheet in response to AILA's March 11, 2010 administrative appeal, rather than in response to plaintiff commencing the present action after the statutory time by which defendants were to respond to the administrative appeal had lapsed.

58. Denied. Not all fraud indicators are entitled to FOIA protection. For instance, several primary fraud indicators are readily available in the public domain as a result of public release by USCIS, including, the gross income of a company, the number of employees, the number of years the company has been in existence, and the occupation of the petitioner. *See* BFCR Report at p. 15 (Exhibit 2, Dkt. No. 23-5).

59. Denied. Reasonably segregable information was not released. Compare, for instance, the H-1B Petition Fraud Referral Sheet as produced by Defendants in redacted form (Exhibit 11, Dkt. No. 23-14) and as publicly available (Exhibit 15, Dkt. No. 23-18). The H-1B Petition Fraud Referral Sheet includes information relating to several primary fraud or technical violation(s) indicators which are readily available in

the public domain as a result of public release by USCIS, including, the gross income of a company, the number of employees, the number of years the company has been in existence, and the occupation of the petitioner. *See* BFCR Report at p. 15 (Exhibit 2, Dkt. No. 23-5). Such information is discrete and reasonably segregable in the H-1B Petition Fraud Referral Sheet but was not released.

This record presents the following genuine issues of material fact:

1. Whether Defendants have carried their evidentiary burden of establishing that the withheld documents or portions of documents are properly exempt from disclosure.

3. Whether Defendants have improperly withheld certain responsive documents or portions of documents.

Dated: July 25, 2011

Respectfully submitted,

/s/ Seth A. Watkins

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