

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001

Defendant.

Civil Action No.: 22-cv-03274

COMPLAINT

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

2. On his first day in office, Attorney General Garland promised that “there [would] not be one rule for Democrats and another for Republicans, one rule for friends and another for foes.” Emily Jacobs, *Merrick Garland Speaks at DOJ Before Swearing-in by VP Kamala Harris*, N.Y. POST (Mar. 11, 2021), <https://tinyurl.com/5x9wd53k>.

3. Yet, while throwing the full weight of the Department behind prosecutions of protestors expressing conservative viewpoints, DOJ has been extraordinarily lenient on individuals rioting, protesting, or committing crimes in the

name of liberal causes. DOJ has been particularly light on crimes committed in the deadly riots that occurred across the country during summer 2020. *See Updated and Reposted: RCI's Jan. 6-BLM Riots Side-by-Side Comparison*, REALCLEARINVESTIGATIONS (Jan. 4, 2022), <https://bit.ly/3lxYhSZ>.

4. On June 11, 2020, a federal grand jury indicted Colinford Mattis and Urooj Rahman on seven counts each—Use of Explosives, Arson, Using an Explosive to Commit a Felony, Arson Conspiracy, Use of a Destructive Device, Civil Disorder, and Possessing and Making a Destructive Device—for their criminal acts during the of Summer 2020, including setting fire to a New York City Police Department vehicle with a Molotov cocktail. *See United States v. Mattis*, No. 1:20-cr-00203-BMC, Doc. 21 (E.D.N.Y. filed June 11, 2020); Bill Sanderson, *Upstate Woman Admits Setting Fire to NYPD Vehicle With Four Cops Inside in George Floyd Protest, Feds Say; Two Others Charged in Separate Police Vehicle Torching*, N.Y. DAILY NEWS (May 31, 2020), <https://bit.ly/3xjv0Rm>.

5. On September 23, 2021, the government notified the Court that the Defendants had advised the government of their intent to accept a plea offer. *See United States v. Mattis*, No. 1:20-cr-00203, Doc. 62 (E.D.N.Y. filed Sep. 23, 2021).

6. Facing up to 45 years in prison each, Mattis and Rahman intended to plead guilty to Possessing and Making a Destructive Device, but critically were able to challenge the terrorism enhancements that could be assigned to the sentences for their crimes. *United States v. Mattis*, No. 1:20-cr-00203, Doc. 80 (E.D.N.Y. filed May

10, 2022). *See also* Luc Cohen, *NY Lawyers Plead Guilty in Molotov Cocktail Case; Shorter Sentences Likely*, REUTERS (June 2, 2022), <https://reut.rs/3MxOes4>.

7. On October 15, 2022, President Biden’s newly appointed United States Attorney for the Eastern District of New York, Breon Peace, was sworn in with significant praise from defense lawyers who had criticized law enforcement’s response during the 2020 protests. *See* U.S. Dep’t Just., Press Release, Breon Peace Sworn in As United States Attorney for the Eastern District of New York (Oct. 15, 2021), <https://tinyurl.com/cy7zb8hh>; Rebecca Davis O’Brien, *Can Brooklyn’s New U.S. Attorney Help Restore Faith in Law Enforcement?* N.Y. TIMES (Oct. 21, 2021), <https://nyti.ms/3QntTsH>.

8. On May 10, 2022, under new political leadership, federal prosecutors notified the United States District Court for the Eastern District of New York of a superseding plea agreement whereby “the parties have reached an alternative resolution of the charges.” Under the new plea deal Mattis and Rahman “agreed to withdraw their objections ... and the government has agreed to recommend ... the imposition of a non-Guidelines sentence within a range of 18 to 24 months’ imprisonment, well below the Guidelines sentence calculated in the PSRs.” *United States v. Mattis*, No. 20-cr-00203, Doc. 80 (E.D.N.Y. filed May 10, 2022).

9. Thus, prior to the Biden Administration’s involvement in the case, federal prosecutors had secured a guilty plea to the crime of unlawful creation and possession of Molotov cocktail incendiary devices and preserved the ability to argue for terrorism enhancements at sentencing. After the Biden Administration inserted

themselves into the process, Mattis and Rahman were charged with substantially less severe crimes, carrying lower sentences, and the government has not sought any sentencing enhancements.

10. While DOJ and the FBI are willing to brand parents who show up to school board meetings as “domestic terrorists” these actions demonstrate that they are unwilling to apply the same label to criminals who deliberately firebomb law enforcement vehicles for the Administration’s favored political causes.

11. Mattis and Rahman have also been afforded temporary bail modifications to attend events such as Parent/Teacher conferences and weddings pending final sentencing, while non-violent conservative political prisoners have not been treated so leniently.

12. Accordingly, AFL filed a FOIA request to understand the motivations and politics between the selective application of justice to individuals based on their political ideology.

13. The American public deserves to know, and needs to know, how the political interference at DOJ has resulted in leniency or harshness based on the political motivations of each criminal defendant (and whether the person becomes a criminal defendant in the first place).

JURISDICTION AND VENUE

14. This 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.*

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

PARTIES

16. 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.

17. Defendant DOJ is an agency under 5 U.S.C. § 552(f), with headquarters at 950 Pennsylvania Avenue, NW, Washington, D.C. 20530-0001. It has possession, custody, and control of the requested records.

AFL'S FOIA REQUEST

18. On June 13, 2022, AFL submitted a narrowly tailored FOIA request to DOJ's Executive Office for United States Attorneys ("EOUSA"), Criminal Division, and Office of Information Policy ("OIP") to uncover whether political influence factored into the alternative arrangement between Mattis and Rahman and the United States. A true and original copy of the FOIA request is attached to this at Exhibit A, at 6.

19. This request sought documents sent or received between October 1, 2021, and June 6, 2022, from a limited set of custodians relating to the following:

- A. All records referring to the matter of United States v. Mattis, No. 20-cr-00203 (E.D.N.Y. filed May 30, 2020)
- B. All records referring to the defendant Colinford Mattis
- C. All records referring to the defendant Urooj Rahman
- D. All records referring to the applicability of a “terrorism enhancement”
- E. All records referring to the “case-specific mitigating facts and circumstances” referenced in the letter from United States Attorney Peace to Judge Cogan
- F. All records referring to sentencing leniency for BLM protestors

See Ex. A, at 9.

EOUSA Response (EOUSA-2022-022189)

20. On June 20, 2022, AFL received a letter from EOUSA acknowledging receipt of AFL’s FOIA request, assigning it tracking number EOUSA-2022-002189, and indicating its “final action” with respect to the request, providing the following as its sole justification:

You have requested records concerning third parties. To the extent that **non-public** responsive records exist, their disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy, absent consent of the third parties, proof of their deaths, or an overriding public interest. *See* 5 U.S.C. § 552(b)(6) & (b)(7)(C). Because any non-public records responsive to your request would be categorically exempt from disclosure, this Office

is not required to conduct a search for the requested records.

See Ex. A at 14.

21. On September 16, 2022, AFL appealed EOUSA's denial. *See* Ex. A at 1.

22. On September 16, 2022, AFL received from OIP a letter acknowledging receipt of AFL's administrative appeal of EOUSA's initial determination, assigning it number A-2022-02118. An original copy is attached to this Complaint as Exhibit B.

23. As of the date of this Complaint, AFL has received no further updates or communications from EOUSA about its June 13, 2022, FOIA request.

24. As of the date of this Complaint, AFL has received no further updates or communications from OIP about its September 16, 2022, administrative appeal of EOUSA's initial determination.

Criminal Division Response (CRM-301722517)

25. On September 22, 2022, AFL received a letter from the Criminal Division acknowledging receipt of AFL's FOIA request, assigning it file number CRM-301722517. An original copy is attached to this Complaint as Exhibit C.

26. As of the date of this Complaint, AFL has received no further updates or communications from the Criminal Division about its June 13, 2022, FOIA request.

OIP Response (FOIA-2022-01353)

27. On July 5, 2022, AFL received a letter from OIP acknowledging receipt of AFL's FOIA request, assigning it number FOIA-2022-01353. An original copy is attached to this Complaint as Exhibit D.

28. As of the date of this Complaint, AFL has received no further updates or communications from OIP about its June 13, 2022, FOIA request.

CLAIM FOR RELIEF
Violation of FOIA, 5 U.S.C. § 552

29. AFL repeats paragraphs 1–28.

30. AFL properly requested records within the possession, custody, and control of DOJ.

31. DOJ failed to conduct a reasonable search for responsive records.

32. The requested records are not “categorically exempt from disclosure” pursuant to 5 U.S.C. §§ 552(b)(6), 7(C), or any other FOIA exemption.

33. Moreover, because they failed to conduct a search, DOJ failed to disclose any segregable, non-exempt portions of responsive records. *See* 5 U.S.C. § 552(b).

34. AFL properly appealed EOUSA’s denial.

35. DOJ has failed to respond to AFL’s request within the statutory time-period. *See* 5 U.S.C. § 552(a)(6).

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

37. DOJ has violated FOIA by failing, within the prescribed time limit, to (i) reasonably search for records responsive to AFL’s FOIA request; (ii) provide a lawful reason for the withholding of any responsive records; make a determination with respect to AFL’s administrative appeal; (iv) grant AFL a fee waiver; and (v) segregate exempt information in otherwise non-exempt responsive records.

PRAYER FOR RELIEF

WHEREFORE, AFL respectfully requests that this Court:

- i. Declare that the records sought by AFL's June 13, 2022, request must be disclosed pursuant to 5 U.S.C. § 552;
- ii. Order Defendant to search immediately, demonstrating search methods reasonably likely to lead to the discovery of responsive records;
- iii. Order Defendant to produce by a date certain all non-exempt records responsive to AFL's FOIA request, accompanied by a Vaughn index of any responsive records or portions of responsive records being withheld under claim of exemption;
- iv. Order Defendant to grant AFL's request for a fee waiver;
- v. Award AFL attorneys' fees and costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- vi. Grant AFL such other and further relief as this Court deems proper.

October 26, 2022

Respectfully submitted,

/s/ Andrew J. Block
ANDREW J. BLOCK
D.C. Bar No. 90002845
AMERICA FIRST LEGAL FOUNDATION
611 Pennsylvania Ave., SE #231
Washington, D.C. 20003
Tel.: (202) 836-7958
E-mail: andrew.block@aflegal.org

/s/ Michael Ding
MICHAEL DING
D.C. Bar No. 1027252
AMERICA FIRST LEGAL FOUNDATION
611 Pennsylvania Ave., SE #231
Washington, D.C. 20003
Tel.: (202) 964-3721
E-mail: michael.ding@aflegal.org

*Counsel for Plaintiff
America First Legal Foundation*