



July 25, 2023

Kenneth Hendricks
Chief, FOIA and Privacy Office
Civil Division
Department of Justice
Room 8314
1100 L Street, NW
Washington, DC 20530-0001
Email: Civil.routing.FOIA@usdoj.gov

RE: FOIA Request for Records of the Department of Justice concerning the case of: *State of Missouri, et al. vs Joseph R. Biden, et al.*, Case No. 3:22-cv-01213, 2023 U.S. Dist. LEXIS 114585 in the United States District Court, Western District of Louisiana Monroe Division, (hereafter, *Missouri v. Biden*, Case No. 3:22-cv-01213 (W.D. La. July 4, 2023) or *Missouri v. Biden*).

Dear Mr. Hendricks:

This letter is a request (“Request”) in accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the corresponding department/agency implementing regulations.

To summarize, this Request seeks records of the Department of Justice concerning the case of *State of Missouri, et al. vs Joseph R. Biden, et al.*, Case No. 3:22-cv-01213, (W.D. La. July 4, 2023) in the United States District Court Western District of Louisiana Monroe Division.

To the best of the Requestor’s knowledge and belief, this Request seeks records of which the Department of Justice (DOJ), and its component, the Civil Division, would be custodians.

Background

Pursuant to DOJ FOIA regulation 28 C.F.R. §16.3(b), this Background addresses “the date, title or name, author, recipient, subject matter of the record[s]” requested, to the extent known.

Missouri v. Biden was filed by the Attorneys General of Missouri and Louisiana on May 5, 2022. A motion for discovery was filed on June 17, 2022, and that motion was granted on July 12,

2022.¹ Subsequently, the Attorneys General of Missouri and Louisiana propounded Interrogatories and Requests for Production to the Biden Administration and social media companies.

They also deposed Federal officials, including Dr. Anthony Fauci, FBI Special Agent Elvis Chan, Eric Waldo of the Surgeon General's Office, Carol Crawford of the CDC, Brian Scully of the Cybersecurity and Infrastructure Security Agency, and Daniel Kimmage of the State Department.

On March 6, 2023, Plaintiff States, Missouri and Louisiana, moved for a preliminary injunction. The District Court granted the Motion on July 4, 2023.²

In its **Memorandum Ruling on Request for Preliminary Injunction**, the District Court stated that *Missouri v. Biden* concerns:

the Free Speech Clause in the First Amendment to the United States Constitution. The explosion of social-media platforms has resulted in unique free speech issues— this is especially true in light of the COVID-19 pandemic. If the allegations made by Plaintiffs are true, the present case arguably involves the most massive attack against free speech in United States' history. In their attempts to suppress alleged disinformation, the Federal Government, and particularly the Defendants named here, are alleged to have blatantly ignored the First Amendment's right to free speech.³

The Court outlines the allegations as:

Plaintiffs allege that Defendants, through public pressure campaigns, private meetings, and other forms of direct communication, regarding what Defendants described as “disinformation,” “misinformation,” and “malinformation,” have colluded with and/or coerced social-media platforms to suppress disfavored speakers, viewpoints, and content on social-media platforms.⁴

The “disinformation,” “misinformation,” and “malinformation,” mentioned above are summarized as:

In this case, Plaintiffs allege that Defendants suppressed conservative-leaning free speech, such as: (1) suppressing the Hunter Biden laptop story prior to the 2020 Presidential election; (2) suppressing speech about the lab-leak theory of COVID-19's origin; (3) suppressing speech about the efficiency of masks and COVID-19 lockdowns; (4) suppressing speech about the efficiency of COVID-19 vaccines; (5) suppressing speech about election integrity in the 2020 presidential election; (6)

¹ Docket, *State of Missouri, et al. vs Joseph R. Biden, et al.*, Case No. 3:22-cv-01213, 2023 U.S. Dist. LEXIS 114585 (W.D. La. July 4, 2023).

² Mem. Ruling re Mot. Prelim. Inj. *State of Missouri, et al. vs Joseph R. Biden, et al.*, Case No. 3:22-cv-01213, 2023 U.S. Dist. LEXIS 114585 (W.D. La. July 4, 2023) at 2.

³ *Id.*

⁴ *Id.*

suppressing speech about the security of voting by mail; (7) suppressing parody content about Defendants; (8) suppressing negative posts about the economy; and (9) suppressing negative posts about President Biden.⁵

Furthermore, “federal officials including Defendants”⁶ are alleged to “have threatened adverse consequences to social-media companies, such as reform of Section 230 immunity under the Communications Decency Act, antitrust scrutiny/enforcement, increased regulations, and other measures, if those companies refuse to increase censorship.”⁷

Government actions were not limited to threats but included deliberate deceptions. For example:

[T]he FBI had a 50% success rate regarding social media’s suppression of alleged misinformation, and it did no investigation to determine whether the alleged disinformation was foreign or by U.S. citizens. The FBI’s failure to alert social-media companies that the Hunter Biden laptop story was real, and not mere Russian disinformation, is particularly troubling. The FBI had the laptop in their possession since December 2019 and had warned social-media companies to look out for a “hack and dump” operation by the Russians prior to the 2020 election. Even after Facebook specifically asked whether the Hunter Biden laptop story was Russian disinformation, Dehmlow of the FBI refused to comment, resulting in the social-media companies’ suppression of the story. As a result, millions of U.S. citizens did not hear the story prior to the November 3, 2020 election. Additionally, the FBI was included in Industry meetings and bilateral meetings, received and forwarded alleged misinformation to social-media companies, and actually mislead social-media companies in regard to the Hunter Biden laptop story.⁸

Furthermore, the federal officials involved were aware of the dubious legality of their actions. Another example:

The State Department Defendants and CISA⁹ Defendants both partnered with organizations whose goals were to “get around” First Amendment issues. [Footnote omitted] In partnership with these non-governmental organizations, the State Department Defendants flagged and reported postings of protected free speech to the social-media companies for suppression. The flagged content was almost entirely from political figures, political organizations, alleged partisan media outlets, and social-media all-stars associated with right-wing or conservative political views, demonstrating likely “viewpoint discrimination.” Since only conservative viewpoints were allegedly suppressed, this leads naturally to the conclusion that Defendants intended to suppress only political views they did not believe in.¹⁰

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 8.

⁸ *Id.* at 107

⁹ The Cybersecurity and Infrastructure Security Agency.

¹⁰ *Id.* at 114

And again:

[T]he White House Defendants¹¹ also allegedly exercised significant encouragement such that the actions of the social-media companies should be deemed to be that of the government. The White House Defendants used emails, private portals, meetings, and other means to involve itself as “partners” with social-media platforms. Many emails between the White House and social-media companies referred to themselves as “partners.” Twitter even sent the White House a “Partner Support Portal” for expedited review of the White House’s requests. Both the White House and the social-media companies referred to themselves as “partners” and “on the same team” in their efforts to censor disinformation, such as their efforts to censor “vaccine hesitancy” spread. The White House and the social-media companies also demonstrated that they were “partners” by suppressing information that did not even violate the social-media companies’ own policies.¹²

The facts underlying these summaries are not in dispute, having been conceded at Oral Argument.¹³

Records Requested

For purposes of this Request, the term “record” means “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government *or private* account or server, consistent with the holdings of *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016)¹⁴ (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

¹¹ The “White House Defendants” are President Joseph R. Biden, White House Press Secretary Karine Jean-Pierre, Ashley Morse, Rob Flaherty, Dori Salcido, Aisha Shah, Sarah Beran, Stuart F. Delery, Mina Hsiang, and Dr. Hugh Auchincloss. *Id.* at 9.

¹² *Id.* at 100.

¹³ *Id.* at 8, n. 18 (“The Factual Background is this Court’s interpretation of the evidence. The Defendants filed a 723-page Response to Findings of Fact [Doc. No. 266-8] which contested the Plaintiffs’ interpretation or characterizations of the evidence. At oral argument, the Defendants conceded that they did not dispute the validity or authenticity of the evidence presented.”).

¹⁴ *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016).

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is January 1, 2018, to the date this request is processed.

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, ACLJ hereby requests that the DOJ produce the following:

1. **All deposition transcripts in the case of *Missouri v. Biden*, Case No. 3:22-cv-01213 (W.D. La. July 4, 2023), if any, and exhibits, if any, of the following people:**
 - a. **President Joseph R. Biden,**
 - b. **Karine Jean-Pierre,**
 - c. **Ashley Morse,**
 - d. **Rob Flaherty,**
 - e. **Dori Salcido,**
 - f. **Aisha Shah,**
 - g. **Sarah Beran,**
 - h. **Stuart F. Delery,**
 - i. **Mina Hsiang,**
 - j. **Dr. Hugh Auchincloss,**
 - k. **Andrew Slavitt.**
2. **All Answers to the Plaintiff's Interrogatories in in the case of *Missouri v. Biden*, Case No. 3:22-cv-01213 (W.D. La. July 4, 2023).**
3. **All deposition transcripts, if any, and exhibits, if any, of Eric Waldo, Senior Advisor to the Surgeon General in the case of *Missouri v. Biden*, Case No. 3:22-cv-01213 (W.D. La. July 4, 2023).**
4. **All deposition transcripts, if any, and exhibits, if any, of Carol Crawford, division director for the division of Digital Media within the CDC Office of the Associate Director for Communication in the case of *Missouri v. Biden*, Case No. 3:22-cv-01213 (W.D. La. July 4, 2023).**
5. **All deposition transcripts, if any, and exhibits, if any, of Dr. Anthony Fauci in the case of *Missouri v. Biden*, Case No. 3:22-cv-01213 (W.D. La. July 4, 2023).**
6. **All deposition transcripts, if any, and exhibits, if any, of Elvis Chan, Special Agent in Charge of the Cyber Branch for the San Francisco Division of the Federal Bureau of Investigation in the case of *Missouri v. Biden*, Case No. 3:22-cv-01213 (W.D. La. July 4, 2023).**
7. **All deposition transcripts, if any, and exhibits, if any, of Brian Scully, Chief of the "Mis, Dis, and Malinformation Team" or "MDM Team" within the Cybersecurity and Infrastructure Security Agency (CISA) in the Department of Homeland Security (DHS) in the case of *Missouri v. Biden*, Case No. 3:22-cv-01213 (W.D. La. July 4, 2023).**

8. All deposition transcripts in the case of *Missouri v. Biden*, Case No. 3:22-cv-01213 (W.D. La. July 4, 2023), if any, and exhibits, if any, of Daniel Kimmage, Principal Deputy Coordinator of the Global Engagement Center in the Department of State.

CONCLUSION

If this Request is denied in whole or in part, the ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions and provide any judicially required explanatory information, including but not limited to, a *Vaughn* Index.

Moreover, the ACLJ is entitled to expedited processing and a waiver of all fees associated with this Request as will be explained if needed in a separate memorandum. The ACLJ reserves the right to appeal a decision to withhold any information sought by this Request.

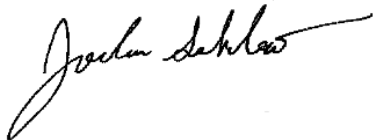
Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director
Benjamin P. Sisney, Senior Litigation Counsel
John A. Monaghan, Senior Litigation Counsel
American Center for Law and Justice
201 Maryland Ave., NE
Washington, D.C. 20002-5703
(202) 546-8890; (202) 546-9309 (fax)

foia-response@aclj.org
bsisney@aclj.org
jmonaghan@aclj.org

I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,



Jordan Sekulow
Executive Director



Benjamin P. Sisney
Senior Litigation Counsel



John A. Monaghan
Senior Litigation Counsel