



January 25, 2022

Via EOUSA Portal

Executive Office for United States Attorneys
United States Department of Justice
175 N Street, N.E., Suite 5.400
Washington, DC 20530-0001
Attn: FOIA Officer

Freedom of Information Act Request: DOJ Politicization - Doc. 67, United States of America v. Montez Terriel Lee, Jr.

Dear FOIA Officer:

America First Legal Foundation (AFL) is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans. Our core mission includes informing and educating the public regarding the operations and activities of the federal government. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's email list contains over 25,000 unique addresses, our Twitter page has nearly 10,000 followers, the Twitter page of our Founder and President has over 98,500 followers, and we have another 22,000 followers on GETTR.

On November 4, 2021, the Department filed the "Position of the United States with Respect to Sentencing" in *United States of America v. Montez Terriel Lee, Jr.*, Case No. 0:20-cr-00168-WMW-ECW, Doc. 67 (D. Minn.), <https://alphanews.org/wp-content/uploads/2022/01/Montez-Lee-Sentencing-Opinion.pdf>. It states:

- "Following the mostly peaceful protests that occurred on [May 26, 2020], the Cities of Minneapolis and St. Paul, and some surrounding communities, endured three nights of violence and destruction. Between Wednesday night and the early hours of Saturday morning, following several organized and peaceful protests, hundreds of individuals carrying on into the night vandalized and looted local businesses and destroyed buildings, vehicles, and other property

through arson, smashing doors and windows, hurling objects, and other means.” Doc. 67, pp. 1-2.

- “As part of that unrest, on May 28, [the Defendant] Mr. Lee and others broke into the Max It Pawn Shop located at 2726 East Lake Street. Mr. Lee poured fire accelerant around the pawn shop and lit it on fire. The subsequent fire destroyed the business. On June 8, 2020, ATF Special Agent Certified Fire Investigators received three videos from the arson of the Max It Pawn. The first video begins with people looting the Max It Pawn. Then a masked man, later identified as Mr. Lee, is shown pouring liquid out from a metal container throughout the pawn store. The video then cuts to outside the pawn shop, which is now on fire. Mr. Lee is shown, now not wearing a shirt, holding his fist up. The man taking the video exclaims “Oh, shit—you really did it!” The second video begins with the man identified as Mr. Le [sic] standing in front of the pawn shop as it is in flames [sic] The individual filming asks Mr. Lee “What you do, Tez?” Mr. Lee responds “Fuck this place. We’re gonna burn this bitch down.” The third video begins with a group of men, including the man identified as Mr. Lee, joking about restaurants they are going to “hit” next. It then cuts to a recording of a cell phone showing the looting of the pawn shop.” Doc. 67, p. 2.
- “On June 5, 2020, a man named Oscar Lee Stewart, 30, was reported missing to the Burnsville Police Department by his mother. Mr. Stewart’s mother reported that she had not seen her son since May 28, 2020. Investigators learned that Mr. Stewart’s vehicle had been found near the Max It Pawn. On July 20, 2020, authorities located Mr. Stewart’s body in the rubble of the Max It Pawn. Mr. Stewart’s remains were submitted to the Hennepin County Medical Examiner’s Office. That office attributed Mr. Stewart’s death to ‘probable inhalation of products of combustion and thermal injury (building fire).’”

The defendant had prior convictions for burglary, assault, violation of no contact order, and theft of property. He had “a terrible incident of domestic violence in his criminal history, in which he viciously assaulted a woman and ruptured her left eardrum.” Doc. 67, p. 10. At the time he burned Mr. Stewart to death, he “was under a criminal justice sentence for his prior assault conviction...” The federal sentencing guidelines therefore provide for 235-240 months of imprisonment. Doc. 67, p. 4. Yet, stating that “this is an extraordinary case”, the federal government requested only 144 months imprisonment. The sole justifications for the reduction in sentence appear to have been first, the Defendant’s race, and second, unspecified “forces that have been present in the country since its inception.” According to the U.S. Attorney:

- “Mr. Lee credibly states that he was in the streets to protest unlawful police violence against black men, and there is no basis to disbelieve this statement. Mr. Lee, appropriately, acknowledges that he ‘could have demonstrated in a

different way,’ but that he was ‘caught up in the fury of the mob after living as a black man watching his peers suffer at the hands of police.’ As anyone watching the news world-wide knows, many other people in Minnesota were similarly caught up. There appear to have been many people in those days looking only to exploit the chaos and disorder in the interests of personal gain or random violence. There appear also to have been many people who felt angry, frustrated, and disenfranchised, and who were attempting, in many cases in an unacceptably reckless and dangerous manner, to give voice to those feelings. Mr. Lee appears to be squarely in this latter category.” Doc. 67, p. 7 (citation omitted).

- “Mr. Lee burned down a commercial building, not a residential one [He] did not commit the offense as part of a separate felony crime, or otherwise for any personal gain. The raised fist Mr. Lee showed, and his brazenness in committing the crime is telling. Mr. Lee was terribly misguided, and his actions had tragic, unthinkable consequences. But he appears to have believed that he was, in Dr. King’s eloquent words, engaging in ‘the language of the unheard.” Doc. 67, p. 9.
- “The events of late May of 2020 were informed by forces that have been present in this country since its inception. General deterrence appears to be of limited relevance given the passions and historical forces at work in the crime For the reasons noted in the discussion about deterrence above, Mr. Lee does not appear to pose a danger to the public.” Doc. 67, p. 10 (citations omitted).
- “‘Moral luck’ casts a long shadow over this case. Had circumstances been just a little different, Mr. Stewart would be alive today, and Mr. Lee would face significantly less criminal liability (a Guideline range of 60 months, approximately 15 years less than the PSR’s calculation)—the cruel caprices of fate.” Doc. 67, p. 12.

The U.S. Attorney, however, did not explain for the court how, precisely, the Defendant’s arson of a pawn shop was “engaging in ‘the language of the unheard’” with respect to illegitimate police violence, or in what regard the Defendant’s conduct in randomly burning down a building and killing a man was specifically “informed by forces that have been present in this country since its inception.”

On March 10, 2021, Attorney General Merrick Garland pledged to depoliticize the Department of Justice and to maintain a commitment to equal justice for all. He said, “The only way we can succeed and retain the trust of the American people, is to adhere to the norms that require that like cases be treated alike — that there not be one rule for Democrats and another for Republicans, one rule for friends and another for foes, one rule for the powerful and another for the powerless, one rule for the rich

and another for the poor, or different rules depending upon one's race or ethnicity.”¹ This case, however, belies the Attorney General's pledge, demonstrating instead that the Biden Administration's unlawful, unconstitutional, and morally repugnant commitment to racialism in health care² and education³ has now infected criminal justice. Furthermore, the department's treatment of the arsonist in this case is highly relevant and probative evidence supporting claims that the department's targeting the January 6, 2021, rioters for disproportionately harsh treatment relative to far more violent and destructive leftist rioters who attacked, injured, and killed hundreds of law enforcement personnel; burned and looted cities nationwide causing billions of dollars in damages; desecrated religious buildings; and besieged federal buildings,⁴ is a result of partisan political animus.⁵

¹ Emily Jacobs, “Merrick Garland speaks at DOJ before swearing-in by VP Kamala Harris,” The New York Post (Mar. 11, 2021), <https://nypost.com/2021/03/11/merrick-garland-speaks-at-doj-before-swearing-in-by-kamala-harris/>

² Kyle Morris, “Biden administration guidance prioritizes race in administering COVID drug,” Fox News (Jan. 8, 2022), <https://news.yahoo.com/biden-administration-guidance-prioritizes-race-231245493.html>.

³ Naomi Lim, “Biden administration looks to push critical race theory via federal grant program,” The Washington Examiner (Apr. 20, 2021), <https://www.msn.com/en-us/news/us/biden-administration-looks-to-push-critical-race-theory-via-federal-grant-program/ar-BB1fRjPb>.

⁴ See, e.g., Updated and Reposted: RCI's Jan. 6-BLM Riots Side-by-Side Comparison, Real Clear Investigations (Jan. 4, 2022), https://www.realclearinvestigations.com/articles/2021/09/09/realclear-investigations_jan_6-blm_comparison_database_791370.html; Byron York, “Armed insurrection: What weapons did the Capitol rioters carry?,” The Washington Examiner (Oct. 11, 2021), <https://www.washingtonexaminer.com/news/armed-insurrection-what-weapons-capitol-rioters-carry>; Mark Hosenball and Sarah N. Lynch, “Exclusive: FBI finds scant evidence U.S. Capitol attack was coordinated – sources,” Reuters (Aug. 20, 2021), <https://www.reuters.com/world/us/exclusive-fbi-finds-scant-evidence-us-capitol-attack-was-coordinated-sources-2021-08-20/>; Major Cities Chiefs Association Intelligence and Commanders Group, “Report on the 2020 Protests & Civil Unrest” (Oct. 2020) <https://majorcitieschiefs.com/wp-content/uploads/2021/01/MCCA-Report-on-the-2020-Protest-and-Civil-Unrest.pdf>; Jennifer A. Kingson, Exclusive: \$1 billion-plus riot damage is most expensive in insurance history, Axios (Sept. 20, 2020), <https://www.axios.com/riots-cost-property-damage-276c9bcc-a455-4067-b06a-66f9db4cea9c.html>; Mike Balsamo and Gillian Flaccus, “On Portland's streets, Anger, fear, and a fence that divides,” AP (July 27, 2020), <https://apnews.com/article/virus-outbreak-ap-top-news-race-and-ethnicity-music-or-state-wire-1dd1bb39093a3691f4e78093787ab877>; see also House Judiciary GOP, “The video Chairman Nadler doesn't want you to see!”, You Tube (Jul. 28, 2020), <https://www.youtube.com/watch?v=BbKvhnLoV0Q&t=6s>; Daniel Greenfield, “God is dead: Leftist rioters vandalize churches and synagogues,” JNS (June 4, 2020), <https://www.jns.org/opinion/god-is-dead-leftist-rioters-vandalize-churches-and-synagogues/>; Katherine Macintire Peters, “Weekend of violent protests leaves trail of damage for feds,” Government Executive (May 31, 2020), <https://www.govexec.com/management/2020/05/weekend-violent-protests-leaves-trail-damage-feds/165786/>; Associated Press, “Government drops charges against all inauguration protesters,” (July 6, 2018), <https://www.nbcnews.com/news/us-news/government-drops-charges-against-all-inauguration-protesters-n889531>

⁵ Given the department's leading role in the Biden Administration's campaign to intimidate and silence citizens with different political views through, *inter alia*, the “Domestic Terrorism Unit” alleged by our sources to have been created for targeting political conservatives, such as Christian evangelicals, pro-family groups, border security advocates, and pro-life activists; the Attorney General's Octo-

Pursuant to 5 U.S.C. § 552(a), AFL makes the following Freedom of Information Act request.

I. Special Definitions

“Attorney Calhoun-Lopez” means Assistant U.S. Attorney Thomas Calhoun-Lopez, Attorney ID No. 480908DC.

“Doc. 67” means the Position of the United States with Respect to Sentencing, *United States of America v. Montez Terriel Lee, Jr.*, Case No. 0:20-cr-00168-WMW-ECW (Nov. 04, 2021, D. Minn.), available at <https://alphanews.org/wp-content/uploads/2022/01/Montez-Lee-Sentencing-Opinion.pdf>

“Record” has the meaning given at 44 U.S.C. § 3301(a)(1).

“Folk” means Acting United States Attorney for the District of Minnesota W. Anders Folk.

II. Requested Records

A. All records in the possession or control of Attorney Calhoun-Lopez and/or Folk concerning, regarding, or mentioning (a) Doc. 67, (b) the sentencing recommendation of 144 months, and/or (c) the decision to seek a “downward variance” in the Sentencing Guidelines.

B. All emails to or from Attorney Calhoun-Lopez concerning, regarding, or mentioning (a) Doc. 67, (b) the sentencing recommendation of 144 months, and/or (c) the decision to seek a “downward variance” in the Sentencing Guidelines.

C. All emails to or from Attorney Calhoun-Lopez and any person employed by or working as a contractor for the United States Attorney’s Office for the District of Minnesota Victim Witness Program regarding, concerning, or mentioning Doc. 67,

ber 4 Memorandum targeting parents protesting Critical Race Theory and extreme gender indoctrination at school board meetings; and the National Strategy for Countering Domestic Terrorism targeting U.S. citizens for a massive surveillance and data mining campaign, and other measures, the allegations of politicization seem well-founded. *See, e.g.*, Office of Public Affairs, Dep’t of Justice, “Assistant Attorney General Matthew G. Olsen Delivers Opening Remarks Before U.S. Senate Committee on the Judiciary,” (Jan. 11, 2022), <https://www.justice.gov/opa/speech/assistant-attorney-general-matthew-g-olsen-delivers-opening-remarks-us-senate-committee>; Office of Public Affairs, Dep’t of Justice, “Justice Department Addresses Violent Threats Against School Officials and Teachers” (Oct. 4, 2021), <https://www.justice.gov/opa/pr/justice-department-addresses-violent-threats-against-school-officials-and-teachers>; Nat’l Sec. Council, “National Strategy for Countering Domestic Terrorism,” pp. 15-16, 20, 22, 26-28, 30 (June 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>.

the sentencing recommendation of 144 months, or the Defendant Montez Terriel Lee, Jr.

III. Processing

FOIA requires the Department to disclose records freely and promptly. The department must liberally construe AFL's requests and make a good faith effort to search for requested records using methods "which can be reasonably expected to produce the information requested." At all times, FOIA must be construed to carry out Congress's open government mandate according to the ordinary public meaning of its terms at the time of its enactment.⁶ As a general matter:

- Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. If a record contains information responsive to a FOIA request, then the Department must disclose the entire record, as a single record cannot be split into responsive and non-responsive bits. 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 locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please construe both our Items and the term "record" broadly and give full effect to all applicable authorities.
- 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 records to official systems within a certain time. AFL has a right to records 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 available tools to conduct a complete and efficient search for potentially responsive records. Many agencies have adopted the National Archives and Records Administration ("NARA") Capstone program or similar policies. These provide options for searching emails and other electronic records

⁶ 5 U.S.C. §§ 552(a)(3)(A), 552(a)(6)(A); *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978); *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151 (1989); *Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990).

in a manner 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, then 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 before our Items are processed. If potentially responsive records 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.

IV. Fee Waiver

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10, AFL requests a waiver of all search and duplication fees.

Fees should be waived "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." AFL's request concerns identifiable operations or activities of the government, and the information requested is likely to contribute significantly to the public understanding such activities.

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. 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. As a nonprofit organization primarily engaged in the dissemination of information to educate the public, AFL does not have a commercial purpose and the release of the information requested is not primarily in AFL's financial interest. Our status as a qualified non-commercial public education and news media requester previously has been acknowledged and recognized by this department and by the Departments of Defense, Education, Energy, Interior, Health and Human Services, and Homeland Security, and the Office of the Director of National Intelligence.

VI. Production

AFL welcomes production on an agreed rolling basis to speed production and reduce agency burden. If possible, please provide responsive records in an electronic format by email, native format by mail, 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, Fifth Floor, Washington, D.C. 20005.

V. Conclusion

If you have any questions about this request or believe further discussions regarding search and processing will speed the efficient production of records of interest to AFL, then please contact me at FOIA@aflegal.org. Finally, please contact us immediately if AFL's request for a fee waiver is not granted in full. Thank you in advance for your cooperation.

Sincerely yours,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation