



April 12, 2023

VIA FOIA.GOV

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VIA eFOIPA

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Christina Butler
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Criminal Division
Department of Justice,
Room 803, Keeney Building
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Freedom of Information Act Request: Douglas Mackey Trial

Dear FOIA Officers:

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, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. 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 59,017 unique addresses, our Twitter page has 64,000 followers, the Twitter page of our Founder and President has over 423,000 followers, our Facebook page has 121,000 followers, and we have another approximately 31,700 followers on GETTR.

611 Pennsylvania Ave SE #231
Washington, DC 20003

320 South Madison Avenue
Monroe, Georgia 30655

I. Background

On February 10, 2021, the Department of Justice indicted Douglas Mackey on one count of “Conspiracy Against Rights,” alleging that satirical memes Mr. Mackey posted on Twitter constituted a “conspir[acy] to injure, oppress, threaten, and intimidate one or more persons in the free exercise and enjoyment” of a constitutional right.¹ On March 13, 2023, jury selection for Mr. Mackey’s trial began.² On that same day, Mr. Mackey requested a continuance because “a researcher named Luke O’Brien from the Southern Poverty Law Center (“SPLC”) [was] close to publishing an article ... [that] unfairly disparages Professor [George] Hawley,” Mr. Mackey’s expert witness for the case.³ “Mr. O’Brien waited until the start of trial to submit written questions to Professor Hawley in an apparent attempt to paint him as an extremist, including questions based on private emails which Mr. O’Brien obtained, simultaneously asking Professor Hawley if his employer, the University of Alabama, [was] aware of his proffered testimony at Mr. Mackey’s trial.”⁴ To avoid any prejudice, counsel for Mr. Mackey requested that the SPLC delay publication of the hit-piece until after Professor Hawley’s testimony at trial, but the SPLC refused.⁵ In response, Professor Hawley withdrew as a witness.⁶

The timing of these events strongly suggests that the SPLC was directly trying to affect the outcome of Mr. Mackey’s trial by intimidating a vital defense witness. This outrageous, devious conduct was a direct attack on the integrity of Mr. Mackey’s trial and encourages regular Americans to distrust the fairness of our justice system. The public thus has a strong interest in getting as much information as possible about these events and also whether the federal government had any advance knowledge about, or involvement in, the SPLC’s despicable actions.

Accordingly, AFL submits the following FOIA request.

¹ *United States v. Mackey*, 21-cr-00080, ECF No. 8 (E.D.N.Y. Feb. 10, 2021), <https://tinyurl.com/27ba24fe>.

² *Id.*, Minute Entry, Mar. 13, 2023, <https://tinyurl.com/p8akwzi9>.

³ *Id.*, ECF No. 95 at 1 (Mar. 13, 2022), <https://tinyurl.com/4jyrmbtw>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*; see also Kaelan Deese, *Twitter troll's election interference trial delayed after alleged witness intimidation*, WASHINGTON EXAMINER, (Mar. 15, 2023), <https://tinyurl.com/2jz8675s>; Adam Klasfeld, *'Alt-right' Twitter troll's election interference trial postponed after anti-hate watchdog obtains 'private' emails*, LAW AND CRIME, (Mar. 14, 2023), <https://tinyurl.com/bdfj5x7k>; Carlos Moliner, *Un aviso a navegantes: el caso de Douglass Mackey*, LA GACETA, (Apr. 2, 2023), <https://tinyurl.com/4tvzw4ab>.

II. Requested Records

Under 5 U.S.C. § 552(a), AFL requests the following records for the time period from January 20, 2021 to the date of processing:

- A. Any emails received or sent by the custodians listed below using the custodian's official U.S. government email account and that lists as the sender or recipient an email address using any of the following domain names: "SPLCenter.org", "lukeobrien.com", "hks.harvard.edu", "shorensteincenter.org", or "hatewatch.org".
- B. Any emails received or sent by the custodians listed below from any of a custodian's personal email accounts and that lists as the sender or recipient an email address using any of the following domain names: "SPLCenter.org", "lukeobrien.com", "hks.harvard.edu", "shorensteincenter.org", or "hatewatch.org", *and* that uses any of the following terms in the body or subject line of the email: "Doug Mackey", "Douglas Mackey", "Mackey", "Luke O'Brien", "Luke", "O'Brien", "George Hawley", or "Hawley".
- C. Any text messages or other communications received or sent by the custodians listed below from the custodian's official U.S. government telephone or any other U.S. government communications system and that involves the following telephone number of Mr. O'Brien (and which Mr. O'Brien has listed publicly on his website): (917) 284-8226.
- D. Any text messages, instant messages, or other communications received or sent by the custodians listed below from the custodian's personal mobile phone that involves the following telephone number of Mr. O'Brien (and which Mr. O'Brien has listed publicly on his website): (917) 284-8226.
- E. All records regarding the processing of the above items.

III. Custodians

A. Executive Office for United States Attorneys

Monty Wilkinson, Director

Eastern District of New York

Breon Peace, United States Attorney

Seth D. DuCharme, Acting United States Attorney

Mark J. Lesko, Acting United States Attorney

Jacquelyn M. Kasulis, Acting United States Attorney

Erik D. Paulsen, Assistant United States Attorney

Nathan Reilly, Assistant United States Attorney

Olatokunbo Olaniyan, Assistant United States Attorney
F. Turner Buford, Assistant United States Attorney

Southern District of New York

Audrey Strauss, Acting United States Attorney
David J. Kennedy, Assistant United States Attorney

B. Department of Justice Criminal Division

Corey R. Amundson, Chief, Criminal Division, Public Integrity Section
William Gullotta, Criminal Division, Public Integrity Section
All political appointees assigned or detailed to the Criminal Division

C. Federal Bureau of Investigation

Maegan Rees, Special Agent
Jamie Dvorsky, Special Agent
Joel DeCapua, Special Agent, Cyber Crimes

IV. Processing and Production

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 28 CFR § 16.10, AFL requests a waiver of all search and duplication fees. AFL broadly disseminates information to the public regarding the operations and activities of the federal government, and numerous federal agencies, including the Department of Justice, have routinely granted our fee waiver requests. All records received will be posted on our website and made freely available to the public, and this request is not primarily in our commercial interest.

Also, AFL requests expedited processing of this request. In support thereof, AFL certifies its compelling need for expedited processing under 5 U.S.C. § 552(a)(6)(E) and 28 CFR 16.5(e)(1)(ii), (iii), & (iv). As explained above, the story of Professor Hawley's withdrawal and Mr. Mackey's subsequent conviction is a "matter of widespread and exceptional media interest in which there exists possible questions that affect public confidence in the Government's integrity."⁷ The above-cited news articles show that there is substantial national and international interest in this story. This also makes it "urgen[t] to inform the public" about any potential activity by the government in this situation, and AFL is well-placed to do so, because it is a non-profit organization "primarily engaged in disseminating information."⁸ Furthermore, any involvement by the government in inducing Professor Hawley's withdrawal would cast serious doubt on the constitutionality, fairness, and integrity

⁷ 28 CFR 16.5(e)(1)(iv).

⁸ *Id.* at (ii).

of the trial against Mr. Mackey and would involve “[t]he loss of substantial due process rights.”⁹

Processing should strictly comply with the processing guidance in the Attorney General’s Memorandum on Freedom of Information Act Guidelines. If you have any questions about our request or believe further discussions regarding search and processing would facilitate the more efficient production of requested records, please contact me at FOIA@aflegal.org. If AFL’s request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

To accelerate your release of responsive records, AFL welcomes production on an agreed rolling basis. Please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native or PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

Thank you in advance for your cooperation.

Sincerely,

/s/ James Rogers
America First Legal Foundation

⁹ *Id.* at (iii).