

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Plaintiff,)

v.)

UNITED STATES DEPARTMENT)
OF STATE,)
2201 C St NW)
Washington, D.C. 20451)

Civil Case No. 1:24-cv-2873

UNITED STATES AGENCY)
FOR INTERNATIONAL)
DEVELOPMENT,)
1300 Pennsylvania Avenue NW)
Washington, D.C. 20004)

AND)

UNITED STATES DEPARTMENT)
OF COMMERCE,)
1401 Constitution Ave NW)
Washington, D.C. 20230)

Defendants.)

COMPLAINT

1. Plaintiff America First Legal Foundation (“AFL”) brings this action against the United States Department of State (“Department of State”), United States Agency for International Development (“USAID”), and United States Department of Commerce (“Department of Commerce”), to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

JURISDICTION AND VENUE

2. The Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Additionally, it may grant declaratory relief under 28 U.S.C. § 2201, *et seq.*

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

PARTIES

4. 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 other media, including social media platforms, all to educate the public.

5. Defendant Department of State is an "agency" within the meaning of 5 U.S.C. § 552(f), with its offices at 2201 C St NW, Washington, D.C. 20451. It has possession and control of the records AFL seeks.

6. Defendant USAID is an "agency" within the meaning of 5 U.S.C. § 552(f), with its offices at 1300 Pennsylvania Avenue NW, Washington D.C. 20004. It has possession and control of the records AFL seeks.

7. Defendant Department of Commerce is an “agency” within the meaning of 5 U.S.C. § 552(f), with its offices at 1401 Constitution Ave NW, Washington D.C. 20230. It has possession and control of the records AFL seeks.

BACKGROUND

8. Transparency is key to a functioning republic. Without it, it is impossible for citizens to hold Government accountable.

9. Indeed, the Biden-Harris Administration routinely states that it is committed to a transparent, open, and ethical government.¹

10. “Timely disclosure of records is also essential to the core purpose of FOIA.” U.S. DEPT OF JUST., *Attorney General’s Memorandum on Freedom of Information Act Guidelines* (March 15, 2022), <https://perma.cc/K3EL-AANM>.

11. Recently, two large internet social media platforms, Telegram and X, were targeted by law enforcement agencies of American allies for their refusal to comply with foreign governments’ censorship demands.

12. Former officials at the Department of State have alleged that the U.S. Government was involved in the actions taken against these platforms, which are used by hundreds of millions of people globally. *See, e.g.*, Mike Benz (@MikeBenzCyber), X (Aug. 26, 2024, 10:10 PM), <https://perma.cc/8PSU-KQ6D>.

13. Censorship of online speech, particularly on X (previously Twitter) has been the subject of great political debate and public scrutiny in recent years.

¹ THE WHITE HOUSE, *FACT SHEET: Biden-Harris Administration Prioritizes Effectiveness, Accountability, and Transparency in Bipartisan Infrastructure Law Implementation* (Apr. 29, 2022).

14. Under new ownership and management, X has significantly reformed its content moderation policies that previously resulted in the censorship of certain narratives on its platform. Davey Alba & Kurt Wagner, *Twitter Cuts More Staff Overseeing Global Content Moderation*, BLOOMBERG (Jan. 7, 2023), <https://perma.cc/8FJQ-WVC2>.

15. Meanwhile, Durov founded Telegram for the purpose of enabling free and private communications beyond the reach of oppressive governments. Andrew R. Chow, *Why the Arrest of Telegram's Pavel Durov Is Sparking Outrage*, TIME (Aug. 28, 2024), <https://perma.cc/DD44-9ZR3>.

16. But now, the Biden-Harris Administration—and/or career bureaucrats within the federal government who also oppose free speech—appear to have incentivized foreign governments to do the work that the U.S. government cannot itself do: pressure the social media platform to censor speech that criticizes or contradicts the preferred government narrative or punish it by banning the platform in foreign nations entirely.

17. The recent events surrounding Telegram in France and X in Brazil provide an illustrative example. Therefore, AFL requested documents from the relevant federal agencies that would show how the United States Government is using diplomatic channels to harm private companies—including an American company—abroad simply for allowing free speech to occur on their platforms.

18. Americans have a right to know what actions the government is taking to directly undermine free speech and American companies. The answers to these questions bear directly on the public's confidence in the Government's integrity.

FACTS

August 29 Requests to Department of State

19. On August 29, 2024, AFL submitted two FOIA requests to the Department of State seeking records related to the detention of Pavel Durov, CEO of Telegram. AFL sought expedited processing and fee waivers for both requests. Exhibits A and B.

20. The same day, the Department of State confirmed receipt of the FOIA requests, assigning them reference numbers F-2024-19047 and F-2024-19048. Exhibits C and D.

21. On September 30, 2024, the Department of State denied AFL's request for expedited processing for Request F-2024-19047. Exhibit E.

22. On September 30, 2024, the Department of State denied AFL's request for expedited processing for Request F-2024-19048. Exhibit F.

September 10 Requests to Department of State, USAID, and Department of Commerce

23. On September 10, 2024, AFL submitted another FOIA request to the Department of State concerning the banning of the social media platform X in Brazil. AFL sought expedited processing for this request. Exhibit G.

24. The same day, the Department of State confirmed receipt and assigned the request reference number F-2024-20275. Exhibit H.

25. On September 25, 2024, the Department of State denied AFL's request for expedited processing of request F-2024-20275. Exhibit I.

26. As of the date of filing, AFL has received no further communications from the Department of State concerning request number F-2024-20275.

27. Also, on September 10, 2024, AFL submitted a FOIA request to USAID concerning the banning of the social media platform X in Brazil. As part of the FOIA, AFL requested expedited processing. Exhibit J.

28. USAID assigned the request reference number F-00922-24. Exhibit K.

29. On September 25, 2024, USAID denied AFL's request for expedited processing. Exhibit L.

30. Also on September 10, 2024, AFL submitted a FOIA request to the Department of Commerce concerning the banning of the social media platform X in Brazil. AFL sought expedited processing for this request. Exhibit M.

31. The Department of Commerce assigned the request reference number DOC-ITA-2024-000327. Exhibit N.

32. On September 18, 2024, the Department of Commerce denied AFL's request for expedited processing. *Id.*

33. As of the date of filing, AFL's requests for expedited processing have been denied by the Defendant agencies.

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

34. AFL repeats paragraphs 1–33.

35. AFL properly requested records within the possession, custody, and control of the Defendants.

36. The Defendants have failed to produce the requested records within the statutory time limit.

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

38. Additionally, in each instance, AFL sufficiently showed that expedited processing was appropriate by citing numerous articles demonstrating widespread public interest in the requested information.

39. Moreover, as an entity “primarily engaged in disseminating information,” AFL has sufficiently demonstrated the “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

40. Nevertheless, Defendants failed to comply with FOIA and the applicable regulations by denying AFL’s expedited processing requests.

41. Accordingly, the Defendants have violated FOIA, and AFL is entitled to relief.

RELIEF REQUESTED

WHEREFORE, AFL respectfully requests this Court:

i. Declare that the records sought by these requests, as described herein, must be disclosed by Defendants under 5 U.S.C. § 552.

- ii. Reverse the determination by the agency defendants denying expedited processing for these requests.
- iii. Order Defendants to conduct immediate searches for all responsive records and require Defendants to demonstrate that the search methods utilized are those reasonably likely to lead to the discovery of responsive records;
- iv. Order Defendants to produce all non-exempt records responsive to AFL's FOIA requests by a specified date to be determined by the Court;
- v. Award AFL attorneys' fees and costs under 5 U.S.C. § 552(a)(4)(E); and
- vi. Grant AFL such other and further relief as this court deems proper

Dated: October 9, 2024

Respectfully submitted,

/s/ Andrew J. Block

Andrew J. Block (D.C. Bar No. 90002845)
Michael Ding (D.C. Bar No. 1027252)
AMERICA FIRST LEGAL FOUNDATION
611 Pennsylvania Ave., S.E. #231
Washington, D.C. 20003
andrew.block@aflegal.org
michael.ding@aflegal.org
(202) 836-7958

Counsel for Plaintiff America First Legal



August 29, 2024

Via FOIA Portal

Office of Information Programs and Services (A/GIS/IPS)
Room B-266
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Freedom of Information Act Request: Detention of Pavel Durov

Dear FOIA Officer:

America First Legal Foundation 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 has over 247,000 followers on X, and our Founder and President has over 654,000 followers on X.

I. Background

Telegram is one of the world's largest messaging platforms and has more than 950 million active users.¹ On August 24, 2024, Telegram's founder and CEO, Pavel Durov, was arrested at the Paris-Le Bourget Airport by authorities who claim he is complicit with illegal activity occurring on the platform.² Telegram is widely used by millions of political dissidents and freedom fighters worldwide to communicate without being

¹ Barbara Ortutay, *What is Telegram and Why Was Its CEO Arrested in Paris?* AP NEWS (Aug. 27, 2024), <https://perma.cc/XM93-EEX6>.

² *Id.*

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watched by Big Brother and is “a darling of digital rights groups ... which have backed the app in its fights with authoritarian regimes.”³

Given Telegram’s ubiquity, public interest in this matter is at a fever pitch. The Financial Times characterized the arrest as “the most drastic attempt yet to hold a platform chief accountable for content ... at a time of highly polarised debate over social media’s responsibility for free speech versus online safety.”⁴ Mr. Durov told Tucker Carlson earlier this year that every time he visits the United States he is approached by federal agents who “want[] to establish a relationship to ... control Telegram better.”⁵

On August 28, 2024, French authorities charged Mr. Durov with a host of crimes. He must post €5 million for bail and faces decades in prison if convicted.⁶

America First Legal has reason to believe that the United States Embassy in Paris had advance knowledge of—and may have played a role in coordinating—this arrest.⁷

America First Legal has grave concerns about the Biden-Harris Administration’s pattern of stifling of free speech.⁸ Your prompt production of these documents will show the American people, inter alia, whether domestic political considerations caused U.S. officials to influence the criminal justice apparatus of an important ally.

II. Requested Records

- Any communications or records containing the names “Pavel Durov” or “Paul du Rove”.
- Any communications or records containing the term “Telegram”.
- Any records or documents regarding the August 25, 2024, arrest of Pavel Durov at Bourget Airport.

The relevant time period is May 1, 2024, to the date that this request is processed.

III. Custodians

- Antony Blinken, United States Secretary of State
- James O’Brien, Assistant Secretary for European and Eurasian Affairs

³ Mohar Chatterjee et al., *The Bewildering Politics of Telegram*, POLITICO (Aug. 27, 2024), <https://perma.cc/WS4J-E5H8>.

⁴ Hannah Murphy & Adrienne Klasa, *How Telegram Chief Pavel Durov Miscalculated on Moderation*, FIN. TIMES (Aug. 27, 2024), <https://perma.cc/VN5G-W2JW>.

⁵ Tucker Carlson (@TuckerCarlson), X (Apr. 16, 2024, 6:00 PM), <https://perma.cc/C89J-YULZ>.

⁶ Barbara Surk & Angela Charlton, *Telegram CEO Durov Faces Preliminary Charges in France of Allowing a Crime on Messaging App*, AP NEWS (Aug. 29, 2024), <https://perma.cc/F64R-P88W>.

⁷ Mike Benz (@MikeBenzCyber), X (Aug. 26, 2024, 10:10 PM), <https://perma.cc/8PSU-KQ6D>.

⁸ See, e.g., *America First Legal Foundation v. Centers for Disease Control and Prevention*, No. 22-00978 (D.D.C. Apr. 11, 2022).

- Yuri Kim, Principal Deputy Assistant Secretary for European and Eurasian Affairs
- The Bureau of European and Eurasian Affairs
- Gentry Smith, Assistant Secretary for Diplomatic Security

IV. Fee Waiver Request

Per 5 U.S.C. § 552(4)(A)(iii), AFL requests a waiver of all search and duplication fees associated with this request. Furthermore, AFL has a demonstrated ability and intention to effectively convey the information broadly to the public. AFL's status as a representative of the news media has been recognized by other agencies for granting fee waivers by the Departments of Defense, Education, Energy, Health and Human Services, Justice, Interior, and Homeland Security. Finally, as a non-profit organization, AFL has no commercial interest, and the request is made entirely to serve the public interest. We are, of course, available to provide additional information in writing or offline in support of this request. If AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

V. Request for Expedited Processing

AFL hereby requests expedited processing pursuant to 22 C.F.R. § 171.12(d)(1)(ii). Expedited processing is appropriate because AFL is a qualifying news media distributor, and there exists an urgency to inform the public concerning alleged Federal Government activity. Nearly 1 billion Telegram users deserve to know what role, if any, the United States government played in the arrest of Pavel Durov. Department of State regulations provide that “[t]he existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ‘urgency to inform’ the public on the topic.” 22 C.F.R. § 171.12(d)(3). The press has published extensively on this event,⁹ and experts have alleged the U.S. government's involvement.¹⁰

VI. Processing and Production

Processing should occur in strict compliance with the processing guidance in the Attorney General's Memorandum on Freedom of Information Act Guidelines.¹¹ If you

⁹ *E.g.*, Matthew Dalton, *French Authorities Charge Telegram Founder Pavel Durov*, WALL ST. J. (Aug. 28, 2024), <https://perma.cc/L3XC-X99Y>; Sylvie Maligorn et al., *Telegram Founder Durov Charged and Banned from Leaving France*, JAPAN TIMES (Aug. 29, 2024), <https://perma.cc/7MTN-968N>; Gaspard Sebag, *Telegram CEO Charged in France For Crimes Committed on His App*, BLOOMBERG (Aug. 28, 2024), <https://perma.cc/DPQ4-SRZQ>.

¹⁰ *See, e.g.*, Tucker Carlson Network (@TCNetwork), X (Aug. 28, 2024, 7:02 PM), <https://perma.cc/A2P4-MZXU>.

¹¹ U.S. DEP'T OF JUST. (Mar. 15, 2022), <https://perma.cc/K3EL-AANM>.

have any questions about our request or believe further discussions regarding search and processing would facilitate more efficient production of records of interest to AFL, then please contact me at FOIA@aflegal.org.

Thank you in advance for your cooperation.

Sincerely,

/s/ Michael Ding

Michael Ding
America First Legal Foundation



August 29, 2024

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- Any communications with French nationals containing the term “Telegram”.
- Any records or documents relevant to the Aug. 25, 2024, arrest of Pavel Durov at Bourget Airport.
- Any diplomatic cables containing the terms “Pavel Durov”, “Paul du Rove”, or “Telegram”.

The relevant time period is July 1, 2024, to the date this request is processed.

³ Mohar Chatterjee et al., *The Bewildering Politics of Telegram*, POLITICO (Aug. 27, 2024), <https://perma.cc/WS4J-E5H8>.

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⁸ See, e.g., *America First Legal Foundation v. Centers for Disease Control and Prevention*, No. 22-00978 (D.D.C Apr. 11, 2022).

III. Custodians

- Denise Campbell Bauer, United States Ambassador to the French Republic and the Principality of Monaco
- The United States Embassy in Paris
- David R. McCawley, Deputy Chief of Mission
- Jarrad Smith, Legal Attaché
- The Regional Security Office
- The Political Section

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Processing should occur in strict compliance with the processing guidance in the Attorney General's Memorandum on Freedom of Information Act Guidelines.¹¹ If you have any questions about our request or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, then please contact me at FOIA@aflegal.org.

Thank you in advance for your cooperation.

Sincerely,

/s/ Robert A. Crossin

Robert A. Crossin
America First Legal Foundation

¹¹ U.S. DEPT OF JUST. (Mar. 15, 2022), <https://perma.cc/K3EL-AANM>.



AFL FOIA <foia@aflegal.org>

Ref: F-2024-19047

foiastatus@state.gov <foiastatus@state.gov>
To: foia@aflegal.org

Thu, Aug 29, 2024 at 12:32 PM

Dear Reed Rubinstein:

Thank you for filing your information access request to the U.S. Department of State. Your request number is F-2024-19047.

You will receive a formal acknowledgement to your request in no later than 10 working days. If the Department requires additional information from you, then you will also be notified.

Should you have any questions about your request, you may also contact us at:

FOIAStatus@state.gov

Regards,
Requesters Communications Branch
Office of Information Programs and Services
U.S. Department of State



AFL FOIA <foia@aflegal.org>

Ref: F-2024-19048

foiastatus@state.gov <foiastatus@state.gov>
To: foia@aflegal.org

Thu, Aug 29, 2024 at 12:32 PM

Dear Reed Rubinstein:

Thank you for filing your information access request to the U.S. Department of State. Your request number is F-2024-19048.

You will receive a formal acknowledgement to your request in no later than 10 working days. If the Department requires additional information from you, then you will also be notified.

Should you have any questions about your request, you may also contact us at:

FOIAStatus@state.gov

Regards,
Requesters Communications Branch
Office of Information Programs and Services
U.S. Department of State



AFL FOIA <foia@aflegal.org>

Ref: F-2024-19047, Freedom of Information Act Acknowledgement

A_FOIAacknowledgement@groups.state.gov

Mon, Sep 30, 2024 at 12:59

<A_FOIAacknowledgement@groups.state.gov>

PM

To: foia@aflegal.org

****THIS EMAIL BOX IS NOT MONITORED, PLEASE DO NOT REPLY TO THIS EMAIL.****

Dear Mr. Rubinstein:

This email acknowledges receipt of your August 29, 2024, Freedom of Information Act (FOIA) (5 U.S.C. § 552) request received by the U.S. Department of State, Office of Information Programs and Services on August 29, 2024.

You are seeking a copy of "records related to the detention of Pavel Durov from July 1, 2024, to the present II. Requested Records • Any communications with French nationals containing the names "Pavel Durov" or "Paul du Rove". • Any communications with French nationals containing the term "Telegram". • Any records or documents relevant to the Aug. 25, 2024, arrest of Pavel Durov at Bourget Airport. • Any diplomatic cables containing the terms "Pavel Durov", "Paul du Rove", or "Telegram". III. Custodians • Denise Campbell Bauer, United States Ambassador to the French Republic and the Principality of Monaco • The United States Embassy in Paris • David R. McCawley, Deputy Chief of Mission • Jarrad Smith, Legal Attaché • The Regional Security Office • The Political Section (Date Range for Record Search: From 7/1/2024 To 8/29/2024)." Unless you advise otherwise, we will treat as non-responsive any compilations of publicly available news reports and any publicly available documents not created by the U.S. government, such as mass-distribution emails from news media. This Office assigned your request the subject reference number and placed it in the complex processing track where it will be processed as quickly as possible. See 22 CFR § 171.11(h).

Also, you requested expedited processing of this request. According to 22 CFR § 171.11(f), requests shall receive expedited processing when a requester demonstrates a "compelling need" for the information exists for one of the following reasons: (1) failure to obtain the requested information on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; (2) the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal government activity; or (3) failure to release the information would impair substantial due process rights or harm substantial humanitarian interests. Your request does not demonstrate a "compelling need" for the requested information. Therefore, this Office denies your request for expedited processing.

If you are not satisfied with this response, you may administratively appeal by writing to: Appeals Officer, Office of Information Programs and Services (A/GIS/IPS), Room B-266, U.S. Department of State, [2201 C Street, NW, Washington, D.C. 20520](https://www.state.gov/2201-C-Street-NW-Washington-D-C-20520); by fax to (202) 485-1669; or by email to FOIAAppeals@state.gov. Your appeal must be postmarked or electronically transmitted within 90 days of the date of this email. Please include a copy of this correspondence with your written appeal and clearly state why you disagree with the determinations set forth in this response.

This Office will not be able to respond within the 20 days provided by the statute due to “unusual circumstances.” See 5 U.S.C. § 552(a)(6)(B)(i)-(iii). In this instance, the unusual circumstances include the need to search for and collect requested records from other Department offices or Foreign Service posts.

If you have any questions regarding your request, would like to narrow the scope or arrange an alternative time frame to speed its processing, or would like an estimated date of completion, please contact our FOIA Requester Service Center or our FOIA Public Liaison by email at FOIAstatus@state.gov or telephone at 202-261-8484. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, [8601 Adelphi Road](https://www.ogis.gov)-OGIS, College Park, Maryland 20740-6001, email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or fax at 202-741-5769.

Sincerely,

Brooke Nicholas
Branch Chief
Requester Communications Branch
Requester Liaison Division
Office of Information Programs and Services
U.S. Department of State

****THIS EMAIL BOX IS NOT MONITORED, PLEASE DO NOT REPLY TO THIS EMAIL.****



AFL FOIA <foia@aflegal.org>

Ref: F-2024-19048, Freedom of Information Act Acknowledgement

A_FOIAacknowledgement@groups.state.gov
<A_FOIAacknowledgement@groups.state.gov>
To: foia@aflegal.org

Mon, Sep 30, 2024 at 12:39
PM

****THIS EMAIL BOX IS NOT MONITORED, PLEASE DO NOT REPLY TO THIS EMAIL.****

Dear Mr. Rubinstein:

This email acknowledges receipt of your August 29, 2024, Freedom of Information Act (FOIA) (5 U.S.C. § 552) request received by the U.S. Department of State, Office of Information Programs and Services on August 29, 2024.

You are seeking a copy of "records related to the detention of Pavel Durov: II. Requested Records • Any communications or records containing the names "Pavel Durov" or "Paul du Rove". • Any communications or records containing the term "Telegram". • Any records or documents regarding the August 25, 2024, arrest of Pavel Durov at Bourget Airport. III. Custodians • Antony Blinken, United States Secretary of State • James O'Brien, Assistant Secretary for European and Eurasian Affairs (Date Range for Record Search: From 5/1/2024 To 8/29/2024)." Unless you advise otherwise, we will treat as non-responsive any compilations of publicly available news reports and any publicly available documents not created by the U.S. government, such as mass-distribution emails from news media. This Office assigned your request the subject reference number and placed it in the complex processing track where it will be processed as quickly as possible. See 22 CFR § 171.11(h).

Also, you requested expedited processing of this request. According to 22 CFR § 171.11(f), requests shall receive expedited processing when a requester demonstrates a "compelling need" for the information exists for one of the following reasons: (1) failure to obtain the requested information on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; (2) the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal government activity; or (3) failure to release the information would impair substantial due process rights or harm substantial humanitarian interests. Your request does not demonstrate a "compelling need" for the requested information. Therefore, this Office denies your request for expedited processing.

If you are not satisfied with this response, you may administratively appeal by writing to: Appeals Officer, Office of Information Programs and Services (A/GIS/IPS), Room B-266, U.S. Department of State, [2201 C Street, NW, Washington, D.C. 20520](#); by fax to (202) 485-1669; or by email to FOIAAppeals@state.gov. Your appeal must be postmarked or electronically transmitted within 90 days of the date of this email. Please include a copy of this correspondence with your written appeal and clearly state why you disagree with the determinations set forth in this response.

This Office will not be able to respond within the 20 days provided by the statute due to "unusual

circumstances.” See 5 U.S.C. § 552(a)(6)(B)(i)-(iii). In this instance, the unusual circumstances include the need to search for and collect requested records from other Department offices or Foreign Service posts.

If you have any questions regarding your request, would like to narrow the scope or arrange an alternative time frame to speed its processing, or would like an estimated date of completion, please contact our FOIA Requester Service Center or our FOIA Public Liaison by email at FOIAstatus@state.gov or telephone at 202-261-8484. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, [8601 Adelphi Road](https://www.archives.gov)-OGIS, College Park, Maryland 20740-6001, email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or fax at 202-741-5769.

Sincerely,

Brooke Nicholas
Branch Chief
Requester Communications Branch
Requester Liaison Division
Office of Information Programs and Services
U.S. Department of State

****THIS EMAIL BOX IS NOT MONITORED, PLEASE DO NOT REPLY TO THIS EMAIL.****



September 10, 2024

Via FOIA Portal

Office of Information Programs and Services (A/GIS/IPS)
Room B-266
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Freedom of Information Act Request: Brazilian Censorship of X

Dear FOIA Officer:

America First Legal Foundation 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 has over 269,000 followers on X, and our Founder and President has over 723,000 followers on X.

I. Background

In June 2021, the Biden-Harris White House released a first-of-its-kind National Strategy for Countering Domestic Terrorism,¹ which endorsed “a global, multi-stakeholder setting in which we can collaborate on addressing terrorist content online with partner governments ... as well as with technology companies and civil society organizations.”² It highlighted the “domestic terrorism threat landscape ... on Internet-based communications platforms such as social media, file-upload sites, and end-to-end encrypted platforms,” where “conspiracy theories and other forms of

¹ *National Strategy for Countering Domestic Terrorism*, NAT’L SEC. COUNCIL (June 2021), <https://perma.cc/VAH2-KZ5E>.

² *Id.* at 22.

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320 South Madison Avenue
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disinformation and misinformation” could cause “mobilization to violence.”³ It “demand[ed] accelerating work to contend with [the] information environment” and “[e]nhanc[e] faith in American democracy.”⁴ As evidence, it alleged that “narratives of fraud in the recent [2020] general election” led to “the violent breach of the U.S. Capitol.”⁵ By June 2021, the “Department of State and United States Agency for International Development” were “already pursuing efforts” based on “public health-focused violence prevention” to “advance the prevention of domestic terrorism” “globally.”⁶

In July 2021, leading up to the 2022 Brazilian election and, apparently, to support its allied candidate, the leftist, pro-Iran former President Luiz Inacio Lula da Silva, Biden-Harris CIA Director William Burns delivered a “message carried from the White House” to Jair Bolsonaro, then Brazil’s democratically elected incumbent president.⁷ Burns reportedly warned Bolsonaro to stop questioning the electronic voting system and talking about voter fraud.⁸ Using the language and tactics outlined in the Biden-Harris National Strategy for Countering Domestic Terrorism to control constitutionally protected political dissent by shutting down legitimate questions regarding irregularities or fraud related to the 2020 election in the United States,⁹ Burns told Bolsonaro to stop spreading “misinformation.”

Ten days before Brazil’s 2022 election, Alexandre de Moraes, Brazil’s election chief and justice on Brazil’s Supreme Court, obtained the power to unilaterally order social media companies to remove any online post that the electoral court had deemed to be misleading. The New York Times, often a reliable Biden-Harris propaganda outlet, remarkably headlined its report on this profoundly anti-democratic measure, “*To Fight Lies, Brazil Gives One Man Power Over Online Speech.*”¹⁰ Unsurprisingly, Moraes ordered the deletion of key Bolsonaro social media posts.¹¹

³ *Id.* at 9.

⁴ *Id.* at 29.

⁵ *Id.* at 10.

⁶ *Id.* at 20 (emphasis added).

⁷ Ryan Cooper, *How Joe Biden and Bernie Sanders Helped Lula Win*, AM. PROSPECT (Nov. 1, 2022), <https://perma.cc/ZQJ2-YD2T>.

⁸ Gabriel Stargardter & Matt Spetalnick, *Exclusive: CIA Chief Told Bolsonaro Government Not to Mess with Brazil Election, Sources Say*, REUTERS (May 5, 2022), <https://perma.cc/W7DT-CQPL>.

⁹ See *BOMBSHELL DOCUMENTS – America First Legal Lawsuit Reveals CISA Knew About Mail-in Voting Risks in 2020 While Censoring Related Narratives as ‘Disinformation,’* AM. FIRST LEGAL (Jan. 22, 2024), <https://perma.cc/FW5B-6WNL>.

¹⁰ Jack Nicas, *To Fight Lies, Brazil Gives One Man Power Over Online Speech*, N.Y. TIMES (Oct. 21, 2022), <https://perma.cc/BFY9-MYUP>.

¹¹ See generally John-Michael Dumais, *‘The Blob’: Government, Media and Big Tech Censorship Alliance Suppressing Dissent on Wide Range of Issues*, THE DEFENDER (Mar. 14, 2024), <https://perma.cc/F83J-JC3S>.

Reportedly, the U.S. pressure on key Brazilian officials “was likely decisive in guaranteeing the eventual outcome” in favor of the Biden-Harris ally Lula da Silva.¹² An investigation by the House Judiciary Committee and Select Committee on the Weaponization of Government found that:

[S]ince at least 2022, the Supreme Federal Court in Brazil, on which Moraes serves as a justice, and the Superior Electoral Court in Brazil, led by Moraes, have ordered X Corp. to suspend or remove nearly 150 accounts on the popular social media platform. These censorship demands were targeted specifically at critics of the Brazilian government: conservative members of the federal legislature, journalists, members of the judiciary, and even a gospel singer and a pop radio station—in other words, anyone with a platform to criticize the ruling leftist government.¹³

On August 30, 2024, Justice Moraes issued an order blocking American social media platform X across Brazil and fining Brazilians caught accessing the platform \$8,900 per day—more than what the average Brazilian makes a year.¹⁴ The order purportedly concerned misinformation that “represents an extremely serious risk to the municipal elections in October” in Brazil.¹⁵ Democrat mega-donor Elizabeth F. Bagley began serving as the Biden-Harris Administration’s ambassador to Brazil in 2023. Bagley has donated more than \$1.6 million to left-wing candidates since 1986¹⁶ and is a veteran of the Carter, Clinton, and Obama Departments of State.¹⁷ To date, she has had nothing to say about Lula’s assault on X and on Elon Musk’s other companies.¹⁸

The evidence of an ongoing multinational assault on free speech by ideologically aligned leftist and putatively democratic Western nations, led by the Biden-Harris Administration, is highly suggestive. For example:

¹² Oliver Stuenkel, *How U.S. Pressure Helped Save Brazil’s Democracy*, FOREIGN POL’Y (Feb. 20, 2024), <https://perma.cc/J2A9-7DCC>.

¹³ STAFF OF H. COMM. ON THE JUD. & SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV’T, 118TH CONG., *THE ATTACK ON FREE SPEECH ABROAD AND THE BIDEN ADMINISTRATION’S SILENCE: THE CASE OF BRAZIL* at 4 (2024), <https://perma.cc/Q494-2JFQ>.

¹⁴ Oliver Wiseman, *The Front Page: The Global War Against Free Speech*, FREE PRESS (Sept. 3, 2024), <https://perma.cc/7ZDD-4ED8>; Jack Nicas & Kate Conger, *How Brazil’s Experiment Fighting Fake News Led to a Ban on X*, N.Y. TIMES (Aug. 31, 2024), <https://perma.cc/PJ4Y-7M2L>.

¹⁵ Jack Nicas & Kate Conger, *How Brazil’s Experiment Fighting Fake News Led to a Ban on X*, N.Y. TIMES (Aug. 31, 2024), <https://perma.cc/PJ4Y-7M2L>.

¹⁶ *Individual Contributions: “Elizabeth F. Bagley”*, FED. ELECTION COMM’N, <https://perma.cc/9XSS-DAEQ>.

¹⁷ *Elizabeth Frawley Bagley, U.S. Ambassador to Brazil*, U.S. EMBASSY & CONSULATES IN BRAZ., <https://perma.cc/52FV-6S7Z>.

¹⁸ See Lora Kolodny, *Elon Musk’s Starlink Says It Will Block X in Brazil To Keep Satellite Internet Active*, CNBC (Sep. 3, 2024), <https://perma.cc/M7SJ-BRK8> (“The supreme court orders had frozen Starlink’s financial assets in the country to ensure X would pay its penalties...”).

- In Brazil, the Biden-Harris Administration endorsed “addressing” “content online with partner governments,”¹⁹ funded “an entire sprawling swarm arm of censorship policy activists,”²⁰ and adopted a partner civil society organization’s suggestion that government action against Tesla would coerce Elon Musk to censor speech on X, in support of the leftist Lula.²¹
- In Canada, the Biden-Harris Administration’s leftist Liberal Party allies, led by Justin Trudeau, have frozen the bank accounts of anti-COVID mandate protestors to crush dissent and now have introduced a bill giving the government broad and unreviewable power to control social media companies and criminalize online “hate speech.”²²
- In the United Kingdom, the Biden-Harris Administration’s leftist Labor Party allies, led by Keir Starmer, have targeted social media companies for potential abuse,²³ used the “Crown Prosecutor” to warn British subjects that they must “think before they post” on social media, and even threatened to extradite American citizens for violating British “hate speech” laws.²⁴
- In France, the Biden-Harris Administration’s “Renaissance” Party allies, led by Emmanuel Macron, arrested Telegram CEO Pavel Durov.²⁵

Here at home, AFL has exposed the Biden-Harris Administration’s censorship program, which has used the Centers for Disease Control, the National Security Council, the Department of Homeland Security, and the FBI to operationalize the Biden-Harris National Strategy for Countering Domestic Terrorism to control what the American people may say and think. AFL also has demonstrated the Biden-Harris Administration’s long-standing and persistent misuse of Department of State

¹⁹ *National Strategy for Countering Domestic Terrorism*, *supra* note 1, at 22.

²⁰ Mike Benz (@MikeBenzCyber), X (Aug. 29, 2023, 5:02 PM), <https://perma.cc/D4ME-86GJ>; *see also National Strategy for Countering Domestic Terrorism*, *supra* note 1, at 6.

²¹ *See* Mike Benz (@MikeBenzCyber), X (Dec. 4, 2023, 12:53 PM), <https://perma.cc/N42U-WWSS>; *see also* America First Legal (@America1stLegal), X (May 2, 2023, 12:11 PM), <https://perma.cc/EK3E-MUXY> (AFL has sued Alex Stamos and the Stanford Internet Observatory for colluding with the Biden-Harris Administration to censor the speech of American citizens online).

²² Katherine Fung, *Banks Have Begun Freezing Accounts Linked to Trucker Protest*, NEWSWEEK (Feb. 18, 2022), <https://perma.cc/48QP-DXCW>.

²³ Gill Whitehead, *Open Letter to UK Online Service Providers*, OFCOM (Aug. 7, 2024), <https://perma.cc/L8BT-GE67>

²⁴ Alexander Hall, *UK Police Commissioner Threatens to Extradite, Jail US Citizens Over Online Posts*, FOX NEWS (Aug. 9, 2024), <https://perma.cc/ZR63-CL75>; Flora Thompson, *Repost Hateful Messages About Disorder Online and You Could End Up in Court*, THE INDEP., (Aug. 7, 2024), <https://perma.cc/3HCA-VMYM>.

²⁵ *America First Legal Launches Investigations Into the Biden-Harris State Department Regarding the Arrest of Telegram CEO, Pavel Durov*, AM. FIRST LEGAL (Aug. 29, 2024), <https://perma.cc/296S-DCVA>.

and USAID assets to push its global censorship program.²⁶ Accordingly, there is strong reason to believe that the U.S. government is working with authoritarian South American leftists to censor political speech²⁷ on a social media platform owned by an American citizen who has publicly supported the Biden-Harris Administration's political rival, former President Donald J. Trump.²⁸

II. Requested Records

- A. All communications that mention or relate to Alexandre de Moraes.
- B. All communications and records containing the terms “ X ” or “ X.” (including the spaces and punctuation in the search).
- C. All records responsive to a Boolean search for: “Elon” OR “Musk” OR “Twitter” OR “Starlink,” AND “ban” OR “block” OR “censor.”
- D. Any records or communications that mention “Diego de Lima Gualda” or “Diego Lima Gualda.”
- E. All records or communications that mention “Rachel de Oliveira Vila Nova Conceição.”
- F. All records responsive to a Boolean search for: “election” OR “electoral system” OR “voting machine” OR “sanctions” AND “Bolsonaro.”
- G. All records or communications that mention or relate to the visit of CIA Director William Burns to Brazil in July 2021.
- H. All records or communications that mention, relate, report, or discuss the subject matter of the conversations or discussions between CIA Director William Burns and Brazilian President Jair Bolsonaro, Augusto Heleno, Alexandre Ramagem, or Luiz Eduardo Ramos.
- I. All records or communications that mention, relate, report, or discuss an article posted on the O Globo website by Scott Hamilton, the U.S. consul in Rio de Janeiro from 2018 to 2021, published on or about April 30, 2022, and titled “Defendendo a democracia,”

²⁶ *Government Documents Confirm the Biden Administration's Mobilization of U.S. Counterterrorism Assets To Support Imran Ahmed's Global Censorship Campaign*, AM. FIRST LEGAL (Mar. 20, 2024), <https://perma.cc/YA8G-V6CM>; *America First Legal's Litigation Against the Biden State Department Unearths Orwellian, Internal USAID "Disinformation Primer"*, AM. FIRST LEGAL (Mar. 14, 2024), <https://perma.cc/7FGT-VVE3>.

²⁷ Mike Benz (@MikeBenzCyber), X (Aug. 30, 2024, 12:06 PM), <https://perma.cc/CUZ2-F5ZM>; *see also* Mike Benz (@MikeBenzCyber), X (Sept. 6, 2024, 12:12 AM), <https://perma.cc/N9RM-WPCE>.

²⁸ Elon Musk (@elonmusk), X (July 13, 2024, 6:45 PM), <https://perma.cc/DB36-6AVX>.

<https://blogs.oglobo.globo.com/opiniaopost/defendendo-democracia.html>.

“Communications” include, but are not limited to, emails, diplomatic cables, demarches, and internal instant message logs, such as logs from Microsoft Teams.

The relevant time for items A–E is January 1, 2024, to the date that this request is processed. The relevant time for items G and H is June 1, 2021, through September 1, 2021. The relevant time for item I is March 1, 2021, through June 30, 2021.

III. Custodians

A. Washington, D.C.

1. Antony Blinken, Secretary of State
2. Suzy George, Chief of Staff
3. The Assistant Secretaries for:
 - a) Western Hemisphere Affairs
 - b) Global Public Affairs
4. The Principal Deputy Assistant Secretaries for:
 - a) Western Hemisphere Affairs
 - b) Global Public Affairs
5. Each Deputy Assistant Secretary and Acting Deputy Assistant Secretary for Global Public Affairs
6. James P. Rubin, Special Envoy and Coordinator for the Global Engagement Center
7. The following Office of Brazil and Southern Cone Affairs personnel:
 - a) The Director
 - b) The Deputy Director
 - c) The Public Diplomacy Advisor

- d) The Senior Brazil Desk Officer
- e) Brazil Desk Officer (Econ)
- f) Brazil Desk Officer (Political)

B. Department of State personnel in Brazil:

- 1. United States Ambassador to Brazil
- 2. Deputy Chief of Mission
- 3. Legal Attache
- 4. Economic Section personnel, Political Section Personnel, and Environment, Science, Technology, and Health Section personnel at:
 - a) U.S. Embassy, Brasilia
 - b) Consulates General, Rio and Sao Paulo

IV. Fee Waiver Request

Per 5 U.S.C. § 552(4)(A)(iii), AFL requests a waiver of all search and duplication fees associated with this request. Furthermore, AFL has a demonstrated ability and intention to effectively convey the information broadly to the public. AFL's status as a representative of the news media has been recognized by other agencies for granting fee waivers by the Departments of Defense, Education, Energy, Health and Human Services, Justice, Interior, and Homeland Security. Finally, as a non-profit organization, AFL has no commercial interest, and the request is made entirely to serve the public interest. We are, of course, available to provide additional information in writing or offline in support of this request. If AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

V. Request for Expedited Processing

AFL hereby requests expedited processing pursuant to 22 C.F.R. § 171.12(d)(1)(ii). because AFL is a qualifying news media distributor, and there exists an urgency to inform the public concerning alleged Federal Government activity. More than half a billion X users deserve to know what role, if any, the United States government played in the banning of X in Brazil. Department of State regulations provide that "[t]he existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an 'urgency to inform' the public on the

topic.” 22 C.F.R. § 171.12(d)(3). The press has published extensively on this event,²⁹ and experts have alleged the U.S. government’s involvement.

VI. Processing and Production

Processing should occur in strict compliance with the processing guidance in the Attorney General’s Memorandum on Freedom of Information Act Guidelines.³⁰ If you have any questions about our request or believe further discussions regarding search and processing would facilitate more efficient production of records of interest to AFL, then please contact me at FOIA@aflegal.org.

Thank you in advance for your cooperation.

Sincerely,
/s/ Reed Rubinstein
America First Legal Foundation

²⁹ *E.g.*, Hannah Murphy & Bryan Harris, *Elon Musk’s X Braced for Ban in Brazil Amid Fight with Judge*, FIN. TIMES (Aug. 29, 2024), <https://perma.cc/6AUD-KSB8>; Robert Greenall & João da Silva, *X Braced for Brazil Ban as Judge’s Deadline Passes*, BBC (Aug. 29, 2024), <https://perma.cc/P28R-U2Y9>; Meghan Bobrowsky, *Starlink Caught in Crosshairs of Elon Musk’s Battle With Brazil*, WALL ST. J. (Aug. 29, 2024), <https://perma.cc/QX7E-PEYZ>; Gabriela Sá Pessoa et al., *How One Brazilian Judge Could Suspend Elon Musk’s X in the Coming Hours*, AP NEWS (Aug. 30, 2024), <https://perma.cc/EUF4-H5ME>; *How Brazil’s Experiment Fighting Fake News Led to a Ban on X*, N.Y. TIMES (Aug. 31, 2024), <https://perma.cc/PJ4Y-7M2L>.

³⁰ U.S. DEP’T OF JUST. (Mar. 15, 2022), <https://perma.cc/K3EL-AANM>.



AFL FOIA <foia@aflegal.org>

Ref: F-2024-20275

foiastatus@state.gov <foiastatus@state.gov>
To: foia@aflegal.org

Tue, Sep 10, 2024 at 8:15 AM

Dear Reed Rubinstein:

Thank you for filing your information access request to the U.S. Department of State. Your request number is F-2024-20275.

You will receive a formal acknowledgement to your request in no later than 10 working days. If the Department requires additional information from you, then you will also be notified.

Should you have any questions about your request, you may also contact us at:

FOIAStatus@state.gov

Regards,
Requesters Communications Branch
Office of Information Programs and Services
U.S. Department of State



AFL FOIA <foia@aflegal.org>

Ref: F-2024-20275, Freedom of Information Act Acknowledgement

FOIAstatus@state.gov <FOIAstatus@state.gov>

Wed, Sep 25, 2024 at 11:46 AM

To: foia@aflegal.org

Dear Mr. Rubinstein:

This email acknowledges receipt of your September 10, 2024, Freedom of Information Act (FOIA) (5 U.S.C. § 552) request received by the U.S. Department of State, Office of Information Programs and Services on September 10, 2024.

You are seeking a copy of "Documents related to the banning of X in Brazil (see attached) (Date Range for Record Search: From 01/01/2024 To 09/10/2024)." Unless you advise otherwise, we will treat as non-responsive any compilations of publicly available news reports and any publicly available documents not created by the U.S. government, such as mass-distribution emails from news media. This Office assigned your request the subject reference number and placed it in the complex processing track where it will be processed as quickly as possible. See 22 CFR § 171.11(h).

Also, you requested expedited processing of this request. According to 22 CFR § 171.11(f), requests shall receive expedited processing when a requester demonstrates a "compelling need" for the information exists for one of the following reasons: (1) failure to obtain the requested information on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; (2) the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal government activity; or (3) failure to release the information would impair substantial due process rights or harm substantial humanitarian interests. Your request does not demonstrate a "compelling need" for the requested information. Therefore, this Office denies your request for expedited processing.

Furthermore, you will not be charged FOIA processing fees.

If you are not satisfied with this response, you may administratively appeal by writing to: Appeals Officer, Office of Information Programs and Services (A/GIS/IPS), Room B-266, U.S. Department of State, [2201 C Street, NW, Washington, D.C. 20520](#); by fax to (202) 485-1669; or by email to FOIAAppeals@state.gov. Your appeal must be postmarked or electronically transmitted within 90 days of the date of this email. Please include a copy of this correspondence with your written appeal and clearly state why you disagree with the determinations set forth in this response.

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Sincerely,

Brooke Nicholas
Branch Chief
Requester Communications Branch
Requester Liaison Division
Office of Information Programs and Services
U.S. Department of State



PAL Request Form.pdf

303K



September 10, 2024

Via FOIA Portal

Chief, Information and Records Division
Office of Administrative Services
U.S. Agency for International Development
Room 2.07c
1300 Pennsylvania Avenue, NW
Washington, DC 20523

Freedom of Information Act Request: Brazilian Censorship of X

Dear FOIA Officer:

America First Legal Foundation 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 has over 269,000 followers on X, and our Founder and President has over 723,000 followers on X.

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Monroe, Georgia 30655

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² *Id.* at 22.

³ *Id.* at 9.

⁴ *Id.* at 29.

⁵ *Id.* at 10.

⁶ *Id.* at 20 (emphasis added).

⁷ Ryan Cooper, *How Joe Biden and Bernie Sanders Helped Lula Win*, AM. PROSPECT (Nov. 1, 2022), <https://perma.cc/ZQJ2-YD2T>.

⁸ Gabriel Stargardter & Matt Spetalnick, *Exclusive: CIA Chief Told Bolsonaro Government Not to Mess with Brazil Election, Sources Say*, REUTERS (May 5, 2022), <https://perma.cc/W7DT-CQPL>.

⁹ See *BOMBSHELL DOCUMENTS – America First Legal Lawsuit Reveals CISA Knew About Mail-in Voting Risks in 2020 While Censoring Related Narratives as ‘Disinformation,’* AM. FIRST LEGAL (Jan. 22, 2024), <https://perma.cc/FW5B-6WNL>.

*Fight Lies, Brazil Gives One Man Power Over Online Speech.*¹⁰ Unsurprisingly, Moraes ordered the deletion of key Bolsonaro social media posts.¹¹

Reportedly, the U.S. pressure on key Brazilian officials “was likely decisive in guaranteeing the eventual outcome” in favor of the Biden-Harris ally Lula da Silva.¹² An investigation by the House Judiciary Committee and Select Committee on the Weaponization of Government found that:

[S]ince at least 2022, the Supreme Federal Court in Brazil, on which Moraes serves as a justice, and the Superior Electoral Court in Brazil, led by Moraes, have ordered X Corp. to suspend or remove nearly 150 accounts on the popular social media platform. These censorship demands were targeted specifically at critics of the Brazilian government: conservative members of the federal legislature, journalists, members of the judiciary, and even a gospel singer and a pop radio station—in other words, anyone with a platform to criticize the ruling leftist government.¹³

On August 30, 2024, Justice Moraes issued an order blocking American social media platform X across Brazil and fining Brazilians caught accessing the platform \$8,900 per day—more than what the average Brazilian makes a year.¹⁴ The order purportedly concerned misinformation that “represents an extremely serious risk to the municipal elections in October” in Brazil.¹⁵ Democrat mega-donor Elizabeth F. Bagley began serving as the Biden-Harris Administration’s ambassador to Brazil in 2023. Bagley has donated more than \$1.6 million to left-wing candidates since 1986¹⁶ and is a veteran of the Carter, Clinton, and Obama Departments of State.¹⁷ To date,

¹⁰ Jack Nicas, *To Fight Lies, Brazil Gives One Man Power Over Online Speech*, N.Y. TIMES (Oct. 21, 2022), <https://perma.cc/BFY9-MYUP>.

¹¹ See generally John-Michael Dumais, *‘The Blob’: Government, Media and Big Tech Censorship Alliance Suppressing Dissent on Wide Range of Issues*, THE DEFENDER (Mar. 14, 2024), <https://perma.cc/F83J-JC3S>.

¹² Oliver Stuenkel, *How U.S. Pressure Helped Save Brazil’s Democracy*, FOREIGN POL’Y (Feb. 20, 2024), <https://perma.cc/J2A9-7DCC>.

¹³ STAFF OF H. COMM. ON THE JUD. & SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV’T, 118TH CONG., THE ATTACK ON FREE SPEECH ABROAD AND THE BIDEN ADMINISTRATION’S SILENCE: THE CASE OF BRAZIL at 4 (2024), <https://perma.cc/Q494-2JFQ>.

¹⁴ Oliver Wiseman, *The Front Page: The Global War Against Free Speech*, FREE PRESS (Sept. 3, 2024), <https://perma.cc/7ZDD-4ED8>; Jack Nicas & Kate Conger, *How Brazil’s Experiment Fighting Fake News Led to a Ban on X*, N.Y. TIMES (Aug. 31, 2024), <https://perma.cc/PJ4Y-7M2L>.

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¹⁷ *Elizabeth Frawley Bagley, U.S. Ambassador to Brazil*, U.S. EMBASSY & CONSULATES IN BRAZ., <https://perma.cc/52FV-6S7Z>.

she has had nothing to say about Lula’s assault on X and on Elon Musk’s other companies.¹⁸

The evidence of an ongoing multinational assault on free speech by ideologically aligned leftist and putatively democratic Western nations, led by the Biden-Harris Administration, is highly suggestive. For example:

- In Brazil, the Biden-Harris Administration endorsed “addressing” “content online with partner governments,”¹⁹ funded “an entire sprawling swarm arm of censorship policy activists,”²⁰ and adopted a partner civil society organization’s suggestion that government action against Tesla would coerce Elon Musk to censor speech on X, in support of the leftist Lula.²¹
- In Canada, the Biden-Harris Administration’s leftist Liberal Party allies, led by Justin Trudeau, have frozen the bank accounts of anti-COVID mandate protestors to crush dissent and now have introduced a bill giving the government broad and unreviewable power to control social media companies and criminalize online “hate speech.”²²
- In the United Kingdom, the Biden-Harris Administration’s leftist Labor Party allies, led by Keir Starmer, have targeted social media companies for potential abuse,²³ used the “Crown Prosecutor” to warn British subjects that they must “think before they post” on social media, and even threatened to extradite American citizens for violating British “hate speech” laws.²⁴
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¹⁸ See Lora Kolodny, *Elon Musk’s Starlink Says It Will Block X in Brazil To Keep Satellite Internet Active*, CNBC (Sep. 3, 2024), <https://perma.cc/M7SJ-BRK8> (“The supreme court orders had frozen Starlink’s financial assets in the country to ensure X would pay its penalties...”).

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Here at home, AFL has exposed the Biden-Harris Administration's censorship program, which has used the Centers for Disease Control, the National Security Council, the Department of Homeland Security, and the FBI to operationalize the Biden-Harris National Strategy for Countering Domestic Terrorism to control what the American people may say and think. AFL also has demonstrated the Biden-Harris Administration's long-standing and persistent misuse of Department of State and USAID assets to push its global censorship program.²⁶ Accordingly, there is strong reason to believe that the U.S. government is working with authoritarian South American leftists to censor political speech²⁷ on a social media platform owned by an American citizen who has publicly supported the Biden-Harris Administration's political rival, former President Donald J. Trump.²⁸

II. Requested Records

- A. All communications that mention or relate to Alexandre de Moraes.
- B. All communications and records containing the terms " X " or " X." (including the spaces and punctuation in the search).
- C. All records responsive to a Boolean search for: "Elon" OR "Musk" OR "Twitter" OR "Starlink," AND "ban" OR "block" OR "censor."
- D. Any records or communications that mention "Diego de Lima Gualda" or "Diego Lima Gualda."
- E. All records or communications that mention "Rachel de Oliveira Vila Nova Conceição."
- F. All records responsive to a Boolean search for: "election" OR "electoral system" OR "voting machine" OR "sanctions" AND "Bolsonaro."
- G. All records or communications that mention or relate to the visit of CIA Director William Burns to Brazil in July 2021.
- H. All records or communications that mention, relate, report, or discuss the subject matter of the conversations or discussions between CIA

²⁶ *Government Documents Confirm the Biden Administration's Mobilization of U.S. Counterterrorism Assets To Support Imran Ahmed's Global Censorship Campaign*, AM. FIRST LEGAL (Mar. 20, 2024), <https://perma.cc/YA8G-V6CM>; *America First Legal's Litigation Against the Biden State Department Unearths Orwellian, Internal USAID "Disinformation Primer"*, AM. FIRST LEGAL (Mar. 14, 2024), <https://perma.cc/7FGT-VVE3>.

²⁷ Mike Benz (@MikeBenzCyber), X (Aug. 30, 2024, 12:06 PM), <https://perma.cc/CUZ2-F5ZM>; *see also* Mike Benz (@MikeBenzCyber), X (Sept. 6, 2024, 12:12 AM), <https://perma.cc/N9RM-WPCE>.

²⁸ Elon Musk (@elonmusk), X (July 13, 2024, 6:45 PM), <https://perma.cc/DB36-6AVX>.

Director William Burns and Brazilian President Jair Bolsonaro, Augusto Heleno, Alexandre Ramagem, or Luiz Eduardo Ramos.

- I. All records or communications that mention, relate, report, or discuss an article posted on the O Globo website by Scott Hamilton, the U.S. consul in Rio de Janeiro from 2018 to 2021, published on or about April 30, 2022, and titled “Defendendo a democracia,” <https://blogs.oglobo.globo.com/opiniaio/post/defendendo-democracia.html>.

“Communications” include, but are not limited to, emails, diplomatic cables, demarches, and internal instant message logs, such as logs from Microsoft Teams.

The relevant time for items A–E is January 1, 2024, to the date that this request is processed. The relevant time for items G and H is June 1, 2021, through September 1, 2021. The relevant time for item I is March 1, 2021, through June 30, 2021.

III. Custodians

- A. Mark Carrato, USAID Mission Director Brazil

IV. Fee Waiver Request

Per 5 U.S.C. § 552(4)(A)(iii), AFL requests a waiver of all search and duplication fees associated with this request. Furthermore, AFL has a demonstrated ability and intention to effectively convey the information broadly to the public. AFL’s status as a representative of the news media has been recognized by other agencies for granting fee waivers by the Departments of Defense, Education, Energy, Health and Human Services, Justice, Interior, and Homeland Security. Finally, as a non-profit organization, AFL has no commercial interest, and the request is made entirely to serve the public interest. We are, of course, available to provide additional information in writing or offline in support of this request. If AFL’s request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

V. Request for Expedited Processing

AFL hereby requests expedited processing pursuant to 22 C.F.R. § 212.8(e)(1)(ii), (iv). Expedited processing is appropriate because AFL is a qualifying news media distributor, and there exists an urgency to inform the public concerning alleged Federal Government activity. Additionally, this is a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” More than half a billion X users

deserve to know what role, if any, the United States government played in the banning of X in Brazil. USAID regulations provide that “[t]he existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ‘urgency to inform’ the public on the topic.” 22 C.F.R. § 212.8(e)(2). The press has published extensively on this event,²⁹ and experts have alleged the U.S. government’s involvement.

VI. Processing and Production

Processing should occur in strict compliance with the processing guidance in the Attorney General’s Memorandum on Freedom of Information Act Guidelines.³⁰ If you have any questions about our request or believe further discussions regarding search and processing would facilitate more efficient production of records of interest to AFL, then please contact me at FOIA@aflegal.org.

Thank you in advance for your cooperation.

Sincerely,

/s/ Reed Rubinstein

America First Legal Foundation

²⁹ *E.g.*, Hannah Murphy & Bryan Harris, *Elon Musk’s X Braced for Ban in Brazil Amid Fight with Judge*, FIN. TIMES (Aug. 29, 2024), <https://perma.cc/6AUD-KSB8>; Robert Greenall & João da Silva, *X Braced for Brazil Ban as Judge’s Deadline Passes*, BBC (Aug. 29, 2024), <https://perma.cc/P28R-U2Y9>; Meghan Bobrowsky, *Starlink Caught in Crosshairs of Elon Musk’s Battle With Brazil*, WALL ST. J. (Aug. 29, 2024), <https://perma.cc/QX7E-PEYZ>; Gabriela Sá Pessoa et al., *How One Brazilian Judge Could Suspend Elon Musk’s X in the Coming Hours*, AP NEWS (Aug. 30, 2024), <https://perma.cc/EUF4-H5ME>; *How Brazil’s Experiment Fighting Fake News Led to a Ban on X*, N.Y. TIMES (Aug. 31, 2024), <https://perma.cc/PJ4Y-7M2L>.

³⁰ U.S. DEPT OF JUST. (Mar. 15, 2022), <https://perma.cc/K3EL-AANM>.



AFL FOIA <foia@aflegal.org>

Request Acknowledgement by USAID

foia@usaid.gov <foia@usaid.gov>
To: foia@aflegal.org

Tue, Sep 10, 2024 at 8:35 AM

Dear Reed Rubinstein,

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the United States Agency for International Development. The tracking number for your request is F-00922-24. Please use this number when corresponding with this office.

At this time, we are in the process of perfecting your request. A perfected request for records reasonably describes such records and is made in accordance with the published rules stating the time, place, fees (if any) and procedures to be followed. This process includes reviewing the request for clarity and fee category determination and related commitment to pay, if applicable.

Once your request is perfected, you will be notified of the Government Information Specialist assigned to process your case. If you have questions, please contact us on (202) 712-0960 or by e-mail at foia@usaid.gov. Please cite the above-referenced number when corresponding with our office.

Sincerely,

The FOIA Team

USAID - Washington DC

From: slewis@usaid.gov
Subject: USAID FOIA REQUEST No. F-00922-24 (FOIA Specialist Assignment Email)
Date: September 25, 2024 at 11:28 AM
To: foia@aflegal.org

September 25, 2024

RE: USAID FOIA No. F-00922-24 (FOIA Specialist Assignment Email)

Dear Mr. Rubinstein:

This acknowledges receipt of your September 10, 2024 Freedom of Information Act (FOIA) request to the United States Agency for International Development (USAID). Specifically, you requested **records related to the banning of X in Brazil (Date Range for Record Search: From 01/01/2024 To 09/10/2024)**. You also requested expedited processing and a fee waiver.

Expedited Processing

The FOIA provides that expedited processing is warranted if the request involves circumstances in which the lack of expedited processing could (1) reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or (2) an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information. You indicated you requested expedited processing "More than half a billion X users deserve to know what role, if any, the United States government played in the banning of X in Brazil because the public has an urgent and compelling need for information about the **records related to the banning of X in Brazil (Date Range for Record Search: From 01/01/2024 To 09/10/2024)**". After review of your justification, your request for expedited processing is denied. Your rationale does not articulate an imminent threat to the life or physical safety of an individual, nor is it an urgency to inform the public. Below is information on how to submit an appeal for this expedited processing denial.

Appeal rights

You have a right to appeal the denial of expedited processing. Your appeal must be received by USAID no later than 90 days from the date of this communication. Please send your appeal to foia@usaid.gov, and address it to the Office Director of the Bureau for Management, Office of Management Services. In addition, please include your tracking number in your email.

FOIA Specialist

Your request has been assigned to **Julia Cruz, Management & Program Analyst**. You may contact **Julia Cruz** by email at julee@usaid.gov. Please reference the tracking number cited above in any future correspondence.

Extending the FOIA's Time Limits due to Unusual Circumstances

The FOIA provides that an agency may extend its time limits when "unusual circumstances" occur in the processing of a request. See 5 U.S.C. § 552(a)(6)(B)(i) (2016). Those "unusual circumstances" are set forth in the statute, 5 U.S.C § 552(a)(6)(B)(iii), and are described as:

- 1) The need to search for records from field facilities or other locations separate from the office processing the request;
- 2) The need to search, collect and examine voluminous records; and
- 3) The need for consultation with another agency.

Based upon the records you have requested, we have determined that one or more unusual circumstances will occur during the processing of your request. Accordingly, your response time-limit has been extended beyond the 20 days required by statute; therefore, 10 additional processing days have been added to your request. To mitigate this action, you may limit the scope of the request so that it can be processed more quickly or to arrange an alternative time to respond.

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact the assigned FOIA Specialist noted above. You may also contact **USAID's FOIA Public Liaison, Christopher Colbow**, at foia@usaid.gov.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services offered:

Office of Government Information Services
National Archives and Records Administration

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001

E-mail: ogis@nara.gov

Telephone: 202-741-5770; Toll Free: 1-877-684-6448

Fax: 202-741-5769

Thank you for your interest in USAID.

Sincerely,

Starr Lewis

FOIA Specialist

Bureau for Management

Office of Management Services

Information and Records Division



September 10, 2024

Via Email: foia@trade.gov

International Trade Administration
Freedom of Information Officer
Room 40003
14th and Constitution Avenue, NW
Washington, D.C. 20230

Freedom of Information Act Request: Brazilian Censorship of X

Dear FOIA Officer:

America First Legal Foundation 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 has over 269,000 followers on X, and our Founder and President has over 723,000 followers on X.

I. Background

In June 2021, the Biden-Harris White House released a first-of-its-kind National Strategy for Countering Domestic Terrorism,¹ which endorsed “a global, multi-stakeholder setting in which we can collaborate on addressing terrorist content online with partner governments ... as well as with technology companies and civil society organizations.”² It highlighted the “domestic terrorism threat landscape ... on

¹ *National Strategy for Countering Domestic Terrorism*, NAT’L SEC. COUNCIL (June 2021), <https://perma.cc/VAH2-KZ5E>.

² *Id.* at 22.

611 Pennsylvania Ave SE #231
Washington, DC 20003

320 South Madison Avenue
Monroe, Georgia 30655

Internet-based communications platforms such as social media, file-upload sites, and end-to-end encrypted platforms,” where “conspiracy theories and other forms of disinformation and misinformation” could cause “mobilization to violence.”³ It “demand[ed] accelerating work to contend with [the] information environment” and “[e]nhanc[e] faith in American democracy.”⁴ As evidence, it alleged that “narratives of fraud in the recent [2020] general election” led to “the violent breach of the U.S. Capitol.”⁵ By June 2021, the “Department of State and United States Agency for International Development” were “already pursuing efforts” based on “public health-focused violence prevention” to “advance the prevention of domestic terrorism” “globally.”⁶

In July 2021, leading up to the 2022 Brazilian election and, apparently, to support its allied candidate, the leftist, pro-Iran former President Luiz Inacio Lula da Silva, Biden-Harris CIA Director William Burns delivered a “message carried from the White House” to Jair Bolsonaro, then Brazil’s democratically elected incumbent president.⁷ Burns reportedly warned Bolsonaro to stop questioning the electronic voting system and talking about voter fraud.⁸ Using the language and tactics outlined in the Biden-Harris National Strategy for Countering Domestic Terrorism to control constitutionally protected political dissent by shutting down legitimate questions regarding irregularities or fraud related to the 2020 election in the United States,⁹ Burns told Bolsonaro to stop spreading “misinformation.”

Ten days before Brazil’s 2022 election, Alexandre de Moraes, Brazil’s election chief and justice on Brazil’s Supreme Court, obtained the power to unilaterally order social media companies to remove any online post that the electoral court had deemed to be misleading. The New York Times, often a reliable Biden-Harris propaganda outlet, remarkably headlined its report on this profoundly anti-democratic measure, “*To Fight Lies, Brazil Gives One Man Power Over Online Speech.*”¹⁰ Unsurprisingly, Moraes ordered the deletion of key Bolsonaro social media posts.¹¹

³ *Id.* at 9.

⁴ *Id.* at 29.

⁵ *Id.* at 10.

⁶ *Id.* at 20 (emphasis added).

⁷ Ryan Cooper, *How Joe Biden and Bernie Sanders Helped Lula Win*, AM. PROSPECT (Nov. 1, 2022), <https://perma.cc/ZQJ2-YD2T>.

⁸ Gabriel Stargardter & Matt Spetalnick, *Exclusive: CIA Chief Told Bolsonaro Government Not to Mess with Brazil Election, Sources Say*, REUTERS (May 5, 2022), <https://perma.cc/W7DT-CQPL>.

⁹ See *BOMBSHELL DOCUMENTS – America First Legal Lawsuit Reveals CISA Knew About Mail-in Voting Risks in 2020 While Censoring Related Narratives as ‘Disinformation,’* AM. FIRST LEGAL (Jan. 22, 2024), <https://perma.cc/FW5B-6WNL>.

¹⁰ Jack Nicas, *To Fight Lies, Brazil Gives One Man Power Over Online Speech*, N.Y. TIMES (Oct. 21, 2022), <https://perma.cc/BFY9-MYUP>.

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- F. All records responsive to a Boolean search for: "election" OR "electoral system" OR "voting machine" OR "sanctions" AND "Bolsonaro."
- G. All records or communications that mention or relate to the visit of CIA Director William Burns to Brazil in July 2021.
- H. All records or communications that mention, relate, report, or discuss the subject matter of the conversations or discussions between CIA Director William Burns and Brazilian President Jair Bolsonaro, Augusto Heleno, Alexandre Ramagem, or Luiz Eduardo Ramos.

²⁶ *Government Documents Confirm the Biden Administration's Mobilization of U.S. Counterterrorism Assets To Support Imran Ahmed's Global Censorship Campaign*, AM. FIRST LEGAL (Mar. 20, 2024), <https://perma.cc/YA8G-V6CM>; *America First Legal's Litigation Against the Biden State Department Unearths Orwellian, Internal USAID "Disinformation Primer"*, AM. FIRST LEGAL (Mar. 14, 2024), <https://perma.cc/7FGT-VVE3>.

²⁷ Mike Benz (@MikeBenzCyber), X (Aug. 30, 2024, 12:06 PM), <https://perma.cc/CUZ2-F5ZM>; *see also* Mike Benz (@MikeBenzCyber), X (Sept. 6, 2024, 12:12 AM), <https://perma.cc/N9RM-WPCE>.

²⁸ Elon Musk (@elonmusk), X (July 13, 2024, 6:45 PM), <https://perma.cc/DB36-6AVX>.

- I. All records or communications that mention, relate, report, or discuss an article posted on the O Globo website by Scott Hamilton, the U.S. consul in Rio de Janeiro from 2018 to 2021, published on or about April 30, 2022, and titled “Defendendo a democracia,” <https://blogs.oglobo.globo.com/opiniao/post/defendendo-democracia.html>.

“Communications” include, but are not limited to, emails, diplomatic cables, demarches, and internal instant message logs, such as logs from Microsoft Teams.

The relevant time for items A–E is January 1, 2024, to the date that this request is processed. The relevant time for items G and H is June 1, 2021, through September 1, 2021. The relevant time for item I is March 1, 2021, through June 30, 2021.

IV. Custodians

- A. U.S. Commercial Service personnel at:
 - a. Consulate General, Rio
 - b. Consulate General, Sao Paulo

V. Fee Waiver Request

Per 5 U.S.C. § 552(4)(A)(iii), AFL requests a waiver of all search and duplication fees associated with this request. Furthermore, AFL has a demonstrated ability and intention to effectively convey the information broadly to the public. AFL’s status as a representative of the news media has been recognized by other agencies for granting fee waivers by the Departments of Defense, Education, Energy, Health and Human Services, Justice, Interior, and Homeland Security. Finally, as a non-profit organization, AFL has no commercial interest, and the request is made entirely to serve the public interest. We are, of course, available to provide additional information in writing or offline in support of this request. If AFL’s request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

VI. Request for Expedited Processing

AFL hereby requests expedited processing pursuant to 15 C.F.R. § 4.6(f)(iii), (iv). Expedited processing is appropriate because this is a “matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence.” Additionally, AFL is a qualifying news media

distributor, and there is an urgency to inform the public about alleged Federal Government activity. More than half a billion X users deserve to know what role, if any, the United States government played in the banning of X in Brazil. Department of Commerce regulations provide that “[t]he existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ‘urgency to inform’ the public on the topic.” 15 C.F.R. § 4.6(f)(3). The press has published extensively on this event,²⁹ and experts have alleged the U.S. government’s involvement.

VII. Processing and Production

Processing should occur in strict compliance with the processing guidance in the Attorney General’s Memorandum on Freedom of Information Act Guidelines.³⁰ If you have any questions about our request or believe further discussions regarding search and processing would facilitate more efficient production of records of interest to AFL, then please contact me at FOIA@aflegal.org.

Thank you in advance for your cooperation.

Sincerely,

/s/ Reed Rubinstein

America First Legal Foundation

²⁹ E.g., Hannah Murphy & Bryan Harris, *Elon Musk’s X Braced for Ban in Brazil Amid Fight with Judge*, FIN. TIMES (Aug. 29, 2024), <https://perma.cc/6AUD-KSB8>; Robert Greenall & João da Silva, *X Braced for Brazil Ban as Judge’s Deadline Passes*, BBC (Aug. 29, 2024), <https://perma.cc/P28R-U2Y9>; Meghan Bobrowsky, *Starlink Caught in Crosshairs of Elon Musk’s Battle With Brazil*, WALL ST. J. (Aug. 29, 2024), <https://perma.cc/QX7E-PEYZ>; Gabriela Sá Pessoa et al., *How One Brazilian Judge Could Suspend Elon Musk’s X in the Coming Hours*, AP NEWS (Aug. 30, 2024), <https://perma.cc/EUF4-H5ME>; *How Brazil’s Experiment Fighting Fake News Led to a Ban on X*, N.Y. TIMES (Aug. 31, 2024), <https://perma.cc/PJ4Y-7M2L>.

³⁰ U.S. DEP’T OF JUST. (Mar. 15, 2022), <https://perma.cc/K3EL-AANM>.



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration

Washington, D.C. 20230

September 18, 2024

Reed Rubinstein
America First Legal
611 Pennsylvania Ave SE #231
Washington, DC 20003

foia@aflegal.org

Dear Mr. Rubinstein:

This letter serves as acknowledgment of your Freedom of Information Act (FOIA) request dated September 10, 2024, received by the International Trade Administration (ITA) on September 10, 2024. Your FOIA request has been assigned FOIA tracking number DOC-ITA-2024-000327. Please reference this number on all communications regarding this request.

In your request, on behalf of American First Legal, you sought copies of:

- A. All communications that mention or relate to Alexandre de Moraes.**
- B. All communications and records containing the terms “ X ” or “ X.” (including the spaces and punctuation in the search).**
- C. All records responsive to a Boolean search for: “Elon” OR “Musk” OR “Twitter” OR “Starlink,” AND “ban” OR “block” OR “censor.”**
- D. Any records or communications that mention “Diego de Lima Gualda” or “Diego Lima Gualda.”**
- E. All records or communications that mention “Rachel de Oliveira Vila Nova Conceição.”**
- F. All records responsive to a Boolean search for: “election” OR “electoral system” OR “voting machine” OR “sanctions” AND “Bolsonaro.”**
- G. All records or communications that mention or relate to the visit of CIA Director William Burns to Brazil in July 2021.**
- H. All records or communications that mention, relate, report, or discuss the subject matter of the conversations or discussions between CIA Director William Burns and Brazilian President Jair Bolsonaro, Augusto Heleno, Alexandre Ramagem, or Luiz Eduardo Ramos.**
- I. All records or communications that mention, relate, report, or discuss an article posted on the O Globo website by Scott Hamilton, the U.S. consul in Rio de Janeiro from 2018 to 2021, published on or about April 30, 2022, and titled “Defendendo a democracia,”**
<https://blogs.oglobo.globo.com/opiniao/post/defendendodemocracia.html>.

“Communications” include, but are not limited to, emails, diplomatic cables, demarches, and internal instant message logs, such as logs from Microsoft Teams. The relevant time for items A–E is January 1, 2024, to the date that this request is processed. The relevant time for items G and H is June 1, 2021, through September 1, 2021. The relevant time for item I is March 1, 2021, through June 30, 2021.

In addition, you sought expedited processing of your request under 15 C.F.R. § 4.6(f). The Department’s regulations require that a “requestor who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.” In your paragraph addressing your compelling need of the requested records, you assert that the

“AFL hereby requests expedited processing pursuant to 15 C.F.R. § 4.6(f)(iii), (iv). Expedited processing is appropriate because this is a “matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence.” Additionally, AFL is a qualifying news media distributor, and there is an urgency to inform the public about alleged Federal Government activity. More than half a billion X users deserve to know what role, if any, the United States government played in the banning of X in Brazil. Department of Commerce regulations provide that “[t]he existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ‘urgency to inform’ the public on the topic.” 15 C.F.R. § 4.6(f)(3). The press has published extensively on this event, 29 and experts have alleged the U.S. government’s involvement.”

Your statement does not demonstrate

- (i) circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.
- (ii) the loss of substantial due process rights.
- (iii) that the records requested involve a matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence.
- (iv) an urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

Thus, your request for expedited processing is **denied**.

For the purpose of assessing fees on this FOIA request, you, on behalf of American First Legal, are being considered a News Media requestor. You may be charged \$0.00. ITA will attempt to produce the responsive records electronically. Should the fee to process your request exceed this amount, you will be promptly notified. If you have any questions regarding this response, please contact me at foia@trade.gov.

In your request, you are also seeking a fee waiver under 15 C.F.R. § 4.11(l). The FOIA directs agencies to furnish records without any charge or at a reduced charge 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 (5 U.S.C. § 552(a)(4)(A)(iii)).

Requests for fee waivers must be considered on a case-by-case basis and address the requirements for a fee waiver in sufficient detail for the agencies to make an informed decision. In determining whether the statutory requirements are met, agencies shall consider the following factors. *See* 15 C.F.R. § 4.11(l)(2).

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. A request for access to records for their informational content alone does not satisfy this factor.
2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.
3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough.
4. The disclosure must contribute "significantly" to public understanding of government operations or activities.
5. The extent to which disclosure will serve the requester's commercial interest, if any.
6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.

The statement provided in your request for a fee waiver pursuant to 15 C.F.R. § 4.11(l) contains sufficient evidence to support a finding that such factors exist. Therefore, your fee waiver is **granted**.

If you have any questions or concerns or would like to discuss any aspect of your request, you may contact the analyst who processed your request, **Bianca Kegler**, at foia@trade.gov.

You may also contact ITA's FOIA Public Liaison, using the following information:

Bianca Kegler
FOIA Officer
International Trade Administration
1401 Constitution Avenue, N.W., Room 40003
Washington, D.C. 20230
Email: foia@trade.gov

Please refer to your FOIA request tracking number, **DOC-ITA-2024-000327** when contacting ITA.

In addition, you may seek FOIA mediation services offered by the National Archives and Records Administration, Office of Government Information Services (OGIS). You may contact OGIS using the following information:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
Email: ogis@nara.gov

In accordance with 15 C.F.R. §§ 4.10(a) and (b), you have the right to appeal this determination within 90 calendar days from the date of this letter. The Department deems appeals arriving after normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday) as received on the next normal business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. The appeal should include a copy of the original request, this response, and a statement of the reasons why you consider the Department made this determination in error. Please mail written appeals to:

Assistant General Counsel for Employment, Litigation, and Information
U.S. Department of Commerce
1401 Constitution Avenue, N.W. Room 5896
Washington, D.C. 20230

You may send an appeal by e-mail to FOIAAppeals@doc.gov. Clearly mark “Freedom of Information Act Appeal”, in the email subject line, or on both the appeal letter and envelope.

Sincerely,

Bianca Kegler
FOIA Officer
International Trade Administration

<input type="radio"/> G. Habeas Corpus/ 2255 530 Habeas Corpus – General 510 Motion/Vacate Sentence 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act 895 Freedom of Information Act 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 740 Labor Railway Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) 441 Voting (if not Voting Rights Act) 443 Housing/Accommodations 440 Other Civil Rights 445 Americans w/Disabilities – Employment 446 Americans w/Disabilities – Other 448 Education	<input type="radio"/> M. Contract 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 153 Recovery of Overpayment of Veteran’s Benefits 160 Stockholder’s Suits 190 Other Contracts 195 Contract Product Liability 196 Franchise	<input type="radio"/> N. Three-Judge Court 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input type="checkbox"/> NO <input type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input type="checkbox"/>	If yes, please complete related case form

DATE: _____	SIGNATURE OF ATTORNEY OF RECORD _____
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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

Plaintiff

v.

Defendant

)
)
)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

Plaintiff

v.

Defendant

)
)
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)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

Plaintiff

v.

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

_____)
 Plaintiff)
)
 v.) Civil Action No.
)
_____)
 Defendant)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

_____)
 Plaintiff)
)
 v.) Civil Action No.
)
_____)
 Defendant)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: