



June 13, 2022

Via EOUSA Portal

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

Via EMAIL

Amanda Marchand Jones, Chief FOIA/PA Unit
Criminal Division
United States Department of Justice
1301 New York Ave, N.W., Suite 1127
Washington, DC, 20530-0001
Crm.foia@usdoj.gov

Via FOIA STAR Portal

Douglas Hibbard, Chief, Initial Request Staff
Office of Information Policy
United States Department of Justice
441 G Street, N.W., 6th Floor
Washington, DC, 20530
Attn: FOIA Officer

Freedom of Information Act Request: Lenient Plea Deal for Arsonists

Dear FOIA Officers:

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 communicate with a national audience through traditional and social media platforms. AFL's email list contains over 33,000 unique addresses, our Facebook page has over 35,000 followers, our Twitter page has over 14,000 followers, the Twitter page of

611 Pennsylvania Ave SE #231
Washington, DC 20003

our Founder and President has over 182,000 followers, and we have another 29,000 followers on GETTR.

From May 29 to June 9, 2020, “mostly peaceful protests” took place throughout New York City. In New York City alone, an estimated 450 businesses were looted or damaged,¹ and costs from property damaged and looting totaled in the “tens of millions.”² On May 30, 2020, Colinford Mattis and Urooj Rahman, two New York attorneys, were arrested in Brooklyn after Rahman threw a Molotov cocktail into a New York City Police Department (NYPD) vehicle and Mattis helped her escape from the scene.³ Less than an hour before she set fire to the police vehicle, Rahman stated in a video-recorded interview that violence against law enforcement was “understandable,” and “the only way they hear us is through violence.”⁴ A witness also photographed Rahman attempting to distribute Molotov cocktails to others,⁵ and police found more Molotov cocktail precursor items in Mattis’s vehicle at the time of their arrest.⁶

On June 11, 2020, a federal grand jury indicted Mattis and Rahman on seven counts each, for Use of Explosives, Arson, Using an Explosive to Commit a Felony, Arson Conspiracy, Use of a Destructive Device, Civil Disorder, and Possessing and Making a Destructive Device.⁷ Each defendant originally faced up to 45 years in prison, and in October 2021, each pled guilty to Count Seven of the indictment, expressed regret, but fought federal prosecutors’ effort to brand them as terrorists.⁸

That same month, President Biden’s newly appointed United States Attorney for the Eastern District of New York, Breon Peace, was sworn in,⁹ receiving praise from de-

¹ Noah Manskar, *450 NYC Businesses Damaged During George Floyd Protests*, N.Y. POST (June 12, 2020), <https://bit.ly/3MBid2j>; Kate King, *Hundreds of New York City Businesses Were Damaged, Looted in Recent Unrest*, WALL ST. J. (June 12, 2020), <https://on.wsj.com/39bEztD>.

² Noah Manskar and Natalie Musumeci, *Looters Cost NYC Businesses ‘Tens of Millions,’ Experts Estimate*, N.Y. POST (June 3, 2020), <https://bit.ly/3MzVROs>.

³ Bill Sanderson, *Upstate Woman Admits Setting Fire to NYPD Vehicle With Four Cops Inside in George Floyd Protest, Feds Say; Two Others Charged in Separate Police Vehicle Torching*, N.Y. DAILY NEWS (May 31, 2020), <https://bit.ly/3xjv0Rm>.

⁴ Bruce Golding, *‘Molotov Thrower’ Urooj Rahman Blames de Blasio for Not Holding Back NYPD Amid Protests*, N.Y. POST (June 5, 2020), <https://bit.ly/3ME19sm>.

⁵ Ben Feuerherd, *Molotov Cocktail-Tossing Lawyers Tried to Pass Out Firebombs to Protesters: Feds*, N.Y. POST (June 1, 2020), <https://bit.ly/3mwobXr>.

⁶ *Id.*

⁷ *United States v. Mattis*, No. 20-cr-00203, Doc. 21 (E.D.N.Y. filed June 11, 2020).

⁸ Luc Cohen, *NY Lawyers Plead Guilty in Molotov Cocktail Case; Shorter Sentences Likely*, REUTERS (June 2, 2022), <https://reut.rs/3MxOes4>.

⁹ U.S. Dep’t Just., Press Release, *Breon Peace Sworn in As United States Attorney for the Eastern District of New York* (Oct. 15, 2021), <https://www.justice.gov/usao-edny/pr/breon-peace-sworn-united-states-attorney-eastern-district-new-york>.

fense lawyers, diversity advocates, and other prosecutors in the office who had criticized law enforcement's response during the 2020 protests.¹⁰ With new political leadership and new marching orders, the federal prosecutors on the case pushed for revised plea agreements with Mattis and Rahman, recommending sentences of 18 to 24 months for conspiracy to commit arson and possess an explosive device.¹¹ In a May 10, 2022 letter to Judge Brian M. Cogan of the Eastern District of New York, Peace argued that “based on the nature and circumstances of the offense and the histories and personal characteristics of these defendants ... it would be appropriate to sentence these defendants to terms of imprisonment far below the applicable Guidelines sentence determined in the [Pre-Sentence Report].”¹² The letter noted that the newly recommended sentence would be below the Guidelines range even if the “terrorism enhancement were found inapplicable.”¹³ The letter articulated nothing about the defendants’ “personal characteristics” which would merit such a lenient plea deal, but it appears relevant that the defendants were protesting a politically correct cause,¹⁴ and they had politically powerful connections.¹⁵

This pattern of leniency for politically correct and politically connected criminals sharply contrasts the persecution facing political opponents of the Biden Administration. It is particularly inappropriate in light of the fact that Attorney General Merrick Garland is on record citing the threat to police officers in pledging to charge and convict those involved “on any level” in the January 6th protest.¹⁶ The Department of Justice’s primary duty is to impartially enforce federal law. It should not have a lenient standard for Biden Administration allies and a much stricter standard for Biden Administration opponents.

Pursuant to 5 U.S.C. § 552(a), AFL requests the following records.

I. Custodians

EOUSA

¹⁰ Rebecca Davis O’Brien, *Can Brooklyn’s New U.S. Attorney Help Restore Faith in Law Enforcement?* N.Y. TIMES (Oct. 21, 2021), <https://nyti.ms/3QntTsH>.

¹¹ Luc Cohen, *NY Lawyers Plead Guilty in Molotov Cocktail Case; Shorter Sentences Likely*, REUTERS (June 2, 2022), <https://reut.rs/3MxOes4>.

¹² *United States v. Mattis*, No. 20-cr-00203, Doc. 80 at 3 (E.D.N.Y. filed May 10, 2022).

¹³ *Id.* at 4.

¹⁴ See, e.g., America First Legal Foundation, *AFL Sues Biden Admin for Records Relating to Leniency for a BLM Rioter and Arsonist* (May 23, 2022), <https://bit.ly/3aRpHB1>.

¹⁵ See, e.g., Gregg Re, *Obama-Era Ex-intel Official Secures Bail for NYC Lawyer Suspected of Hurling Molotov Cocktail in George Floyd Unrest*, FOX NEWS (June 7, 2020), <https://fxn.ws/3MxOAYU>.

¹⁶ Jonathan Turley, *New York Attorneys Accused of Firebombing Police Car Given Generous Plea Deal*, RES IPSA LOQUITUR (June 5, 2022), <https://bit.ly/3xxkWW4> (citing Nicole Sganga, *Garland Says “The Actions We Have Taken Thus Far” on January 6 Rioters “Will Not Be Our Last”*, CBS NEWS (Jan. 6, 2022), <https://cbsn.ws/3xwvwN0>). See also, Editors, *Updated and Reposted: RealClearInvestigations’ Jan. 6-BLM Riots Comparison*, REALCLEARINVESTIGATIONS (Jan 4, 2022), <https://bit.ly/3lxY-hSZ>.

- A. EOUSA Director Monty Wilkinson
- B. United States Attorney Breon Peace
- C. First Assistant United States Attorney for the Eastern District of New York (name unknown)
- D. Assistant United States Attorney Ian C. Richardson
- E. Assistant United States Attorney Jonathan E. Algor

Criminal Division

- A. All political appointees and career employees with a grade of or equivalent to GS-14 or higher in the Office of the Assistant Attorney General

OIP

- A. All political appointees and career employees with a grade of or equivalent to GS-14 or higher in the Office of the Attorney General
- B. All political appointees and career employees with a grade of or equivalent to GS-14 or higher in the Office of the Deputy Attorney General
- C. All political appointees and career employees with a grade of or equivalent to GS-14 or higher in the Office of Public Affairs
- D. All political appointees and career employees with a grade of or equivalent to GS-14 or higher in the Office of Legislative Affairs

II. Records Request

The timeframe for each request is October 1, 2021 to June 6, 2022.

- A. All records referring to the matter *United States v. Mattis*, No. 20-cr-00203 (E.D.N.Y. filed May 30, 2020)
- B. All records referring to the defendant Colinford Mattis
- C. All records referring to the defendant Urooj Rahman
- D. All records referring to the applicability of a “terrorism enhancement”
- E. All records referring to the “case-specific mitigating facts and circumstances” referenced in the letter from United States Attorney Peace to Judge Cogan¹⁷
- F. All records referring to sentencing leniency for BLM protestors

III. Processing

¹⁷ *United States v. Mattis*, No. 20-cr-00203, Doc. 80 at 4 (E.D.N.Y. filed May 10, 2022).

The Department of Justice must comply with the processing guidance in the Attorney General's Memorandum on Freedom of Information Guidelines.¹⁸ This means, among other things, the following.

- You may withhold responsive records only if: (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates; or (2) disclosure is prohibited by law.
- Information that might technically fall within an exemption should not be withheld unless you can identify a foreseeable harm or legal bar to disclosure. In case of doubt, openness should prevail.
- If you cannot make full disclosure of a requested record, then the FOIA requires that you consider whether partial disclosure of information is possible and take reasonable steps necessary to segregate and release nonexempt information.
- You must properly apply the foreseeable harm standard by confirming for and demonstrating to AFL that you have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.
- Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. If a record contains information responsive to a FOIA request, then you must disclose the entire record, as a single record cannot be split into responsive and non-responsive bits. AFL's request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please give full effect to all applicable authorities and broadly construe our Item and your obligations to provide responsive records.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move records to official systems within a

¹⁸ U.S. Dep't Just. (Mar. 15, 2022), <https://www.justice.gov/ag/page/file/1483516/download>.

certain time. AFL has a right to records in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.

- Please use all available tools to conduct a complete and efficient search for potentially responsive records. Many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program or similar policies. These provide options for searching emails and other electronic records in a manner reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, then please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted before our Items are processed. If potentially responsive records are subject to potential deletion, including on a scheduled basis, please prevent deletion by instituting a litigation hold or other appropriate measures.

IV. Fee Waiver

Per 5 U.S.C. § 552(a)(4)(A)(iii), AFL requests a waiver of all search and duplication fees associated with this request.

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public’s understanding of your policies and practices will be enhanced through AFL’s analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL’s financial interest. This has previously been recognized by the Departments of Defense, Education, Energy, Interior, and Homeland Security, and the Office of the Director of National Intelligence.

Second, waiver is proper as disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.”¹⁹ Questions arising from the events relating to the requested records have generated significant media attention.²⁰

V. Production

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

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

Sincerely,

/s/ Michael Ding
Michael Ding
America First Legal Foundation

¹⁹ 5 U.S.C. § 552(a)(4)(A)(iii).

²⁰ See, e.g., Luc Cohen, *NY Lawyers Plead Guilty in Molotov Cocktail Case; Shorter Sentences Likely*, REUTERS (June 2, 2022), <https://reut.rs/3MxOes4>; Jonathan Turley, *New York Attorneys Accused of Firebombing Police Car Given Generous Plea Deal*, RES IPSA LOQUITUR (June 5, 2022), <https://bit.ly/3xxkWW4>.