



March 14, 2022

Via FOIA STAR

Mr. Douglas Hibbard, Chief, Initial Request Staff
Office of Information Policy
U.S. Department of Justice
6th Floor, 441 G Street, N.W.
Washington, D.C. 20530

Re: Justice Clarence and Virginia Thomas

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL’s email list contains over 25,000 unique addresses, our Twitter page has nearly 10,000 followers, the Twitter page of our Founder and President has over 83,800 followers, and we have another 18,000 followers on GETTR.

I. Background

For thirty years, leftists have launched racist, spurious, and vile personal attacks against U.S. Supreme Court Justice Clarence Thomas.¹ Now, to prevent Justice Thomas from participating in important Supreme Court cases on abortion, gun rights, affirmative action, and other matters, and to advance its Court-packing

¹ Opinion, *Hating Clarence Thomas*, The Wall Street Journal (July 9, 2020), <https://www.wsj.com/articles/hating-clarence-thomas-11594336853>; Derek Hunter, *Liberals Launch Racist Attacks On Clarence Thomas After Scalia’s Death*, The Daily Caller (Feb. 13, 2016), <https://dailycaller.com/2016/02/13/liberals-launch-racist-attacks-on-clarence-thomas-after-scalias-death/>; Jeet Heer, *Clarence Thomas Deserves Criticism. Just Leave His Race Out of It*, The New Republic (July 6, 2015), <https://newrepublic.com/article/122250/clarence-thomas-deserves-criticism-just-leave-his-race-out-it>

agenda,² the left has unleashed a coordinated and cynical attack and smear campaign against him, and against his wife, Virginia.³

The attacks against Justice and Virginia Thomas are meritless and will fail. But AFL is concerned because the facts raise credible concerns that Biden political appointees in the Department are working with outside dark money groups, political activists, and the Administration's media partners to coordinate and control these attacks. First, as a Senator, President Biden orchestrated the notorious "high-tech lynching" of Justice Thomas during his confirmation hearing.⁴ Second, the Biden Administration has repeatedly used the Department of Justice as a weapon to intimidate and

² Jonathan Turley, Opinion, *Biden Commission on Picking Supreme Court Left Liberals Empty-Handed. They Won't Accept It*, USA TODAY (Oct. 18, 2021), <https://www.usatoday.com/story/opinion/2021/10/18/biden-supreme-court-commission-fails-liberals/8508059002/?gnt-cfr=1>; Bruce Wolpe, *Analysis, Is Biden About to Fill a Supreme Court Vacancy?* THE UNITED STATES STUDIES CENTRE (June 22, 2021), <https://www.ussc.edu.au/analysis/is-biden-about-to-fill-a-supreme-court-vacancy>; Sahil Kapur, *From Big Cases to a New Vacancy, Supreme Court Faces a High-Stakes 2022*, NBC NEWS (Jan. 31, 2022), <https://www.nbcnews.com/politics/supreme-court/big-cases-new-vacancy-supreme-court-faces-high-stakes-2022-n1288314>.

³ See, e.g., Darragh Roche, *Critics Demand Clarence Thomas Retire After Trump Documents Dissent*, NEWSWEEK (Jan. 20, 2022), <https://www.newsweek.com/critics-demand-clarence-thomas-retire-donald-trump-documents-dissent-supreme-court-1671042>; Jane Mayer, *Is Ginni Thomas a Threat to the Supreme Court?* THE NEW YORKER (Jan. 21, 2022), <https://www.newyorker.com/magazine/2022/01/31/is-ginni-thomas-a-threat-to-the-supreme-court?>; Alison Durkee, *Justice Clarence Thomas's Wife Ginni Behind Group That Reportedly Pushed January 6 'Fake Electors' Scheme*, FORBES (Feb. 22, 2022), <https://www.forbes.com/sites/alisdurkee/2022/02/22/justice-clarence-thomas-wife-ginni-behind-group-that-reportedly-pushed-january-6-fake-electors-scheme/?sh=a1156fe432dd>; Michael Tomasky, *The Case for Impeaching Clarence Thomas*, THE NEW REPUBLIC (Jan. 24, 2022) <https://newrepublic.com/article/165118/clarence-thomas-impeachment-case-democrats>; Michael Kranish, *Critics say Ginni Thomas's activism is a Supreme Court conflict*, THE WASHINGTON POST (Jan. 31, 2022) <https://www.msn.com/en-us/news/politics/critics-say-ginni-thomass-activism-is-a-supreme-court-conflict-under-court-rules-only-her-husband-can-decide-if-thats-true/ar-AATk1wE>; Charles Passy, *New York Times Story About Supreme Court Justice Clarence Thomas and His Wife, Conservative Activist Ginni Thomas, Sparks Social-Media Outcry*, MARKETWATCH (Feb. 23, 2022), <https://www.marketwatch.com/story/should-clarence-thomas-resign-new-york-times-story-about-supreme-court-justice-and-his-wife-conservative-activist-ginni-thomas-sparks-outcry-11645563904> (citing Danny Hakim and Jo Becker, *The Long Crusade of Clarence and Ginni Thomas*, THE NEW YORK TIMES MAGAZINE (Feb. 22, 2022), <https://www.nytimes.com/2022/02/22/magazine/clarencethomas-ginni-thomas.html>). See, e.g., Chuck Hobbs, *Why Justice Clarence Thomas Should Resign from the Supreme Court*, INSIGHT NEWS (Feb. 23, 2022), https://www.insightnews.com/opinion/columnists/why-justice-clarence-thomas-should-resign-from-the-supreme-court/article_d4cf807a-94e2-11ec-b540-8b5509abc98b.html; Jill Filipovic, Opinion, *Clarence Thomas Refuses the Clear and Obvious Path Forward*, CNN (Feb. 22, 2022), <https://www.cnn.com/2022/02/22/opinions/ginni-thomas-clarence-thomas-supreme-court-filipovic/index.html>.

⁴ Matt London, *Justice Clarence Thomas: Joe Biden had 'no idea' what he was talking about at confirmation hearings*, FOX NEWS.COM (Jan. 30, 2020), <https://www.foxnews.com/media/joe-biden-clarence-thomas-abortion-anita-hill>.

punish Americans who disagree with its politics.⁵ The infamous Garland Memorandum labeling American parents domestic terrorists is but one example of inappropriate collusion between Biden political appointees, White House political operatives, and outside groups. Third, the pattern, content, and message discipline of the smear campaign against Justice and Virginia Thomas is highly suggestive of a calculated disinformation and propaganda effort.⁶

Accordingly, AFL requests the following records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

II. Requested Records

A. All records **excluding news articles and judicial opinions** containing any of following words or phrases: (1) Justice Thomas, (2) Clarence Thomas, (3) Virginia Thomas, (4) Ginni, and/or (4) Thomas. The time frame for this item is January 21, 2021, through the date of processing.

B. All records relating to the processing of this request.

III. Custodians

A. Anthony Coley.

B. Vanita Gupta.

C. All political appointees in the Office of the Attorney General and the Office of Legislative Affairs.

⁵ *AFL FOIAs DOJ for Records of Its Politically Motivated ‘Domestic Terrorism Unit’ to Target and Silence Conservatives*, America First Legal Foundation (Jan. 20, 2022), <https://www.aflegal.org/news/afl-foias-doj-for-records-of-its-politically-motivated-domestic-terrorism-unit-to-target-and-silence-conservatives> (investigating Biden Administration’s targeting of political conservatives); *AFL Requests DOJ OIG Investigation Into AG Garland’s Memorandum of October 4, 2021 Targeting Concerned Parents*, America First Legal Foundation (Oct. 7, 2021), <https://www.aflegal.org/news/afl-requests-doj-oig-investigation-into-ag-garlands-memorandum-of-october-4-2021-targeting-concerned-parents> (investigating DOJ’s use of federal law enforcement against parents opposed to critical race theory, gender ideology, and irrational mask mandates in public schools); Jonathan Turley, *Opinion, Prosecutors or Praetorian Guard: Why Is FBI Investigating One Missing Diary in a Sea of Smash and Grabs?* THE HILL (Dec. 21, 2021), <https://thehill.com/opinion/criminal-justice/586693-prosecutors-or-praetorian-guard-why-is-fbi-investigating-one-missing>.

⁶ It is possible that the message and purpose unity of, e.g., CNN, the New Yorker, the New York Times, Forbes, Time, Newsweek, and the Washington Post, may be mere “hive” behavior, the spontaneous product of a combined deficit in creativity and the economic and social status signaling imperatives of groupthink. *See, e.g.*, Amelie Aidenberger, et al, “Is participation in high-status culture a signal of trustworthiness?”, *Plos One* (May 5, 2020), <https://doi.org/10.1371/journal.pone.0232674>; Robb Willer, “A Status Theory of Collective Action” at 7-8 (2009), https://docs.wix-static.com/ugd/2f07d4_792aa37a3ab447b4a99546223c8bbf7f.pdf. But the essential similarity of the attacks against Justice and Virginia Thomas cuts against this alternative explanation.

- D. All political appointees, and all career employees with a grade equivalent to GS-14 or higher, in the Office of the Deputy Attorney General.
- E. All political appointees, and all career employees with a grade equivalent to GS-14 or higher, who are a part of the “Domestic Terrorism Unit referenced at <https://www.justice.gov/opa/speech/assistant-attorney-general-matthew-g-olsen-delivers-opening-remarks-us-senate-committee>.

IV. Fee Waiver

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

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 operations or activities of the government.”

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.

VI. Conclusion

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at FOIA@aflegal.org. Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Sincerely yours,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation