

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

**CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,**



Plaintiff,

v.

**U.S. CUSTOMS AND BORDER
PROTECTION,
1300 Pennsylvania Avenue NW
Washington, DC 20004,**

Defendant.

Civil Action No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. Plaintiff Citizens for Responsibility and Ethics in Washington ("CREW") brings this action against Defendant U.S. Customs and Border Protection ("CBP" or "Defendant") to compel compliance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. CREW submitted its FOIA request on June 8, 2022 for communications made by CBP employee Brandon Judd regarding the "Great Replacement Theory," and CBP has since failed to make a determination on CREW's request within the statutory deadline set forth in 5 U.S.C.

§ 552(a)(6)(ii).

2. CREW seeks declaratory relief that CBP is in violation of FOIA and injunctive relief requiring CBP to immediately process and release the requested records.

Jurisdiction and Venue

3. This Court has subject-matter jurisdiction and personal jurisdiction under 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202.

4. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

5. Plaintiff CREW is a non-profit, non-partisan organization organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials and agencies, and to ensuring the integrity of government officials and agencies. CREW seeks to empower citizens to have an influential voice in government decisions and in the government decision-making process through the dissemination of information about public officials and their actions. To advance its mission, CREW uses a combination of research, litigation, and advocacy. As part of those efforts, CREW uses government records it obtains under FOIA.

6. Defendant CBP is an agency within the meaning of 5 U.S.C. § 552(f)(1). CBP is a component of U.S. Department of Homeland Security.

7. CBP has possession, custody, and control of the requested records.

Factual Background

8. Brandon Judd is an employee of CBP and president of the National Border Patrol Council union.

9. In April of 2022, Mr. Judd appeared on Fox News, where he endorsed the so-called “Great Replacement Theory” in an interview with anchor Bill Hemmer.¹

10. The “Great Replacement Theory” is a far-right conspiracy theory that claims Democrats are attempting to skew the electorate to the left by weakening the southern border to

¹ Will Carless, ‘Replacement Theory’ Fuels Extremists and Shooters. Now a Top Border Patrol Agent is Spreading it, USA TODAY (May 6, 2022, 5:03 AM), <https://www.usatoday.com/story/news/nation/2022/05/06/great-replacement-theory-border-patrolracist-talking-point/9560233002/>.

allow in more Latin American immigrants, thus changing the demographics of the country by “replacing” white Americans.²

11. Replacement theory is not a new concept; it is deeply rooted in white supremacist ideology tracing back to the nineteenth century.³ In recent years, the narrative has been linked to racially-motivated mass murders in Buffalo, Pittsburgh, El Paso, and other American cities.⁴

12. The public has a significant interest in learning whether Judd—a federal employee—has endorsed or promoted this racist conspiracy theory while communicating in his official capacity as a CBP employee. The public also has a significant interest in discovering how prevalent and popular this theory may be within CBP.

13. On June 8, 2022, CREW submitted a FOIA request to CBP (attached as Exhibit 1) seeking “all communications sent or received by Border Patrol Agent Brandon Judd, from January 1, 2020 to the date this request is processed” that mention any of the following terms:

1. “Replacement theory.”
2. “Great Replacement.”
3. “Great Replacement theory.”
4. “Demographic replacement.”
5. “Replaced.”
6. “Open Border.”
7. “Demographic,” or “Demographics.”
8. “Demographic change.”

² *Id.*

³ Jason Wilson & Aaron Flanagan, *The Racist ‘Great Replacement’ Conspiracy Theory Explained*, S. POVERTY L. CTR. (May 17, 2022), <https://www.splcenter.org/hatewatch/2022/05/17/racist-great-replacement-conspiracy-theory-explained>.

⁴ *Id.*

9. "Change the demographics."
10. "Electorate."
11. "White Americans."
12. "Jews."
13. "Liberal Voters."

14. Additionally, CREW's FOIA request sought "all communications from January 1, 2020 to the date this request is processed between Border Patrol Agent Brandon Judd and any employee, agent, or representative of Fox News, including but not limited to Tucker Carlson, Bill Hemmer, Laura Ingraham, or anyone with an email domain ending in '@foxnews.com' or '@fox.com.'"

15. Finally, CREW's FOIA request sought "all communications from January 1, 2020 to the date this request is processed between Border Patrol Agent Brandon Judd and any employee, agent, or representative of Newsmax, including but not limited to John Bachman, Greg Kelly, Sean Spicer, or anyone with an email domain ending in '@newsmax.com.'"

16. CREW sought fee waivers in its FOIA request because the subject of its request concerns the operations of the federal government and the views of federal employees charged with enforcing its laws.

17. CREW intends to analyze the information responsive to its request and share its analysis with the public through reports, press releases, or other means. In addition, CREW intends to disseminate any documents it acquires from its request to the public through its website, www.citizensforethics.org.

18. CREW is a non-profit organization in addition to a representative of the news media under 5 U.S.C. § 552(a)(4)(A)(ii)(II), and release of this information is not in CREW's financial interest.

19. Thus, a fee waiver is appropriate because the disclosures will contribute to a better understanding of the actions of CBP officials by CREW and the general public in a significant way.

20. On June 9, 2022, CBP acknowledged receiving CREW's FOIA request and assigned the request the tracking number CBP-2022-089163. CBP also asked for clarification whether CREW requested documents from Mr. Brandon Judd acting in his capacity of a CBP agent or as the president of the National Border Patrol Council.

21. Later that same day, CREW responded to CBP's request to clarify its FOIA request, clarifying that it seeks records generated "while Mr. Brandon Judd is on duty with CBP," including "all responsive communications from any of Brandon Judd's official CBP electronic messaging accounts, including CBP agency email, direct messaging account, Wickr, WhatsApp, or any other account he uses to conduct official CBP business."

22. On June 13, 2022, CBP sent a message notifying CREW that it changed the assigned tracking number of the FOIA request to CBP-OIT-2022-089163.

23. On December 12, 2022, CREW emailed CBP requesting an update on the request. More than a month later, on January 24, 2023, CBP responded that CREW's request is being processed.

24. To date, CREW has received no further communications from CBP regarding its FOIA request.

CREW'S CLAIM FOR RELIEF

CBP's Wrongful Withholding of Records Responsive to CREW's FOIA Request

25. CREW repeats and re-alleges the preceding paragraphs.
26. In its June 8, 2022 FOIA request, CREW properly asked for records within the possession, custody, and control of CBP.
27. CBP is wrongfully withholding any records responsive to CREW's requests.
28. By failing to timely release any and all requested records in full to CREW, CBP is in violation of FOIA.
29. CREW has constructively exhausted its administrative remedies. 5 U.S.C. § 552(a)(6)(C).
30. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the requested records.

Requested Relief

WHEREFORE, CREW respectfully requests that this Court:

1. Order CBP to immediately and fully process CREW's FOIA request and disclose all non-exempt records to CREW;
2. Issue a declaration that CREW is entitled to immediate processing and disclosure of the requested records;
3. Provide for expeditious proceedings in this action;
4. Retain jurisdiction of this action to ensure no agency records are wrongfully withheld;
5. Award CREW its costs and reasonable attorneys' fees in this action; and
6. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

By:



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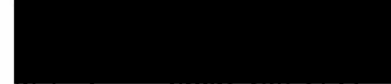
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CITIZENS FOR RESPONSIBILITY AND

ETHICS IN WASHINGTON



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Attorneys for Plaintiff

Dated: February 1, 2023

EXHIBIT 1



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

June 8, 2022

SUBMITTED VIA ONLINE FORM

FOIA Officer
U.S. Customs and Border Protection
FOIA Division
90 K Street NE
Washington, DC 20229

Re: Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and U.S. Department of Homeland Security regulations.

Specifically, CREW requests the following:

1. All communications sent or received by Border Patrol Agent Brandon Judd, from January 1, 2020 to the date this request is processed, mentioning any of the following terms:
 - "Replacement theory"
 - "Great replacement"
 - "Great replacement theory"
 - "Demographic replacement"
 - "Replaced"
 - "White genocide"
 - "Open border"
 - "Demographic" or "Demographics"
 - "Demographic change"
 - "Change the demographics"
 - "Electorate"
 - "White Americans"
 - "Jews"
 - "Liberal voters"
2. All communications from January 1, 2020 to the date this request is processed between Border Patrol Agent Brandon Judd and any employee, agent, or representative of Fox News, including but not limited to Tucker Carlson, Bill Hemmer,

[REDACTED]

info@citizensforethics.org 202.408.5565

CITIZENSFORETHICS.ORG

Laura Ingraham, or anyone with an email domain ending in "@foxnews.com" or "@fox.com."

3. All communications from January 1, 2020 to the date this request is processed between Border Patrol Agent Brandon Judd and any employee, agent, or representative of Newsmax, including but not limited to John Bachman, Greg Kelly, Sean Spicer, or anyone with an email domain ending in "@newsmax.com."

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records.

If it is your position that any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. See *Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and agency regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. See 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. See, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

By way of background, in April Border Patrol agent Brandon Judd appeared on Fox News where he touted the far-right "Great Replacement Theory" to anchor Bill Hemmer.¹ The theory, which has grown increasingly popular on far-right web forums, suggests that Democrats are attempting to skew the electorate to the left and stay in power by weakening the southern border to allow in more Latin American immigrants, changing the

¹ Carless, Will, "Replacement theory' fuels extremists and shooters. Now a top Border Patrol agent is spreading it," *USA Today*, May 6, 2022, available at <https://www.usatoday.com/story/news/nation/2022/05/06/great-replacement-theory-border-patrol-racist-talking-point/9560233002/>

demographics of the country by “replacing” white Americans.² Judd, who is also the president of the National Border Patrol Council union, criticized the Biden Administration’s immigration policies: “I believe that they’re trying to change the demographics of the electorate; that’s what I believe they’re doing... They want to stay in power, and the only way to stay in power is to continue to stay elected.”³

Dehumanizing rhetoric like the great replacement theory can easily lead to violence and is becoming more mainstream. For example, the theory has been cited as inspiration for several racially motivated mass shootings, including last month’s shooting in Buffalo, New York.⁴ A recent poll by the Southern Poverty Law Center also found that the majority of Republicans believe in the theory.⁵ Judd is a federal employee who is paid by U.S. taxpayers to police the nation’s borders. The requested records will shed light on how prevalent and popular the great replacement theory is within CBP, a matter of significant public interest.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public’s right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW’s financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. See *Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a “representative of the news media” and broadly interpreting the term to include “any person or organization which regularly publishes or disseminates information to the public”).

CREW routinely and systematically disseminates information to the public in several ways. CREW’s website receives tens of thousands of page views every month. The website includes blogposts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts documents it receives under the FOIA its website, which has been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

² *Id.*

³ *Id.*

⁴ Jones, Dustin, “What is the ‘great replacement’ and how is it tied to the Buffalo shooting suspect?,” *NPR*, May 16, 2022, available at <https://www.npr.org/2022/05/16/1099034094/what-is-the-great-replacement-theory>

⁵ “Poll finds majority of GOP believes in ‘Great Replacement’ theory,” *MSNBC*, June 5, 2022, available at <https://www.msnbc.com/the-sunday-show/watch/poll-finds-majority-of-gop-believes-in-great-replacement-theory-141485125506>

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at [REDACTED]. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to [REDACTED]. If DHS is not able to provide the records electronically, please contact me to arrange an alternative method of transmission. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R Jacobs', is positioned above the typed name.

Rebecca Jacobs
Senior Researcher