

Exhibit

1



September 1, 2021

Shalanda Young, Acting Director
Office of Management and Budget
725 17th Street NW, Suite 9204
Washington, DC 20203

Xavier Becerra, Secretary
Department of Health and Human Services
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue, SW
Washington, DC 20501

Via email to OMBFOIA@omb.eop.gov and FOIARequest@hhs.gov

Re: Freedom of Information Act - Appeal from Denial of Request No. 2021-384

Dear Acting Director Young and Secretary Becerra:

I write on behalf of my client, Justin Hart, to appeal, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), the refusal of the Office of Management and Budget (“OMB”) and the Department of Health and Human Services (“HHS”) to disclose certain public records within its control within the statutorily required time period. The requested records relate to the admitted involvement of OMB and HHS in flagging and removing posts and accounts from social media platforms for alleged misinformation regarding COVID-19 and posts and accounts specifically of Justin Hart. The records are set forth in the initial request of July 22, 2021, a copy of which is attached to this letter as Exhibit A.

As you know, under the Freedom of Information Act (“FOIA”), OMB and HHS had twenty business days from their receipt of the July 22, 2021 letter and e-mail to notify Mr. Hart whether they would comply with his request. *See* 5 U.S.C. § 552(a)(6)(A)(i). Both OMB and HHS failed to comply with this law. HHS gave no response whatsoever. OMB replied by e-mail on August 2, 2021 with the letter attached as Exhibit B. Exhibit B does not notify Mr. Hart whether it will comply with his request; instead, it notifies him only that it is denying the expedited nature of his request, which would have required a response regarding compliance within ten business days instead of twenty. Exhibit B says nothing about the underlying merits of his request.

Because both OMB and HHS failed to comply with the applicable time limit provisions of FOIA, Mr. Hart is “deemed to have exhausted his administrative remedies.” 5 U.S.C. § 552(a)(6)(C)(i). Therefore, he may bring a lawsuit in federal court in the district of his residence or principal place of business to obtain the records. Yesterday he did so. *See Hart v. Facebook et al.*, No. 3:21-cv-01543-MMA-WVG (S.D. Cal. August 31, 2021). Nonetheless, in an effort to speed up the process of receiving the public records to which he is entitled by law and in a show of good-faith pursuit of them, Mr. Hart also files these appeals.



Mr. Hart hereby appeals “to the head of the agency” of OMB and HHS the denial of his records request found at Exhibit A. 5 U.S.C. § 552(a)(6)(A)(i)(III). The basis for his appeal to Secretary Becerra is the failure of HHS to timely respond to his records request by August 19, 2021, as required by 5 U.S.C. § 552(a)(6)(A)(i). Because HHS failed to respond to the records request at all, Mr. Hart deems that the records request was denied. He has a right to the records for the reasons set forth in Exhibit A; therefore, he files this appeal.

The basis for Mr. Hart’s appeal to Acting Director Young is the failure of OMB to timely notify him by August 19, 2021 whether it would comply with his request, as required by 5 U.S.C. § 552(a)(6)(A)(i). The notification that OMB was denying the expedited nature of his request, found at Exhibit B, did not notify Mr. Hart whether OMB would comply with his request. Exhibit B states only that the request “is being handled in the order in which it was received.” Because OMB failed to notify Mr. Hart within twenty business days whether it would comply with his request, Mr. Hart deems that the records request was denied. He has a right to the records for the reasons set forth in Exhibit A; therefore, he files this appeal.

Mr. Hart looks forward to OMB and HHS making the records he requested available to him “promptly,” pursuant to the terms set forth in Exhibit A. 5 U.S.C. § 552(a)(6)(C)(i). He notes that OMB and HHS must “make a determination with respect to [his] appeal within twenty [business] days” of receipt of this appeal. 5 U.S.C. § 552(a)(6)(A)(ii). In the event that these appeals are also denied, he notes that OMB and HHS are required to “set forth the names and titles or positions of each person responsible for the denial of such request.” 5 U.S.C. § 552(a)(6)(C)(i).

If you have any questions regarding these appeals, please do not hesitate to contact me at records@libertyjusticecenter.org or by phone at (312) 637-2280. Thank you for your prompt attention to these appeals.

Very truly yours,

A handwritten signature in black ink that reads "Brian Kelsey". The signature is written in a cursive, flowing style.

Brian Kelsey
Managing Attorney

EXHIBIT A



July 22, 2021

Dionne Hardy, FOIA Officer
Office of Management and Budget
725 17th Street NW, Suite 9204
Washington, DC 20203

Brandon Gaylord, FOIA Officer
Department of Health and Human Services
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue, SW
Washington, DC 20501

Via email to OMBFOIA@omb.eop.gov and FOIARequest@hhs.gov

Re: Freedom of Information Act Request for communications with social media companies

Dear Ms. Hardy and Mr. Gaylord:

Liberty Justice Center (LJC) is a national, nonpartisan, public-interest law firm committed to protecting fundamental constitutional rights and best known for its protection of free speech in the landmark U.S. Supreme Court case of *Janus v. AFSCME*. In addition to protecting free speech and other constitutional rights, LJC has a strong interest in bringing greater transparency to government.

Background

Both White House Press Secretary Jen Psaki and U.S. Surgeon General Vivek Murthy recently revealed that the President Biden administration is directing social media companies to remove posts they deem to be spreading misinformation regarding COVID-19. Specifically, on July 15, 2021, at a White House Press Conference, Dr. Murthy stated, “We’re asking [our technology companies] to consistently take action against misinformation super-spreaders on their platforms.”¹ Ms. Psaki followed up by stating, “We’ve increased disinformation research and tracking within the Surgeon General’s office. We’re flagging problematic posts for Facebook that spread disinformation.”¹ She further explained, “[W]e are in regular touch with these social media platforms, and those engagements typically happen through members of our senior staff, but also members of our COVID-19 team”¹

Government direction to remove speech from the internet based on its content violates the Free Speech clause of the First Amendment of the U.S. Constitution. The American people have a right to know which government officials are censoring their social media posts, when, why, and under what circumstances. Specifically, LJC

¹ Press Briefing by Press Secretary Jen Psaki and Surgeon General Dr. Vivek H. Murthy, July 15, 2021, available at <https://www.whitehouse.gov/briefing-room/press-briefings/2021/07/15/press-briefing-by-press-secretary-jen-psaki-and-surgeon-general-dr-vivek-h-murthy-july-15-2021/> (retrieved July 21, 2021).



represents a client named Justin Hart, whose science-based posts were removed during the relevant time period described by Ms. Psaki and Dr. Murthy. For those reasons, LJC requests the following records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Requested Records

1. All records of communications, from January 20, 2021, to the date the records request is processed, between the White House or the Department of Health and Human Services (HHS) and any social media company related to the removal from social media platforms or flagging of posts with misinformation or disinformation about COVID-19. This request includes, but is not limited to, e-mail messages, text messages, iPhone messages, WhatsApp messages, Signal messages, social media direct messages, social media flags or reports of offending content, letters, facsimiles, phone records, voicemail messages, audio recordings, videos, visitation logs, photographs, graphics, spreadsheets, PowerPoints, memoranda, meeting agendas or notes, and handwritten notes with social media companies, including, but not limited to, Facebook, Instagram, Twitter, Snapchat, TikTok, Reddit, YouTube, LinkedIn, Tumblr, and Pinterest.
2. All other records of any kind, produced or received from January 20, 2021, to the date the records request is processed, by the White House or HHS regarding the removal from social media platforms or flagging of posts with misinformation or disinformation about COVID-19.
3. All records of communications, from January 20, 2021, to the date the records request is processed, between the White House or HHS and any social media company related to Justin Hart or his social media posts. This request includes, but is not limited to, e-mail messages, text messages, iPhone messages, WhatsApp messages, Signal messages, social media direct messages, social media flags or reports of offending content, letters, facsimiles, phone records, voicemail messages, audio recordings, videos, visitation logs, photographs, graphics, spreadsheets, PowerPoints, memoranda, meeting agendas or notes, and handwritten notes with social media companies, including, but not limited to, Facebook, Instagram, Twitter, Snapchat, TikTok, Reddit, YouTube, LinkedIn, Tumblr, and Pinterest.
4. All other records of any kind, produced or received from January 20, 2021, to the date the records request is processed, by the White House or HHS related to Justin Hart or his social media posts.
5. The Internet browsing history of White House and HHS staff that includes searching for, viewing, or flagging or reporting any social media posts of



misinformation or disinformation about COVID-19. The timeframe for this request is January 20, 2021, to the date the records request is processed.

6. The Internet browsing history of White House and HHS staff that includes searching for, viewing, or flagging or reporting any social media posts of Justin Hart. The timeframe for this request is January 20, 2021, to the date the records request is processed.

Request for Expedited Processing

LJC requests expedited processing, which requires a response from you within ten working days. In furtherance of this request, LJC demonstrates the following. The removal from social media platforms or flagging of posts with misinformation or disinformation about COVID-19 has constituted a matter of widespread and exceptional media interest over the past week, as demonstrated by the various news outlets throughout the country reporting on the matter and the follow-up questions posed to the White House, the president, and the Surgeon General at multiple press inquiries. There exist possible questions about the government's integrity which affect public confidence because government direction to remove speech from the internet based on its content violates the Free Speech clause of the First Amendment of the U.S. Constitution. Additionally, LJC engages in disseminating information and has an urgency to inform the public about this constitutional violation. Finally, there exists the possible loss of substantial due process rights of Justin Hart. For these reasons, expedited processing is proper.

Fee Waiver Request

LJC requests a waiver of all applicable fees. 5 U.S.C. § 552(a)(4)(A)(iii) provides that you shall furnish requested records without or at 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."

In this case, a fee waiver is appropriate because of the public interest in knowing the government's role in social media censorship. To date, the information requested has yet to be released to the public in any form. Its release in response to this request will inform the public you serve about the operations of the government. As a nonprofit organization, LJC does not have any commercial interest in the release of the requested records.

Production

To accelerate release of responsive records, LJC welcomes production on a rolling basis. Please provide responsive records in electronic format by e-mail to



records@libertyjusticecenter.org. Alternatively, please provide responsive records in native format or in PDF format on a USB drive mailed to Liberty Justice Center, 141 W. Jackson Blvd., Suite #1065, Chicago, IL 60604.

Conclusion

If you have any questions regarding this request, please do not hesitate to contact me at records@libertyjusticecenter.org or by phone at (312) 637-2280. Please inform me as soon as possible if you do not believe you can fulfill this request or if LJC's request for a fee waiver is not granted. Thank you for your prompt attention to this request.

Very truly yours,

A handwritten signature in black ink that reads "Brian Kelsey".

Brian Kelsey
Managing Attorney

EXHIBIT B

Hello and Good Afternoon:

This email is in response to your Freedom of Information Request (FOIA) dated and received in this office on July 22, 2021, and assigned tracking number 2021-384. You asked for expedited processing of your FOIA request.

Under OMB's FOIA regulation at 5 C.F.R. § 1303.40(e), expedited processing will be granted if a requester demonstrates a compelling need for the records because: (i) the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; (ii) there is an urgency to inform the public about an actual or alleged Federal Government activity; (iii) failure to respond to the request expeditiously would result in the loss of due process rights in other proceedings; or (iv) there are possible questions, in a matter of widespread and exceptional public interest, about the government's integrity which effect public confidence. A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of the requester's knowledge and belief, explaining in detail the basis for requesting expedited processing.

After carefully considering your request, this Office finds that your request for expedited processing cannot be granted because you have not adequately demonstrated that you qualify under any of the categories listed above. Specifically, your request did not present any facts or basis to justify a grant of expedited processing under the applicable standards nor any information to demonstrate that there is an urgency to inform the public about an actual or alleged Federal Government activity.

Your request has been placed in our complex processing queue and is being handled in the order in which it was received. You have the right to appeal our denial determination regarding expedited processing. If you choose to file an appeal, you must do so within ninety (90) calendar days from the date of this response. Your appeal must be in writing, signed by you or your representative, and should contain the basis for the appeal. You may send your appeal to: OMBFOIA@omb.eop.gov.

Thank you,
OMB FOIA

Exhibit

2

1 Robert H. Tyler
CA S.B.N. 179572
2 rtyler@tylerbursch.com
Nada N. Higuera
3 CA S.B.N. 299819
nhiguera@tylerbursch.com
4 Tyler & Bursch, LLP
25026 Las Brisas Rd.
5 Murrieta, California 92562
6 Phone: 951-600-2733
Fax: 951-600-4996
7

8 Brian Kelsey, *Pro Hac Vice*
Tennessee Bar Number 022874
bkelsey@ljc.org
9 Mallory Reader, *Pro Hac Vice*
Michigan Bar Number P84806
10 mreader@ljc.org
Liberty Justice Center
11 141 W. Jackson Blvd., Ste. 1065
12 Chicago, Illinois 60604
13 Phone: 312-637-2280
Fax: 312-263-7702
14 *Attorneys for Plaintiff*

15 **UNITED STATES DISTRICT COURT**
16 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

17 JUSTIN HART,
Plaintiff,
18 v.
FACEBOOK, INC.; TWITTER, INC.;
19 VIVEK MURTHY in his official capacity as
United States Surgeon General; JOSEPH R.
20 BIDEN, JR. in his official capacity as
President of the United States; the
21 DEPARTMENT OF HEALTH AND
HUMAN SERVICES; and the OFFICE OF
22 MANAGEMENT AND BUDGET,
23 Defendants.

Case No. 3:21-cv-01543-W-WVG

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS PROPOUNDED TO
DEFENDANT FACEBOOK, INC.**

1 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff, Justin
2 Hart (“Plaintiff”), by and through his undersigned counsel, submits the following
3 First Set of Requests for Production of Documents to Defendant Facebook, Inc.
4 (“Defendant”). The requests must be answered separately, fully, and in writing. Your
5 response to these requests should be submitted to each of Plaintiff’s counsel at the
6 e-mail addresses listed on the cover page. The documents requested shall be
7 produced in electronic format and sent to Brian Kelsey via e-mail to
8 records@libertyjusticecenter.org; alternatively, they may be sent on a USB drive
9 delivered to Brian Kelsey, Liberty Justice Center, 141 West Jackson Boulevard,
10 Suite 1065, Chicago, Illinois 60604. Pursuant to Rule 34(b)(2)(A), all documents
11 responsive to these requests shall be produced within thirty (30) days after the
12 parties’ first Rule 26(f) conference.

13 These requests are continuing in nature. If further information or documents
14 come into Defendant’s possession or are brought to Defendant’s attention during
15 preparation for trial or at trial, supplementation of Defendant’s responses to these
16 requests is required.

17 **I. Definitions, General Provisions, and Instructions**

18 1. The terms “Facebook,” “Defendant,” and “You” refer to Defendant
19 Facebook, Inc., its attorneys, agents, employees, and/or any other person or entity
20 purporting to act on its behalf.

21 2. The terms “Plaintiff,” “Justin Hart,” and “Hart” refer to Plaintiff, Justin
22 Hart, his attorneys, and/or any other person or entity purporting to act on his behalf.

1 3. The term “White House” refers to Defendant Joseph R. Biden, Jr., the
2 Executive Office of the President, its attorneys, agents, employees, and/or any other
3 person or entity purporting to act on Biden’s behalf.

4 4. The term “HHS” refers to Defendant the Department of Health and
5 Human Services, its attorneys, agents, employees, and/or any other person or entity
6 purporting to act on its behalf, including but not limited to Defendant Surgeon
7 General Vivek Murthy, the Office of the Surgeon General, its attorneys, agents,
8 employees, and/or any other person or entity purporting to act on Murthy’s behalf.

9 5. “Document,” “Documents,” “Record,” and “Records” are used in the
10 broadest sense and include, but are not limited to, the original and all non-identical
11 copies (whether different from the original because of additional notations or
12 otherwise) of all written, printed, typed, recorded, graphic, or electronic matter,
13 however produced or reproduced, in the actual control of Defendant, including, but
14 not limited to, communications, e-mail messages, text messages, iPhone messages,
15 WhatsApp messages, Signal messages, social media direct messages, social media
16 flags or reports of offending content, letters, facsimiles, phone records, voicemail
17 messages, audio recordings, videos, visitation logs, photographs, graphics,
18 spreadsheets, PowerPoints, memoranda, reports, meeting agendas or notes, and
19 handwritten notes, or other tangible things which constitute or contain matters within
20 the scope of Rule 26(b) of the Federal Rules of Civil Procedure.

21 6. “Relate to,” (or a form thereof) means consulting, reflecting, regarding,
22 respecting, supporting, contradicting, referring to, describing, recording, noting,

1 embodying, containing, mentioning, studying, analyzing, discussing, evaluating, or
2 relevant to.

3 7. “Communication” means any exchange, transmission, or receipt
4 (whether as listener, addressee, person called or otherwise) of information, whether
5 such exchange, transmission, or receipt is oral, written, electronic, or otherwise, and
6 includes, without limitation, any meeting, conversation, telephone call, letter, e-mail,
7 text message, iPhone message, WhatsApp message, Signal message, social media
8 direct message, social media flag or report of offending content, online posting,
9 social media posting, facsimile, and the exchange, transmission, or receipt of any
10 document.

11 8. In answer to these discovery requests, please furnish all information
12 available to you at the time of your answer and supplement your answers as required
13 by law. Please respond separately to each request. Combined or general answers
14 shall be considered non-responsive unless accompanied by an express statement that
15 the answer is full, complete, and specific as to each request to which the combined
16 or general answer is meant to be responsive.

17 9. Without limiting the definition of “document” stated above, documents
18 covered by this Request include all documents in the possession, custody, or control
19 of Defendant, its agents, or representatives regardless of their location, including all
20 copies of such documents, the contents of which differ in any respect from the
21 original.

22 10. For each document responsive to any Request which is withheld for any
23

1 reason, provide the following information:

2 (a) The place, approximate date, and the manner of recording or
3 otherwise preparing the document;

4 (b) The name and title of the sender and the name and title of the
5 recipient of the document;

6 (c) The name of each person (other than stenographic assistants or
7 translators) who participated in the document's preparation;

8 (d) The name and position of each person to whom the document's
9 contents have been communicated by copy, exhibition, reading, or
10 substantial summarization; and

11 (e) A statement of the basis on which the document is withheld.

12 **II. Requests for Production**

13 REQUEST NO. 1: All records of communications, from January 20, 2021, to
14 the date this production request is produced, between Defendant and the White
15 House or HHS related to the removal from social media platforms or flagging of
16 posts with misinformation or disinformation about COVID-19.

17 REQUEST NO. 2: All other documents of any kind, created from January 20,
18 2021, to the date this production request is produced, from the White House or HHS
19 related to the removal from Defendant's social media platforms or the flagging of
20 posts with misinformation or disinformation about COVID-19.

21 REQUEST NO. 3: All records of communications, from January 20, 2021, to
22 the date this productions request is produced, between Defendant and the White
23

1 House or HHS, related to Plaintiff or his social media posts.

2 REQUEST NO. 4: All other documents of any kind, created from January 20,
3 2021, to the date this production request is produced, related to Plaintiff or his social
4 media posts.

5
6 Dated: September 30, 2021

Respectfully submitted,

7 s/ Brian Kelsey
8 Brian Kelsey, *Pro Hac Vice*
9 Liberty Justice Center
10 141 W. Jackson Blvd., Suite 1065
11 Chicago, Illinois 60604
12 bkelsey@ljc.org
13 Phone: 312-637-2280
14 *Attorney for Plaintiff*

15
16
17
18
19
20
21
22
23

Exhibit

3

1 Robert H. Tyler
CA S.B.N. 179572
2 rtyler@tylerbursch.com
Nada N. Higuera
3 CA S.B.N. 299819
nhiguera@tylerbursch.com
4 Tyler & Bursch, LLP
25026 Las Brisas Rd.
5 Murrieta, California 92562
6 Phone: 951-600-2733
Fax: 951-600-4996
7

8 Brian Kelsey, *Pro Hac Vice*
Tennessee Bar Number 022874
bkelsey@ljc.org
9 Mallory Reader, *Pro Hac Vice*
Michigan Bar Number P84806
10 mreader@ljc.org
Liberty Justice Center
11 141 W. Jackson Blvd., Ste. 1065
12 Chicago, Illinois 60604
13 Phone: 312-637-2280
Fax: 312-263-7702
14 *Attorneys for Plaintiff*

15 **UNITED STATES DISTRICT COURT**
16 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

17 JUSTIN HART,
Plaintiff,
18 v.
19 FACEBOOK, INC.; TWITTER, INC.;
VIVEK MURTHY in his official capacity as
20 United States Surgeon General; JOSEPH R.
BIDEN, JR. in his official capacity as
21 President of the United States; the
DEPARTMENT OF HEALTH AND
22 HUMAN SERVICES; and the OFFICE OF
MANAGEMENT AND BUDGET,
23 Defendants.

Case No. 3:21-cv-01543-W-WVG

**PLAINTIFF’S FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS PROPOUNDED TO
DEFENDANT TWITTER, INC.**

1 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff, Justin
2 Hart (“Plaintiff”), by and through his undersigned counsel, submits the following
3 First Set of Requests for Production of Documents to Defendant Twitter, Inc.
4 (“Defendant”). The requests must be answered separately, fully, and in writing. Your
5 response to these requests should be submitted to each of Plaintiff’s counsel at the
6 e-mail addresses listed on the cover page. The documents requested shall be
7 produced in electronic format and sent to Brian Kelsey via e-mail to
8 records@libertyjusticecenter.org; alternatively, they may be sent on a USB drive
9 delivered to Brian Kelsey, Liberty Justice Center, 141 West Jackson Boulevard,
10 Suite 1065, Chicago, Illinois 60604. Pursuant to Rule 34(b)(2)(A), all documents
11 responsive to these requests shall be produced within thirty (30) days after the
12 parties’ first Rule 26(f) conference.

13 These requests are continuing in nature. If further information or documents
14 come into Defendant’s possession or are brought to Defendant’s attention during
15 preparation for trial or at trial, supplementation of Defendant’s responses to these
16 requests is required.

17 **I. Definitions, General Provisions, and Instructions**

18 1. The terms “Twitter,” “Defendant,” and “You” refer to Defendant
19 Twitter, Inc., its attorneys, agents, employees, and/or any other person or entity
20 purporting to act on its behalf.

21 2. The terms “Plaintiff,” “Justin Hart,” and “Hart” refer to Plaintiff, Justin
22 Hart, his attorneys, and/or any other person or entity purporting to act on his behalf.

1 3. The term “White House” refers to Defendant Joseph R. Biden, Jr., the
2 Executive Office of the President, its attorneys, agents, employees, and/or any other
3 person or entity purporting to act on Biden’s behalf.

4 4. The term “HHS” refers to Defendant the Department of Health and
5 Human Services, its attorneys, agents, employees, and/or any other person or entity
6 purporting to act on its behalf, including but not limited to Defendant Surgeon
7 General Vivek Murthy, the Office of the Surgeon General, its attorneys, agents,
8 employees, and/or any other person or entity purporting to act on Murthy’s behalf.

9 5. “Document,” “Documents,” “Record,” and “Records” are used in the
10 broadest sense and include, but are not limited to, the original and all non-identical
11 copies (whether different from the original because of additional notations or
12 otherwise) of all written, printed, typed, recorded, graphic, or electronic matter,
13 however produced or reproduced, in the actual control of Defendant, including, but
14 not limited to, communications, e-mail messages, text messages, iPhone messages,
15 WhatsApp messages, Signal messages, social media direct messages, social media
16 flags or reports of offending content, letters, facsimiles, phone records, voicemail
17 messages, audio recordings, videos, visitation logs, photographs, graphics,
18 spreadsheets, PowerPoints, memoranda, reports, meeting agendas or notes, and
19 handwritten notes, or other tangible things which constitute or contain matters within
20 the scope of Rule 26(b) of the Federal Rules of Civil Procedure.

21 6. “Relate to,” (or a form thereof) means consulting, reflecting, regarding,
22 respecting, supporting, contradicting, referring to, describing, recording, noting,

1 embodying, containing, mentioning, studying, analyzing, discussing, evaluating, or
2 relevant to.

3 7. “Communication” means any exchange, transmission, or receipt
4 (whether as listener, addressee, person called or otherwise) of information, whether
5 such exchange, transmission, or receipt is oral, written, electronic, or otherwise, and
6 includes, without limitation, any meeting, conversation, telephone call, letter, e-mail,
7 text message, iPhone message, WhatsApp message, Signal message, social media
8 direct message, social media flag or report of offending content, online posting,
9 social media posting, facsimile, and the exchange, transmission, or receipt of any
10 document.

11 8. In answer to these discovery requests, please furnish all information
12 available to you at the time of your answer and supplement your answers as required
13 by law. Please respond separately to each request. Combined or general answers
14 shall be considered non-responsive unless accompanied by an express statement that
15 the answer is full, complete, and specific as to each request to which the combined
16 or general answer is meant to be responsive.

17 9. Without limiting the definition of “document” stated above, documents
18 covered by this Request include all documents in the possession, custody, or control
19 of Defendant, its agents, or representatives regardless of their location, including all
20 copies of such documents, the contents of which differ in any respect from the
21 original.

22 10. For each document responsive to any Request which is withheld for any
23

1 reason, provide the following information:

2 (a) The place, approximate date, and the manner of recording or
3 otherwise preparing the document;

4 (b) The name and title of the sender and the name and title of the
5 recipient of the document;

6 (c) The name of each person (other than stenographic assistants or
7 translators) who participated in the document's preparation;

8 (d) The name and position of each person to whom the document's
9 contents have been communicated by copy, exhibition, reading, or
10 substantial summarization; and

11 (e) A statement of the basis on which the document is withheld.

12 **II. Requests for Production**

13 REQUEST NO. 1: All records of communications, from January 20, 2021, to
14 the date this production request is produced, between Defendant and the White
15 House or HHS related to the removal from social media platforms or flagging of
16 posts with misinformation or disinformation about COVID-19.

17 REQUEST NO. 2: All other documents of any kind, created from January 20,
18 2021, to the date this production request is produced, from the White House or HHS
19 related to the removal from Defendant's social media platforms or the flagging of
20 posts with misinformation or disinformation about COVID-19.

21 REQUEST NO. 3: All records of communications, from January 20, 2021, to
22 the date this productions request is produced, between Defendant and the White
23

1 House or HHS, related to Plaintiff or his social media posts.

2 REQUEST NO. 4: All other documents of any kind, created from January 20,
3 2021, to the date this production request is produced, related to Plaintiff or his social
4 media posts.

5 Dated: September 29, 2021

Respectfully submitted,

6 s/ Brian Kelsey
7 Brian Kelsey, *Pro Hac Vice*
8 Liberty Justice Center
9 141 W. Jackson Blvd., Suite 1065
10 Chicago, Illinois 60604
11 bkelsey@ljc.org
12 Phone: 312-637-2280
13 *Attorney for Plaintiff*

11
12
13
14
15
16
17
18
19
20
21
22
23

Exhibit

4

1 Robert H. Tyler
CA S.B.N. 179572
2 rtyler@tylerbursch.com
Nada N. Higuera
3 CA S.B.N. 299819
nhiguera@tylerbursch.com
4 Tyler & Bursch, LLP
25026 Las Brisas Rd.
5 Murrieta, California 92562
6 Phone: 951-600-2733
Fax: 951-600-4996
7

8 Brian Kelsey, *Pro Hac Vice*
Tennessee Bar Number 022874
9 bkelsey@ljc.org
Mallory Reader, *Pro Hac Vice*
10 Michigan Bar Number P84806
mreader@ljc.org
11 Liberty Justice Center
141 W. Jackson Blvd., Ste. 1065
12 Chicago, Illinois 60604
13 Phone: 312-637-2280
Fax: 312-263-7702
14 *Attorneys for Plaintiff*

15 **UNITED STATES DISTRICT COURT**
16 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

17 JUSTIN HART,
Plaintiff,
18 v.
FACEBOOK, INC.; TWITTER, INC.;
19 VIVEK MURTHY in his official capacity as
United States Surgeon General; JOSEPH R.
20 BIDEN, JR. in his official capacity as
President of the United States; the
21 DEPARTMENT OF HEALTH AND
HUMAN SERVICES; and the OFFICE OF
22 MANAGEMENT AND BUDGET,
23 Defendants.

Case No. 3:21-cv-015430-W-WVG

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS PROPOUNDED TO
DEFENDANT THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES**

1 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff, Justin
2 Hart (“Plaintiff”), by and through his undersigned counsel, submits the following
3 First Set of Requests for Production of Documents to Defendant Department of
4 Health and Human Services (“Defendant”). The requests must be answered
5 separately, fully, and in writing. Your response to these requests should be submitted
6 to each of Plaintiff’s counsel at the e-mail addresses listed on the cover page. The
7 documents requested shall be produced in electronic format and sent to Brian Kelsey
8 via e-mail to records@libertyjusticecenter.org; alternatively, they may be sent on a
9 USB drive delivered to Brian Kelsey, Liberty Justice Center, 141 West Jackson
10 Boulevard, Suite 1065, Chicago, Illinois 60604. Pursuant to Rule 34(b)(2)(A), all
11 documents responsive to these requests shall be produced within thirty (30) days
12 after the parties’ first Rule 26(f) conference.

13 These requests are continuing in nature. If further information or documents
14 come into Defendant’s possession or are brought to Defendant’s attention during
15 preparation for trial or at trial, supplementation of Defendant’s responses to these
16 requests is required.

17 **I. Definitions, General Provisions, and Instructions**

18 1. The terms “HHS,” “Defendant,” and “You” refer to Defendant the
19 Department of Health and Human Services, its attorneys, agents, employees, and/or
20 any other person or entity purporting to act on its behalf, including but not limited
21 to Defendant Surgeon General Vivek Murthy, the Office of the Surgeon General, its
22 attorneys, agents, employees, and/or any other person or entity purporting to act on

1 Murthy’s behalf.

2 2. The terms “Plaintiff,” “Justin Hart,” and “Hart” refer to Plaintiff, Justin
3 Hart, his attorneys, and/or any other person or entity purporting to act on his behalf.

4 3. The term “Facebook” refers to Defendant Facebook, Inc., its attorneys,
5 agents, employees, and/or any other person or entity purporting to act on its behalf.

6 4. The term “Twitter” refers to Defendant Twitter, Inc., its attorneys,
7 agents, employees, and/or any other person or entity purporting to act on its behalf.

8 5. “Document,” “Documents,” “Record,” and “Records” are used in the
9 broadest sense and include, but are not limited to, the original and all non-identical
10 copies (whether different from the original because of additional notations or
11 otherwise) of all written, printed, typed, recorded, graphic, or electronic matter,
12 however produced or reproduced, in the actual control of Defendant, including, but
13 not limited to, communications, e-mail messages, text messages, iPhone messages,
14 WhatsApp messages, Signal messages, social media direct messages, social media
15 flags or reports of offending content, letters, facsimiles, phone records, voicemail
16 messages, audio recordings, videos, visitation logs, photographs, graphics,
17 spreadsheets, PowerPoints, memoranda, reports, meeting agendas or notes, and
18 handwritten notes, or other tangible things which constitute or contain matters within
19 the scope of Rule 26(b) of the Federal Rules of Civil Procedure.

20 6. “Relate to,” (or a form thereof) means consulting, reflecting, regarding,
21 respecting, supporting, contradicting, referring to, describing, recording, noting,
22 embodying, containing, mentioning, studying, analyzing, discussing, evaluating, or

1 relevant to.

2 7. “Communication” means any exchange, transmission, or receipt
3 (whether as listener, addressee, person called or otherwise) of information, whether
4 such exchange, transmission, or receipt is oral, written, electronic, or otherwise, and
5 includes, without limitation, any meeting, conversation, telephone call, letter, e-mail,
6 text message, iPhone message, WhatsApp message, Signal message, social media
7 direct message, social media flag or report of offending content, online posting,
8 social media posting, facsimile, and the exchange, transmission, or receipt of any
9 document.

10 8. In answer to these discovery requests, please furnish all information
11 available to you at the time of your answer and supplement your answers as required
12 by law. Please respond separately to each request. Combined or general answers
13 shall be considered non-responsive unless accompanied by an express statement that
14 the answer is full, complete, and specific as to each request to which the combined
15 or general answer is meant to be responsive.

16 9. Without limiting the definition of “document” stated above, documents
17 covered by this Request include all documents in the possession, custody, or control
18 of Defendant, its agents, or representatives regardless of their location, including all
19 copies of such documents, the contents of which differ in any respect from the
20 original.

21 10. For each document responsive to any Request which is withheld for any
22 reason, provide the following information:

1 (a) The place, approximate date, and the manner of recording or
2 otherwise preparing the document;

3 (b) The name and title of the sender and the name and title of the
4 recipient of the document;

5 (c) The name of each person (other than stenographic assistants or
6 translators) who participated in the document's preparation;

7 (d) The name and position of each person to whom the document's
8 contents have been communicated by copy, exhibition, reading, or
9 substantial summarization; and

10 (e) A statement of the basis on which the document is withheld.

11 **II. Requests for Production**

12 REQUEST NO. 1: All records of communications, from January 20, 2021, to
13 the date this production request is produced, between Defendant and Twitter,
14 Facebook, or any other social media company, related to the removal from social
15 media platforms or flagging of posts with misinformation or disinformation about
16 COVID-19.

17 REQUEST NO. 2: All other documents of any kind, created from January 20,
18 2021, to the date this production request is produced, related to the removal from
19 social media platforms or the flagging of posts with misinformation or
20 disinformation about COVID-19.

21 REQUEST NO. 3: All records of communications, from January 20, 2021, to
22 the date this productions request is produced, between Defendant and Twitter,

1 Facebook, or any other social media company, related to Plaintiff or his social media
2 posts.

3 REQUEST NO. 4: All other documents of any kind, created from January 20,
4 2021, to the date this production request is produced, related to Plaintiff or his social
5 media posts.

6 REQUEST NO. 5: The Internet browsing history, from January 20, 2021, to
7 the date this productions request is produced, of Defendant that includes searching
8 for, viewing, or flagging or reporting of any social media posts of misinformation or
9 disinformation about COVID-19, including the name and title of the person
10 conducting the browsing.

11 REQUEST NO. 6: The Internet browsing history, from January 20, 2021, to
12 the date this productions request is produced, of Defendant that includes searching
13 for, viewing, or flagging or reporting of any social media posts of Plaintiff, including
14 the name and title of the person conducting the browsing.

15
16 Dated: September 30, 2021

Respectfully submitted,

17 s/ Brian Kelsey

Brian Kelsey, *Pro Hac Vice*

18 Liberty Justice Center

19 141 W. Jackson Blvd., Suite 1065

Chicago, Illinois 60604

20 bkelsey@ljc.org

Phone: 312-637-2280

21 *Attorney for Plaintiff*

Exhibit

5

1 Robert H. Tyler
CA S.B.N. 179572
2 rtyler@tylerbursch.com
Nada N. Higuera
3 CA S.B.N. 299819
nhiguera@tylerbursch.com
4 Tyler & Bursch, LLP
25026 Las Brisas Rd.
5 Murrieta, California 92562
6 Phone: 951-600-2733
Fax: 951-600-4996

7
8 Brian Kelsey, *Pro Hac Vice*
Tennessee Bar Number 022874
bkelsey@ljc.org
9 Mallory Reader, *Pro Hac Vice*
Michigan Bar Number P84806
10 mreader@ljc.org
Liberty Justice Center
11 141 W. Jackson Blvd., Ste. 1065
12 Chicago, Illinois 60604
13 Phone: 312-637-2280
Fax: 312-263-7702
14 *Attorneys for Plaintiff*

15 **UNITED STATES DISTRICT COURT**
16 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

17 JUSTIN HART,
Plaintiff,
18 v.
FACEBOOK, INC.; TWITTER, INC.;
19 VIVEK MURTHY in his official capacity as
United States Surgeon General; JOSEPH R.
20 BIDEN, JR. in his official capacity as
President of the United States; the
21 DEPARTMENT OF HEALTH AND
HUMAN SERVICES; and the OFFICE OF
22 MANAGEMENT AND BUDGET,
23 Defendants.

Case No. 3:21-cv-01543-W-WVG

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS PROPOUNDED TO
DEFENDANT JOSEPH R. BIDEN, JR.**

1 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff, Justin
2 Hart (“Plaintiff”), by and through his undersigned counsel, submits the following
3 First Set of Requests for Production of Documents to Defendant Joseph R. Biden,
4 Jr. (“Defendant”). The requests must be answered separately, fully, and in writing.
5 Your response to these requests should be submitted to each of Plaintiff’s counsel at
6 the e-mail addresses listed on the cover page. The documents requested shall be
7 produced in electronic format and sent to Brian Kelsey via e-mail to
8 records@libertyjusticecenter.org; alternatively, they may be sent on a USB drive
9 delivered to Brian Kelsey, Liberty Justice Center, 141 West Jackson Boulevard,
10 Suite 1065, Chicago, Illinois 60604. Pursuant to Rule 34(b)(2)(A), all documents
11 responsive to these requests shall be produced within thirty (30) days after the
12 parties’ first Rule 26(f) conference.

13 These requests are continuing in nature. If further information or documents
14 come into Defendant’s possession or are brought to Defendant’s attention during
15 preparation for trial or at trial, supplementation of Defendant’s responses to these
16 requests is required.

17 **I. Definitions, General Provisions, and Instructions**

18 1. The terms “Biden,” “Defendant,” and “You” refer to Defendant Joseph
19 R. Biden, Jr., the Executive Office of the President, its attorneys, agents, employees,
20 and/or any other person or entity purporting to act on Biden’s behalf.

21 2. The terms “Plaintiff,” “Justin Hart,” and “Hart” refer to Plaintiff, Justin
22 Hart, his attorneys, and/or any other person or entity purporting to act on his behalf.

1 3. The term “Facebook” refers to Defendant Facebook, Inc., its attorneys,
2 agents, employees, and/or any other person or entity purporting to act on its behalf.

3 4. The term “Twitter” refers to Defendant Twitter, Inc., its attorneys,
4 agents, employees, and/or any other person or entity purporting to act on its behalf.

5 5. “Document,” “Documents,” “Record,” and “Records” are used in the
6 broadest sense and include, but are not limited to, the original and all non-identical
7 copies (whether different from the original because of additional notations or
8 otherwise) of all written, printed, typed, recorded, graphic, or electronic matter,
9 however produced or reproduced, in the actual control of Defendant, including, but
10 not limited to, communications, e-mail messages, text messages, iPhone messages,
11 WhatsApp messages, Signal messages, social media direct messages, social media
12 flags or reports of offending content, letters, facsimiles, phone records, voicemail
13 messages, audio recordings, videos, visitation logs, photographs, graphics,
14 spreadsheets, PowerPoints, memoranda, reports, meeting agendas or notes, and
15 handwritten notes, or other tangible things which constitute or contain matters within
16 the scope of Rule 26(b) of the Federal Rules of Civil Procedure.

17 6. “Relate to,” (or a form thereof) means consulting, reflecting, regarding,
18 respecting, supporting, contradicting, referring to, describing, recording, noting,
19 embodying, containing, mentioning, studying, analyzing, discussing, evaluating, or
20 relevant to.

21 7. “Communication” means any exchange, transmission, or receipt
22 (whether as listener, addressee, person called or otherwise) of information, whether

1 such exchange, transmission, or receipt is oral, written, electronic, or otherwise, and
2 includes, without limitation, any meeting, conversation, telephone call, letter, e-mail,
3 text message, iPhone message, WhatsApp message, Signal message, social media
4 direct message, social media flag or report of offending content, online posting,
5 social media posting, facsimile, and the exchange, transmission, or receipt of any
6 document.

7 8. In answer to these discovery requests, please furnish all information
8 available to you at the time of your answer and supplement your answers as required
9 by law. Please respond separately to each request. Combined or general answers
10 shall be considered non-responsive unless accompanied by an express statement that
11 the answer is full, complete, and specific as to each request to which the combined
12 or general answer is meant to be responsive.

13 9. Without limiting the definition of “document” stated above, documents
14 covered by this Request include all documents in the possession, custody, or control
15 of Defendant, its agents, or representatives regardless of their location, including all
16 copies of such documents, the contents of which differ in any respect from the
17 original.

18 10. For each document responsive to any Request which is withheld for any
19 reason, provide the following information:

- 20 (a) The place, approximate date, and the manner of recording or
21 otherwise preparing the document;
- 22 (b) The name and title of the sender and the name and title of the

1 recipient of the document;

2 (c) The name of each person (other than stenographic assistants or
3 translators) who participated in the document's preparation;

4 (d) The name and position of each person to whom the document's
5 contents have been communicated by copy, exhibition, reading, or
6 substantial summarization; and

7 (e) A statement of the basis on which the document is withheld.

8 **II. Requests for Production**

9 REQUEST NO. 1: All records of communications, from January 20, 2021, to
10 the date this production request is produced, between Defendant and Twitter,
11 Facebook, or any other social media company, related to the removal from social
12 media platforms or flagging of posts with misinformation or disinformation about
13 COVID-19.

14 REQUEST NO. 2: All other documents of any kind, created from January 20,
15 2021, to the date this production request is produced, related to the removal from
16 social media platforms or the flagging of posts with misinformation or
17 disinformation about COVID-19.

18 REQUEST NO. 3: All records of communications, from January 20, 2021, to
19 the date this productions request is produced, between Defendant and Twitter,
20 Facebook, or any other social media company, related to Plaintiff or his social media
21 posts.

22 REQUEST NO. 4: All other documents of any kind, created from January 20,
23

1 2021, to the date this production request is produced, related to Plaintiff or his social
2 media posts.

3 REQUEST NO. 5: The Internet browsing history, from January 20, 2021, to
4 the date this productions request is produced, of Defendant that includes searching
5 for, viewing, or flagging or reporting of any social media posts of misinformation or
6 disinformation about COVID-19, including the name and title of the person
7 conducting the browsing.

8 REQUEST NO. 6: The Internet browsing history, from January 20, 2021, to
9 the date this productions request is produced, of Defendant that includes searching
10 for, viewing, or flagging or reporting of any social media posts of Plaintiff, including
11 the name and title of the person conducting the browsing.

12
13 Dated: September 30, 2021

Respectfully submitted,

14 s/ Brian Kelsey

15 Brian Kelsey, *Pro Hac Vice*
16 Liberty Justice Center
17 141 W. Jackson Blvd., Suite 1065
18 Chicago, Illinois 60604
19 bkelsey@ljc.org
20 Phone: 312-637-2280
21 *Attorney for Plaintiff*
22
23