



Brazil's Crackdown On Free Speech

Testimony by Michael Shellenberger, C.B.R. Chair of Censorship, Politics,
and Free Speech, at the University of Austin; Founder, Public;
Founder-President, Civilization Works

Before

The Subcommittee on Global Health, Human Rights, and International
Organizations of the House Foreign Affairs Committee

For a hearing on

“Brazil: A Crisis of Democracy, Freedom & Rule of Law?”

May 7, 2024

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Overview

Brazil has been a liberal democracy for over thirty years. During that period, there have been free and fair elections, and people have been free to express their views. Brazil's Constitution specifically protects political freedom of speech. "Any and all censorship of a political, ideological, and artistic nature," reads Chapter 5, article 220, paragraph 2 of the Brazilian Constitution, "is prohibited."

Today, Brazil is no longer a liberal democracy. It is an illiberal one where people fear speaking their minds for fear of punishment. And for simply exposing this fact, I find myself under criminal investigation by Brazil's Federal Police and Attorney General.

I might be less worried if Brazil were a small and irrelevant country, but it's not. Brazil is the largest nation in Latin America. Therefore, its impact is global, and it risks being an example for other nations.

What's more, the evidence suggests that the Federal Supreme Court (STF) and the Superior Electoral Court (TSE), which are under the heavy influence of a single justice named Alexandre de Moraes, are directly interfering in elections by demanding the deplatforming of independent journalists and politicians on every major social media platform.

As for the executive branch, controlled by President Lula, it now appears determined to shut down X entirely.¹

De Moraes is not simply demanding that social media platforms censor specific content by controversial journalists and politicians. He is demanding that all social media platforms ban them for life. He often does so through secret hearings without the right of appeal.

One cannot be a politician or an independent journalist if you can't communicate on social media. And so, de Moraes is not just violating the Brazilian constitution's protections of free speech; he is also attacking the freedom of the press, destroying careers, and interfering in elections.

As such, the censorship in Brazil is the worst I have seen in any Western democracy. De Moraes has acted unilaterally to invent entirely new laws. He is thus interfering with and, to a significant extent, taking over the role of Congress.

My involvement began on April 3, 2024, when I published the Twitter Files—Brazil (Appendix B). They show Supreme Court Justice de Moraes had illegally demanded that Twitter reveal private information about Twitter users who used hashtags he considered inappropriate and demanded the deplatforming of independent journalists and politicians from all major social media platforms, including ones that did not publish the offending material.

Three days later, on April 6, 2024, X corporation, formerly known as Twitter, announced that a Brazilian court had forced it to “block certain popular accounts in Brazil.”² One hour later, X's owner, Elon Musk, announced that X would defy the court's order and lift all restrictions.³ “As a result,” said Musk, “we will probably lose all revenue in Brazil and have to shut down our office there. But principles matter more than profit.”⁴

One day later, on April 7, de Moraes announced a criminal investigation into Musk for allegedly spreading disinformation, obstructing justice, and allowing people who De Moraes had banned from social media to freely express their views. De Moraes said he would fine X \$20,000 per day for every banned person Musk allows to speak. On April 15, X's top attorney in Brazil resigned his post, fearing for his safety.⁵

On April 18 and April 19, Brazil's Federal Police (PF) published two reports that suggested that I was under criminal investigation for publishing the “Twitter Files - Brazil.”⁶ The reports claim that people whom de Moraes had demanded be censored had gained limited access to communicate on X, in particular through X's Spaces, which allows for live conversation. This is yet more evidence that De Moraes is obsessed with silencing his enemies. It was not enough for X to have blocked profiles within Brazil. De Moraes also does not want those individuals to be able to use their voices.

The Federal Police reports singled me out. They suggest it is somehow suspicious that I only have paid for one subscription on X, which is to Elon Musk. But there is nothing suspicious about this. I am paying Musk, not the other way around. And, as the Police report notes, Musk takes a percentage of the revenue of the people who subscribe to my content on X.

Three days later, Brazil's attorney general, Jorge Messias, urged the Supreme Court to pursue “criminal prosecution” and investigation to “identify and punish the possible culprits.”⁷ His report named me specifically.

At no point did the Attorney General suggest that either I or my coauthors Eli Vieira and David Ágape lied or presented inaccurate information in the Twitter Files - Brazil. Rather, the Attorney General's office's six-page memo, released publicly, claims that I released “excerpts of content from confidential judicial decisions” in an “attempt to destabilize the democratic state.”

But this is also untrue. None of the Twitter Files - Brazil contained “confidential judicial decisions.” The Twitter Files - Brazil were strictly emails between Twitter staff. There is not a single instance where we published “confidential judicial decisions.”

But even if it were true, Brazil's constitution says, “the law may only restrict the publicity of procedural acts when the defense of privacy or social interests so require” (Article 5, LX). And in this case, it was imperative that we publish the Twitter Files precisely to protect the public's right to privacy, freedom of speech, and democracy.⁸

What's more, the attack on me is highly selective. Brazilian news media have reported on confidential judiciary decisions for years and have not been subjected to such an outrageous criminal investigation as I am under.

Finally, there is no law against attempting to "destabilize the democratic state" through non-violent methods. The law only prohibits violent attacks on democracy. As such, the Attorney General abuses his powers and acts as a lawmaker, usurping Brazil's Congress.

And just imagine if Brazil criminalized something as vague as "destabilizing the democratic state." Such a law would allow President Lula to lock up nonviolent protesters, journalists, and his political rivals.

While in Brazil, I interviewed dozens of Brazilians, including professors, journalists, and respected lawyers. The vast majority told me they were shocked by what was happening and were afraid to speak their minds.

President Lula Betrays Promise

This is very ironic for me because three decades ago, I was attracted to the political movement created by President Lula precisely because he appeared to support free speech. I had read an inspiring 1991 book, *Without Fear of Being Happy*, whose title is the English translation of Lula's campaign slogan.⁹ It described Lula and the PT as democratic socialists who embraced anti-poverty measures but also rejected the authoritarianism and censorship of Communist regimes such as the one in Cuba.

In 1994, I interviewed President Lula himself in his office in São Paulo. I asked Lula, if he were elected president, would he transform Brazil into another Cuba, complete with censorship? He said, emphatically, "No." The Brazilian people loved freedom too much, he explained, as did he. After all, Lula had risen to fame in the 1970s when he led mass protests against Brazil's military dictatorship as a labor union leader.

Now, 30 years later, President Lula is seeking sweeping restrictions on freedom of speech as severe as the ones that have been in place in Cuba since the early 1960s, after Fidel Castro seized power through military violence. Last year, shortly after taking office, Lula created two new agencies, the National Prosecutor's Office for the Defense of Democracy (PNDD), under the supervision of the Attorney General of the Republic, and the Orwellian-named "Department for the Promotion of Freedom of Expression," with extraordinary censorship powers.

And, notably, the people demanding censorship are demanding it solely of their political enemies, not their own side. All 50 of the instances where Lula's Office for the Defense of Democracy (PNDD) demanded censorship in the first two-thirds of 2023, noted *Revista Oeste* last December, "all related to unfavorable information or criticism of the government. The members of the government who called [former president] Dilma Rousseff's impeachment a 'coup,' for example, never underwent any investigation."¹⁰

Lula also created the Digital Policies Secretariat, a body linked to the Ministry of Justice. "The Digital Policies Secretariat is responsible for," it explained, efforts to "combat misinformation and hate speech on the Internet, in conjunction with the Ministry of Justice and Public Security."¹¹ Lula also created an innocent-sounding "fact-checking" website whose real purpose was to serve as a foundation for demanding censorship — a de facto "Ministry of Truth" straight out of 1984. And Lula supported the "Fake News" Bill, which would have created steep financial penalties for social media companies that refused to censor "fake news."

The Fake News bill failed to pass, and most of the censorship demands today come from Brazil's Superior Electoral Court (TSE), which is officially independent of the Executive Branch. What's more, the president of the TSE, de Moraes, voted in 2021 to support the

criminal prosecution of Lula for the latter's role in a corruption scandal. In several important ways, Brazil still has a long way to go before becoming a dictatorship.

But Lula and de Moraes have been close allies in demanding censorship, and the end of freedom of speech is a crucial first step toward dictatorship. During the 2022 elections, de Moraes' TSE prevented Grupo Jovem Pan, a media conglomerate, from discussing Lula's criminal conviction for money laundering and corruption. The TSE also censored the newspaper Gazeta do Povo for reporting accurately about Lula's support for the president of Nicaragua, Daniel Ortega, who has arrested his political enemies. And the TSE forced social media platforms to remove 31 posts from Gazeta do Povo and other accounts about Lula's support for Ortega.

In October 2022, before the second round of presidential elections, Lula's lawyer created a report claiming that supporters of Lula's opponent, Jair Bolsonaro, had created a "disinformation ecosystem."¹² This led the TSE to indict and censor 55 prominent individuals, including Bolsonaro, his sons, journalists, and activists. De Moraes even created a special secretive police force, "Núcleo de Inteligência," to oversee the censorship process.¹³

Lula has shown other signs that he wants the government to censor Brazilian citizens on social media. In February 2023, Lula sent a letter to UNESCO making the case for censorship.¹⁴ In January 2024, Lula said, "Freedom is not an authorization to spread lies about vaccines on social media...Our Democracy will be under constant threat as long as we are not firm in regulating social networks."¹⁵

In March of this year, then-Minister of Justice Flávio Dino, who is now a Supreme Court justice, said his Ministry was preparing legislation to regulate social media.¹⁶ Earlier last month, in response to revelations in the Twitter Files - Brazil, Lula's Solicitor General said, on X, "It is urgent to regulate social networks....Social Peace is non-negotiable."¹⁷

On April 10, 2024, President Lula wrote a post on X that strongly suggests that his government will push for censorship legislation in order to counter the impact of the freedom of speech allowed for on X. "Right-wing extremism allows a foreign businessman [Elon Musk], who has never produced a stalk of grass in Brazil, to dare to speak ill of the Brazilian Court, its ministers, and the Brazilian people."¹⁸

Such censorship is plainly illegal and undemocratic. It is a hallmark of democracies that people be allowed to "speak ill" of their government. The idea that the government should censor speech that leads to violence would result in mass censorship, including and especially Black Lives Matter protests. Activists and the media have spread massive misinformation about the frequency of police killings of unarmed black men, resulting in fires and deaths.

The US government felt that it controlled both the corporate news media and social media companies. We saw in the Twitter Files that the FBI orchestrated a disinformation and censorship campaign in order to protect Joe Biden.

Starting with the Cyber Threat Intelligence League, operatives working for the US Department of Defense and the British Ministry of Defense sought to hide their censorship and disinformation efforts as “cyber security.” After that, the US Department of Homeland Security and the Stanford Internet Observatory engaged in a mass censorship effort around the 2020 elections and Covid.

It is today clear that intelligence and security agencies have been working together around the world to gain control over social media platforms in order to discredit, prosecute, and incarcerate populist leaders.

Brazilian Censorship In a Global Context

Politicians and governments around the world say they must censor speech online to protect vulnerable individuals and democracy from hate speech and dictatorships. The Scottish government has implemented a law that could result in the arrest of comedians for jokes deemed “hateful.” The Irish government is seeking legislation that would allow the police to enter homes and confiscate cell phones and personal computers to search for “hate speech.” The Canadian ruling party is seeking legislation that would incarcerate people for life for things they said. The European Union has created a small committee of individuals to decide what is true and false and what should be censored. And in the US, the Department of Homeland Security in 2020 and 2021 outsourced mass censorship to a consortium of NGOs led by the Stanford Internet Observatory.

In March 2023, I testified and provided evidence to Congress about the existence of a Censorship Industrial Complex, a network of government agencies, including the Department of Homeland Security, government contractors, and Big Tech media platforms that conspired to censor ordinary Americans and elected officials alike for holding disfavored views.

Less than one year later I reported back to Congress that the scope, power, and law-breaking of the Censorship Industrial Complex are even worse than we had realized.¹⁹ In November of last year, my colleagues and I published the first batch of internal files from “The Cyber Threat Intelligence League,” which show US and UK military contractors working in 2019 and 2020 to both censor and turn sophisticated psychological operations and disinformation tactics, developed abroad, against the American people.

Many insist that all we identified in the Twitter Files, the Facebook Files, and the CTIL Files were legal activities by social media platforms to take down content that violated their terms of service. Facebook, X (formerly Twitter), and other Big Tech companies are privately owned and free to censor content. And government officials are free to point out wrong information, they argue.

But the First Amendment prohibits the government from abridging freedom of speech, the Supreme Court has ruled that the government “may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish,” and there is now a large body of evidence proving that the government did precisely that.

The US Department of Homeland Security’s Cybersecurity and Information Security Agency (CISA) has been the center of gravity for much of the censorship, with the National Science Foundation financing the development of censorship and disinformation tools and other federal government agencies supporting it.

Emails from CISA’s NGO and social media partners show that CISA created the Election Integrity Partnership (EIP) in 2020, which involved the Stanford Internet Observatory (SIO) and other US government contractors. EIP and its successor, the Virality Project (VP), urged Twitter, Facebook, and other platforms to censor social media posts by ordinary citizens and elected officials alike.

In 2020, the Department of Homeland Security’s CISA violated the First Amendment and interfered in the election, while in 2021, CISA and the White House violated the First Amendment and undermined America’s response to the Covid pandemic by demanding that Facebook and Twitter censor content that Facebook said was “often-true,” including about vaccine side effects.

Politicians and governments promise they won’t abuse their new powers in every situation. But free speech, not censorship, is the only tried and true way of correcting disinformation and hate speech. And social media puts free speech on steroids. Consider X. There, over 500 million people are able to identify false information and talk back to hate speech.

This was the case before X implemented a “Community Notes” system, whereby X users could vote on fact checks. Community Notes wasn’t necessary since people could always respond in replies or by “quote-posting” responses to particular posts. But notably, Community Notes uses more speech, not censorship, to combat misinformation. Authors of posts who disagree with Community Notes remain free to object to the Community Note after it is applied.

As for “hate speech,” it is best dealt with by publicly and openly seeking to humanize demonized groups. For more than three decades, a black blues musician named Darryl Davis engaged with and even befriended members of the Ku Klux Klan, the famously racist hate group.²⁰

The functioning of X and Davis’ story are well-understood. Most children learn of the importance of freedom of speech starting in elementary school. In middle school, children around the world learn of the danger of letting governments censor and monopolize the truth. They read George Orwell’s 1984 where they learn about the danger of allowing for the

creation of a “Ministry of Truth” to decide what is true and false, which inevitably results in the censorship of true facts in service of political power.

Brazilian Government And Media Spread Misinformation

On April 19, Alexandre de Moraes, the Brazilian Supreme Court Justice and President of the Superior Electoral Commission lashed out angrily at X owner Elon Musk. At an event heavily promoted by Globo News, Alexandre de Moraes claimed that Musk is part of a vast extremist conspiracy to undermine Brazil’s sovereignty and democracy. He claimed that Musk was an “irresponsible mercantilist” motivated solely by profits who had “united” with “extremist Brazilian politicians.”

But there is no evidence of any conspiracy. Musk did not know I would publish the Twitter Files Brazil, nor did the Brazilian politicians who reacted to them. And many of the politicians and journalists whom de Moraes is demonizing as “extremists” are advocates of freedom of speech, including the right to criticize de Moraes.

It’s true that some of the people who de Moraes is censoring have urged a military intervention and have made unsubstantiated claims about elections and Covid. I do not agree with many of the statements made by the people whom de Moraes has censored.

However, freedom of speech means nothing if it does not protect people and ideas you disagree with. If we aren’t going to allow people to criticize democracy, elections, and vaccines, how will we ever know if they are bad? If people are spreading false information about democracy, elections, and vaccines, the best way to deal with the false information is with accurate information, not censorship.

Notably, the new Lula government increased government funding by 60% for Globo alone. Globo is the biggest media in Brazil. It has been demanding more censorship and promoting the censorship by de Moraes.

After publishing the Twitter Files - Brazil, the mainstream news media in Brazil, many of whom are heavily funded by the Brazilian government, spread misinformation about me, Elon Musk, and my Brazilian journalists colleagues as “far right” and part of a conspiracy to help former president Bolsonaro to overthrow the government.

They pointed to the fact that I spoke at the “Freedom Forum” in Porto Alegre last week with a center-right member of Congress named Marcel van Hattem. The media also note that some of Van Hatten’s colleagues went to Belgium immediately following the Freedom Forum to discuss the worldwide crackdown on free speech.

However, the media has been forced to admit that it has no proof to support any of its accusations. “We don’t have any proof of this yet,” reported a CNN-Brazil reporter.²¹ But, she added, “it’s being investigated.” I responded on X by saying, “Good luck finding evidence

because there isn't any! I was invited many months ago to speak at the Freedom Forum... After it became clear that many Brazilians were interested in talking to me about the Twitter Archives, I postponed my return to the US by a week. After I decided to do this, Van Hattem canceled his long-planned trip to Brussels.... I gratefully accepted Van Hattem's offer to be introduced to several people he knew in Brazil. That's all there is to the 'coordination.' If CNN had done its job, it could have learned all of this from me before publishing its 'misinformation.'"²²

It's worth putting the mainstream Brazilian news media's reaction in context. Public trust and audiences for the mainstream news media are declining, as is advertising revenue. Instead of trying to regain public trust by engaging in real journalism, corporate media outlets demand to be paid by X and the government, so they engage in propaganda. Notably, Lula increased the Brazilian government's funding of the country's largest and ostensibly private news media corporation, Globo, by 60 percent.

Corporate and government media are in a downward spiral. They are losing readers and corporate advertising revenue to social media platforms and, therefore, have to rely more on governments for money. This means that their financial incentives are to carry out state propaganda. If they report honestly and objectively about the Lula government, they risk losing government subsidies. As a result, they attract mediocre reporters willing to repeat state propaganda. Thus, they further alienate their audience who discover the truth in X. And they increasingly depend on government funding.

Recommendations

Global pressure on Brazil is crucial. There are signs that the Lula government is struggling to respond to the Twitter Files and recognizes the unpopularity of censorship. On April 9, the government leaked to a publication that it was considering changing its discourse from "Social media regulation" to "Free and responsible Internet."²³ On May 3, the media giant Globo reported that, "though they don't say it in public, internally his allies admit that de Moraes felt the weight of the dispute with the owner of X (former Twitter), Elon Musk, when a Committee of the US House of Representatives, dominated by Republicans, released excerpts from their confidential documents ordering the suspension of accounts belonging to Brazilians on the extreme right."²⁴

I encourage Congress to begin its own investigation into the crackdown on free speech in Brazil and to condemn the censorship and the persecution of journalists, policymakers, and others in clear terms.

Appendix A: Michael Shellenberger Bio

Michael Shellenberger is the [C.B.R. Chair](#) of Censorship, Politics, and Free Speech at the University of Austin, [Founder of Public](#), and Founder and President of Civilization Works, formerly [Environmental Progress](#).

Shellenberger is a Time Magazine "[Hero of the Environment](#)," [Green Book Award winner](#), and Dao Journalism Prize Winner. He is the best-selling author of [San Fransicko: Why Progressives Ruin Cities](#) (HarperCollins 2021) and [Apocalypse Never: Why Environmental Alarmism Hurts Us All](#) (HarperCollins 2020).

Michael has broken major stories, including on the Twitter Files, for which he won the 2023 [Dao Award for journalism](#); the [Censorship Industrial Complex](#); [San Francisco's cash incentives for homelessness](#); the "[Amazon Forest are the lungs of the world](#)" myth; [climate pseudoscience](#); [climate anxiety](#); [the U.S. government support for fracking](#); and [forest management, climate change, and California's fires](#).

Michael offers testimony as a journalist and policy expert to the U.S. Congress on a range of issues covering free speech, censorship, and the environment. He has testified on censorship in Brazil (May 2024); [Censorship Industrial Complex, Part 2](#) (November 2023); [AI and censorship](#) (September 2023); [climate change and public health](#) (April 2023); [Big Tech censorship](#) (March 2023); the [Censorship Industrial Complex, Part 1](#) (March 2023); [climate change and the global energy crisis](#) (September 2022); [Texas & California electrical grid failures](#) (April 2021); [climate change and agriculture](#) (February 2021); [climate change and health](#) (August 2020); [climate change and energy](#) (July 2020); and [nuclear energy](#) (January 2020).

Appendix B: Twitter Files - Brazil



Michael Shellenberger ✓
@shellenberger

Promote



TWITTER FILES - BRAZIL

Brazil is engaged in a sweeping crackdown on free speech led by a Supreme Court justice named Alexandre de Moraes.

De Moraes has thrown people in jail without trial for things they posted on social media. He has demanded the removal of users from social media platforms. And he has required the censorship of specific posts, without giving users any right of appeal or even the right to see the evidence presented against them.

Now, Twitter Files, released here for the first time, reveal that de Moraes and the Superior Electoral Court he controls engaged in a clear attempt to undermine democracy in Brazil. They:

- illegally demanded that Twitter reveal personal details about Twitter users who used hashtags he did not like;
- demanded access to Twitter’s internal data, in violation of Twitter policy;
- sought to censor, unilaterally, Twitter posts by sitting members of Brazil’s Congress;
- sought to weaponize Twitter’s content moderation policies against supporters of then-president [@jairbolsonaro](#)

The Files show: the origins of the Brazilian judiciary’s demand for sweeping censorship powers; the court’s use of censorship for anti-democratic election interference; and the birth of the Censorship Industrial Complex in Brazil.

TWITTER FILES - BRAZIL was written by [@david_agape_](#) [@EliVieiraJr](#) & [@shellenberger](#)

We presented these findings to de Moraes, to the Supreme Court (STF), and to the High Electoral Court (TSE). None responded.

Let’s get into it...

Rate proposed Community Notes



6:31 AM · Apr 3, 2024 · **30.5M** Views



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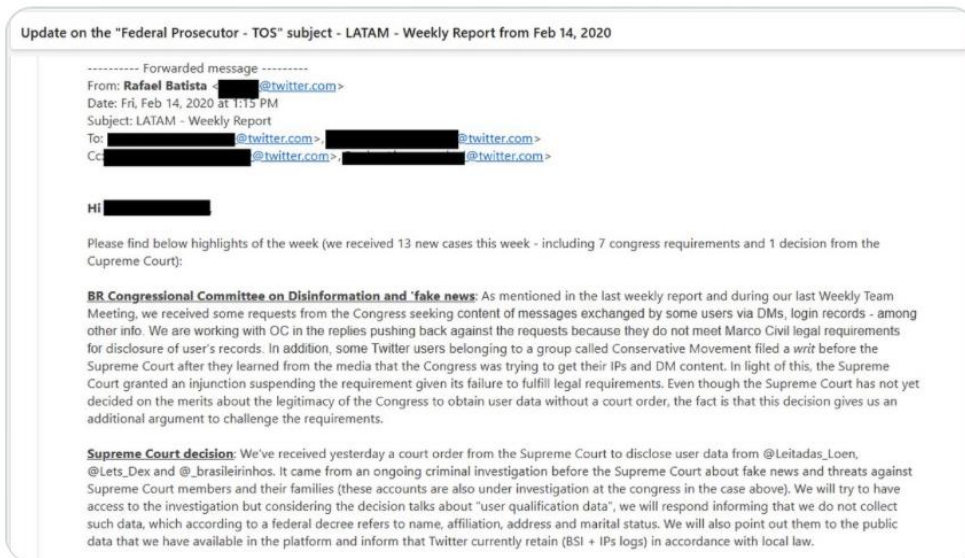
“We are... pushing back against the requests...”

On February 14, 2020, Twitter’s legal counsel in Brazil, Rafael Batista, emailed his colleagues to describe a hearing in Congress on “Disinformation and 'fake news”

Batista revealed that members of Brazil’s Congress had asked Twitter for the “content of messages exchanged by some users via DMs” as well as “login records - among other info.”

Batista said, “We are... pushing back against the requests,” which were illegal, “because they do not meet [Brazilian Internet law] Marco Civil legal requirements for disclosure of user's records.”

Batista noted that some conservative Twitter users had gone to the Supreme Court “after they learned from the media that the Congress was trying to get their IPs and DM content. In light of this, the Supreme Court granted an injunction suspending the requirement given its failure to fulfill legal requirements.”



6:32 AM · Apr 3, 2024 · 1.2M Views

View post engagements

173

3.2K

14K

462





Michael Shellenberger  @shellenberger · Apr 3



“Google, Facebook, Uber, WhatsApp and Instagram provide registration data and phone numbers without court order”

On January 27, 2021, Batista emailed his colleagues about a police investigation against him for refusing to give personal Twitter user data to the São Paulo State...

[Show more](#)

Criminal Investigation (summary and strategy)

On Wed, Jan 27, 2021 at 5:29 AM Rafael Batista <[REDACTED]@twitter.com> wrote:
[Privileged and Confidential]

Hi [REDACTED]

I am sharing details on the criminal investigation and next steps. I hope it helps for the Lit Weekly Sync next week. Thanks for taking it, much appreciated and I will keep you updated after my deposition on Friday.

Subject matter. Police Investigation for alleged crime of disobedience supposedly committed on two occasions by Rafael Batista, as a legal representative of Twiiter Brasil, for failure to comply with requests of the São Paulo State Public Prosecutor Office. According to the Public Prosecutor: **(i)** “This attitude is isolated, because all the other big technology companies such as Google, Facebook, Uber, WhatsApp and Instagram provide registration data and phone numbers without court order” and **(ii)** “Twitter claims that it does not keep registration data, but as occurs with any other platform, the registration data that individualizes each user are phone or email, being thus absurd the justification provided by Twitter”.

Context. According to the case records, **(i)** the Public Prosecutor Office issued two official letters to Twitter Brasil requesting registration data of “pqcacrolzinha_” for allegedly association with organized crimes and **(ii)** Twitter Brasil replied twice explaining that: **(a)** the company has not affirmative obligation to collect registration data - the decree regulating the Marco Civil is very clear about the definition of registration data, which covers only: “I - physical address; and **II** - personal qualifications, understood as full name, marital status and profession”. **(b)** any other data (v.g. e-mail and phone number) could only be disclosed under a Court order, pursuant to the current legislation and to legal writings and Court precedents - in addition there is no phone number associated with the account under investigation.

 58

 2.2K

 10K

 479K





Michael Shellenberger ✓
@shellenberger



CONTEXT: Brazil's Supreme Court and Superior Electoral Court

Seven justices comprise Brazil's Superior Electoral Court (TSE).

Three of those justices are also members of the Supreme Court (STF).

One of them, Alexandre de Moraes, presides over the TSE.

Here's background on the rise of Brazil's Censorship Industrial Complex by [@david_agape_](#)

[x.com/shellenberger/...](#)

6:35 AM · Apr 3, 2024 · **551.4K** Views

View post engagements

58

2.3K

11K

254





Michael Shellenberger ✓
@shellenberger



“This is the first time an actual criminal investigation was filed against an employee”

On February 18, 2021, Batista emailed his colleagues again to report back on his deposition. He said he told the prosecutor that “Twitter operates in Brazil since 2012 and this is the first time an actual criminal investigation was filed against an employee for allegedly non-compliance either with a request or a court order.”

Batista said he pointed out that “There is no affirmative obligation in the country for collection and consequently provision of 'registration data'”

Moreover, Brazil’s Internet privacy law, “Marco Civil... covers only: "I - physical address; and II - personal qualifications: understood as full name, marital status and profession" - none of them collected by Twitter.”

Criminal Investigation (summary and strategy)

On Thu, Feb 18, 2021 at 9:15 AM Rafael Batista - [redacted]@twitter.com> wrote:
[Safety Content & Law Enforcement \(SCALE-LEGAL\)](#) for awareness

Privileged and Confidential

Hi Team,

Today was my 'deposition' for alleged crime of disobedience for not attending two requests from the São Paulo State Public Prosecutor Office to deliver user private information absent court orders. Happy to provide you with a more detailed summary but here are the highlights:

- We've emphasized that protecting and defending the privacy of people who use our services is one of our core values at Twitter;
- Twitter Brazil is very cooperative in judicial proceedings and investigations with full respect to local legislations;
- Twitter operates in Brazil since 2012 and this is the first time an actual criminal investigation was filed against an employee for allegedly non-compliance either with a request or a court order;
- There is no affirmative obligation in the country for collection and consequently provision of 'registration data';
- The rule of law regulating Marco Civil is very clear about the definition of registration data, which covers only: "I - physical address; and II - personal qualifications: understood as full name, marital status and profession" - none of them collected by Twitter;
- Any other data (IP addresses, e-mail or phone number - defined as personal data) could only be disclosed after judicial review and in accordance with certain legal requirements, pursuant to the current legislation, legal writings and court precedents;

We are going to prepare and present "closing arguments" and the authority must prepare a report in the next few days, close the investigation and submit it to the Public Prosecutor Office for appreciation. A decision will be issued soon either closing the investigation permanently or then submitting it to a criminal court.

We've also filed a writ, which is still under advisement pending a decision on the injunction to stay the original request.

We will keep you posted!

6:37 AM · Apr 3, 2024 · **349.6K** Views

View post engagements

33

1.8K

9.2K

172



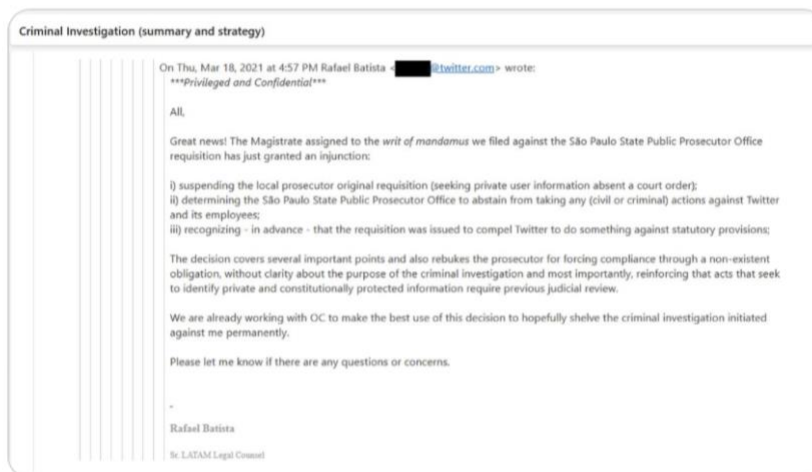


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@shellenberger



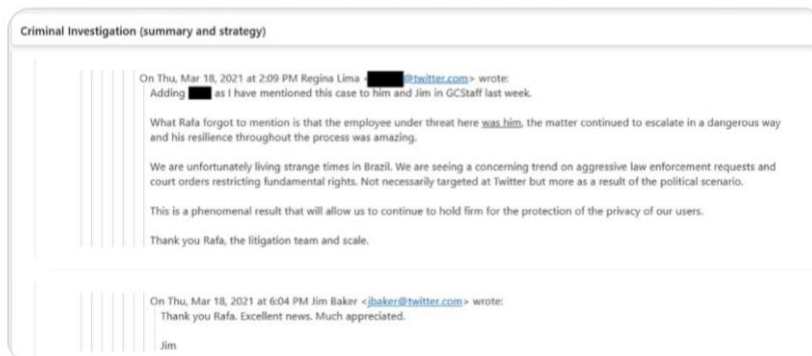
“We are unfortunately living strange times in Brazil.”

One month later, on March 18, Batista emailed his colleagues again, this time with, “Great news!” A judge rejected the prosecutor’s request for “private user information absent a court order” and also “rebukes the prosecutor for forcing compliance through a non-existent obligation, without clarity about the purpose of the criminal investigation and most importantly, reinforcing that acts that seek to identify private and constitutionally protected information require previous judicial review.”



A colleague of Batista, Regina Lima, replied to his email saying, “What Rafa forgot to mention is that the employee under threat here was him, the matter continued to escalate in a dangerous way and his resilience throughout the process was amazing.”

She added, “We are unfortunately living strange times in Brazil. We are seeing a concerning trend on aggressive law enforcement requests and court orders restricting fundamental rights.”



6:39 AM · Apr 3, 2024 · 301.3K Views

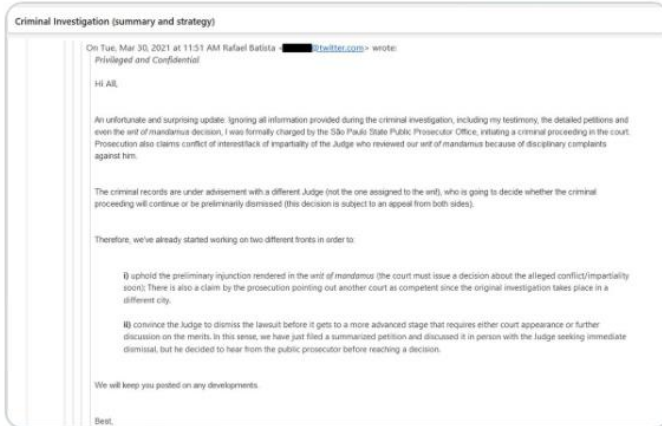


Michael Shellenberger
@shellenberger



“An unfortunate and surprising update”

Then, on March 30, Batista emailed his colleagues again with “An unfortunate and surprising update”: the São Paulo State Public Prosecutor Office was back on the attack, “initiating a criminal proceeding” and claiming a “conflict of interest/lack of impartiality of the Judge.”



One week later, on April 5, 2021, Batista emailed his colleagues to say, “I am happy to share that we had great and relieving news.... The criminal court preliminary dismissed the charges against me mainly because it was not possible to identify any element of crime in my conduct.”

The ruling was because Twitter does not collect “registration data” of its users and the Marco Civil “clearly states that access to protected information such email - personal data - could only be done through specific judicial review.”



6:40 AM · Apr 3, 2024 · 259.1K Views

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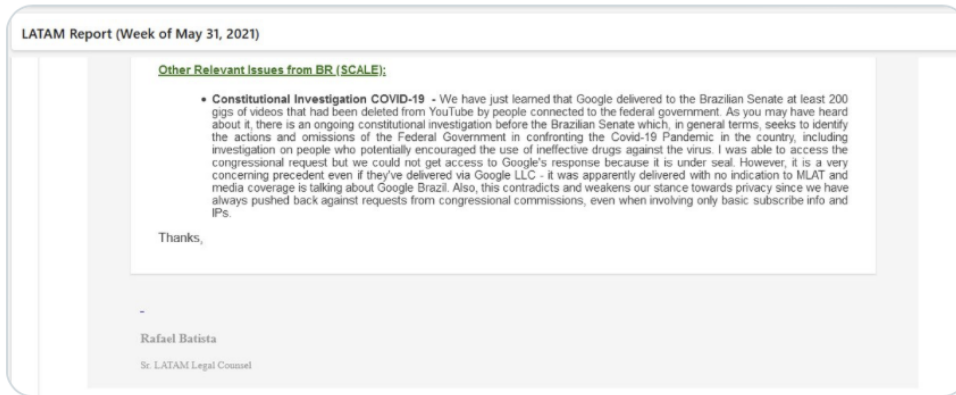


“Google Brazil... weakens our stance on privacy since we have always pushed back...”

On May 31, 2021, Batista wrote to his colleagues to lament that “Google delivered to the Brazilian Senate at least 200 gigs of videos that had been deleted from YouTube by people connected to the federal government” related to a Brazilian Senate investigation of the government’s response to COVID-19.

Batista called Google’s actions “a very concerning precedent... that contradicts and weakens our stance towards privacy since we have always pushed back against requests from congressional commissions, even when involving only basic subscribe info and IPs....”

In the same email, Batista noted that a member of Congress named Gleisi Hoffmann, who presides over Lula da Silva’s Workers’ Party, and who had sued Twitter for “attacks against her honor,” seeking “private data and removal of some Tweets,” had finally dropped her lawsuit.



6:42 AM · Apr 3, 2024 · **235.3K** Views

View post engagements

33

1.5K

7.8K

156



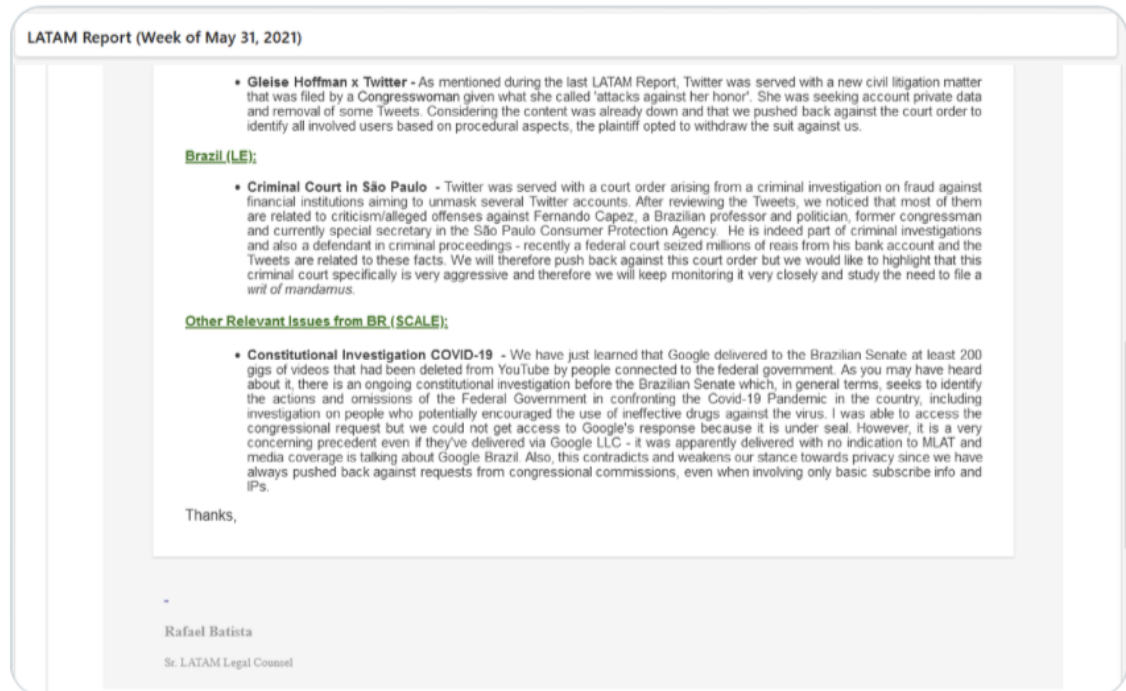


Michael Shellenberger ✓
@shellenberger



"Unmask several Twitter accounts..."

In the same email, Batista noted that a court in São Paulo had demanded that Twitter “unmask several Twitter accounts... related to criticism/alleged offenses against Fernando Capez, a Brazilian professor and politician, former congressman and currently special secretary in the São Paulo Consumer Protection Agency” who was “a defendant in criminal proceedings - recently a federal court seized millions of reais from his bank account and the Tweets are related to these facts. We will therefore push back against this court order...”



6:43 AM · Apr 3, 2024 · **219.5K** Views

View post engagements

22

1.4K

7.5K

151





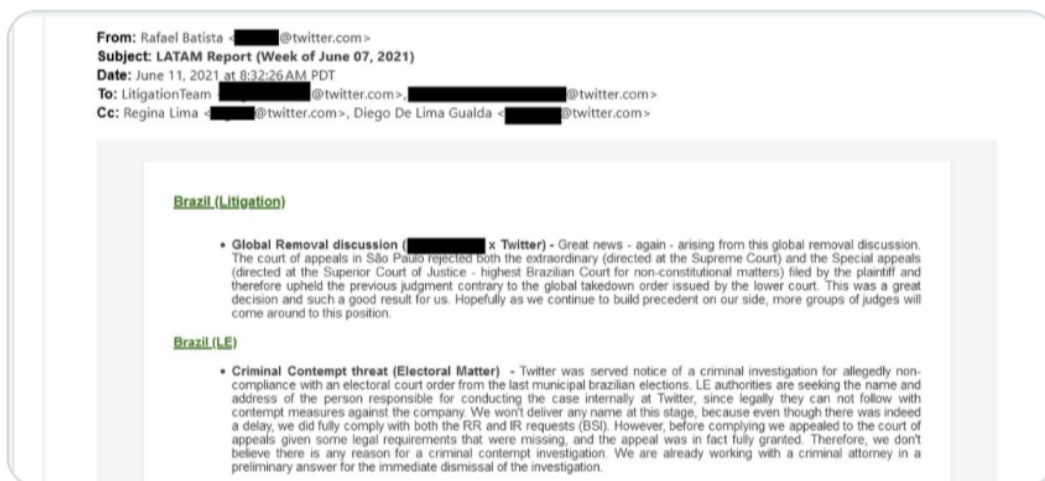
Michael Shellenberger ✓
@shellenberger



“We won't deliver any name at this stage..”

On June 11, 2021, Batista emailed his colleagues to say that the government had opened a criminal investigation against Twitter and that Brazilian “authorities are seeking the name and address of the person responsible for conducting the case internally at Twitter..”

Batista reassured his colleagues: “We won't deliver any name at this stage..”



6:44 AM · Apr 3, 2024 · **197.8K** Views

View post engagements

23

1.3K

7.1K

129





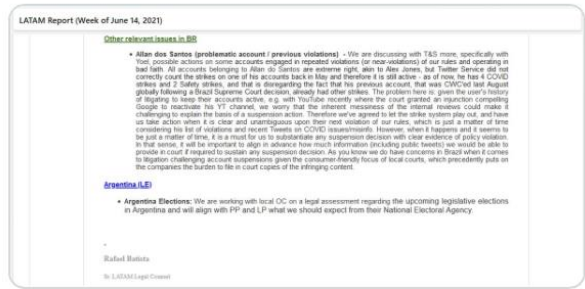
“Even though the complaint is legitimate, the requests are unreasonable”

Batista emailed his colleagues on June 14, 2021, to say that “Twitter was served last year with a 'complaint notice', which now was turned into a civil investigation against us.”

Batista explained that “The complaint was brought by Djamilia Ribeiro, a Brazilian philosopher and journalist after racist offenses/hate crimes directed to her (no specific content has been provided though). Among several requests, she is seeking: i) monitoring measures of all trending topics to avoid offensive content especially against black woman; ii) disclosure of user information without court orders in racially motivated crimes; iii) message triggers in a regular basis informing people about ethical and legal parameters of responsibility for what is published on social networks; iv) standard messages/texts about such ethical and legal parameters to new users; v) payment of collective moral damages. “



Another case related to an “extreme right” blogger “akin to Alex Jones” named Allan dos Santos. Twitter wanted to suspend the user, explained Batista, but “the user’s history of litigating to keep their accounts active... we worry that the inherent messiness of the internal reviews [at Twitter] could make it challenging to explain the basis of a suspension action. Therefore we’ve agreed to let the strike system play out, and have us take action when it is clear and unambiguous upon their next violation of our rules, which is just a matter of time considering his list of violations and recent Tweets on COVID issues/misinfo...”



6:45 AM · Apr 3, 2024 · 219.8K Views

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Information “related to @CarlosBolsonaro (president's son)”

On July 2, 2021, Batista reported on an information request “related to @CarlosBolsonaro (president's son) - We received an official letter from the federal police supported by a court order seeking registration data from @CarlosBolsonaro. Therefore, we are working on a reply where we will push back as follow (i) Twitter does not collect registration data - which under BR definition refers to personal data such as professional qualification, address and full name; (ii) it is not possible to provide data relating to a specific tweet - no IP available; (iii) even if it were possible, the legal retention period of logs in BR are 6 months and it has already been exceeded - Tweets are from 2018; and (iv) the profile @CarlosBolsonaro is a verified account.”

LATAM Report (Week of June 28, 2021)

- IR related to @CarlosBolsonaro (president's son) - We received an official letter from the federal police supported by a court order seeking registration data from @CarlosBolsonaro. Therefore, we are working on a reply where we will push back as follow (i) Twitter does not collect registration data - which under BR definition refers to personal data such as professional qualification, address and full name; (ii) it is not possible to provide data relating to a specific tweet - no IP available, (iii) even if it were possible, the legal retention period of logs in BR are 6 months and it has already been exceeded - Tweets are from 2018; and (iv) the profile @CarlosBolsonaro is a verified account.

Brazil (Litigation)

- [REDACTED] x Twitter (foreign IPs) - We have reached a final judgement where Twitter was demanded to provide IP logs from a specific account given serious threats/offenses against the plaintiff. All Tweets were suspended for TOS violation but LP was unable to find any identifiers that pointed to this account being located in Brazil. We therefore appealed against the lower court's decision based on procedural and jurisdiction aspects. The plaintiff has initiated a provisional enforcement seeking accrued fines - the amount is not high - but the judge can still raise the amount if we don't deliver the data - to avoid it, we are working to speed up the judgment before the court of appeals - we will present oral arguments when it comes the time.

Sincerely,

-

Rafael Batista
Sr. LATAM Legal Counsel

6:46 AM · Apr 3, 2024 · 183.2K Views

View post engagements

18

1.2K

6.7K

130





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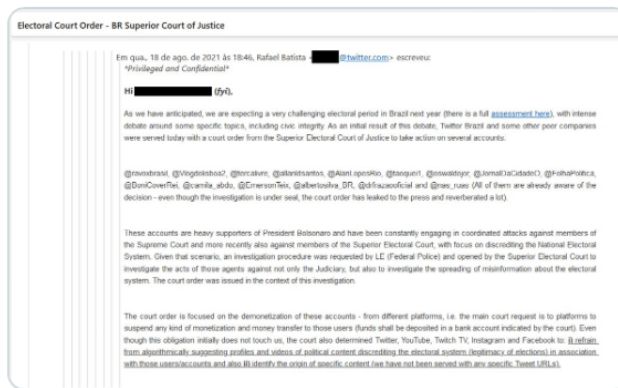


“There is a strong political component with this investigation”

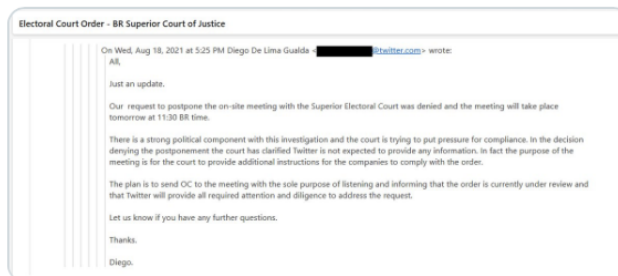
On August 18, 2021, Batista emailed his colleagues to say that the Superior Electoral Court has demanded that the accounts of “heavy supporters of President Bolsonaro” who “have been constantly engaging in coordinated attacks against members of the Supreme Court” and “Superior Electoral Court... The court order is focused on the demonetization of these accounts - from different platforms..”

These demands appeared to be politically motivated to target pro-Bolsonaro sentiment.

“Even though this obligation initially does not touch us, the court also determined Twitter, YouTube, Twitch TV, Instagram and Facebook to: i) refrain from algorithmically suggesting profiles and videos of political content discrediting the electoral system (legitimacy of elections) in association with those users/accounts and also ii) identify the origin of specific content (we have not been served with any specific Tweet URLs).”



Twitter’s Head of Legal Diego de Lima Gualda, a colleague of Batista’s, responded saying, “There is a strong political component with this investigation and the court is trying to put pressure for compliance.”



6:48 AM · Apr 3, 2024 · 201K Views

View post engagements

25 1.3K 6.9K 142



Michael Shellenberger ✓
@shellenberger



The “court wants to identify account handles... and also somehow reduce engagement”

Two days later, On August 20, 2021, Batista reported some alarming news about new demands from the Superior Electoral Court (TSE).

Batista reported that “it seems like the court wants to identify account handles that would have specifically added certain types of trending hashtags and also somehow reduce engagement of specific content on the platform (ie. refrain specific accounts from being suggested to others.”

This represented a significant escalation in the court’s anti-democratic efforts.

Batista noted that “President Bolsonaro himself and several of his supporters are being investigated in this procedure (15 Twitter account handles have been provided so far).”



6:51 AM · Apr 3, 2024 · 168.7K Views

View post engagements

20

1.2K

6.5K

121





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@shellenberger



“We are going to push back”

Brazil’s High Electoral Court (TSE), which de Moraes controls, also demanded that Twitter reveal the identities of users. On October 25, 2021, Twitter’s senior legal counsel, Rafael Batista, emailed his colleagues to let them know that the TSE was “compelling us to track down and unmask users who used specific hashtags.”

The TSE’s request was illegal, noted Batista, and so Twitter would resist the court’s order. Batista said that Twitter was “going to push back” because there was “no evidence of illegality in the use of hashtags” and because the TSE was demanding “mass and indiscriminate disclosure of private user data, which characterizes a violation of privacy and other constitutional rights.”

LATAM Report (Week of October 25, 2021)

- **Superior Electoral Court Investigation** - Twitter has been served with an additional court order compelling us to trackdown and unmask users who used specific hashtags. However, as we had already stated during the court hearings we attended with LE and the Court Justice, we are going to push back against this court order mainly because of the following: (i) decision does not minimally cover Marco Civil requirements (ii) no evidence of illegality in the use of hashtags, which may characterize monitoring and fishing expedition (iii) mass and indiscriminate disclosure of private user data, which characterizes a violation of privacy and other constitutional rights, as recognized by the Superior Court of Justice.

Brazil (Litigation)

- **Gerson Florindo de Souza (Major of Ubatuba, State of São Paulo) x Twitter Brazil** - Great news arising from this litigation matter filed by a local politician against Twitter and Alexandre Frola, a Brazilian Congressman. The court has fully granted our arguments and dismissed the claim against Twitter. In addition, the court stated that *“Twitter arguments is accurate as there is no reason for these records to proceed under seal, specially when we are so close to a new electoral year, when the issue of misinformation issue will be widely present and should be combated by all, voters, authorities, candidates, where transparency should always prevail”*.
- **[REDACTED] x Twitter Brazil** - This week the plaintiff filed in court seeking the imposition of huge fines against us for bad faith litigation and the issuance of an official letter to the Public Prosecutor’s Office to investigate potential contempt by Twitter given our failure to reinstate her accounts. The accounts were suspended by Platform Manipulation, SPAM policy and behavior of multiple accounts violation (including for violating the illegal or certain regulated goods or services policy - sexual services). The court was reasonable and refused criminal penalties at this stage, but applied a 1.000 BRL daily fine until we reinstated the accounts. We are working with LP on an affidavit and will appeal this decision. We will also schedule a court hearing, where we strongly recommend presenting a copy of the infringing Tweets that LP was able to retrieve.

Brazil (Additional information - Electoral)

- The Superior Electoral Court (TSE) decided on Thursday (28) to remove from office the congressman Fernando Francischini before the normal expiration of his constitutional terms for spreading false information about the electronic ballot box and the voting system during the 2018 elections. TSE considered that the conduct of spreading disinformation can represent misuse of the media and abuse of political power, and this was the first decision of its kind, which sets a precedent for the next electoral period.

-

Rafael Batista

6:52 AM · Apr 3, 2024 · 186.6K Views

View post engagements

22

1.3K

6.6K

140





Michael Shellenberger ✓
@shellenberger



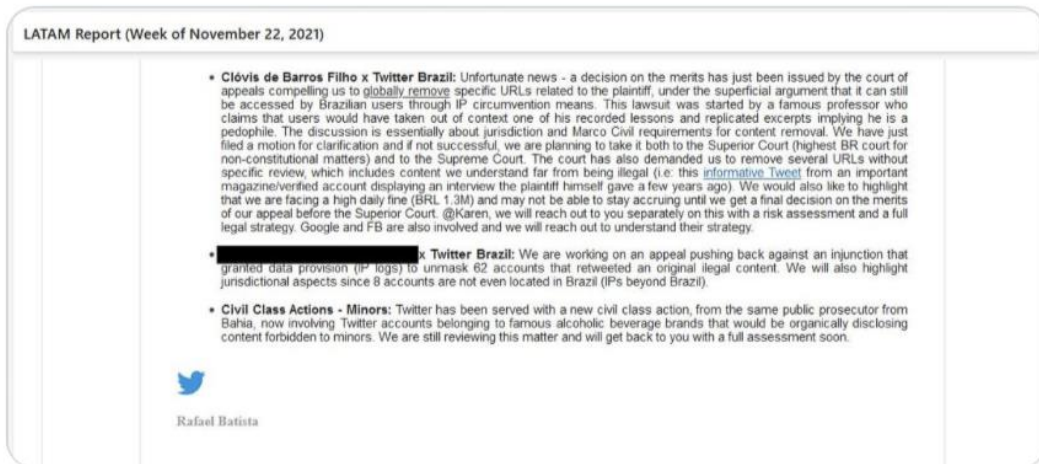
On November 26, 2021, the courts of Brazil issued sweeping censorship demands.

A court of appeals orders Twitter to “globally remove,” not just in Brazil, “specific URLs related to the plaintiff.”

The court claimed that Brazilians could find other ways to see the content, such as through a VPN, which masks a user’s location.

The court also sought to know the identities of users who were not in Brazil.

In another case, Twitter was “pushing back against an injunction that granted data provision (IP logs) to unmask 62 accounts that retweeted an original illegal content...” Of the 62 accounts, “8 accounts are not even located in Brazil...”



6:54 AM · Apr 3, 2024 · 167.1K Views

View post engagements

15

1.2K

6.5K

128





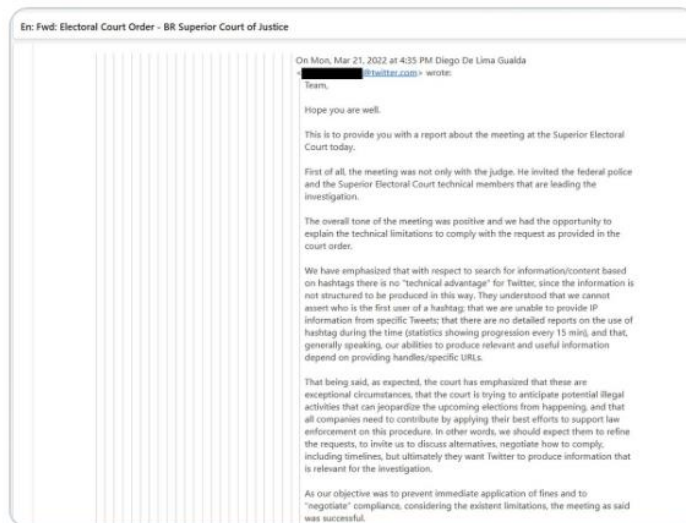
Michael Shellenberger ✓
@shellenberger



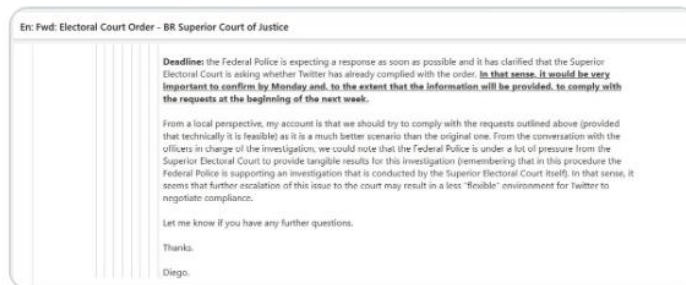
The Police are “under a lot of pressure from the Superior Electoral Court”

In March 2022, Twitter’s Head of Legal for Latin America said that he met with “the judge,” referring to de Moraes. He said he was surprised to find there the Federal Police (Brazil’s FBI) and technical court staff working on the hashtag investigation.

TSE pushed for private user data under the justification of “exceptional circumstances” and wanted to use Twitter as a crime recognition machine to “anticipate potential illegal activities.”



Two months later, Gualda said that the Federal Police “is under a lot of pressure from the Superior Electoral Court to provide tangible results for this investigation (remembering that in this procedure the Federal Police is supporting an investigation that is conducted by the Superior Electoral Court itself).”



6:56 AM · Apr 3, 2024 · 156.3K Views

View post engagements

24

1.2K

6.2K

113





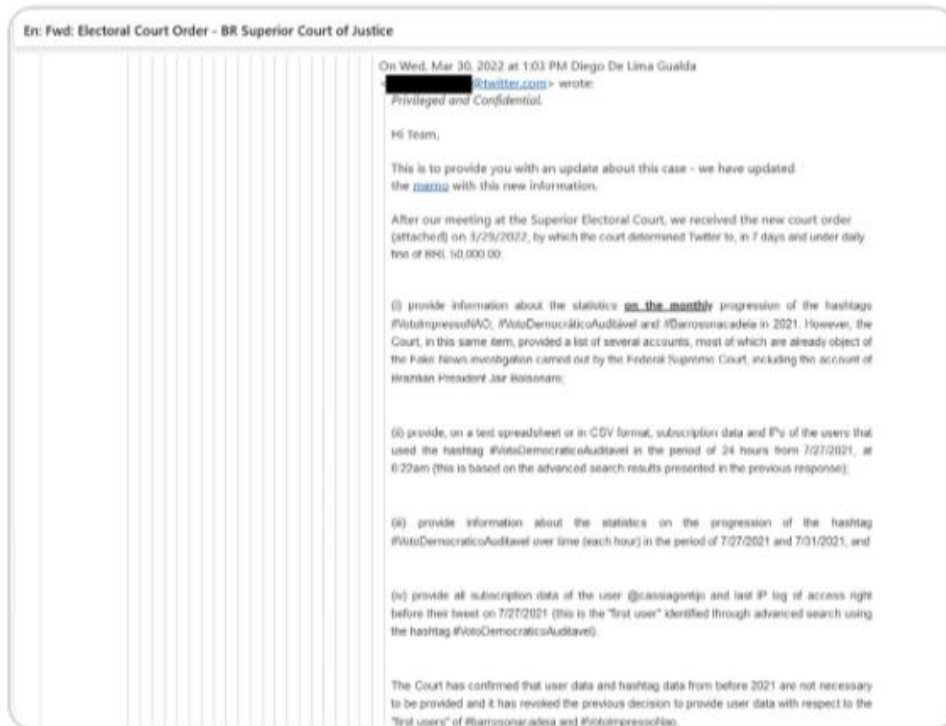
Michael Shellenberger ✓
@shellenberger



“There is no reason for this lawsuit to be under court secrecy.”

Leading up to the 2022 presidential election in Brazil, TSE made censorship demands to prevent citizens from commenting on election policies and procedures.

On March 30, 2022, the day after de Moraes took office as president of the TSE, the TSE mandated Twitter to, within a week and under the threat of a daily fine of 50,000 BRL (US\$ 10,000), supply data on the monthly trend statistics for the hashtags [#VotoImpressoNAO](#) (“PrinteVoteNo”) and [#VotoDemocraticoAuditavel](#) (“DemocraticAuditavelVote”).



Additionally, the TSE demanded subscription information and IP addresses of users who used the hashtag [#VotoDemocraticoAuditavel](#) in 2021. Brazilians wanted to debate printouts to enhance their unique voting machines, but the TSE wasn't happy about their cause and pressured Twitter to give up their personal data.

In an e-mail sent in November 2022, a Twitter lawyer detailed actions taken by Moraes and TSE during the presidential race. The judge wouldn't explain why he ordered Twitter to remove Evangelical pastor André Valadão's (@andrevaladao) entire account under a heavy fine.

Twitter "filed an appeal against the order", pointing out they didn't know why they were being ordered to do so, but complying. TSE would threaten Twitter to comply "in 1 hour" under an hourly fine of BRL 100,000 [US\$ 20,000] to censor an inactive account for disinformation committed elsewhere.



TSE also targeted elected House members Carla Zambelli (@Zambelli2210) & Marcel van Hattem (@marcelvanhattem) for alleged misinformation, threatening a fine of BRL 150,000 (US\$ 30,000) if Twitter did not comply within 1 hour. Twitter pushed back. Among other objections, it argued that "there is no reason for this lawsuit to be under court secrecy."



6:58 AM · Apr 3, 2024 · 149.6K Views

View post engagements

21 1.2K 6.1K 125



Michael Shellenberger @shellenberger



“Unusual requests compelling us to provide... user data based on hashtag mentions”

On August 17, 2022, a member of Twitter’s legal team emailed the groups saying that Twitter “received a new court order” relating to “an inquiry with the aim to identify individuals/groups behind a potential coordination of efforts to attack the institutions and the electoral system across different platforms. President Bolsonaro himself is investigated in this process..”

She added, “We have received several unusual requests coming from this inquiry, the most recent relevant one compelling us to provide an undetermined amount of user data based on hashtag mentions. The hashtags concern a mobilization around the elections - roughly translated as [#PrintedVoteNO](#); [#DemocraticAuditableVote](#) and [#BarrosoInJail](#) - Barroso is the former TSE President....According to the report we currently have, there were 182 tweets in the period of interest... We need the content, user handles and respective BSI data asap..”

En: Fwd: Electoral Court Order - BR Superior Court of Justice

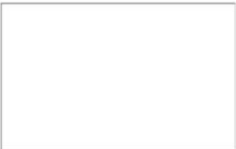
We received a new court order in the scope of this investigation. **Short recap:** this is an inquiry with the aim to identify individuals/groups behind a potential coordination of efforts to attack the institutions and the electoral system across different platforms. President Bolsonaro himself is investigated in this process, there is great public attention to this case as well as a legitimate concern with the integrity of the democratic system. We have received several unusual requests coming from this inquiry, the most recent relevant one compelling us to provide an undetermined amount of user data based on hashtag mentions. The hashtags concern a mobilization around the elections - roughly translated as [#PrintedVoteNO](#), [#DemocraticAuditableVote](#) and [#BarrosoInJail](#) - Barroso is the former TSE President. We were able to narrow down the request, with the Federal Police specifying what they wanted after a meeting.

Now, the Superior Electoral Court ordered Twitter to disclose, in 5 days, data related to users that posted tweets with the [#BarrosoNaCadeia](#), between 00h00 and 15h59 (BRT) on August 3, 2021; [#VotoDemocraticoAuditavel](#), between 14h and 19h59 on August 3, 2021; and [#VotoDemocraticoAuditavel](#), between 22h00 and 22h59 on August 10, 2021. The data requested is: all subscription data, the last IP log of access right before the user posted the tweet(s) with such hashtag(s) - which is not available, and the specific tweet with applicable hashtag.

In the past, Site Integrity provided us with the [hashtag report](#), the [initial pull of data and content](#) and the table with the [results](#) of such pull, which based our conversation with the police authority.

We already have the tweets posted with the hashtags [#VotoDemocraticoAuditavel](#) on such dates and will request LP to produce the data accordingly, but considering the amount of tweets posted with the hashtag [#BarrosoNaCadeia](#) on August 3, 2021 (40,600, as provided in tab I-B of the [results](#) document), Site Integrity did not provide us with copies of such tweets at the time.

However, considering this new court order, we need this content in order to comply with the disclosure order and check which users are subject of the data disclosure determination. According to the report we currently have, there were **182 tweets** in the period of interest.



We need the content, user handles and respective BSI data asap, but please let us know how much time you estimate the team would be able to complete this pull, and also if there are any concerns or difficulties regarding this request. Our formal deadline to respond is 5 days (next Monday), but since we have a good relationship with them, we could ask for an extension.

We would just like to highlight that this case is high priority and sensitive, as you know, and while we understand that it may take a toll on the team, we also know how important it is to comply or, at least, have grounds to challenge the determination. Here is the [background document](#) on this entire investigation - updated with this new development.

6:59 AM · Apr 3, 2024 · 167.3K Views

View post engagements

26

1.1K

6K

115



Endnotes

¹ <https://www.gazetadopovo.com.br/republica/exclusivo-agu-de-lula-estuda-pedir-suspensao-ou-dissolucao-do-x-no-brasil/>

² <https://x.com/GlobalAffairs/status/1776729732970594483>

³ <https://x.com/elonmusk/status/1776739518240170254>

⁴ <https://x.com/elonmusk/status/1776739518240170254>

⁵ <https://www1.folha.uol.com.br/internacional/en/business/2024/04/responsible-for-x-in-brazil-leaves-position-amid-dispute-between-musk-and-justice.shtml>

⁶ <https://environmentalprogress.org/big-news/2024/4/20/reports-by-brazils-federal-police-alleging-social-media-conspiracy>

⁷

<https://static1.squarespace.com/static/56a45d683b0be33df885def6/t/662861141db8ed5b149cd248/1713922325082/INQ+4874+-+Noticia+de+fato.pdf>

⁸ <https://www.tjdft.jus.br/consultas/jurisprudencia/jurisprudencia-em-temas/direito-constitucional/a-publicidade-dos-atos-processuais-e-a-garantia-a-tramitacao-em-segredo-de-justica>

⁹ https://www.amazon.com/Without-Fear-Being-Happy-Workers/dp/0860913066/ref=sr_1_1?crd=1BODROPTR1T3Y&dib=eyJ2ljoMSJ9.PEbiCH_8LjvQ5dmBciElqLcxkvsEcOD9Pv_cFZDDxD1CdIUclpluTDNKFwPubmu1sC81sndMz8gogbRIUYcN6XW5dRKYNztsi9NDEurpcjOI82rx9r0xYOv-

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¹⁰ https://revistaoeste-com.translate.google.com/politica/procuradoria-da-democracia-de-lula-quer-ampliar-sua-atuacao/?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en

¹¹ https://www.planalto.gov.br/ccivil_03/_Ato2023-2026/2023/Decreto/D11362.htm

¹² <https://environmentalprogress.org/big-news/2024/1/21/brazils-authoritarian-rise>

¹³ <https://environmentalprogress.org/big-news/2024/1/21/brazils-authoritarian-rise>

¹⁴ <https://www.gov.br/planalto/pt-br/acomprae-o-planalto/noticias/2023/02/carta-do-president-da-republica-a-directora-geral-da-unesco>

¹⁵ <https://x.com/LulaOficial/status/1744443549947462040>

¹⁶ <https://agenciabrasil.ebc.com.br/politica/noticia/2023-03/dino-governo-prepara-pl-para-regulamentacao-das-redes-sociais>

¹⁷ <https://x.com/jorgemessiasagu/status/1776760509842210957>

¹⁸ Lula, April 10, 2024. <https://x.com/LulaOficial/status/1778098834268103131>

¹⁹ Michael Shellenberger, “The Censorship Industrial Complex, Part 2,” House Judiciary Committee, November 30, 2023

https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/shellenberger_testimony.pdf

²⁰ <https://www.npr.org/2017/08/20/544861933/how-one-man-convinced-200-ku-klux-klan-members-to-give-up-their-ropes>

²¹ <https://x.com/shellenberger/status/1777793959571411365>

²² <https://x.com/shellenberger/status/1777793959571411365>

²³ <https://www.metropoles.com/blog-do-noblat/governo-muda-discurso-e-fala-sobre-internet-livre-e-responsavel>

²⁴ [O recuo tático de Alexandre de Moraes no julgamento da cassação de senador bolsonarista](#)