Written by Submitted on August 3, 2023, at 6:00 AM EST

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INTRODUCTION

- 1. The Federal Deposit Insurance Corporation (**FDIC**, **Corporation**) campaigned to violate the United States Constitution, specifically the First Amendment. I believe a senior executive of the agency, specifically Amy C. Thompson (**Thompson**), Director of the Office of Communications (**OCOM**), is spearheading this campaign.
- 2. Being a Federal Government Employee, Thompson swore an oath to upload the Constitution, yet knowing, intentionally, and willfully does precisely the opposite. She does this to advance her personal interests while fully knowing she is exposing the Corporation to significant legal, financial, and reputational risks.
- 3. This administrative complaint is submitted under the Whistleblower Protection Act and Whistleblower Protection Enhancement Act (5 U.S.C. §§2302(b)(8)-(9)) and not a waiver of any rights or privileges, all of which are expressly reserved.

COMPLAINT

- 4. Individuals have a First Amendment right to be free from viewpoint discrimination on an interactive government-created forum. This right was clearly established at the time of the alleged violations.
- 5. Director Amy C. Thompson, the FDIC official responsible for overseeing these communications platforms, directs or directly hides comments critical of her actions while in Federal Service. These actions likely violate 5 C.F.R. § 2635.702 (2023). She is suppressing protected first amendment speech to aid her personal reputation at the cost of exposing the FDIC to significant legal liability, increased congressional oversight, and, quite frankly, substantial embarrassment. I have previously told Thompson on multiple occasions not to suppress commentary on public social media platforms because it is almost certainly illegal, and even her

now-deleted personal account (@amycthomo) purported to represent the FDIC, therefore, may have also had the same protections.

- 6. In every suppressed comment, Thompson's wrongdoings were directly mentioned. She uses her public position as Director of the OCOM, the Office that maintains, controls, and is otherwise charged with managing the agency's social media accounts to chill content critical to her activities as a senior executive with the Corporation. No other FDIC employee would have the privilege to delete content critical of them, and other critical comments have remained on Twitter if they were not critical of Thompson. This attack on free speech to advance her broken ego easily meets the standards set in 5 C.F.R. § 2635.702 (2023).
- 7. Some content observed Tweets actively hidden by the FDIC and Thompson are available at the URLs below (exhibited herewith):
 - (a) < https://twitter.com/FDICgov/status/1684927397043265537/hidden>
 - (b) < https://twitter.com/FDICgov/status/1684549304369782785/hidden>
 - (c) < https://twitter.com/FDICgov/status/1685062401341743104/hidden>
 - (d) < https://twitter.com/FDICgov/status/1686397657781006337/hidden>
 - (e) < https://twitter.com/FDICgov/status/1686754639742439425/hidden>
- 8. All the comments hidden by FDIC and Thompson involve allegations of misconduct by Thompson.
- 9. To reiterate and put the claims at issue into a more specified context, the FDIC and Thompson are violating well-established Constitutional rights, including First Amendment rights. They are engaging in viewpoint discrimination by hiding social media posts from public viewership that are critical of the FDIC (mainly critical of Thompson), making allegations of wrongdoings by

the FDIC or that the FDIC disagrees with. The FDIC and Thompson are shackling, fettering, and chilling protected First Amendment speech causing irreparable harm.

- 10. This suppression of free speech is happening across the FDIC's official government accounts, including the Twitter (X Corp) account @FDICgov https://twitter.com/FDICgov. These accounts are clearly government actors and not private speakers. In fact, the accounts are verified as official accounts of the United States Government. Once the government opens an account for conversation, it cannot selectively choose and hide content that exposes significant allegations of wrongdoing or viewpoints they disagree with.
- 11. Specifically, multiple first-amendment-protected microblogging posts (comments) on the Twitter platform have been hidden by the FDIC and Thompson, thereby removing the ability for citizens to petition, assemble, and criticize FDIC and Thompson effectively. More alarming, the hidden comments are alleging the agency employees violated ethical standards of conduct expected by Federal employees. These include alleged violations of 18 U.S.C. 208(a), 5 C.F.R. § 2635.402 (2023), 5 C.F.R. § 3201.103 (2023), and 5 C.F.R. § 2635.101 (2023). The FDIC and Thompson have allowed some critical posts made by other citizens to remain, but only ones unsupported by factual allegations or not involving Thompson.
- 12. Allowing a government actor to ban critics from speaking in public forums silences and chills dissent, warps the public conversation, and skews public perception. Enabling government actors to suppress critics from petitioning them for redress or punishing them for speaking out or holding critical views. *Knight First Amendment Inst. at Columbia Univ. v. Trump*, No. 18-1691-cv (2d Cir. July 9, 2019); *Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019).
- I point you to Matal v. Tam, 137 S. Ct. 1744 (2017) and Reed v. Town of Gilbert,
 U.S. 155 (2015). In both cases, the Court held that such regulation is subject to strict scrutiny,

which means that the government must show that the regulation is narrowly tailored to serve a compelling government interest. These cases show that government officials cannot justify deleting or suppressing speech unless they can meet this high standard. There is no compelling government interest in suppressing the speech of parties who provide credible proof of wrongdoing at the Corporation, and the FDIC and Thompson's suppression would not survive this strict scrutiny. In fact, the only interest advanced by this suppression is that of Amy C. Thompson, who is using her position in public office for private gain (her personal reputation).

14. I further direct you to *Evans v. Herman*, Civil Action 4:22-CV-2508 (S.D. Tex. Apr. 24, 2023). *Evans* is particularly relevant, as it specifically addresses the deletion of comments and blocking of users from a government-created social media page. The court held that such actions violated the First Amendment because they constituted viewpoint discrimination. This case suggests that government officials may not be able to justify deleting or suppressing speech if they are doing so based on the content or viewpoint of the speech.

FURTHER LEGAL SUPPORT

15. FDIC has numerous social media accounts that operate as designated or limited public forums. Citizens have a First Amendment right to be free from viewpoint discrimination on a government-created forum. Government discrimination against speech based on the viewpoint expressed has long been held to violate the Constitution. *Rosenberger v. Rector & Visitors of Univ.* of *Va.*, 515 U.S. 819, 828 (1995) ("It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys."); *Robinson v. Hunt Cty.*, 921 F.3d 440, 447 (5th Cir. 2019) ("It is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers." (*Quoting Street v. New York*, 394 U.S. 576, 592 (1969))).

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16. Where the First Amendment applies, it protects claimants from viewpoint discrimination by the State, regardless of whether the discrimination occurs in a traditional public forum, a designated or limited public forum, or a nonpublic forum. Chiu v. Plano Indep. Sch. Dist., 260 F.3d 330, 350 (5th Cir. 2001) ("[V]iewpoint discrimination is a clearly established violation of the First Amendment in any forum." (Emphasis added)). More specifically, the First Amendment protects users from viewpoint discrimination on government-created social media accounts. Kallinen v. Newman, No. 4:22-CV-652, 2022 WL 2834756, at *7 (S.D. Tex. July 20, 2022) (citing Packingham v. North Carolina, 582 U.S. 98 (2017) and stating "[t]he First Amendment protects against viewpoint discrimination by the government on a public forum, including one conducted through social media"); Davison v. Randall, 912 F.3d 666, 688 (4th Cir. 2019) (holding that "the interactive component of a public official's Facebook page was a public forum subject to First Amendment protection from viewpoint discrimination"); Knight First Amendment Inst. at Columbia Univ. v. Trump, 928 F.3d 226 (2d Cir. 2019) ("Once it is established that the President is a government actor with respect to his use of the [social media] Account, viewpoint discrimination violates the First Amendment."), vacated as moot sub nom. Biden v. Knight First Amend. Inst. at Columbia Univ., 141 S.Ct. 1220 (2021); see also Garnier v. O'Connor-Ratcliff, 41 F.4th 1158, 1177, 1184 (9th Cir. 2022) (holding that "state actors . . . violated the First Amendment when they blocked users from their social media pages"); Swanson v. Griffin, No. 21-2034, 2022 WL 570079, at *3 (10th Cir. Feb. 25, 2022) ("[T]he First Amendment protects against viewpoint discrimination by the government in government-created public forums on social media." (citing *Packingham*, 582 U.S. at 104)).

17. "Viewpoint discrimination" occurs when the government "has singled out a subset of messages for disfavor based on the views expressed." *Matal v. Tam*, 137 S. Ct. 1744 (2017)

(Kennedy, J., concurring in part) (citations omitted). This form of discrimination is an "egregious form of content discrimination," which is 'presumptively unconstitutional." Id. (quoting *Rosenberger*, 515 U.S. at 248); *Iancu v. Brunetti*, 139 S.Ct. 2294, 2299 (2019) ("The government may not discriminate against speech based on the ideas or opinions it conveys."); *Cornelius*, 473 U.S. at 806 ("[T]he government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject.").

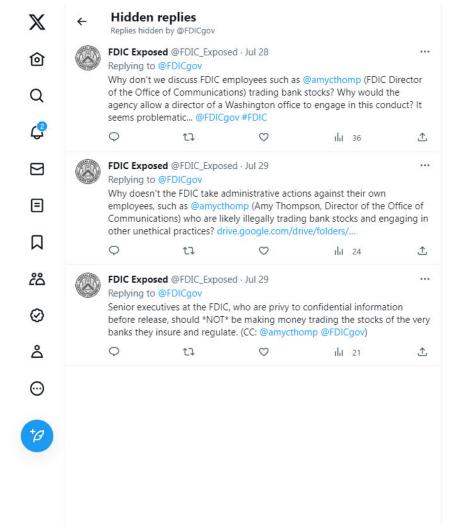
- 18. The Second and Fourth Circuit Courts of Appeals both expressly held in 2019 that deleting comments or blocking users' access to interactive social media sites based on the viewpoint expressed by those users violated their First Amendment rights. *Knight*, 928 F.3d at 236 (stating in 2019 that "[o]nce it is established that the President is a government actor with respect to his use of the [social media] Account, viewpoint discrimination violates the First Amendment" (citing *Manhattan Cmty. Access Corp. v. Halleck*, 139 S.Ct. 1921 (2019))); *Davison*, 912 F.3d at 688 (holding that "the interactive component" of a public official's Facebook page was a forum and therefore subject to First Amendment protection from viewpoint discrimination). The Fifth Circuit has also held a First Amendment violation when a citizen alleges that a government official operating a government-created interactive social media account deletes comments or blocks access to the page based on the viewpoint expressed. *Robinson*, 921 F.3d at 449-50.
- 19. In short, persuasive Second, Fourth, and Fifth Circuit precedents clearly establish that a state actor who removes comments or blocks users from a government-created interactive social media page based on the viewpoint expressed by those users violates the First Amendment.

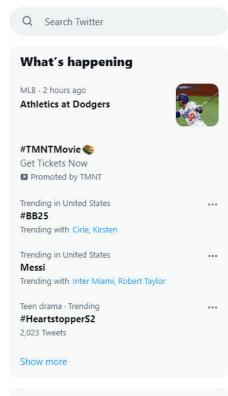
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3	foregoing is true and correct. Executed on the 3rd day of August 2023
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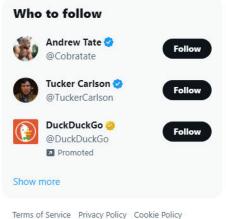


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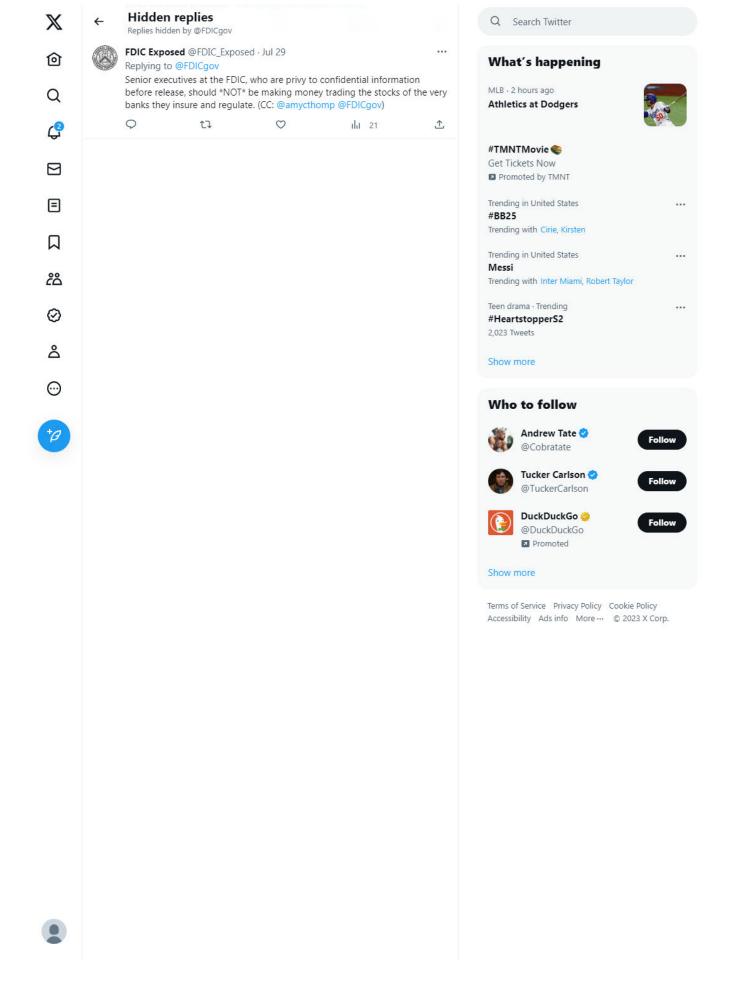
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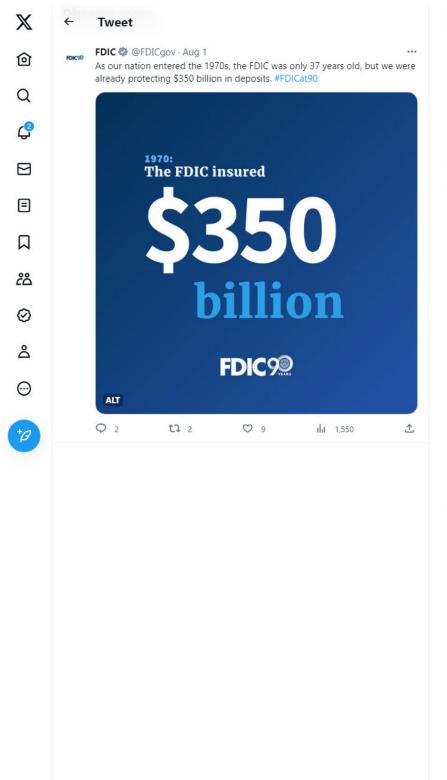
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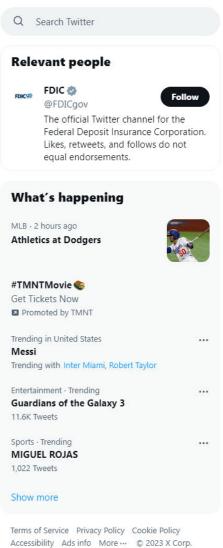
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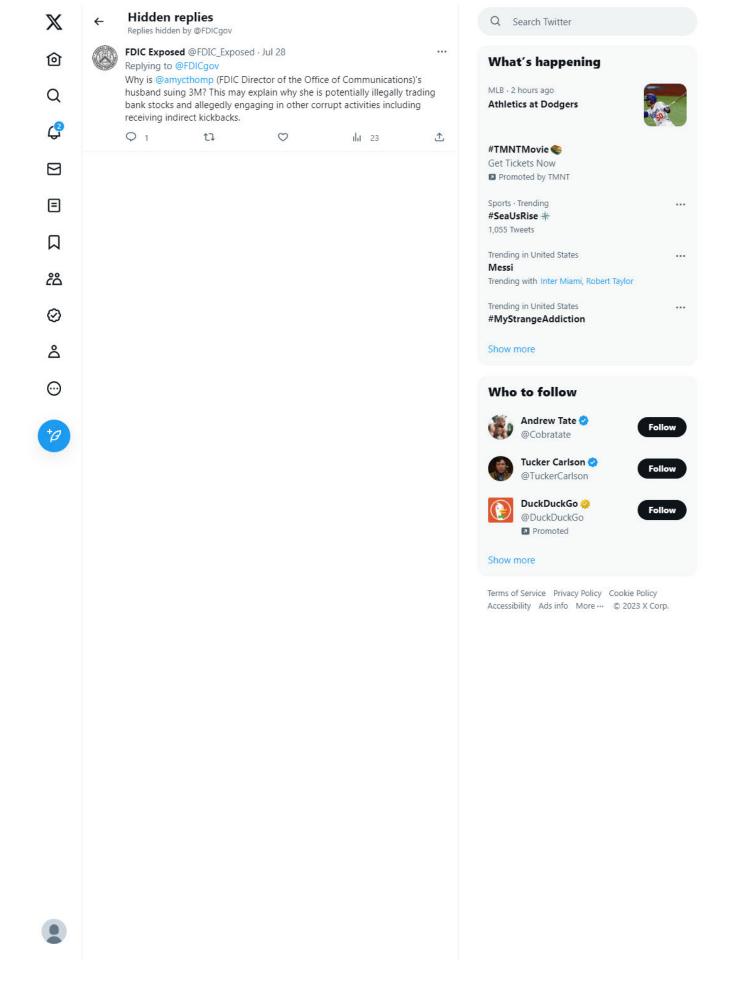






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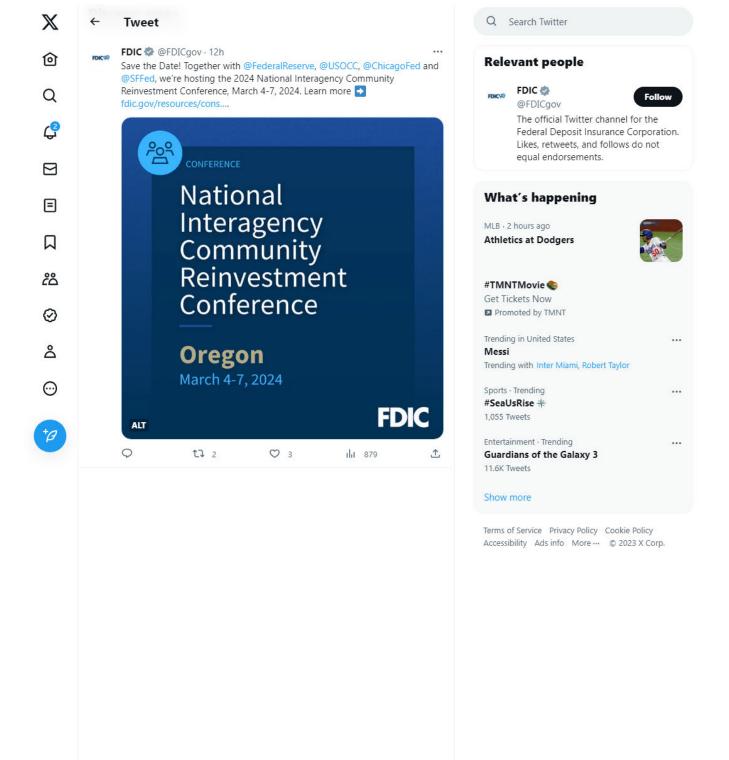
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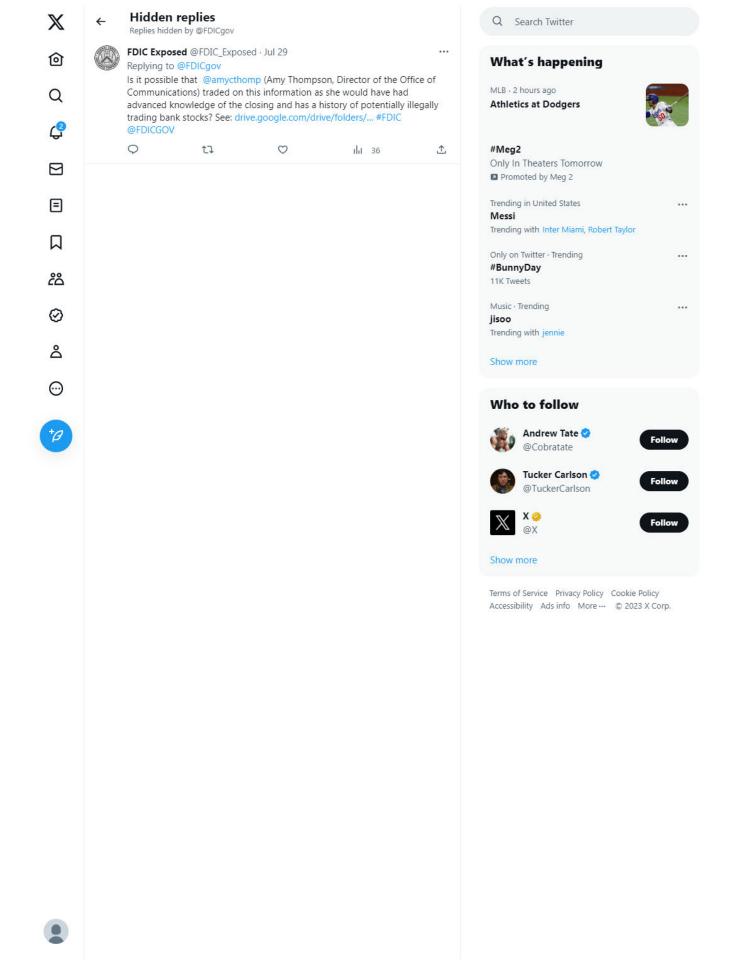




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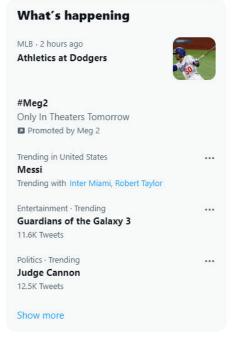
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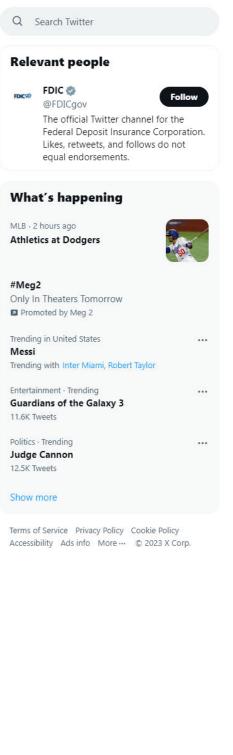


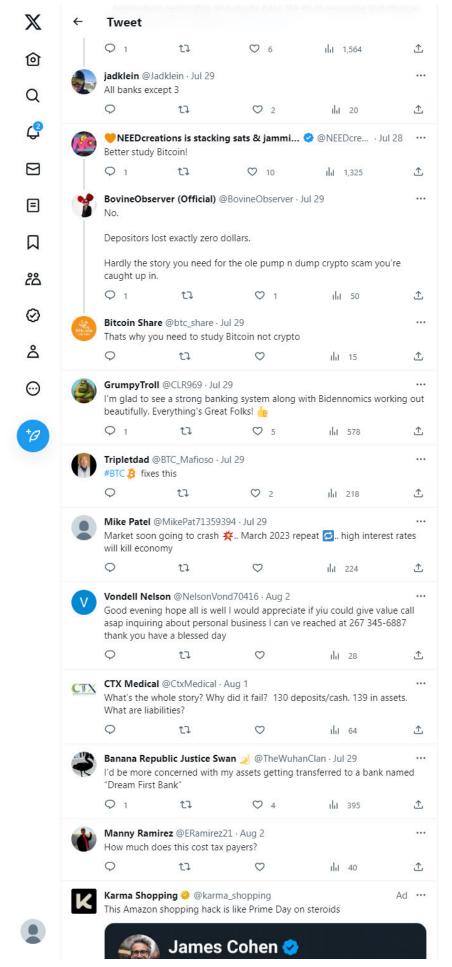


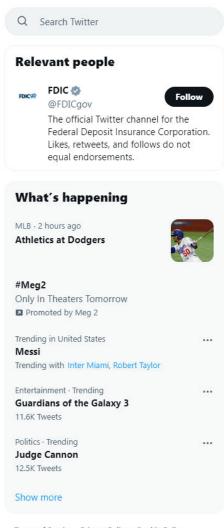


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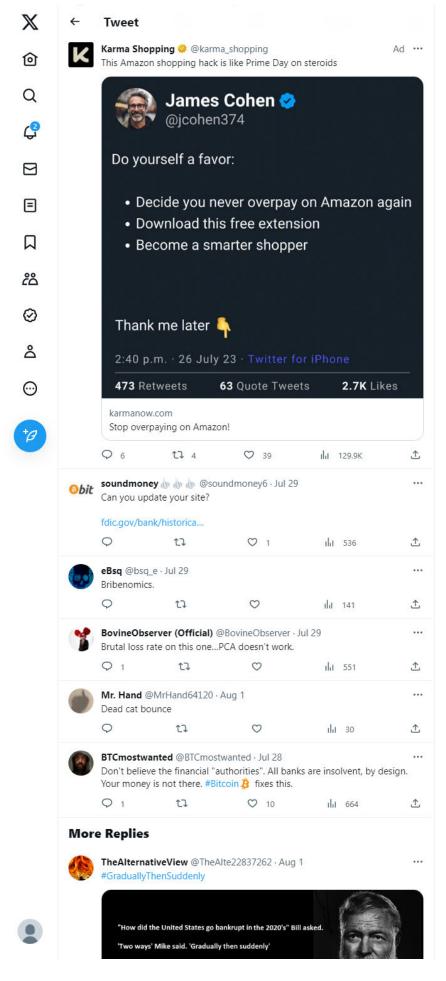


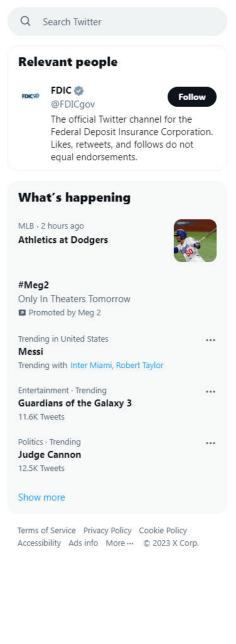


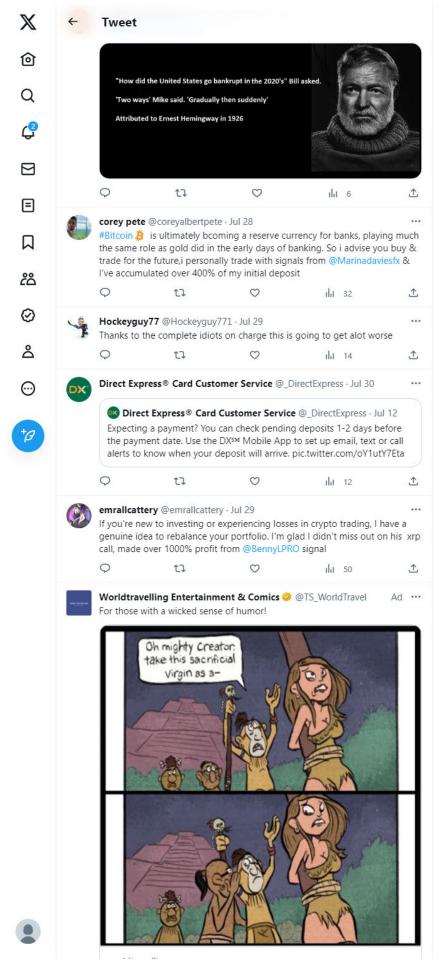


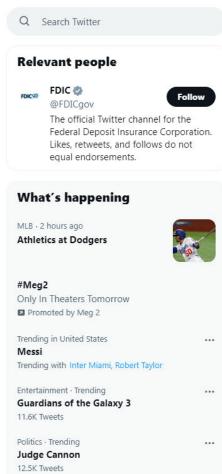


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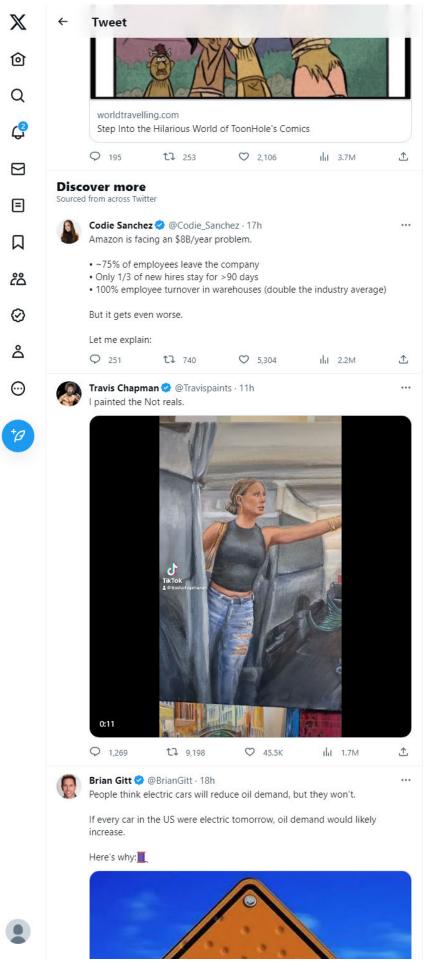


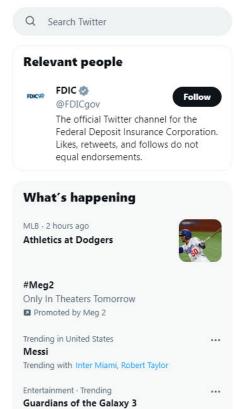




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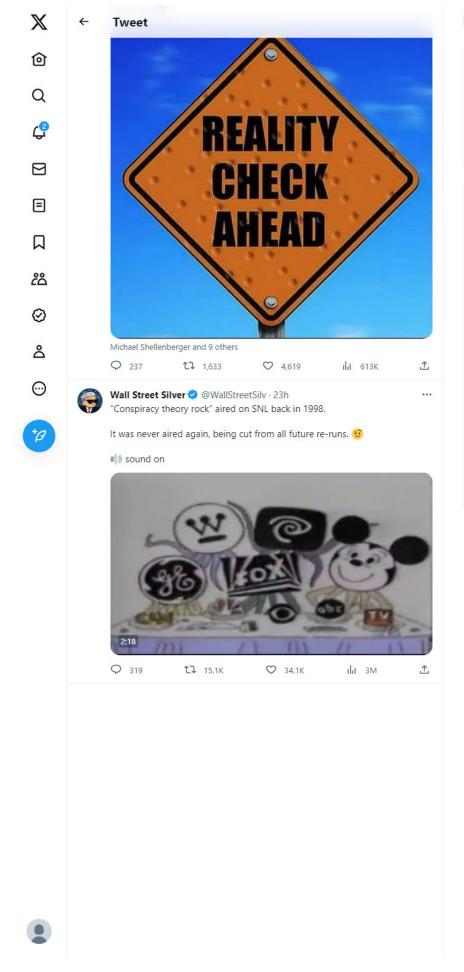
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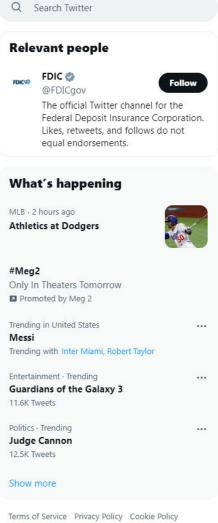
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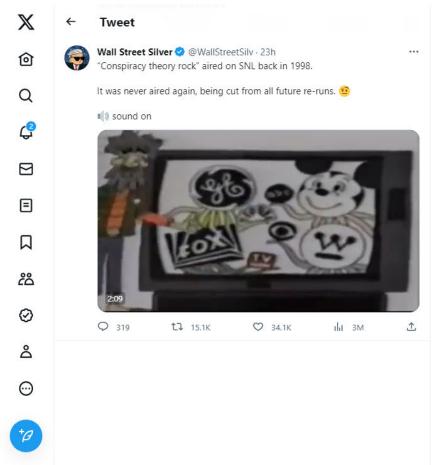
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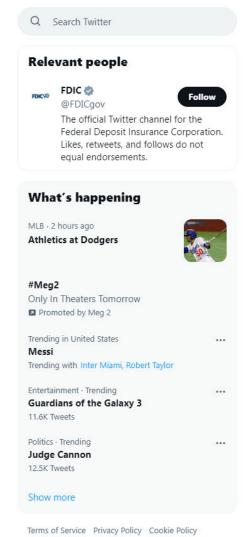
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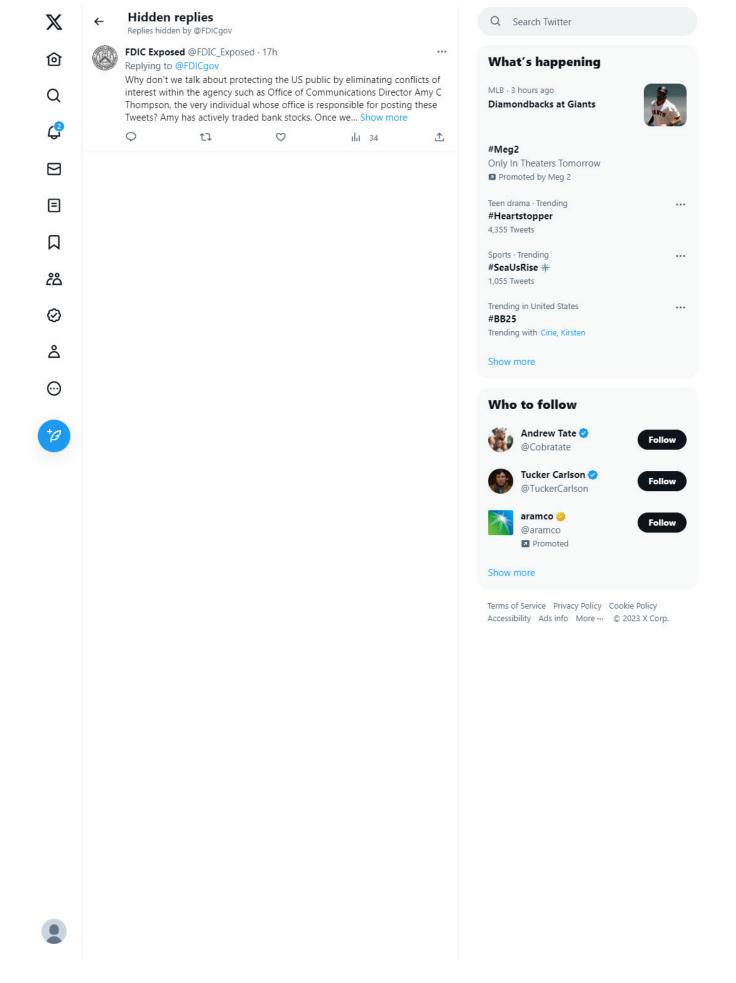




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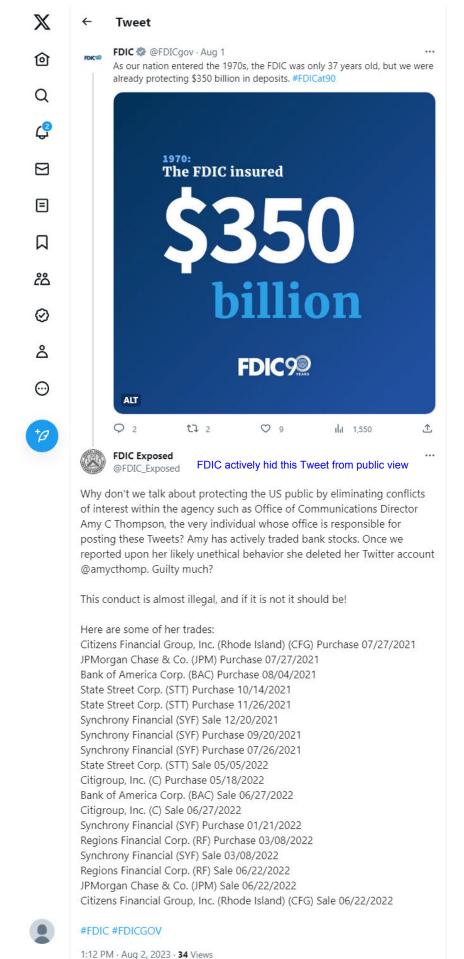
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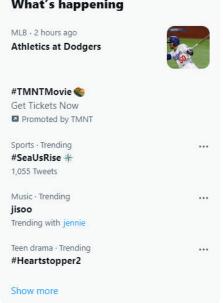
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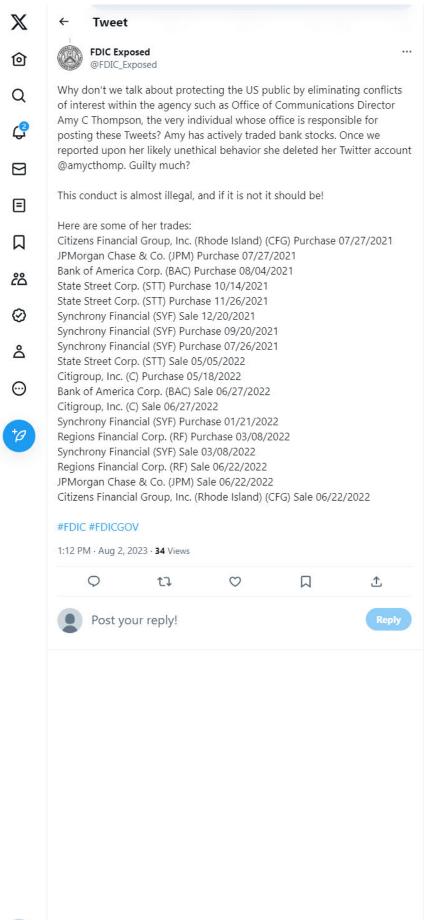
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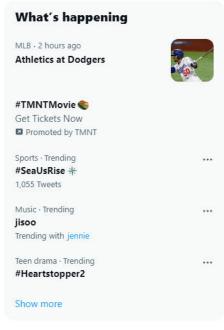




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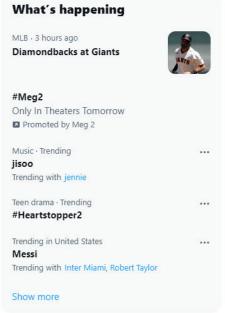
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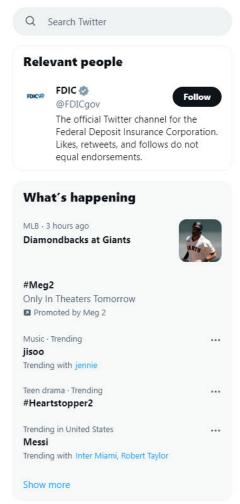






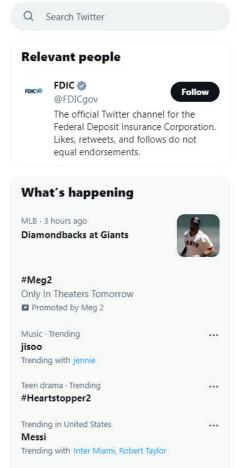
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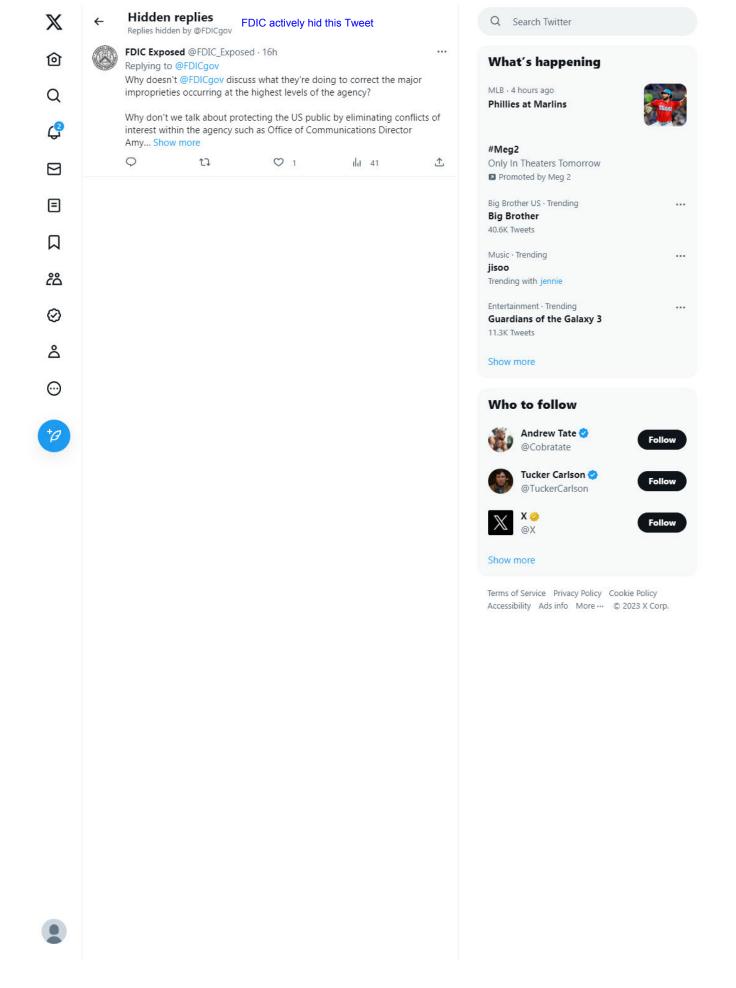
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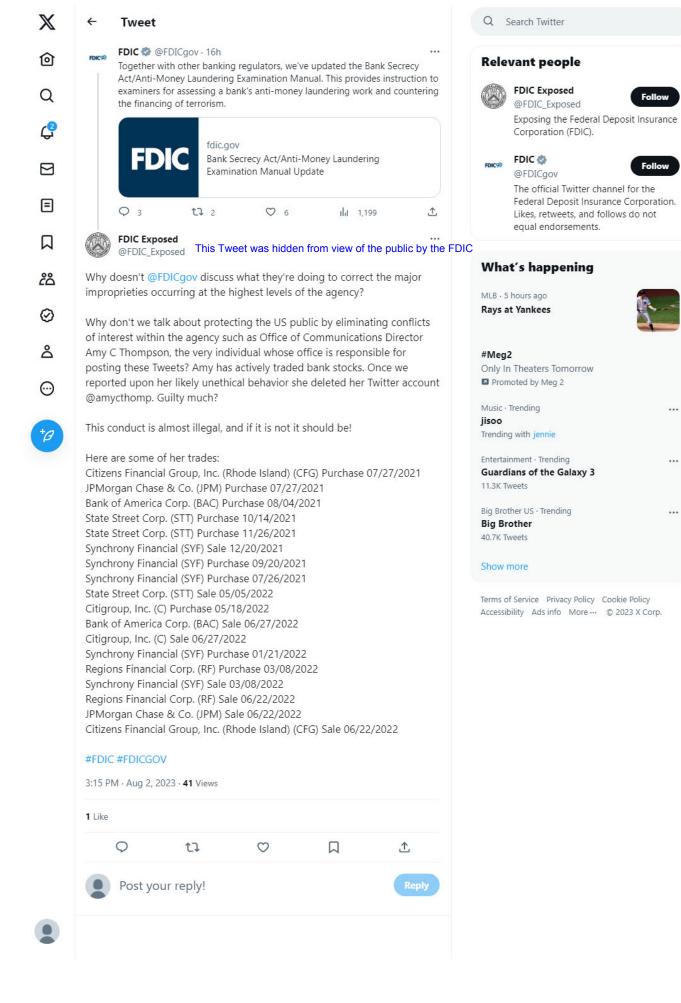
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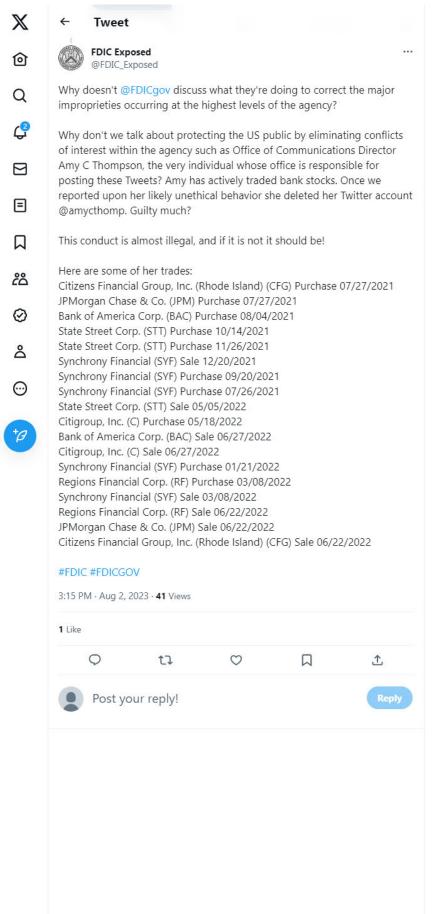
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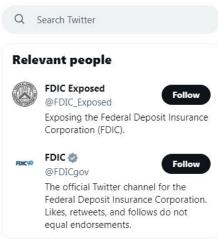
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Document title: (2) FDIC on Twitter: "Together with other banking regulators, we've updated the Bank Secrecy Act/Anti-Money Laundering Examination Manual. This provides instruction to examiners for assessing a bank's anti-money laundering work and countering the financing of terrorism. https://t.co/jyqThiuzAo" / X Capture URL: https://twitter.com/FDICgov/status/1686754639742439425 Page loaded at (UTC): Thu, 03 Aug 2023 07:36:00 GMT Capture timestamp (UTC): Thu, 03 Aug 2023 07:36:38 GMT Capture tool: 10.26.10 Collection server IP: 34.230.137.168 Browser engine: Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/108.0.5359.215 Safari/537.36 Operating system: Windows_NT (Node 16.17.1) PDF length: 2 Capture ID: kCCHm16D1WYxFTxnZbRJQR User:

