

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

THE HERITAGE FOUNDATION )  
214 Massachusetts Avenue, NE )  
Washington, D.C. 20002; )

Civil Action No.

MIKE HOWELL )  
214 Massachusetts Avenue, NE )  
Washington, D.C. 20002 )

*Plaintiffs,* )

v. )

U.S. DEPARTMENT OF THE )  
TREASURY )  
1500 Pennsylvania Avenue, NW )  
Washington, DC 20220, )

*Defendant.* )

\_\_\_\_\_ )

**COMPLAINT**

COMES NOW Plaintiffs Heritage Foundation (“Heritage”) and Mike Howell (collectively “Plaintiffs”) to bring this action against the U.S. Department of the Treasury (“Treasury”) to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. In support thereof, Plaintiffs state the following:

1. The term “recession” is defined by the Board of the Federal Reserve as a “significant decline in economic activity spreading across the economy, lasting more than a few months.” Economic Information Newsletter, Fed. Reserve Bank of St. Louis (Feb. 2009) (Ex. 1). The International Monetary Fund likewise defines recession as “two consecutive quarters of

declines in a country's real (inflation-adjusted) gross domestic product.” Stijn Claessens & M. Ayhan Kose, *Recession: When Bad Times Prevail*, International Monetary Fund (Ex.2).

2. Over the past year, The Biden Administration, under Treasury, has worked to redefine recession by using metrics that are *not* commonly and historically used to define recession, such as the Gross Domestic Output (“GDO”).<sup>1</sup> See, EJ Antoni, *By the Treasury Secretary's Own Definition, We're Back in a Recession*, The Heritage Foundation (June 20, 2023) (Ex. 3). On or about July 21, 2022, The White House issued blog post that states that “...it is unlikely that the decline of the GDP in the first quarter of this year – even if followed by another GDP decline in the second quarter – indicates a recession.” The White House, *How Do Economists Determine Whether the Economy Is in a Recession?*, (July 21, 2023) (Ex. 4). This position is in extreme tension with conventional wisdom and the position of the Board of the Federal Reserve.

3. The integrity and transparency of the United States Government are of the utmost importance. Plaintiffs are justifiably concerned that Treasury has redefined the term “recession” to minimize the political impact of any economic downturns faced during the Biden Administration. Many are concerned that as the American People are feeling the effects of economic loss, Treasury is spending more time redefining terms than on addressing the economic needs of the country. As Plaintiff's have sought to understand the decision-making and tax-payer

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<sup>1</sup> GDO is the average of gross domestic product (“GDP”) and gross domestic income (“GDI”). See Ex. 3.

funding behind this radical change in terminology, Treasury has failed to respond to Plaintiffs' FOIA Request ("Request") (Ex. 5). Plaintiffs are thus left with no remedy but this lawsuit.

### **PARTIES**

4. Plaintiff The Heritage Foundation is a Washington, D.C.-based nonpartisan public policy organization with a national and international reputation whose mission is to "formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense." Heritage Foundation, *About Heritage*, found at <https://www.heritage.org/about-heritage/mission> (last visited Nov. 29, 2023). Heritage is a not-for-profit section 501(c)(3) organization which engages in substantial dissemination of information to the public. Heritage operates a national news outlet, *The Daily Signal*.

5. Plaintiff Mike Howell leads The Heritage Foundation's Oversight Project and is an author for *The Daily Signal*. The Oversight Project is an initiative aimed at obtaining information via Freedom of Information Act requests and other means in order to best inform the public and Congress for the purposes of Congressional oversight. The requests and analysis of information are informed by Heritage's deep policy expertise. By function, the Oversight Project is primarily engaged in disseminating information to the public. *See, e.g.*, Oversight Project, found at <https://www.heritage.org/oversight> (last visited Nov. 29, 2023); Twitter, found at [@OversightPR](#) (last visited Nov. 29, 2023). Staff for the Oversight Project routinely appear on television, radio, print, and other forms of media to provide expert commentary on salient issues in the national debate.

6. Defendant U.S. Department of the Treasury ("Treasury") is an Executive Branch department of the United States Government. Relevant to the herein matter, Treasury is charged

with maintaining a strong economy and creating economic opportunities through the promotion of conditions that enable economic growth and stability. DHS is an agency within the meaning of 5 U.S.C. § 552(f)(1) and, upon information and belief, has in its possession, custody, and control records to which Plaintiffs seeks access.

### **JURISDICTION AND VENUE**

7. The Court has subject matter jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

8. Venue lies in this district pursuant to 28 U.S.C. section 1391(e).

9. Plaintiffs seek declaratory relief under 28 U.S.C. §§ 2201–2202 and Rule 57 of the Federal Rules of Civil Procedure.

### **STATEMENT OF FACTS**

10. On or about July 6, 2023, Plaintiffs submitted a FOIA request to Treasury seeking “All electronic mails (emails), MMS or SMS text messages, instant messages, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger),” containing the terms:

- 1) “Recession;
- 2) Alternative definition of recession;
- 3) Alternative recession measurements”

Request at 1.

11. The Request sought the above-referenced records for the following custodians:

- 1) “Dr. Janet Louise Yellen;
- 2) Calvin A. Mitchell, III;
- 3) Alvin Zack Rosenblum;
- 4) Natalie Pyle Earnest;
- 5) James V. Secreto;
- 6) William Pratt;
- 7) Chastity C. Murphy;
- 8) Matthew Wiegmann;

- 9) Didem A. Niscanci;
- 10) Nathan H. Levit;
- 11) Aditi Hardiker;
- 12) Kayla Arslanian;
- 13) Nicole Lindler;
- 14) Raymond Pham; and
- 15) Hira Qureshi.”

*Id.* at 2.

12. The Request was further limited as Plaintiffs requested only those documents from April 28, 2022, to October 27, 2022, and excluded press clippings and mailers. *Id.*

13. The Request further sought a fee waiver. *Id.*

14. Treasury has never substantively responded to the Request. On August 30, 2023, Treasury sent an email asking Plaintiff’s to narrow the scope of the Request. (Ex. 6). On August 31, 2023, Plaintiffs responded and agreed to narrow the scope to only correspondence from the above-listed custodians of record. (Ex. 7).

15. On September 1, 2023, Treasury sent an acknowledged receipt of the Request and assigned it tracking number 2023-FOIA-00559. In the same correspondence, Treasury noted that “...unusual circumstances exist regarding the search for and review of potentially responsive records which may delay our response.” (Ex. 8). Treasury did not, however, explicitly invoke the 10-day extension pursuant to the Code of Federal Regulations. *Id.*; 8 C.F.R. Part 5 § 5.5(c). The correspondence further noted that Treasury would consider the fee waiver once the office “...ascertains that the billable costs will exceed our \$25.00 billing threshold.” *Id.*

16. Since Treasury’s September 1, 2023 letter, the Department has not produced documents in response to the Request nor further contacted Plaintiffs.

17. Twenty business days from July 6, 2023, is August 2, 2023.

18. Thirty business days from July 6, 2023, is August 17, 2023.

19. As of the date of this filing, Treasury has failed to produce any records, responsive or other, in response to the Request, nor has it otherwise demonstrated that the requested records are exempt from production. Additionally, Treasury has failed to meet either the twenty or thirty business day time frame to provide a determination. *See* 5 U.S.C. § 552(a)(6)(A)–(B).

20. Pursuant to federal law, Plaintiffs are deemed to have exhausted their administrative remedies as DHS failed to make a determination within the applicable time frame. *See* 5 U.S.C. § 552(a)(6)(C)(i).

**CLAIMS**

**COUNT I**

**Violation of FOIA, 5 U.S.C. § 552  
Failure to Conduct Searches for Responsive Records**

21. Plaintiffs incorporate by reference all preceding paragraphs and incorporate each paragraph of each count as applicable to each other count.

22. Plaintiffs properly requested records within the possession, custody, and control of Treasury.

23. Treasury has failed to produce any responsive records.

24. Treasury is subject to FOIA and therefore must comply with 5 U.S.C § 552 and make reasonable efforts to search for requested records. Plaintiffs have a legal right to obtain such records, and no legal basis exists for Treasury’s failure to conduct reasonable searches for records.

25. Plaintiffs have a statutory right to the information sought, are being irreparably harmed by Treasury’s unlawful failure to comply with FOIA and failure to conduct searches for responsive records and Plaintiffs will continue to be irreparably harmed unless Treasury is compelled to comply with applicable federal statutes.

26. 5 U.S.C. § 552(a)(4)(B) authorizes the grant of injunctive relief to Plaintiffs as Treasury continues to violate the FOIA provisions and improperly withhold responsive records.

27. 28 U.S.C. § 2201 authorizes declaratory relief because an action and justiciable controversy exists regarding DHS' actions.

## **COUNT II**

### **Violation of FOIA, 5 U.S.C. § 552 Wrongful Withholding of Non-Exempt Responsive Records**

28. Plaintiffs incorporate by reference all preceding paragraphs and incorporate each paragraph of each count as applicable to each other count.

29. Plaintiffs properly requested records within the possession, custody, and control of the Defendants.

30. Treasury is subject to FOIA and therefore must release any non-exempt records and provide lawful reasons for withholding any materials deemed exempt.

31. Treasury is wrongfully withholding non-exempt records requested by Plaintiffs by failing to produce any records response to Plaintiffs' request.

32. No basis exists for Treasury's failures to provide responses to Plaintiffs' request. Plaintiffs have constructively exhausted their administrative remedies under FOIA by virtue of Treasury's failure to reach a determination on the request and release responsive records.

33. Plaintiffs have a statutory right to the information sought, are being irreparably harmed by Treasury's unlawful failure to comply with FOIA and failure to conduct searches for

responsive records and Plaintiffs will continue to be irreparably harmed unless Treasury is compelled to comply with applicable federal statutes.

**COUNT III**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Wrongful Denial of Fee Waiver**

34. Plaintiffs incorporate by reference all preceding paragraphs and incorporate each paragraph of each count as applicable to each other count.

35. Plaintiffs properly requested records within the possession, custody, or control of Defendant.

36. Treasury has constructively denied Plaintiffs' application for a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(ii) & (iii) and 6 C.F.R. § 5.11(d)(2).

37. The Request does not have a commercial purpose because Heritage is a 501(c)(3) nonprofit, Howell acts in his capacity as a Heritage employee, and release of the information sought does not further Plaintiffs' commercial interest.

38. Plaintiffs are members of the news media as they "gather[] information of potential interest to a segment of the public, use[] . . . [their] editorial skills to turn the raw materials into a distinct work and distribute[] that work to an audience" via Heritage's major news outlet, *The Daily Signal*. 5 U.S.C. § 552(a)(4)(a)(ii).

39. Disclosure of the information sought by the Request also "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

40. Treasury has "failed to comply with a[]time limit under paragraph (6)" as to the Request. 5 U.S.C. § 552(a)(4)(A)(viii)(I).

41. Plaintiffs have a statutory right to a fee waiver.



42. Treasury is in violation of FOIA by denying a fee waiver.

43. Plaintiffs are being irreparably harmed by reason of Treasury's violation of FOIA. Plaintiffs are being denied a fee waiver to which they are statutorily entitled and that is important to carrying out Plaintiffs' functions as a non-partisan research and educational institution and publisher of news. Plaintiffs will continue to be irreparably harmed unless Treasury is compelled to comply with the law.

44. Plaintiffs have no adequate remedy at law.

45. Plaintiffs have constructively exhausted their administrative remedies.

#### **COUNT IV**

##### **Violation of FOIA, 5 U.S.C. § 552 Statutory Bar Against Charging Fees**

46. Plaintiffs incorporate by reference all preceding paragraphs and incorporate each paragraph of each count as applicable to each other count.

47. Plaintiffs properly requested records within the possession, custody, or control of Defendant.

48. The Request does not have a commercial purpose because Heritage is a 501(c)(3) nonprofit, Howell acts in his capacity as a Heritage employee, and release of the information sought does not further Plaintiffs' commercial interest.

49. Plaintiffs are members of the news media as they "gather[] information of potential interest to a segment of the public, use[] . . . [their] editorial skills to turn the raw materials into a distinct work, and distribute[] that work to an audience" via Heritage's major news outlet, *The Daily Signal*. 5 U.S.C. § 552(a)(4)(a)(ii).

50. Disclosure of the information sought by the Request also “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii).

51. Treasury has “failed to comply with a[]time limit under paragraph (6)” as to the Request. 5 U.S.C. § 552(a)(4)(A)(viii)(I).

52. Treasury is currently statutorily barred from charging fees related to Plaintiffs’ FOIA Request. Therefore, Plaintiffs have a statutory right to have their request processed without being charged any fees.

53. Plaintiffs are being irreparably harmed by reason of Treasury’s violation of FOIA. Plaintiffs will continue to be irreparably harmed unless Treasury is compelled to comply with the law.

54. Plaintiffs have no adequate remedy at law.

55. Plaintiffs have constructively exhausted their administrative remedies.

### **PRAYER FOR RELIEF**

For these reasons, Plaintiffs asks this Court to:

- a. Declare unlawful Treasury’s refusal to disclose requested records;
- b. Declare that Treasury’s failure to make determinations to Plaintiffs’ request within the statutory time frame violates FOIA;
- c. Order Treasury to conduct a search for any and all records responsive to Plaintiffs’ FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiffs’ FOIA request;

- d. Order Treasury to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to Plaintiffs' FOIA request as well as a Vaughn index of any responsive records withheld under claim of exemption;
- e. Enjoin Treasury from continuing to withhold any and all non-exempt records responsive to Plaintiffs' FOIA request;
- f. Award Plaintiffs the costs of this action and reasonable attorney's fees; and
- g. Grant such other and further relief as this Court deems equitable and just.

Dated: November 28, 2023

Respectfully submitted,

/s/ Joseph B. Edlow  
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*Counsel for Plaintiff*

# **EXHIBIT 1**



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Economic Information Newsletter  
Brought to You by the Research Library of the Federal Reserve Bank of St. Louis

## What Is a Recession?

February 2009

*“The economy is now in a recession...It will last longer and be deeper than the last two recessions, which lasted only 8 months from peak to trough. It could well be longer and deeper than the recession in the early 1980s that lasted 16 months.”*

—Dr. Martin Feldstein, former president of the National Bureau of Economic Research

During the past year, talk of the current economic downturn has dominated U.S. and world newspapers, media airwaves, and the Internet. Economists closely scrutinized the declining economy, frequently debating whether the United States was in the midst of a recession. On November 28, 2008, the Business Cycle Dating Committee of the National Bureau of Economic Research (NBER) [announced](#) that the United States has indeed been in a recession since December 2007. Although the term “recession” is well known, and its negative connotations for the state of the economy are typically understood by the general public, the actual definition of a recession is less clear. Specifically, at what point is the economy officially in a recession, and how does the NBER determine this point? Or, in other words, what actually makes a recession a recession?

Since 1929, the NBER has mapped the U.S. business cycle, which is the up-and-down fluctuation in U.S. economic activity ([note 1](#)). Periods of economic growth are characterized as expansions, whereas times of economic contraction are considered recessions. Expansions begin when the economy has reached a trough (low point) in economic activity, and they end when the economy has arrived at a peak (high point). Recessions, on the other hand, occur when economic growth declines from a peak to a trough.

The NBER measures peak-to-trough declines in economic activity through a number of macroeconomic variables. While the [popular definition](#) of a recession is “two consecutive quarters of negative real gross domestic product (GDP) growth,” the NBER does not strictly abide by this designation ([note 2](#)). Instead, the committee broadly defines a recession as a “significant decline in economic activity spreading across the economy, lasting more than a few months.” The committee considers a wide range of indicators with particular emphasis on payroll employment and several measures of domestic production and income, such as gross domestic product, gross domestic income, and industrial production ([note 3](#)). A number of other monthly indicators are also considered, as the NBER focuses on recognizing broad trends across all sectors of the economy ([note 4](#)). Since peaks in [payroll employment](#) tend to coincide with peaks in the business cycle, it appears that the NBER places significant importance on employment.

Spotting the peaks and troughs of the U.S. business cycle often takes considerable time, as the NBER must wait until it can conclusively date the beginnings and ends of recessions. Revisions are usually made to most of the older data that are analyzed by the NBER, which means that the committee must look retrospectively at macroeconomic statistics. In short, previous estimates can change significantly ([note 5](#)). For the current recession, the committee took nearly a year to declare December 2007 as a peak in economic activity. This peak ended an expansion of 73 months, which began after a trough in economic activity that occurred in November 2001. Since World War II, recessions have lasted 10 months on average, which means that the current recession has already outlived the average historical time span. The longest post-WWII recession lasted 16 months, with the shortest recession taking six months ([note 6](#)). Although it is difficult to predict the duration of the current economic downturn, the NBER will certainly use its broad definition of recessions to mark the point when the United States reaches a trough in economic activity and enters its next expansionary stage.

By Douglas C. Smith, Research Analyst, Federal Reserve Bank of St. Louis

### NOTES

*The views expressed are those of the author and do not necessarily reflect the official positions of the Federal Reserve Bank of St. Louis, the Federal Reserve System, or the Board of Governors.*

## Recent Articles and Further Reading on Recessions

[“The Current Recession: How Bad Is It?”](#) by Charles S. Gascon, Federal Reserve Bank of St. Louis, *Economic Synopses*, 2009, Number 4 (posted on January 8, 2009).

Some economists believe that because of the contraction in the housing market and problems in financial markets, the magnitude of the current recession could be the most severe in decades.

[“The Recession in Perspective“](#) by the Federal Reserve Bank of Minneapolis Policy Study.

This web page places the current economic downturn into historical (post-WWII) perspective. It compares output and employment changes during the present recession with the same data for the 10 previous recessions since 1946.

[“What Is a Recession, Who Decides When It Starts, and When Do They Decide?”](#) by Brian W. Cashell, Library of Congress, *CRS Report for Congress* (posted on January 23, 2008).

This report outlines the NBER’s methods for dating the U.S. business cycle.

[“Man the Lifeboats!“](#) by Kevin Kliesen, Federal Reserve Bank of St. Louis, *Regional Economist*, January 2009.

A tumultuous turn of events rocked the U.S. economy last year. This article briefly summarizes the previous year’s economic happenings and takes a look at economic projections for the future.

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## Free Data Sources and Reports

**Data:** “Determination of December 2007 Peak in Economic Activity”  
**Description:** Official declaration of the current recession; includes Q&A section and website data sources  
**Published by:** Business Cycle Dating Committee, NBER  
**Location:** <http://www.nber.org/cycles/dec2008.html>

**Data:** NBER U.S. Business Cycles and Contractions  
**Description:** Shows the peaks and troughs of past expansions and contractions in the U.S. economy  
**Published by:** National Bureau of Economic Research  
**Location:** <http://www.nber.org/cycles.html>

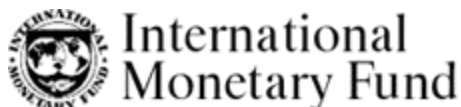
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# **EXHIBIT 2**



## Recession: When Bad Times Prevail

FINANCE & DEVELOPMENT

Stijn Claessens and M. Ayhan Kose

*It is a sustained period when economic output falls and unemployment rises*

Following the onset of the recent global economic crisis, much of the news, especially in advanced economies, was dire. **Unemployment** was rising, company profits were falling, financial markets were tumbling, and the housing sector collapsed. Is there a single word to describe these developments? Yes: "recession."

The crisis was accompanied by recessions in many countries. This pattern is consistent with the historical record. Simultaneous, or synchronized, recessions have occurred in advanced economies several times in the past four decades—the mid-1970s, early 1980s, early 1990s, and early 2000s. Because the United States is the world's largest economy and has strong trade and financial linkages with many other economies, most of these globally synchronized recession episodes also coincide with U.S. recessions.



**Who will water the plants?** (photo: Zuma Press/Newscom)

Although U.S. recessions had become milder over time, the recent global crisis reversed that trend. The latest episode was one of the longest and deepest recessions since the Great Depression of the 1930s. It led to a sharp increase in unemployment—along with substantial declines in output, consumption and investment.

<p><b>What Is a Recession?</b></p> 	
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### Calling a recession

There is no official definition of recession, but there is general recognition that the term refers to a period of decline in economic activity. Very short periods of decline are not considered recessions. Most commentators and analysts use, as a practical definition of recession, two consecutive quarters of decline in a country's real (inflation-adjusted) gross domestic product (GDP)—the value of all goods and services a country produces. Although this definition is a useful rule of thumb, it has drawbacks. A focus on GDP alone is narrow, and it is often better to consider a wider set of measures of economic activity to determine whether a country is indeed suffering a recession. Using other indicators can also provide a timelier gauge of the state of the economy.

In the United States, the private National Bureau of Economic Research (NBER), which maintains a chronology of the beginning and ending dates of U.S. recessions, uses a broader definition and considers a number of measures of activity to determine the dates of recessions. The NBER's Business Cycle Dating Committee defines a recession as *"a significant decline in economic activity spread across the economy, lasting more than a few months, normally visible in production, employment, real income, and other indicators. A recession begins when the economy reaches a peak of activity and ends when the economy reaches its trough."* Consistent with this definition, the Committee focuses on a comprehensive set of measures—including not only GDP, but also employment, income, sales, and industrial production—to analyze the trends in economic activity.

Although an economy can show signs of weakening months before a recession begins, the process of determining whether a country is in a true recession often takes time. For example, it took the NBER committee a year to announce the beginning and end dates of the most recent U.S. recession. This is understandable. The decision process involves establishing a broad decline in economic activity over an extended period of time, after compiling and sifting through many variables, which are often subject to revisions after their initial announcement. In addition, different measures of activity may exhibit conflicting behavior, making it difficult to identify whether the country is indeed suffering from a broad-based decline in economic activity.

### Why do recessions happen?

Understanding the sources of recessions has been one of the enduring areas of research in economics. There are a variety of reasons recessions take place. Some are associated with sharp changes in the prices of the inputs used in producing goods and services. For example, a steep increase in oil prices can be a harbinger of a recession. As energy becomes expensive, it pushes up the overall price level, leading to a decline in aggregate demand. A recession can also be triggered by a country's decision to reduce inflation by employing contractionary monetary or

**fiscal** policies. When used excessively, such policies can lead to a decline in demand for goods and services, eventually resulting in a recession.

Other recessions, such as the one that began in 2007, are rooted in financial market problems. Sharp increases in asset prices and a speedy expansion of credit often coincide with rapid accumulation of debt. As corporations and households get overextended and face difficulties in meeting their debt obligations, they reduce investment and consumption, which in turn leads to a decrease in economic activity. Not all such credit booms end up in recessions, but when they do, these recessions are often more costly than others. Recessions can be the result of a decline in external demand, especially in countries with strong export sectors. Adverse effects of recessions in large countries—such as Germany, Japan, and the United States—are rapidly felt by their regional trading partners, especially during globally synchronized recessions.

Because recessions have many potential causes, it is a challenge to predict them. The behavioral patterns of numerous economic variables—including credit volume, asset prices, and the unemployment rate—around recessions have been documented, but although they might be the cause of recessions, they could also be the result of recessions—or in economic parlance, endogenous to recessions. Even though economists use a large set of variables to forecast the future behavior of economic activity, none has proven a reliable predictor of whether a recession is going to take place. Changes in some variables—such as asset prices, the unemployment rate, certain interest rates, and consumer confidence—appear to be useful in predicting recessions, but economists still fall short of accurately forecasting a significant fraction of recessions, let alone predicting their severity in terms of duration and amplitude.

### **Recessions are infrequent but costly**

There were 122 completed recessions in 21 advanced economies over the 1960–2007 period. Although this sounds like a lot, recessions do not happen frequently. Indeed, the proportion of time spent in recession—measured by the percentage of quarters a country was in recession over the full sample period—was typically about 10 percent. Although each recession has unique features, recessions often exhibit a number of common characteristics:

- They typically last about a year and often result in a significant output cost. In particular, a recession is usually associated with a decline of 2 percent in GDP. In the case of severe recessions, the typical output cost is close to 5 percent.
- The fall in consumption is often small, but both industrial production and investment register much larger declines than that in GDP.
- They typically overlap with drops in **international trade** as exports and, especially, imports fall sharply during periods of slowdown.
- The unemployment rate almost always jumps and inflation falls slightly because overall demand for goods and services is curtailed. Along with the erosion of house and equity values, recessions tend to be associated with turmoil in financial markets.

### **What about a depression?**

The latest U.S. recession—which began in December 2007 and ended in June 2009—was the longest (18 months) and deepest (about a 3.7 percent decline in output) the country has experienced since 1960. The typical U.S. recession prior to 2007 lasted about 11 months and resulted in a peak-to-trough output decline of 1.7 percent. Although investment and industrial production fell in every recession, consumption registered a decline in only four out of eight episodes since 1960.

One question sometimes asked is how a recession compares with a depression, especially the Great Depression of the 1930s. There is no formal definition of depression, but most analysts consider a depression to be an extremely severe recession, in which the decline in GDP exceeds 10 percent. There have been only a handful of depression episodes in advanced economies since 1960. The most recent was in the early 1990s in Finland, which registered a decline in GDP of about 14 percent. That depression coincided with the breakup of the Soviet Union, a large trading

partner of Finland. During the Great Depression, the U.S. economy contracted by about 30 percent over a four-year period. Although the latest recession is obviously severe, its output cost was much smaller than that of the Great Depression.

**Stijn Claessens** is an Assistant Director and **M. Ayhan Kose** is an Assistant to the Director in the IMF's Research Department.

#### References

*Claessens, Stijn, M. Ayhan Kose, and Marco Terrones, 2009, "What Happens During Recessions, Crunches, and Busts?" Economic Policy, Vol. 60, pp. 653–700. Also IMF Working Paper, No. 08/274, (Washington).*

—, 2011a, "Financial Cycles: What? How? When?" forthcoming, NBER 2010 International Seminar on Macroeconomics, *Richard Clarida and Francesco Giavazzi (eds.)*. Also IMF Working Paper, No. 11/76 (Washington).

—, 2011b, "How Do Business and Financial Cycles Interact?" IMF Working Paper, No. 11/88, (Washington).

Updated: **Cannot perform flastmod(): Win32 Error Code = 2**

# **EXHIBIT 3**

# By the Treasury Secretary’s Own Definition, We’re Back in Recession

COMMENTARY [Markets and Finance](#)

Jun 20, 2023

3 min read

[EJ Antoni @RealEJAntoni](#)

Research Fellow, Grover M. Hermann Center

EJ Antoni is a Research Fellow in The Heritage Foundation’s Grover M. Hermann Center for the Federal Budget.



U.S. Treasury Secretary Janet Yellen testifies before the House Financial Services Committee at the Rayburn House Office Building on June 13, 2023 in Washington, D.C. Kevin Dietsch / Getty Images

## Key Takeaways

The latest economic data show the economy might be doing a “double dip,” where a recession is followed by a brief period of growth and then another recession.

While some government spending is highly desirable, too much of it necessarily strangles the private economy. And that's precisely what we're seeing now.

While officials in the Biden administration worry about redefining "recession," conservatives in Congress should keep their eye on the prize: cutting spending.

Last month, the Department of Commerce released troubling data on the anemic economy, showing that gross domestic income (GDI) shrank in the previous six months. That's no surprise to half of Americans who believe we're currently in a recession, but the data refute President Joe Biden's claim that the economy is "strong as hell."

And according to Treasury Secretary Janet Yellen's own words from last year, the economy is back in recession.

There are different ways of measuring the health and size of the economy, like gross domestic product (GDP) and GDI. While GDP measures total production, GDI measures total income. In theory, GDP and GDI should be the same because they measure the two sides of every transaction. In practice, though, there are slight differences in how the data are collected, which leaves some room for interpretation.

In the first half of last year, GDP shrank for two consecutive quarters—a classic recession indicator—but Treasury Secretary Janet Yellen was quick to dismiss this.

### >>> [We Traded a Debt Crisis for an Inflation Crisis, and Now We Have Both](#)

Instead, in August of last year, she cited the average of GDP and GDI—referred to as gross domestic output (GDO)—being positive as an indicator the economy was still growing. But by September, updated figures showed GDO was revised down to a negative level. Yellen and other Biden administration officials remained awkwardly silent about GDO thereafter.

Now, Yellen's words have come back to haunt her yet again. The latest economic data show the economy might be doing a "double dip," where a recession is followed by a brief period of growth and then another recession.

But Yellen is no longer espousing GDO as the preferred indicator of economic growth. Following the release of this latest economic data, I reached out to the Department of the Treasury last month, asking if Yellen believed another recession had arrived, given her previous statements. No one had responded by the time of this writing.

But playing Orwellian word games, like redefining "recession," doesn't help American families and doesn't aid in accurately assessing the economy's current state. Putting politics aside, the data offer a bleak picture of sluggish growth and high inflation brought on by excessive government spending.

In four of the last five quarters, GDO has been negative. This anemic growth is dragging down tax receipts and exacerbating the federal deficit. As interest payments on the debt balloon to levels exceeding

major spending categories, like defense, the need for faster economic growth is becoming increasingly apparent.

Economic growth means higher levels of sustained consumption, supporting more people at a higher standard of living. That means more and higher quality products and services—everything from food to health care to housing. But to make the miracle of economic growth happen, government needs to get out of the way.

While some government spending is highly desirable, too much of it necessarily strangles the private economy. And that’s precisely what we’re seeing now, with government accounting for about one-fifth of the economy.

### >>> [You’ll Be Poorer and Like It](#)

But the art of economics is in measuring opportunity costs, or the value of decisions not taken. Every dollar the government spends must first be taken from the private sector. Whether the government pays for its spending through explicit taxation, or the hidden tax of inflation, or through borrowing, public activity crowds out private activity.

In short, government spending takes away as much or more as it adds to the economy.

Shrinking government means shrinking spending, and the debt-ceiling negotiations were a missed opportunity to accomplish both. But Congress will have another chance to reduce spending this fall when it comes time to pass appropriations bills. The fewer resources government takes from the private sector, the more is available for productive activity that will grow the economy, increase incomes and spur innovation.

While officials in the Biden administration play word games and worry about redefining “recession,” conservatives in Congress should keep their eye on the prize: cutting government spending. That is the only way out of the current economic doldrums, no matter what you call them.

This piece originally appeared in MSN



# **EXHIBIT 4**



JULY 21, 2022

## How Do Economists Determine Whether the Economy Is in a Recession?

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What is a recession? While some maintain that two consecutive quarters of falling real GDP constitute a recession, that is neither the official definition nor the way economists evaluate the state of the business cycle. Instead, both official determinations of recessions and economists' assessment of economic activity are based on a holistic look at the data—including the labor market, consumer and business spending, industrial production, and incomes. Based on these data, it is unlikely that the decline in GDP in the first quarter of this year—even if followed by another GDP decline in the second quarter—indicates a recession.

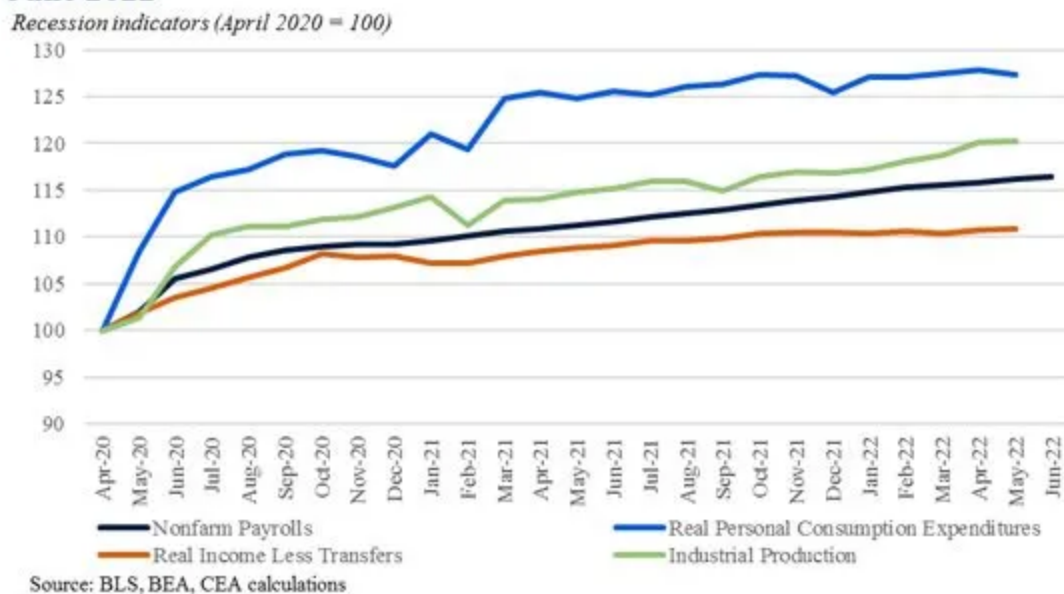
The National Bureau of Economic Research (NBER) Business Cycle Dating Committee—the official recession scorekeeper—defines a recession as “a significant decline in economic activity that is spread across the economy and that lasts more than a few months.” The variables the committee typically tracks include real personal income minus government transfers, employment, various forms of real consumer spending, and industrial production. Notably, there are no fixed rules or thresholds that trigger a determination of decline, although the committee does note that in recent decades, they have given more weight to real personal income less transfers and payroll employment.

Also, because the committee depends on government statistics that are reported at various lags, it cannot officially designate a recession until after it starts.<sup>[1]</sup> So how might the NBER committee assess the health of the economy?

Figure 1 shows the trend in four of the NBER committee's recession-indicator variables—real income minus transfers, real spending, industrial production, and employment—relative to their values in April 2020 (the

trough of the last recession, and thus, the month before the current expansion began). All of these indicators have exhibited strong growth in the U.S. economy since the start of the pandemic, and have continued to expand through the first half of this year. And while real income net of transfers has been flat in recent months, industrial production, employment, and real spending have grown this year. The committee does not directly consider inflation; however, it is embedded in the real income and spending variables it tracks, including those plotted in Figure 1. Those data show that while inflation is highly elevated, real spending is still growing, powered by one of the strongest labor markets on record and an elevated stock of household savings.

**Figure 1. A Few Key NBER Recession Indicator Variables, April 2020-June 2022**



The fact that the NBER committee looks for a “significant decline” in activity that is broad-based puts this year’s 1.6 percent rate contraction in first quarter real GDP into context. Far from being a broad contraction, the negative estimate of the growth rate was a function of inventories—one of the noisiest components of GDP growth[2]—and net exports, in part reflecting our economic strength relative to that of our trading partners, as well as less snarled global supply chains. Private domestic final demand—consumer spending and fixed investment (which together make up over 80 percent of nominal GDP)—grew at a 3.0 percent real annualized rate in the first quarter, demonstrating solid, above-trend growth. And payroll employment grew at an even stronger 4.7 percent annualized rate, followed by 3.4 percent in Q2.

In fact, the 1.1 million jobs created in the second quarter—an average of around 375,000 jobs per month—is more than three times more jobs created than in any three-month period leading up to a recession.

Finally, although the unemployment rate is not on the committee’s list, the fact that it has held at a historically low 3.6 percent in the past four months also has bearing on the recession question. A widely cited indicator of recessions (the “Sahm rule” named after economist Claudia Sahm) maintains that a recession is likely underway when the three-month moving average of the unemployment rate rises by at least half a percentage point (50 basis points) relative to its lowest point in the previous 12 months. The fact that the Sahm indicator is 0, far below its 50 basis-point threshold, provides yet another indication that the economic expansion is ongoing.

Recession probabilities are never zero, but trends in the data through the first half of this year used to determine a recession are not indicating a downturn.

Looking ahead, we know that the U.S., along with the rest of the global economy, faces significant headwinds—and little relevant data are yet available on the third quarter (2022Q3). At the same time, there is a good chance that the strength of the labor market and of consumer balance sheets help the economy transition from the rapid growth of the last year to steadier and more stable growth. But, whatever path the economy takes, CEA will continue to carefully track these indicators to assess the state of the economic cycle.

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[1] In fact, when recessions are short-lived, the committee typically announces them after they are over.

[2] Inventories in the GDP accounts reflect not a level change, as for example, with consumer spending, but a change in a change, i.e., whether inventories were growing or shrinking faster or slower than the previous quarter. In fact, the level of inventories rose in 2022 Q1, just not as fast as in the previous quarter.

# **EXHIBIT 5**



214 Massachusetts Avenue, NE  
Washington, DC 20002  
(202) 546-4400  
heritage.org

**SENT VIA: FOIA@treasury.gov**

July 6, 2023

United States Department of the Treasury  
FOIA/PA Request  
FOIA and Transparency  
Department of the Treasury  
Washington, D.C. 20220

Dear FOIA Officer,

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the implementing FOIA regulations of the Department of the Treasury, 31 CFR Part 1, Subpart A, I respectfully request the following records (or records containing the following information):

- 1) All electronic mail (emails), MMS or SMS text messages, instant messages, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), from the following custodians:
  - a) Dr. Janet Louise Yellen
  - b) Calvin A. Mitchell III
  - c) Alvin Zack Rosenblum



214 Massachusetts Avenue, NE  
Washington, DC 20002

(202) 546-4400  
heritage.org

- d) Natalie Pyle Earnest
- e) James V. Secreto
- f) William Pratt
- g) Chastity C. Murphy
- h) Matthew Wiegmann
- i) Didem A. Nisanci
- j) Nathan H. Levit
- k) Aditi Hardikar
- l) Kayla Arslanian
- m) Nicole Lindler
- n) Raymond Pham
- o) Hira Qureshi

- 2) That contain the following terms:
  - a. recession
  - b. alternative definitions of recession
  - c. alternative recession measurements

Please limit the search for this request from 4/28/2022 to 10/27/2022.

Please remove all press clipping and mailers.

The terms “pertaining to,” “referring,” “relating,” or “concerning” with respect to any given subject means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

The term “record” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes,



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letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (emails), MMS or SMS text messages, instant messages, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), contracts, cables, telexes, notations of any type of conversation, telephone call, voicemail, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electronic records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A record bearing any notation not a part of the original text is to be considered a separate record. A draft or non-identical copy is a separate record within the meaning of this term. By definition a “communication” (as that term is defined herein) is also a “record” if the means of communication is any written, recorded, or graphic matter of any sort whatsoever, regardless of how recorded, and whether original or copy.

The terms “and” and “or” should be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The terms “all,” “any,” and “each” should each be construed as ‘encompassing any and all. The singular includes the plural number, and vice versa. The present tense



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includes the past and vice versa. The masculine includes the feminine and neuter genders.

The term “communication” means each manner or means of disclosure or exchange of information (in the form of facts, ideas, inquiries, or otherwise), regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in an in-person meeting, by telephone, facsimile, e-mail (desktop or mobile device), text message, MMS or SMS message, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), regular mail, telexes, releases, or otherwise.

“Communications with,” “communications from,” and “communications between” means any communication involving the related parties, regardless of whether other persons were involved in the communication, and includes, but is not limited to, communications where one party is cc’d or bcc’d, both parties are cc’d or bcc’d, or some combination thereof.

The term “employee” means a current or former: officer, director, shareholder, partner, member, consultant, senior manager, manager, senior associate, permanent employee, staff employee, attorney, agent (whether de jure, de facto, or apparent without limitation), advisor, representative, attorney (in law or in fact), lobbyist (registered or unregistered), borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, provisional employee, or subcontractor.

The term “person” is defined as any natural person or any legal entity, including, without limitation, any business or governmental entity or association, and all subsidiaries, divisions, partnerships, properties, affiliates, branches, groups, special purpose entities, joint ventures, predecessors, successors, or any other entity





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in which they have or had a controlling interest, and any employee, and any other units thereof.

The term “Congress” refers to any person elected to the United States House of Representatives or United States Senate, or is assigned a “house.gov” or “senate.gov” email address.

Please consider all members of a document “family” to be responsive to the request if any single “member” of that “family” is responsive, regardless of whether the “family member” in question is “parent” or “child.”

This request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.

In the interest of expediency and to minimize the research and/or duplication burden on your staff, please send records electronically if possible. If this is not possible, please notify me before sending to the mailing address listed below. If access to this request takes longer than twenty business days, please let me know when I might receive records or be able to inspect the requested records. Please produce responsive documents as soon as they become available. In all cases, please communicate with me at the below email address.

Please comply fully with 5 U.S.C. § 552(b). Accordingly, without limitation to the foregoing, if any portion of this request is denied for any reason, please provide written notice of the records or portions of records that are being withheld and cite each specific exemption of the Freedom of Information Act on which the agency relies. Moreover, to the extent that responsive records may be withheld in part



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produce all reasonably segregable portions of those records. Additionally, please provide all responsive documents even if they are redacted in full.

### Fee Waiver Request

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit, Heritage Foundation does not have a commercial purpose and the release of the information requested is not in Heritage Foundation's commercial interest. The Heritage Foundation's mission is to formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense. Heritage Foundation uses the information requested and analyzes it in order to educate the public through social media,<sup>1</sup> broadcast media<sup>2</sup> (traditional and nontraditional) and press releases.<sup>3</sup> The requested information is in the public interest because The Biden administration took great pains to redefine "recession" in order to claim the economy was not in fact in a recession.<sup>4</sup>

Because this is a request by a member of the news media for information of public interest, made in my capacity as an author for The Daily Signal<sup>5</sup> (a major news outlet<sup>6</sup>), I actively gather information of potential interest to our Daily Signal

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<sup>1</sup> Heritage Foundation. [@ Heritage] (Accessed: 2023, May 17). 669.8K Followers Twitter.

<sup>2</sup> Fox News. (Accessed: 2023, May 17). Heritage Foundation launches Conservative Oversight Project aimed at 'exposing' Biden admin, leftist policies. <https://www.foxnews.com/politics/heritage-conservative-oversight-project-biden-admin-leftist-policies>

<sup>3</sup> Heritage Foundation. (Accessed: 2023, May 17). Press. <https://www.heritage.org/press>

<sup>4</sup> Msn.com. (Accessed: 2023, July 6). Biden plays Orwell, tries to redefine what 'recession' means. <https://www.msn.com/en-us/money/markets/commentary-by-the-treasury-secretary-s-own-definition-we-re-back-in-recession/ar-AA1czzRV?li=BB16M4hs>

<sup>5</sup> Daily Signal. (Accessed: 2023, May 17). Mike Howell. <https://www.dailysignal.com/author/mike-howell/>

<sup>6</sup> Daily Signal. [@DailySignal] (Accessed: 2023, May 17). 81.7K Followers Twitter. <https://twitter.com/DailySignal>



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Washington, DC 20002

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audience, and I use my editorial skills to turn raw materials into a distinct work, and I distribute that work to our Daily Signal audience through podcasts<sup>7</sup> or articles. I request that you waive all applicable fees associated with this request.

If you deny this request for a fee waiver, please advise me in advance of the estimated charges if they are to exceed \$50. Please send me a detailed and itemized explanation of those charges.

If you have any questions, or feel you need clarification of this request please contact me at [oversightproject@heritage.org](mailto:oversightproject@heritage.org).

Sincerely,

Mike Howell  
Director of the Oversight Project and  
Investigative Reporter at The Daily  
Signal  
The Heritage Foundation  
214 Massachusetts Ave, N.E.  
Washington, D.C. 20002

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<sup>7</sup> Apple. (Accessed: 2023, May 17) The Daily Signal Podcast.  
<https://podcasts.apple.com/us/podcast/the-daily-signal-podcast/id1313611947>

# **EXHIBIT 6**

**From:** [FOIA@treasury.gov](mailto:FOIA@treasury.gov)  
**To:** [OversightProject](#)  
**Subject:** 2023-FOIA-00559 Follow Up Email Regarding NMI Letter  
**Date:** Wednesday, August 30, 2023 7:37:55 AM  
**Attachments:** [NMI Acknowledgement.pdf](#)

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Hi Mr. Howell,

I am following up on the email previously sent to you regarding narrowing the scope of your request. Please note that your request will be closed on 09/06/23 if we do not receive a response.

I kindly ask that you review the letter attached and respond to this email referencing FOIA 2023-FOIA-00559.

Thank you,

Cawana Pearson

# **EXHIBIT 7**

**From:** [OversightProject](#)  
**To:** [FOIA@treasury.gov](mailto:FOIA@treasury.gov); [OversightProject](#)  
**Subject:** RE: 2023-FOIA-00559 Follow Up Email Regarding NMI Letter  
**Date:** Thursday, August 31, 2023 2:27:44 PM

---

I would like to narrow down the scope to only emails **FROM**

- A) Dr. Janet Louise Yellen
- b) Calvin A. Mitchell III
- c) Alvin Zack Rosenblum
- d) Natalie Pyle Earnest
- e) James V. Secreto
- f) William Pratt
- g) Chastity C. Murphy
- h) Matthew Wiegmann
- i) Didem A. Nisanci
- j) Nathan H. Levit
- k) Aditi Hardikar
- l) Kayla Arslanian
- m) Nicole Lindler
- n) Raymond Pham
- o) Hira Quresh

- 2) That contain the following terms:
  - a. recession
  - b. alternative definitions of recession
  - c. alternative recession measurements

---

**From:** FOIA@treasury.gov <FOIA@treasury.gov>  
**Sent:** Wednesday, August 30, 2023 7:38 AM  
**To:** OversightProject <OversightProject@heritage.org>  
**Subject:** 2023-FOIA-00559 Follow Up Email Regarding NMI Letter

Hi Mr. Howell,

I am following up on the email previously sent to you regarding narrowing the scope of your request. Please note that your request will be closed on 09/06/23 if we do not receive a response.

I kindly ask that you review the letter attached and respond to this email referencing FOIA 2023-FOIA-00559.

Thank you,

Cawana Pearson

# **EXHIBIT 8**





DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

09/01/2023

Mr. Mike Howell  
The Heritage Foundation  
214 Massachusetts Ave, NE  
Washington, DC 20002

email: [oversightproject@heritage.org](mailto:oversightproject@heritage.org)

RE: Your FOIA Request to Treasury, Case Number 2023-FOIA-00559

Dear Mr. Howell:

This letter acknowledges the receipt of your Freedom of Information Act (FOIA) request to the U.S. Department of the Treasury, dated 07/06/2023. Your request is outlined as follows:

"Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the implementing FOIA regulations of the Department of the Treasury, 31 CFR Part 1, Subpart A, I respectfully request the following records (or records containing the following information):

Part 1:

1) All electronic mail (emails) from the following custodians:

- a) Dr. Janet Louise Yellen
- b) Calvin A. Mitchell III
- c) Alvin Zack Rosenblum
- d) Natalie Pyle Earnest
- e) James V. Secreto
- f) William Pratt
- g) Chastity C. Murphy
- h) Matthew Wiegmann
- i) Didem A. Nisanci
- j) Nathan H. Levit
- k) Aditi Hardikar
- l) Kayla Arslanian
- m) Nicole Lindler
- n) Raymond Pham
- o) Hira Qureshi

2) That contain the following terms:

- a. recession
- b. alternative definitions of recession
- c. alternative recession measurements

Please limit the search for this request from 4/28/2022 to 10/27/2022."

I have initiated a search within the Departmental Offices for records that would be responsive to your request. Every effort will be made to provide you with a timely response; however, unusual circumstances exist regarding the search for and review of potentially responsive records which may delay our response. This may include the need to consult with multiple program offices, to review a voluminous quantity of records, or to search for records stored in multiple locations. I invite you to contact my office to discuss limiting the scope of your request which could significantly reduce the time needed to process your request.

We will review your request for a fee waiver once our office ascertains that the billable costs will exceed our \$25.00 billing threshold.

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact Treasury's FOIA Public Liaison by phone at (202) 622-8098 or by email at [FOIAPL@treasury.gov](mailto:FOIAPL@treasury.gov).

If the FOIA Public Liaison is unable to satisfactorily resolve your question or concern, the Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. If you wish to contact OGIS, you may contact the agency directly by email at [OGIS@nara.gov](mailto:OGIS@nara.gov), by phone at (877) 684-6448, by fax at (202) 741-5769 or by mail at the address below:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road – OGIS  
College Park, MD 20740-6001

You may reach me via telephone at 202-622-0930, extension 2; or via e-mail at [FOIA@treasury.gov](mailto:FOIA@treasury.gov). Please reference FOIA case number 2023-FOIA-00559 when contacting our office about this request.

Sincerely,

Cawana Pearson  
FOIA and Transparency  
Office of Privacy, Transparency, and Records  
U.S. Department of the Treasury





<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input checked="" type="radio"/> <b>I. FOIA/Privacy Act</b>  <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
 1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi-district Litigation  
  7 Appeal to District Judge from Mag. Judge  
  8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 5 U.S.C. S 552 - The U.S. Department of the Treasury failed to respond to a FOIA request.

<b>VII. REQUESTED IN COMPLAINT</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	<b>DEMAND \$</b> <b>JURY DEMAND:</b>	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
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<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>	If yes, please complete related case form
-------------------------------------	-------------------	------------------------------	--	---

DATE: 12/1/23	SIGNATURE OF ATTORNEY OF RECORD:
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**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



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

The Heritage Foundation, et. al.

\_\_\_\_\_  
*Plaintiff*

v.

U.S. Department of The Treasury

\_\_\_\_\_  
*Defendant*

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Civil Action No.

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)* Merrick Garland  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Joseph B. Edlow  
Law Offices of Joseph Edlow LLC  
1201 Seven Locks Road  
Suite 360  
Rockville, Maryland 20854

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



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

The Heritage Foundation, et. al.

\_\_\_\_\_  
*Plaintiff*

v.

U.S. Department of The Treasury

\_\_\_\_\_  
*Defendant*

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Civil Action No.

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

Civil Process Clerk  
U.S. Attorney's Office for the District of Columbia  
601 D. Street, NW  
Washington, D.C. 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Joseph B. Edlow  
Law Offices of Joseph Edlow LLC  
1201 Seven Locks Road  
Suite 360  
Rockville, Maryland 20854

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

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I returned the summons unexecuted because \_\_\_\_\_; or

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My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: