

United States Senate

WASHINGTON, DC 20510

April 9, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland
Attorney General
Department of Justice

The Honorable Christopher Wray
Director
Federal Bureau of Investigation

The Honorable David Weiss
Special Counsel
Department of Justice

Dear Attorney General Garland, Director Wray and Special Counsel Weiss:

Since October 13, 2022, Congress has requested from the Justice Department and FBI information and records relating to the FD-1023 to better understand what steps, if any, the Justice Department and FBI took to investigate the document.¹ As detailed below, Congress has carefully conducted oversight on this matter; however, the Justice Department and FBI have failed to provide records, let alone any substantive reply. The timing of when the FBI interviewed the Confidential Human Source, who formed the basis of the FD-1023, over three years after the FD-1023 was created appears to confirm congressional concerns that the FBI didn't follow normal investigative process and procedure. This failure demands immediate explanation.

The FBI refused to confirm even the existence of the FD-1023 until Senator Grassley and Chairman Comer informed Director Wray on a May 31, 2023, phone call that they had reviewed it.² On that May 31, 2023, call with Director Wray, he informed Senator Grassley and Chairman Comer of the importance of the Confidential Human Source (Smirnov) to the FBI's investigative

¹ Letter from Senator Charles E. Grassley, Ranking Member, Senate Committee on the Judiciary to Christopher Wray, Director, Federal Bureau of Investigation, Merrick Garland, Attorney General, Department of Justice & David Weiss, U.S Attorney, District of Delaware (Oct. 13, 2022), available at https://www.grassley.senate.gov/imo/media/doc/grassley_to_doj_fbi_weiss_political_bias_part_iii.pdf; Letter from Senator Charles E. Grassley, Ranking Member, Senate Committee on the Budget to Christopher Wray, Director, Federal Bureau of Investigation & Merrick Garland, Attorney General, Department of Justice (Oct. 24, 2023), available at https://www.grassley.senate.gov/imo/media/doc/grassley_to_justice_deptfbi1023followup.pdf.

² Press Release, Sen. Chuck Grassley, Ranking Member, Senate Committee on the Budget, *Grassley, Comer Demand FBI Record Alleging Criminal Scheme Involving Then-VP Biden* (May 3, 2023), <https://www.grassley.senate.gov/news/news-releases/grassley-comer-demand-fbi-record-alleging-criminal-scheme-involving-then-vp-biden>; Press Release, Sen. Chuck Grassley, Ranking Member, Senate Committee on the Budget, *Grassley & Comer To Wray: Provide The Unclassified Documents Or Face Contempt* (May 31, 2023), <https://www.grassley.senate.gov/news/news-releases/grassley-and-comer-to-wray-provide-the-unclassified-documents-or-face-contempt>.

work.³ Indeed, in regard to that alleged credibility, the FBI informed the House Committee on Oversight and Accountability that the Confidential Human Source was “highly credible,” trusted, had worked for the FBI for years and had been paid “six figures.”⁴ The FBI’s statements were corroborated by Ranking Member Raskin who said, “[t]he source, who has been described as highly credible by the FBI...”⁵ The FBI further represented to Congress that information from the Confidential Human Source was used in criminal investigations and prosecutions.⁶

On July 9, 2023, Senator Grassley wrote a letter to U.S. Attorney Weiss about an October 23, 2020, meeting where Justice Department officials and FBI Special Agents from the Pittsburgh Field Office briefed one of his top prosecutors, Assistant U.S. Attorney Lesley Wolf, with respect to the contents of the FD-1023.⁷ Moreover, for context, during questioning by the House Judiciary Committee, former U.S. Attorney for the Western District of Pennsylvania, Scott Brady, stated that there was “sufficient indicia of credibility in this 1023 to pass it on to an office that had a predicated grand jury investigation,” which was a reference to U.S. Attorney Weiss.⁸ Mr. Brady further stated to the House:

As I testified previously and as Mr. Barr stated publicly, the 1023, the CHS, was vetted against known sources of Russian disinformation. It was found that it was not sourced from Russian disinformation. To do analysis, we interacted with EDNY.⁹

U.S. Attorney Weiss has failed to respond to that July 2023 letter, which asked what steps he took to fully investigate the FD-1023. The February 14, 2024, federal indictment doesn’t answer any questions relating to the FD-1023 from that letter. Accordingly, U.S. Attorney Weiss’s conduct with the FD-1023 demands answers just as his attempted unprecedented sweetheart plea deal for Hunter Biden does.

Then, at the Senate Judiciary Committee’s December 5, 2023, oversight hearing, Senator Grassley asked Director Wray the following question:

³ Press Release, Sen. Charles Grassley, Grassley & Comer to Wray: Provide the Unclassified Documents or Face Contempt (May 31, 2023), <https://www.grassley.senate.gov/news/news-releases/grassley-and-comer-to-wray-provide-the-unclassified-documents-or-face-contempt>.

⁴ Letter from Representative James Comer, Chairman, House Committee on Oversight and Accountability & Representative Jim Jordan, Chairman, House Committee on the Judiciary to Christopher Wray, Director, Federal Bureau of Investigation (Mar. 1, 2024), available at <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-03-01%20JDJ%20JC%20to%20Wray%20re%20Smirnov.pdf>; Hannah Rabinowitz, Evan Perez & Marshall Cohen, *Former FBI Informant Charged With Lying About the Biden’s Role in Ukraine Business, Undercutting GOP Impeachment Inquiry*, CNN (Feb. 15, 2024, 9:41 PM), <https://www.cnn.com/2024/02/15/politics/former-fbi-informant-charged-biden-burisma/index.html>.

⁵ Press Release, Rep. Jamie Raskin, Ranking Member, House Committee on Oversight and Accountability, *Ranking Member Raskin’s Statement Following Review of Debunked FBI Tip* (Jun. 5, 2023), <https://oversightdemocrats.house.gov/news/press-releases/ranking-member-raskin-s-statement-following-review-of-debunked-fbi-tip>.

⁶ Letter from Representative James Comer, Chairman, House Committee on Oversight and Accountability & Representative Jim Jordan, Chairman, House Committee on the Judiciary to Christopher Wray, Director, Federal Bureau of Investigation (Mar. 1, 2024), available at <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-03-01%20JDJ%20JC%20to%20Wray%20re%20Smirnov.pdf>.

⁷ Letter from Senator Charles E. Grassley, Ranking Member, Senate Committee on the Budget to David Weiss, U.S. Attorney, District of Delaware (July 9, 2023), available at https://www.grassley.senate.gov/imo/media/doc/grassley_to_weiss_1023.pdf.

⁸ Transcribed Interview of Scott Brady, former U.S. Att’y, W. Dist. Of Penn. At 19-20.

⁹ Transcribed Interview of Scott Brady, former U.S. Att’y, W. Dist. Of Penn. At 150.

Q: Director Wray, this FBI 1023 was serialized on June 30, 2020 – over three years ago. When were you first made aware of the [Biden family] 1023?

A: Well, I don't know that I can give you the exact date, but I can tell you that I learned of the 1023 much, much, much more recently than anything around 2020 that's for sure.¹⁰

That answer underscores the problem that the FBI Director was not apprised of the FD-1023 until apparently years after it was created. Why was the FBI Director kept in the dark for so long when the FBI told Congress their Confidential Human Source was “highly credible” and the matter involved an alleged criminal scheme with the sitting president? Why weren't any investigative steps taken, such as interviewing the source, to determine the veracity, or lack thereof, with respect to the FD-1023 for over three years? Moreover, at the time of Director Wray's answer, the FBI had finally interviewed the Confidential Human Source on September 27, 2023, but failed to apprise Congress of that fact.¹¹

Additional concerns relate to the fact that the FBI refused to produce to Congress and the American people a copy of the unclassified FD-1023 under the guise that doing so would put the “highly credible” Confidential Human Source at risk.¹² Even after Director Wray was threatened with contempt proceedings for obstructive conduct, the FBI still only provided a redacted version to Congress subject to a limited member distribution.¹³ As Congress fought unsuccessfully with the FBI to possess a fully unredacted copy of this unclassified document, the FBI repeatedly claimed that it would put the Confidential Human Source at risk. The FBI provided a public statement to that effect, which stated, in part:

Director Wray has offered to produce the requested document, with limited redactions to protect the confidentiality and safety of sources, by bringing it to a secure location in the U.S. Capitol for the chair and ranking member to review...The commonsense protections the FBI has requested to maintain the confidentiality of that sensitive information are routinely employed both in response to congressional requests and in court in criminal proceedings to

¹⁰ *Oversight of the Federal Bureau of Investigation Before the Senate Committee on the Judiciary* (Dec. 5, 2023) (questions from Senator Charles. E. Grassley, Member, Senate Committee on the Judiciary to Christopher Wray, Director, Federal Bureau of Investigation), accessed at <https://www.judiciary.senate.gov/committee-activity/hearings/12/05/2023/oversight-of-the-federal-bureau-of-investigation>.

¹¹ Indictment, *U.S. v. Smirnov*, No. 2:24-cr-00091-ODW (C.D. Cal. Feb. 14, 2024) at 30.

¹² Message from the Federal Bureau of Investigation on the FD-1023 Request from Congress, (last accessed Feb. 20, 2024), <https://socxfbi.org/SFSA/SFSA/Featured-Articles/Message-from-the-FBI-on-the-FD-1023-Request-from-Congress.aspx>; Senator Marsha Blackburn, *Blackburn to FBI: Is Your Job to Protect & Shield Joe Biden or Is it to Protect This Country?*, YouTube (June 13, 2023), <https://www.youtube.com/watch?v=lytUsR5CqZ8>; Letter from James Comer, Chairman, H. Comm. on Oversight and Accountability, and Jim Jordan, Chairman, H. Comm. on Judiciary to Christopher Wray, Director, Fed. Bureau Investigation (Mar. 1, 2024), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-03-01%20JDJ%20JC%20to%20Wray%20re%20Smirnov.pdf>.

¹³ Press Release, H. Comm. on Oversight and Accountability, Comer Forces the FBI to Cooperate and Allow All Oversight Committee Members to Review Biden Bribery Record (June 7, 2023), <https://oversight.house.gov/release/comer-forces-the-fbi-to-cooperate-and-allow-all-oversight-committee-members-to-review-biden-bribery-record/>.

protect the physical safety of sources and the integrity of investigations.¹⁴

Furthermore, at a June 13, 2023, Senate Judiciary Committee hearing, FBI Deputy Director Abbate said the following with respect to redactions on the 1023: “We often redact documents to protect sources and methods...the document was redacted to protect the source as everyone knows, and this is a question of life and death, potentially.”¹⁵ Indeed, Ranking Member Raskin said largely the same after an FBI briefing, noting that “[a]s the FBI explained at length during today’s briefing, and in previous conversations leading up to today’s accommodation, releasing this form publicly could place the Confidential Human Source in grave danger and undermine the integrity of FBI programs and investigations going forward.”¹⁶ It appears that the FBI’s concern about the Confidential Human Source was an excuse to stiff-arm congressional oversight and the American people.

As the Smirnov indictment now shows, the FBI and U.S. Attorney Weiss failed to even interview him – again, a source the FBI said was “highly credible” – until September 27, 2023, after Senator Grassley and Chairman Comer forced their hands and made the FD-1023 public on July 20, 2023.¹⁷ On August 29, 2023, over a month after the public release of the 1023, FBI investigators spoke with the FBI handling agent responsible for Smirnov.¹⁸

The federal indictment of Smirnov leaves many questions unanswered, including how the Justice Department and FBI could use this Confidential Human Source for approximately 14 years, pay him hundreds of thousands of dollars, use his information in investigations and prosecutions, and then ultimately determine he’s a liar. The FBI’s questionable handling of this Confidential Human Source underscores, as Senator Johnson has pointed out, a greater scandal relating to the overall corruption within federal law enforcement, the Justice Department, and the intelligence community.¹⁹

¹⁴ Message from the Federal Bureau of Investigation on the FD-1023 Request from Congress, (last accessed Feb. 20, 2024), <https://socxfbi.org/SFSA/SFSA/Featured-Articles/Message-from-the-FBI-on-the-FD-1023-Request-from-Congress.aspx>. Ultimately, the FBI provided a redacted version of the FD-1023 to the entire House Committee on Oversight and Accountability; Press Release, H. Comm. on Oversight and Accountability, Comer Forces the FBI to Cooperate and Allow All Oversight Committee Members to Review Biden Bribery Record (June 7, 2023), <https://oversight.house.gov/release/comer-forces-the-fbi-to-cooperate-and-allow-all-oversight-committee-members-to-review-biden-bribery-record/>; Press Release, H. Comm. on Oversight and Accountability, Comer on FBI Briefing: Unclassified Record Generated by Trusted Informant, Active During Obama-Biden Administration, Being Used in Ongoing Investigation (June 5, 2023), <https://oversight.house.gov/release/comer-on-fbi-briefing-unclassified-record-generated-by-trusted-informant-active-during-obama-biden-administration-being-used-in-ongoing-investigation/>.

¹⁵ Senator Marsha Blackburn, *Blackburn to FBI: Is Your Job to Protect & Shield Joe Biden or Is it to Protect This Country?*, YouTube (June 13, 2023), <https://www.youtube.com/watch?v=lytUsR5CqZ8>.

¹⁶ Press Release, Rep. Jamie Raskin, Ranking Member, House Committee on Oversight and Accountability, *Ranking Member Raskin’s Statement Following Review of Debunked FBI Tip* (June 5, 2023), <https://oversightdemocrats.house.gov/news/press-releases/ranking-member-raskin-s-statement-following-review-of-debunked-fbi-tip>.

¹⁷ Indictment, *U.S. v. Smirnov*, No. 2:24-cr-00091-ODW (C.D. Cal. Feb. 14, 2024).

¹⁸ *Id.*

¹⁹ Sunday Morning Futures, Fox News, *Ron Johnson: The ‘greater scandal’ is the corruption of federal law enforcement, intel community, DOJ*, Nov. 5, 2023, <https://www.foxnews.com/video/6340564197112>.

Accordingly, so that Congress and the public have answers relating to U.S. Attorney Weiss and the FBI's multi-year delay in investigating the allegations in the FD-1023 and the FBI's efforts to vet the Confidential Human Source, we request that you make the handling agent and his superiors available for a full-day transcribed interview no later than May 7, 2024:

- 1.
- 2.
- 3.
- 4.

In addition, so that Congress and the public have answers to all questions relating to the FD-1023 and the actions the Biden administration has taken to investigate it, and better understand any changes made to the FBI's Confidential Human Source program, please answer and provide the following no later than April 29, 2024:

1. U.S. Attorney Weiss, what steps did you take to investigate the FD-1023 after the October 2020 briefing on the matter? If none, why not?
2. On what basis did the FBI determine the Confidential Human Source was credible and, accordingly, inform Congress of the same?
3. On what basis did the FBI make the claim that the release of the 1023 would risk the safety of the Confidential Human Source?²⁰
4. Has the FBI made any changes to its Confidential Human Source program to better analyze and judge source credibility? If so, please explain. If not, why not?
5. How much did the government pay the Confidential Human Source? What steps have the Justice Department and FBI taken to recover the money and return it to the taxpayer? Provide all records of payment from the FBI to the Confidential Human Source.
6. How often did the Confidential Human Source testify in court and for which cases?
7. Have defendants in those cases been informed of the indictment?
8. The indictment states, “[t]he Defendant also knew the information he provided was used in criminal investigations because the Defendant participated in a number of operations where he was authorized to engage in criminal activity as part of an on-going criminal investigation.”²¹ For which criminal investigations was the defendant used? Of those, which ones was he “authorized to engage in criminal activity”? Provide all records.
9. Provide the dates for each re-evaluation for the Confidential Human Source.

²⁰ Senator Marsha Blackburn, *Blackburn to FBI: Is Your Job to Protect & Shield Joe Biden or Is it to Protect This Country?*, YouTube (June 13, 2023), <https://www.youtube.com/watch?v=IytUsR5CqZ8>; Press Release, Rep. Jamie Raskin, Ranking Member, House Committee on Oversight and Accountability, *Ranking Member Raskin's Statement Following Review of Debunked FBI Tip* (June 5, 2023), <https://oversightdemocrats.house.gov/news/press-releases/ranking-member-raskin-s-statement-following-review-of-debunked-fbi-tip>.

²¹ Indictment, *U.S. v. Smirnov*, No. 2:24-cr-00091-ODW (C.D. Cal. Feb. 14, 2024) at 2.

10. The indictment states that the defendant was admonished by the FBI handler that he must provide truthful information to the FBI when he first became a CHS in 2010 and on multiple occasions thereafter, including, but not limited to: 10/1/2010, 1/20/2011, 5/17/2011, 9/14/2011, 8/29/2012, 11/28/2012, 4/12/2013, 8/29/2013, 1/22/2014, 7/9/2014, 7/10/2015, 9/29/2016, 9/26/2017, 9/26/2018, 9/27/2019, 3/11/2020, 2/19/2021, 10/28/2021, 10/17/2022 and 9/29/2023.²² Provide all records.
11. Why was the defendant meeting with officials connected to Burisma to include contact in 2017? Was it part of a criminal investigation into that company and its owner? Provide all records.
12. Did the FBI interview Mykola Zlochevsky? If so, when? If not, why not? Provide all records.
13. Did the FBI interview Oleksandr Ostapenko? If so, when? If not, why not? Provide all records.
14. Did the FBI interview Vadim Pojarskii? If so, when? If not, why not? Provide all records.
15. Did the FBI interview Karina Zlochevsky? If so, when? If not, why not? Provide all records.
16. Did the Justice Department and FBI interview all named parties in the FD-1023? If so, when? If not, why not? Provide all records.
17. Has the Justice Department and FBI conclusively determined the audio tapes, bank records, and text messages alleging the bribery scheme do not exist? If so, describe all investigative steps taken to reach that conclusion. If not, why not?
18. In the indictment, when the defendant says, “I’ll meet with the guys as soon as I will be able to fly,” in reference to obtaining audio records of Hunter Biden’s involvement in the alleged bribery scheme, what steps has the FBI taken to identify who “the guys” were or determine if this statement contains false information?²³ If none, why?
19. When were all of you (1) made aware of the FD-1023 and (2) made aware that the Confidential Human Source was interviewed on September 27, 2023?
20. In the indictment, the FBI handler texted the Confidential Human Source, “How’s [Burisma Official 2] fit into the story[?]” The defendant responded, “This is the guy that will do the public company from there [sic.] side.”²⁴ What “story” or investigative activity is the FBI handler referring to? Of what importance is the Confidential Human Source to the apparent ongoing matter? Provide all records.

²² *Id.*

²³ *Id.* at 9.

²⁴ *Id.* at 20.

21. The indictment says “Associate 1 never spoke to Burisma official 1 on the phone, or in person.”²⁵ How did the DOJ and FBI reach that conclusion? Provide all records.
22. The indictment references emails, texts, travel records, and photos involving the Confidential Human Source and the FBI. Provide all records.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget



Ron Johnson
Ranking Member
Permanent Subcommittee
on Investigations

cc: The Honorable Sheldon Whitehouse
Chairman
Committee on the Budget

The Honorable Richard Blumenthal
Chairman
Permanent Subcommittee on Investigations

The Honorable Michael Horowitz
Inspector General
Department of Justice

²⁵ *Id.* at 27.