

United States Senate
WASHINGTON, DC 20510

May 24, 2023

VIA ELECTRONIC TRANSMISSION

Ms. Alyssa DaCunha
Partner
WilmerHale

Mr. Bruce M. Berman
General Counsel
WilmerHale

Dear Ms. DaCunha and Mr. Berman:

I am in receipt of Mr. Bruce M. Berman's May 5, 2023, letter responding to my inquiry on behalf of your client, WilmerHale, and Mr. Boyd Johnson.¹ The letter failed to fully respond to all the questions in my letter, and failed to provide a single requested document. WilmerHale's letter states that DEA prevented it from complying with certain record requests, but the responses WilmerHale did provide are also lacking. The letter dodged my question about whether Mr. Johnson knew of any personal connections between Ms. Milgram and any of those who aided in preparing your DEA report. WilmerHale likewise failed to provide records showing edits DEA requested be made to the report, and withheld the total amount WilmerHale charged the taxpayer. The May 5 letter also raised additional questions with respect to the accuracy of statements made by Administrator Milgram to my office regarding the date the report was first delivered to DEA.

In its failed response, WilmerHale made clear that DEA used the contract as a shield to prevent and frustrate production of the information I requested. But you have not provided me with a copy of the governing contract, so I am unable to assess the legitimacy of your claims about it. I request that you do so in your response. As DEA and other executive branch agencies are aware, however, contracts with third parties are not a basis to withhold information from Congress during a congressional investigation into a government agency funded by congressional appropriations. Moreover, WilmerHale failed to answer a question from my staff asking whether the contract established an attorney-client relationship between DEA and WilmerHale.² This report was billed as independent, so it would be odd if WilmerHale claimed

¹ Letter from Mr. Bruce M. Berman, General Counsel, WilmerHale (May 5, 2023), on file with Committee staff.

² Email from James Layne, Investigative Counsel, U.S. Senate Committee on the Budget, to Alyssa DaCunha, Partner, WilmerHale (April 27, 2023), on file with Committee staff.

it represented DEA as their attorneys and advocates, rather than acting independently as promised to the public.³

Let's take the other defects in your response one by one. In question four, I asked for the exact date WilmerHale *first delivered* the report to DEA.⁴ You answered that you delivered the report on March 23, the day before the report was released publicly.⁵ That directly contradicts what I was told by Administrator Milgram in a phone call on that same day, March 23, in the presence of multiple members of my staff.⁶ She told me that WilmerHale delivered the report to DEA approximately 3-4 weeks before that date. I ask you to review WilmerHale's answer and correct its response accordingly.

As to question six, I asked whether Mr. Johnson had any knowledge of a friendship or connection between Mr. Lawn, or anyone who aided in preparing the report, and Administrator Milgram. In response, WilmerHale dodged the question and stated that I should ask this of Mr. Lawn. The scope of this congressional investigation will not be set by WilmerHale. My question specifically asked about Mr. Johnson's knowledge, not Mr. Lawn's.

WilmerHale's response to question seven was incomplete as well. I asked whether Administrator Milgram or anyone at DEA or elsewhere in the government requested Mr. Johnson, Mr. Lawn, or anyone aiding in preparation of the report to make changes to it. WilmerHale indicated that they did, claiming that "drafts of the Report were provided to DEA, which provided information and made organizational suggestions."⁷ But WilmerHale failed to provide a "detailed description of all such requests," which I asked for.⁸ As deficient as WilmerHale's response is, by admitting edits were made, it apparently is not claiming that information on the subject is purportedly blocked by the contract. The public has a right to know whether DEA requested significant edits that may have weakened the report or omitted discussion of the serious failures of DEA's oversight of its foreign operations. Again, if DEA has nothing to hide, this information needs to be released. The DEA's credibility is on the line.

As to question nine, I asked for the total amount WilmerHale charged DEA and the taxpayer to prepare its report. While WilmerHale noted that this amount was less than the \$1.425 million the contract allowed, it did not provide the final total. I reiterate my request for this information as well. The taxpayer has a right to know to the penny how much DEA spent on this report, which has widely been regarded as a flop.

³ U.S. Drug Enforcement Administration, *DEA Announces Foreign Operations Review Team*, Press Release (October 26, 2021), <https://www.dea.gov/press-releases/2021/10/26/dea-announces-foreign-operations-review-team>.

⁴ Letter from Senator Charles E. Grassley, Ranking Member, Senate Committee on the Budget, to Boyd Johnson, Partner, WilmerHale (April 12, 2023), question 4, https://www.grassley.senate.gov/imo/media/doc/grassley_to_wilmer-hale_-_dea_foreign_ops_review.pdf.

⁵ Letter from Bruce M. Berman, *supra* n. 1.

⁶ Notes of multiple staff members taken during the March 23 conversation are on file with Committee staff.

⁷ Letter from Bruce M. Berman, *supra* n. 1.

⁸ Letter from Senator Charles E. Grassley, *supra* n. 4.

Finally, please describe whether and to what extent Louis Milione, the Principal Deputy Administrator at DEA, communicated with WilmerHale with respect to the contract and all iterations of the report. Please provide all records between and among WilmerHale and Mr. Milione with respect to the contract and all iterations of the report.

The public's business should be public. Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Ranking Member
Committee on the Budget