

# Congress of the United States

Washington, DC 20515

July 20, 2023

## VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland  
Attorney General  
Department of Justice

The Honorable Christopher Wray  
Director  
Federal Bureau of Investigation

Dear Attorney General Garland and Director Wray:

On May 3, 2023, we wrote to the FBI requesting the production of an unclassified FBI-generated FD-1023 form that describes an alleged criminal scheme involving then-Vice President Biden and a foreign national relating to the exchange of money for policy decisions.<sup>1</sup> On that same day, Chairman Comer issued a subpoena for the FD-1023. After that, the FBI refused to confirm the existence of the FD-1023 until we informed Director Wray on a May 31, 2023, phone call that we had reviewed it based on legally protected whistleblower disclosures.<sup>2</sup> The FBI then only produced the FD-1023 to the House Committee on Oversight, after confirming in writing on June 1, 2023, that the FD-1023 is in fact unclassified, but did so with extensive, improper and unjustifiable redactions. For example, as Senator Grassley noted in his June 13, 2023, floor speech, the FBI redacted references in the document that mentioned recordings between the foreign national in the document and then-Vice President Biden and Hunter Biden.<sup>3</sup>

The Justice Department and FBI's placement of redactions on substantive and unclassified text meant for Congress to review is obstructive conduct. The Justice Department and FBI's obstructive conduct towards Congress is all the more reprehensible knowing that hundreds of Justice Department and FBI personnel have had access to a full and unredacted FD-1023. Moreover, the FBI has failed to comply in full with Chairman Comer's duly authorized subpoena for an unredacted copy of the FD-1023. Congress has constitutionally-based authority to review and possess this 1023 just as it did when Senators Grassley and Johnson acquired a 1023 from the Justice Department and FBI during their Crossfire Hurricane investigation and

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<sup>1</sup> 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>

<sup>2</sup> 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>

<sup>3</sup> Press Release, Sen. Chuck Grassley, Ranking Member, Senate Committee on the Budget, *Grassley: FBI Redacted References To Recordings In Biden Allegation Shared With Congress* (June 12, 2023), <https://www.grassley.senate.gov/news/remarks/grassley-fbi-redacted-references-to-recordings-in-biden-allegation-shared-with-congress>

made it public in December of 2020 while Crossfire Hurricane was under a review by Special Counsel Durham.<sup>4</sup> Whether a Republican or Democrat is in the White House, the Executive Branch must re-learn its obligation to comply with constitutional oversight requests from Congress, its authorizer and appropriator. Our making public a largely unredacted and unclassified FD-1023, which was obtained by Senator Grassley via legally protected whistleblower disclosures, that was produced to Congress for mere in camera review and with improper redactions should serve as an example of what the Justice Department and FBI should've done from the get-go. Accordingly, these whistleblowers are constitutionally and statutorily protected, and they have done the job that you should have done. You must take care that they are protected and not retaliated against.

The congressional investigative interests are higher now than in May when we initially requested the document. For example, two IRS whistleblowers have come forward and informed Congress that they were not made aware of the FD-1023 while working on U.S. Attorney Weiss's Biden investigation even though the document is directly relevant to the investigation.<sup>5</sup> Further, Attorney General Garland has given testimony that conflicts with the testimony provided by the two IRS whistleblowers with respect to U.S. Attorney Weiss's independence in the Biden investigation.<sup>6</sup> U.S. Attorney Weiss's recent letters to Congress defending his authorities to investigate have only created more questions.<sup>7</sup> Thus, the Justice Department and FBI's pattern of providing incomplete, imprecise and apparently misleading public statements requires immediate explanation which has not been sufficiently forthcoming. Therefore, in light of those failures, the FD-1023 is required for congressional and public transparency with respect to what the Justice Department and FBI have hidden from Congress and the American people and U.S. Attorney Weiss must answer with clarity with respect to how and to what extent the FD-1023 is apparently within the scope of his review. Moreover, the Justice Department and FBI must precisely answer what they have done to investigate the information in the FD-1023. After all, you've had three years to do so.

The both of you have committed to Senator Grassley in private and in public that you will protect whistleblowers. We cannot stress enough the demand to protect whistleblowers, especially in light of the retaliation faced by the IRS whistleblowers who have approached Congress. At Director Wray's July 12, 2017, confirmation hearing he stated to Senator Grassley:

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<sup>4</sup> Press Release, Sen. Chuck Grassley, Chairman, Senate Committee on Finance, *Johnson, Grassley Release FBI, DOJ, State Department Records Related To The FBI's Crossfire Hurricane Investigation* (Dec. 3, 2020), <https://www.grassley.senate.gov/news/news-releases/johnson-grassley-release-fbi-doj-state-department-records-related-fbi-s-crossfire>

<sup>5</sup> See generally Statement of IRS Whistleblower Gary A. Shapley Jr. (May 26, 2023), [https://waysandmeans.house.gov/wp-content/uploads/2023/06/Whistleblower-1-Transcript\\_Redacted.pdf](https://waysandmeans.house.gov/wp-content/uploads/2023/06/Whistleblower-1-Transcript_Redacted.pdf); See generally Supplemental Statement of IRS Whistleblower (June 19, 2023), [https://waysandmeans.house.gov/wp-content/uploads/2023/06/WB-2-Supplemental-Submission\\_Redacted.pdf](https://waysandmeans.house.gov/wp-content/uploads/2023/06/WB-2-Supplemental-Submission_Redacted.pdf).

<sup>6</sup> Press Release, Sen. Chuck Grassley, Senate Committee on the Budget, *Grassley Questions Attorney General At DOJ Oversight Hearing* (Mar. 1, 2023), <https://www.grassley.senate.gov/news/news-releases/grassley-questions-attorney-general-at-doj-oversight-hearing>

<sup>7</sup> Letter from The Hon. David C. Weiss, U.S. Att'y, District of Delaware, to Sen. Lindsey O. Graham, Ranking Member, Senate Committee on the Judiciary (July 10, 2023), <https://www.judiciary.senate.gov/imo/media/doc/usattorneyweissresponsetograham071023.pdf>; Catherine Herridge & Robert Legare, *U.S. Attorney Defends Hunter Biden Probe Amid GOP Accusations*, CBS NEWS (July 1, 2023), <https://www.cbsnews.com/news/david-weiss-u-s-attorney-defends-hunter-biden-probe-amid-gop-accusations/>

I would say first off, retaliation against whistleblowers is just wrong. Period... And whistleblowers, in my experience, having seen them in a lot of different kinds of organizations, can play a very important role in ensuring accountability. It's not just oversight from congressional committees and courts, but there is a form of accountability that comes from within and, oftentimes, whistleblowers can be a very important part of that.<sup>8</sup>

At the August 4, 2022, Senate Judiciary Committee oversight hearing, Director Wray stated to Senator Grassley:

I think retaliatory conduct against whistleblowers is unacceptable. They serve a very, very important role in our system. I know you have long championed the cause of whistleblowers and we have a number of mechanisms to try to make sure that they are -- they have the mechanisms to report. But also the mechanisms to be protected from retaliation. One of the things that I've been doing since I became director is that every time we bring all of our SACs, our special agents in charge, across the country together, which we do twice a year, we have the inspector general, Mr. Horowitz, come and talk to all of them in particular to talk to them about the importance of whistleblowers and making sure that whistleblowers are protected.<sup>9</sup>

In later questioning during that same hearing, Director Wray stated, "I condemn in the strongest possible terms, any prospect of retaliation against whistleblowers."

Indeed, Attorney General Garland has committed to protecting whistleblowers as well. At a March 1, 2023, Senate Judiciary Committee oversight hearing, in response to being asked by Senator Grassley to "commit to me, this committee, and the Senate as a whole that any retaliatory conduct against whistleblowers will be disciplined," Attorney Garland stated, "I do, Senator. And -- and you know well, more than any other member of this committee, that I've been a staunch supporter of whistleblowers..."<sup>10</sup>

Most recently, on the May 31, 2023, call between us and Director Wray he committed again to protecting whistleblowers.

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<sup>8</sup> *Hearing on the Nomination of Christopher Wray to be Director of the Federal Bureau of Investigation: Before the S. Comm. on the Judiciary*, 115<sup>th</sup> Cong. (2017) (testimony of Christopher Wray, Nominee for Director, Federal Bureau of Investigation).

<sup>9</sup> *Oversight of the Federal Bureau of Investigation: Before the S. Comm. on the Judiciary*, 117<sup>th</sup> Cong. (2022) (testimony of Christopher Wray, Director, Federal Bureau of Investigation).

<sup>10</sup> *Oversight of the Department of Justice: Before the S. Comm. On the Judiciary*, 118<sup>th</sup> Cong. (2023). (testimony of Merrick Garland, Attorney General, Department of Justice).

The Justice Department whistleblowers who have approached Senator Grassley and provided him information relating to government misconduct, including information showing that the Justice Department and FBI have misled Congress, must be protected based on the personal and public assurances, which were done under oath, the both of you have provided to Congress on multiple occasions.

We will work hard to ensure that you hold true to your word.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Budget



James Comer  
Chairman  
Committee on Oversight and Accountability