

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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September 15, 2023

Mr. Elvis Chan
Assistant Special Agent in Charge
San Francisco Field Office
Federal Bureau of Investigation
450 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102

Dear Special Agent Chan:

The Committee on the Judiciary is conducting oversight of how and to what extent the Executive Branch has coerced and colluded with companies and other intermediaries to censor speech.¹ To develop effective legislation, such as the possible enactment of new statutory limits on the Executive Branch's ability to work with social media platforms and other companies to restrict the circulation of content and deplatform users, the Committee on the Judiciary must first understand the nature of this collusion and coercion. As the primary liaison between the Federal Bureau of Investigation's (FBI) Foreign Influence Task Force (FITF) and social media companies, you are uniquely positioned to aid the Committee's oversight.² On January 17, 2023, and again on March 3, 2023, the Committee requested that you voluntarily appear for a transcribed interview.³

The Committee's investigation, along with other public reporting, and publicized discovery in an ongoing federal court case, *Missouri v. Biden*, have exposed how the federal government has pressured and colluded with Big Tech and other intermediaries to censor certain viewpoints on social and other media in ways that undermine First Amendment principles.⁴ The

¹ See Ryan Tracy, *Facebook Bowed to White House Pressure, Removed Covid Posts*, WALL ST. J. (July 28, 2023); Rep. Jim Jordan (@Jim_Jordan), TWITTER (July 27, 2023, 12:03 PM), https://twitter.com/Jim_Jordan/status/1684595375875760128.

² *Missouri v. Biden*, No. 3:22-cv-01213 (W.D. La. Jul. 4, 2023), Dkt. 144-2 (Deposition of Special Agent Elvis Chan), 38:13-39:22.

³ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Christopher A. Wray, Fed. Bureau of Investigation (Jan. 17, 2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Christopher A. Wray, Fed. Bureau of Investigation (Mar. 3, 2023).

⁴ See, e.g., Tracy, *supra* note 1; Rep. Jim Jordan (@Jim_Jordan), TWITTER (July 28, 2023, 12:03 PM), https://twitter.com/Jim_Jordan/status/1684957660515328001; Rep. Jim Jordan (@Jim_Jordan), TWITTER (Aug. 3, 2023, 11:00 AM), https://twitter.com/Jim_Jordan/status/1687116316073930752.

First Amendment prohibits government officials from imposing viewpoint-based censorship restrictions. State action doctrine stands for the proposition that government officials may not circumvent constitutional strictures by using private actors—whether through coercion, encouragement, entwinement, or joint participation—to accomplish what the government cannot directly.⁵

Numerous documents that have been made publicly available reflect the weaponization of the federal government’s power to censor speech online directly and by proxy. It is necessary for Congress to gauge the extent to which FBI agents coerced, pressured, worked with, or relied upon social media and other tech companies to censor speech. The scope of the Committee’s investigation includes understanding the extent and nature of the FBI’s involvement in this censorship. For example, through its investigation, the Committee has uncovered evidence that appears to contradict several statements in your deposition in *Missouri v. Biden*, particularly as they relate to your communications with social media platforms.⁶

The Committee was ready and willing to proceed with your transcribed interview under the Committee’s established protocols. After the Committee repeatedly requested that you voluntarily appear for a transcribed interview, the FBI agreed to schedule your interview for September 15, 2023, with full knowledge of the Committee’s longstanding protocol for conducting transcribed interviews.⁷ Then, only three days before your scheduled interview, you and the FBI requested special treatment to deviate from this protocol, which the Committee repeatedly and clearly denied. Just one day before your scheduled transcribed interview, you threatened to withdraw your appearance due to this disagreement and today you failed to appear for your interview.⁸

The Constitution affords the House the authority to determine its own rules and procedures.⁹ Consistent with this authority, House committees have developed, over both Democrat and Republican majorities, protocols for conducting voluntary transcribed interviews. These protocols, which mirror House rules for conducting a deposition pursuant to a subpoena, include that a witness for a transcribed interview has the choice of being represented by either agency counsel or personal counsel, but not both. The FBI, Department of Justice, and your personal counsel are all well aware of the Committee’s protocol—early in the 118th Congress, the Committee notified the Department about this specific protocol—and every other voluntary transcribed interview of FBI employees in the 118th Congress has operated under these protocols without incident.

⁵ See *Norwood v. Harrison*, 413 U.S. 455, 465 (1973) (“[i]t is ... axiomatic that a state may not induce, encourage, or promote private persons to accomplish what it is constitutionally forbidden to accomplish.”).

⁶ Rep. Jim Jordan (@Jim_Jordan), TWITTER (Aug. 7, 2023, 10:11 AM), https://twitter.com/Jim_Jordan/status/1688553339624042496.

⁷ See, e.g., Telephone Call between Committee Staff and FBI Personnel (May 22, 2023); Email from Committee Staff to FBI and DOJ Personnel (Jun. 21, 2023, 3:53 PM); Email from Committee Staff to FBI and DOJ Personnel (Jul. 5, 2023, 12:22 PM); Email from Committee Staff to FBI and DOJ Personnel (Aug. 8, 2023, 5:05 PM); Email from Committee Staff to FBI and DOJ Personnel (Aug. 17, 2023, 1:08 PM); Meeting between Committee Staff and FBI Personnel (Aug. 22, 2023); Email from FBI Personnel to Committee Staff (August 30, 2023, 4:00 PM).

⁸ Email from Lawrence Berger to Committee Staff (September 14, 2023, 12:03 PM).

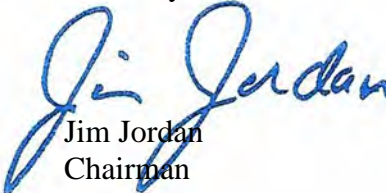
⁹ U.S. Const. Art. I.

The Committee’s right to adopt and insist on its rules and procedures is especially important where, as here, a witness’s *personal* interests depart significantly from the *institutional* interests of the agency for which the witness works. The Committee has information that suggests you were not fully candid in your sworn deposition in federal litigation—a deposition during which you were represented by Department counsel and a matter in which you face personal liability in a manner that departs from the FBI’s and Department’s institutional interests.

The Supreme Court has recognized that Congress has a “broad and indispensable” power to conduct oversight, which “encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them.”¹⁰ Pursuant to the Rules of the House of Representatives, the Committee on the Judiciary has jurisdiction to conduct oversight of matters concerning “civil liberties” to inform potential legislative reforms.¹¹ In addition, H. Res. 12 authorized the Committee’s Select Subcommittee on the Weaponization of the Federal Government to investigate “issues related to the violation of the civil liberties of citizens of the United States.”¹²

Accordingly, please find attached a subpoena.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

Enclosure

¹⁰ *Trump v. Mazars*, 140 S. Ct. 2019, 2031 (2020) (internal quotation marks omitted).

¹¹ Rules of the House of Representatives R. X (2023).

¹² H. Res. 12 § 1(b)(1).