

EMPOWER OVERSIGHT

Whistleblowers & Research



July 23, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
United States House of Representatives

Dear Chairman Jordan:

On July 2, 2024, I wrote to inform you of a new whistleblower disclosure and retaliation complaint Empower Oversight submitted on behalf of a Federal Bureau of Investigation (“FBI”) supervisory special agent (“SSA”) who witnessed firsthand the FBI’s Security Division’s (“SecD”) weaponization of the security clearance process.¹

Today I write on behalf of our SSA client in SecD (“SecD whistleblower client” or “SecD client”) to provide additional protected disclosures to this committee. Specifically, our SecD client wishes to disclose exculpatory information regarding Special Agent (“SA”) Garret O’Boyle that the FBI withheld from the Committee.² In two separate transcribed interviews, then-Executive Assistant Director (“EAD”) Jennifer Leigh Moore withheld exculpatory information about SA O’Boyle. Specifically, she failed to inform the Committee that the FBI was aware SA O’Boyle *was not the anonymous agent* masked in a May 11, 2022 Project Veritas interview. As

¹ Letter from Tristan Leavitt to Chairman Jim Jordan, House Judiciary Committee, et al. (July 2, 2024), *available at* <https://empowr.us/wp-content/uploads/2024/07/2024-07-02-TL-to-Congress-FBI-SecD-WB-Retaliation-Complaint.pdf>.

² As I wrote to you and others in Congress yesterday, Empower Oversight is representing SA O’Boyle in his retaliation complaint with the Department of Justice Office of Inspector General and Office of Professional Responsibility. *See* Letter from Tristan Leavitt to Chairman Jim Jordan, House Judiciary Committee, et al. (July 22, 2024) (enclosing Letter from Tristan Leavitt to Inspector General Michael Horowitz, Department of Justice, and Counsel Jeffrey Ragsdale, Department of Justice (July 22, 2024)).

you know, that false allegation was the FBI’s key pretext to suspend and ultimately revoke SA O’Boyle’s security clearance.³

EAD Moore’s failure to disclose this exculpatory information and her misleading testimony prompted Committee Ranking Member Jerrald Nadler and Weaponization Subcommittee Ranking Member Stacy Plaskett to falsely accuse SA O’Boyle as well, and refer him to the Department of Justice for allegedly committing perjury⁴—an inquiry the Justice Department recently closed, essentially exonerating SA O’Boyle with no prosecution.⁵

Despite being aware of the exculpatory information that SA O’Boyle was not the agent behind the Project Veritas video, the FBI waited *22 months* before adjudicating SA O’Boyle’s clearance. Throughout this process, SA O’Boyle has remained in an unpaid limbo with no legal deadline for any required FBI action, while the delay of his clearance adjudication prevented SA O’Boyle from either being (1) reinstated or (2) obtaining SecD’s investigative file providing the basis for a clearance revocation.⁶

The FBI recently revoked SA O’Boyle’s clearance on July 16, 2024—only after it became aware that (1) our SecD whistleblower client made protected disclosures to the Department of Justice (“DOJ”) Office of Inspector General (“OIG”) and to Congress, which SecD knows could include this exculpatory information about SA O’Boyle; (2) Director Christopher Wray will be testifying before the Committee tomorrow,⁷ when he could face questions about SA O’Boyle’s case; and (3) Inspector General Horowitz and I will both be testifying July 30 about the FBI’s abuse of the security clearance process—a hearing certain to raise the case of SA O’Boyle, who testified at a similar hearing before the Committee on May 18, 2023.⁸ The FBI’s timing appears similar to the May 2023 hearing, when according to our SecD client, SecD rushed to revoke the

³ See Project Veritas, FBI Whistleblower LEAKS Doc Showing Bureau Targets “News Media” as “Sensitive Investigative Matter,” May 11, 2022, available at <https://www.youtube.com/watch?v=HQLjttPzSfM>.

⁴ See Letter from Ranking Member Jerrold Nadler, House Committee on the Judiciary, and Ranking Member Stacey Plaskett, House Subcommittee on the Weaponization of the Federal Government, to Attorney General Merrick Garland, Department of Justice (June 8, 2023).

⁵ See Letter from United States Attorney Matthew Graves, District of Columbia, to Matthew Dummermuth, Binnall Law Group, and Jane Raskin, Raskin & Raskin (June 13, 2024).

⁶ The DOJ OIG recently wrote Justice Department leadership about this problem. Office of Inspector General, Department of Justice, *Notification of Concerns Regarding the Department of Justice’s Compliance with Whistleblower Protections for Employees with a Security Clearance*, Management Advisory Memorandum 24-067 (May 2024), available at <https://oig.justice.gov/sites/default/files/reports/24-067.pdf>.

In Empower Oversight client Marcus Allen’s case, although the FBI also delayed it extensively, post-revocation document production from the FBI eventually enabled us to establish that the evidence in the FBI’s own files contradicted its conclusions—resulting in the restoration of Allen’s security clearance. See Press Release, Empower Oversight, *FBI Whistleblower’s Security Clearance Reinstated in Full*, June 4, 2024, <https://empowr.us/fbi-whistleblowers-security-clearance-reinstated-in-full>.

⁷ See *Oversight of the Federal Bureau of Investigation: Hearing Before the House Committee on the Judiciary*, 118 Cong. (July 25, 2024), <https://judiciary.house.gov/committee-activity/hearings/oversight-federal-bureau-investigation-7>.

⁸ See *Hearing on the Weaponization of the Federal Government: Hearing Before the Select Subcommittee on the Weaponization of the Fed Government*, 118 Cong. (2023).

clearances of two FBI witnesses scheduled to testify⁹—then released allegations against them that were quickly leaked to the media.

Background on SA O’Boyle’s Case

Consistent with his oath to support and defend the U.S. Constitution, in 2021 SA O’Boyle started making protected whistleblower disclosures. Over the fall of 2021, these protected disclosures regarded FBI policies on COVID-19 that SA O’Boyle reasonably believed violated constitutional and statutory law as well as FBI regulations and policies. He first made his disclosures through his FBI chain of command. He also began communicating with fellow FBI employees making similar disclosures, like SA Kyle Seraphin, an agent from the Albuquerque New Mexico Field Office.

As time progressed, it became clear that no one within FBI management or leadership took seriously his good-faith protected disclosures of FBI wrongdoing—much less investigated them, fixed the problems, or punished the wrongdoers. Thus, in late 2021 SA O’Boyle started making protected disclosures to Congress concerning the politicization of the FBI.

One of SA O’Boyle’s disclosures to his local congressman was his reasonable belief that the FBI had opened an inappropriate and politically-motivated investigation into the investigative journalistic organization Project Veritas, and that DOJ had made false claims about the case in court. The FBI had in early November 2021 raided the homes of three individuals associated with Project Veritas, including the group’s founder, and seized various materials. The raids received a significant amount of media attention, including a focus on the raid’s First Amendment implications.¹⁰ Various journalistic associations expressed concern about the raids,¹¹ and on November 15, 2021, the Reporters Committee for Freedom of the Press even filed a motion in the U.S. District Court for the Southern District of New York to unseal the search warrant application.¹² In response to a separate legal motion from Project Veritas, the U.S. Attorney’s Office for the Southern District of New York on November 19, 2021 filed a

⁹ See Press Release, Empower Oversight, *New Empower Oversight Whistleblower: Rampant Reprisal in FBI Clearance Work*, July 2, 2024, <https://empowr.us/new-empower-oversight-whistleblower-rampant-reprisal-in-fbi-clearance-work>.

¹⁰ See, e.g., Josh Gerstein, *FBI raid on Project Veritas founder’s home sparks questions about press freedom*, POLITICO (Nov. 13, 2021), available at <https://www.politico.com/news/2021/11/13/raid-veritas-okeefe-biden-press-521307> (“A predawn FBI raid last weekend against Project Veritas founder James O’Keefe and similar raids on some of his associates are prompting alarm from some First Amendment advocates, who contend that prosecutors appear to have run roughshod over Justice Department media policies and a federal law protecting journalists.”).

¹¹ Press Release, American Civil Liberties Union, *ACLU Comment on FBI Raid of Project Veritas Founder*, Nov. 14, 2021, <https://www.aclu.org/press-releases/aclu-comment-fbi-raid-project-veritas-founder>; Press Release, Committee to Protect Journalists, *CPJ concerned over FBI raid on home of Project Veritas founder James O’Keefe*, Nov. 15, 2021, <https://cpj.org/2021/11/cpj-concerned-over-fbi-raid-on-home-of-project-veritas-founder-james-okeefe>; Trevor Timm and Parker Higgins, *Why the FBI raid of Project Veritas is concerning for press freedom*, FREEDOM OF THE PRESS FOUNDATION (Nov. 17, 2021), <https://freedom.press/news/why-the-fbi-raid-of-project-veritas-is-concerning-for-press-freedom>.

¹² See Press Release, Reporters Committee for Freedom of the Press, *In re Search Warrant dated November 5, 2021*, <https://www.rcfp.org/litigation/project-veritas-unsealing>.

memorandum with the court in which it stated Project Veritas “is not engaged in journalism within any traditional or accepted definition of that word” because (DOJ argued) they did not disseminate information to the public like a press or media organization.¹³

Yet FBI training on its media policy states: “The FBI defines media as ‘any person, organization, or entity (other than federal, state, local, tribal, and territorial governments) operating with the primary purpose of collection, production, or dissemination of information to the public in any form, including print, broadcast, film, and the Internet.’” Although cases involving news media would be categorized as a “sensitive investigation matter” (or “SIM”), and only case participants and case managers can access a SIM case file in the FBI’s case management system, all employees can see such a case’s landing page—the equivalent of an electronic cover page. SA O’Boyle accessed the Project Veritas landing page to document the contradiction with DOJ’s court filing, and sure enough, it showed that the Project Veritas case was categorized as a SIM for “News Media.” SA O’Boyle took a screenshot of the landing page demonstrating the conflict with DOJ’s court filings, which he reasonably believed evidenced a violation of law, rule, or regulation, as well as an abuse of DOJ’s authority.¹⁴ SA O’Boyle showed the screenshot to his local congressman’s staff on November 23, 2021, but did not leave the screenshot with the staff.

SA O’Boyle first contacted your office in March of 2022 to make protected disclosures. Among other things, SA O’Boyle disclosed what he had learned about the FBI and DOJ’s claims in court filings about Project Veritas that were contradicted by the FBI’s own case file on the Project Veritas investigation. Around this time, SA O’Boyle and SA Seraphin discussed with each other disclosures they had been making to Congress. SA Seraphin indicated he intended to make further disclosures to Congress about the Project Veritas case, and SA O’Boyle shared with SA Seraphin the screenshot of the Project Veritas case landing page—the only time he ever provided the screenshot to anyone outside of Congress.¹⁵ SA Seraphin stated he intended to share the screenshot with Congress, and did not state or imply in any way that he would share the screenshot with any other outside organization (including media).

FBI Violation of Employee Transfer Policy

In closed-door transcribed testimony and in the Committee’s May 18, 2023 hearing, FBI SA Garret O’Boyle shared with the Committee how he had applied and was accepted for a prestigious assignment with the FBI’s new National Surveillance Team, accepted orders in June 2022 to begin the new position on September 26, 2022, and sold his Kansas home in August 2022 in preparation for moving his eight-month pregnant wife and three children to Virginia.

¹³ <https://storage.courtlistener.com/recap/gov.uscourts.nysd.569823/gov.uscourts.nysd.569823.29.0.pdf>.

¹⁴ That FBI Executive Assistant Director for Human Resources Jennifer Leigh Moore later stated this screenshot “compromised” the case underscores the significance of DOJ’s false legal filings about Project Veritas not being a media organization. Transcript of Jennifer Leigh Moore Interview, House Committee on the Judiciary, 147 (June 2, 2023), available at https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023_04_24_Moore%20Transcript_Redacted.pdf (hereinafter “Moore June 2023 Interview”).

¹⁵ SA Seraphin had not yet been suspended from the FBI at the time SA O’Boyle shared this document with SA Seraphin.

His fourth child was born in early September, and while his family stayed in Wisconsin to await the closing on their new Virginia home, he reported to his new unit on September 26, 2022. Upon arrival, he was ushered into a conference room, accused of leaking information to the press, and told his security clearance was being suspended.

Because the FBI also suspended SA O'Boyle, he lost access for six weeks in October and November to the Virginia storage unit that included nearly all of his family's belongings, such as the coats they needed to stave off the Wisconsin winter. Furthermore, because of the adverse personnel action against SA O'Boyle, the O'Boyles' home loan lender cancelled their loan for the Virginia home they had entered into a contract on, leaving SA O'Boyle and his wife and young children without accommodations (and a few months later without income).

As SA O'Boyle summarized in his May 18, 2023 testimony:

In weaponized fashion, the FBI allowed me to accept orders to a new position halfway across the country. They allowed us to sell my family's home. They ordered me to report to the new unit when our youngest daughter was two weeks old. Then on my first day on the new assignment, they suspended me, rendering my family homeless. They refused to release our goods, including our clothes, for weeks.¹⁶

Our SecD whistleblower client was an SSA in SecD's Clearance Investigations Unit ("CIU") when the O'Boyle clearance investigation was assigned to his fellow SSA Sean Clark's West Coast investigative team. Our SecD client is aware of other FBI employees SecD knew accessed files on other cases without a need to know, but did not have their clearances suspended. Our SecD client became aware that the lead CIU investigator on SA O'Boyle's case told Dena Perkins, Acting Section Chief ("ASC") of SecD's Security Integrity and Investigations Section ("SIIS"), that it was only a theory that SA O'Boyle was the source for the Project Veritas video and that he had no actual evidence to prove his theory. According to our SecD client, ASC Perkins directed SecD to move forward with the suspension regardless, and represented to her supervisors—Acting Deputy Assistant Director Jeffrey Veltri, Assistant Director Douglas Beidler, and EAD Moore—that SIIS knew SA O'Boyle leaked the video.

Further, because there is an entire office in the FBI's Human Resources Division dedicated to facilitating employee transfers—assigning employees a counselor from the Transfer Unit, contracting with a relocation company, etc.—FBI headquarters clearly knew about SA O'Boyle's imminent transfer. Additionally, our SecD whistleblower client knew that SSA Clark's CIU team had discussed with the Kansas City Field Office SA O'Boyle's plans to suspend the clearance after the transfer, and expressed his objections to SSA Clark about the plan because it violated FBI policy against transferring employees who are under investigation. SSA Clark carried it out nonetheless.

¹⁶ *Hearing on the Weaponization of the Federal Government: Hearing Before the Select Subcommittee on the Weaponization of the Fed Government*, 118 Cong. 8 (2023).

When interviewed by the Committee, EAD Moore provided conflicting accounts of this violation of FBI policy. Omitting the fact that she oversaw the division which facilitates employee transfers, EAD Moore testified in her first interview with the Committee that she had no idea he was suspended on his first day in a new assignment,¹⁷ claimed it was mere coincidence he was suspended on that day¹⁸—a patently false statement—and suggested what happened to SA O’Boyle’s family was really his fault for transferring when he did.¹⁹

In her second interview, EAD Moore told the Committee SecD opened its investigation into SA O’Boyle on August 1, 2022.²⁰ Yet she claimed SecD had “a level of urgency” to act on SA O’Boyle’s clearance²¹—a claim contradicted by the fact that SecD waited seven weeks, until SA O’Boyle had completed his transfer, to suspend his clearance. At one point EAD Moore claimed: “He was on leave already, and so the determination was we will just go ahead and cut that access since he’s not in the office.”²² And later in the interview: “We had been made aware that he was out of the office, because we were trying to quickly figure out how to limit his access to information systems, but yet still give us enough time to do the appropriate document and get everything approved through the chain.”²³

Contrary to EAD Moore’s claim, SA O’Boyle was not “out of the office” until September 7, 2022, when he took paternity leave for the birth of his daughter. This was over one month after the allegation against him came into SecD. EAD Moore also made various conflicting statements about what the Human Resources Division knew at the time of SA O’Boyle’s move, all of which belied the role of the Transfer Unit she oversaw:

- “[W]e did not know, like, he was packing up his house or any of those things.”²⁴
- “[I]t’s not always a given that someone packs up and moves just because they get a promotion. Sometimes the families stay behind, and that’s not also unusual.”²⁵
- Q: “And what when was your understanding of when his last day was with the Wichita resident agency?” A: “We were trying to determine that, because there is some gray in

¹⁷ Transcript of Jennifer Leigh Moore Interview, House Committee on the Judiciary (Apr. 24, 2023), at 116, available at https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023_04_24_Moore%20Transcript_Redacted.pdf.

¹⁸ *Id.* at 121.

¹⁹ *Id.* at 119.

²⁰ Moore June 2023 Interview at 153.

²¹ *Id.* at 174.

²² *Id.* at 154-55.

²³ *Id.* at 181.

²⁴ *Id.* at 153.

²⁵ *Id.* at 181.

there in the sense of he had his house packed up on August 10th, 11th, and the 12th, if I'm not mistaken, but he didn't take any leave for that."²⁶

In summary, EAD Moore was asked, "Is it fair to say you were simply following your normal course of action as the package was being prepared and notifying him as soon as you could?" She responded: "That's correct."²⁷ EAD Moore's testimony is flatly contradicted by the facts (including these new disclosures from our SecD whistleblower client) and the FBI policy's against allowing the transfer of an employee under investigation, of which EAD Moore was clearly aware given her position.

FBI Knowledge of Masked Project Veritas Source

FBI agents interviewed SA O'Boyle's on the day of his suspension, September 26, 2022. He immediately and truthfully admitted that (1) he had shared FBI information outside of the agency when he made legally protected whistleblower disclosures to Congress, but clarified (2) he was not the source of the leak to Project Veritas or any other news organization. The FBI nevertheless suspended SA O'Boyle's clearance and subsequently place him on unpaid leave without any evidence to contradict his denial. Moreover, the FBI developed evidence exculpatory of SA O'Boyle relatively early in his 22-month suspension.

Specifically, our SecD whistleblower client wishes to inform the Committee that the FBI sent the Project Veritas video to Quantico for voice analysis, and by early 2023 had conclusively discovered the masked voice in the video was not that of SA O'Boyle. Instead, the voice analysis revealed with very high confidence that the voice was actually that of SA Seraphin, who had been suspended shortly before the Project Veritas released the interview was released.

EAD Moore knew this exculpatory information about SA O'Boyle when she testified to the Committee, but withheld it from you. When asked about the basis for suspending SA O'Boyle's clearance, EAD Moore testified:

A We received a referral from our Insider Threat Office that there had been an individual who had leaked information on an FBI criminal investigation.

Q And what was the context of the individual leaking?

A ***The individual leaked investigative information that compromised the case and had been interviewed apparently, like, behind a shield.*** And so that had opened up a leak case. It had come in as a referral.²⁸

* * *

²⁶ *Id.* at 180-82.

²⁷ *Id.*

²⁸ *Id.* at 147 (emphasis added).

Q And you said the individual in the interview was covered by a shield. Is that correct?

A It was.

Q And how did the FBI determine that it was Mr. O'Boyle behind that shield?

A At the time, the belief that it was Mr. O'Boyle was the one behind the shield based off of the leak information that we could tell who had accessed information, what specific information they had said, and what had been done at that point. Does that make sense?

When asked whether the FBI currently had information that SA O'Boyle was the person masked in the Project Veritas interview, she refused to answer rather than reveal the truth that SA O'Boyle was, in fact, not the Project Veritas source and the FBI knew it.

Q Yes. And what information does the FBI have now that it was Mr. O'Boyle behind the shield?

A *I can't talk about that.*

Q Okay. Does the FBI still –

A Because that comes after the suspension.

Q Does the FBI still believe that it was Mr. O'Boyle behind the shield?

A I can't talk about that.²⁹

Later in the interview a questioner clarified of EAD Moore:

Q *[Y]ou're not sure who it was that actually gave the interview.* You just know that the information originally that was accessed unlawfully by Mr. O'Boyle?

A Correct.³⁰

EAD Moore testified about what the FBI supposedly believed at the time of SA O'Boyle's initial suspension, but she intentionally omitted the material, exculpatory fact that the FBI determined shortly after his suspension that SA O'Boyle was not, in fact, the Project Veritas source.

Six days after this material omission from EAD Moore's transcribed interview, on June 8, 2023, Ranking Member Jerrold Nadler and Weaponization Subcommittee Ranking Member

²⁹ *Id.* at 148-49 (emphasis added).

³⁰ *Id.* at 179 (emphasis added). Moore's answer here is patently false on two counts: at no point had SA O'Boyle "unlawfully accessed" any information.

Stacey Plaskett used her misleading testimony in an attempt to convince the Justice Department prosecute SA O’Boyle for perjury.³¹ The perjury referral highlighted the contradictions between SA O’Boyle’s and EAD Moore’s testimony about whether SA O’Boyle leaked information to Project Veritas.³²

This material omission from EAD Moore’s testimony may at least partially explain why the FBI revoked other whistleblowers’ clearances on the eve of my and their May 18, 2023 public testimony before your committee—but kept SA O’Boyle in the indefinite suspended-but-not-revoked limbo for 22 months. Now, the FBI has finally revoked SA O’Boyle’s clearance on the eve of another hearing likely to expose its false allegations against SA O’Boyle, among other failures. The FBI’s revocation notice contains new, vague, and untested allegations that will undoubtedly be leaked to the media to further smear SA O’Boyle ahead of your hearing. Just as with its false claims against our other client, Marcus Allen, the FBI’s fundamentally unfair procedures ensure that it withholds the documents that would expose its false claims about SA O’Boyle until long after your hearing.

Conclusion

As if the FBI’s treatment of SA O’Boyle and his family when it suspended him wasn’t reprehensible enough, the FBI’s withholding of material information from Congress is more evidence of its vindictive retaliation. By withholding this material information and allowing a false perjury referral based on false information, the FBI is responsible for significant damage to SA O’Boyle’s reputation.

In contrast with Marcus Allen’s ultimate vindication, the FBI has escaped accountability thus far for what it did to SA O’Boyle. It continues its never-ending cycle of retaliation even to this day, revoking SA O’Boyle’s clearance and suspending the clearance of our SecD whistleblower client in reprisal for objecting to SecD’s abuse of this process against SA O’Boyle and others. It’s using the same playbook of delay tactics, and will continue to do so until Congress enacts fundamental reforms to the security clearance adjudication process and FBI wrongdoers are held accountable.

³¹ Letter from Ranking Member Jerrold Nadler, House Committee on the Judiciary, and Ranking Member Stacey Plaskett, House Subcommittee on the Weaponization of the Federal Government, to Attorney General Merrick Garland, Department of Justice (June 8, 2023).

³² The referral also contained a bizarre and confusing claim that SA O’Boyle falsely claimed to the Committee that leaks to the media were a basis for his suspension. Yet, the Ranking Members cited EAD Moore as *confirming* that leaks to the media were a basis for his suspension. Nadler and Plaskett seem to have concluded SA O’Boyle misled the Committee because he testified an allegation of leaking to the media was included in the paperwork he received at the time of his suspension. Nadler and Plaskett point to the “actual copy of Mr. O’Boyle’s suspension notice” as “say[ing] nothing about disclosures to the media.” However, the full paperwork SA O’Boyle received at the time of his suspension included an Inspection Division notification which states: “On August 23, 2022, an internal investigation was initiated concerning an allegation that Special Agent Garret J. O’Boyle allegedly made an unauthorized disclosure to the media which was uploaded on a social media website in violation of 4.10 – Unauthorized Disclosures – Sensitive Information.”

This Kafkaesque nightmare must stop. We hope this information will assist you in reforming SecD, the FBI, FBI whistleblower protections, and the security clearance process.

Cordially,

[/Tristan Leavitt/](#)
Tristan Leavitt
President

cc: The Honorable Michael Horowitz
Inspector General
U.S. Department of Justice