EMPOWER OVERSIGHT
Whistleblowers & Research

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June 8, 2024

Via Electronic Transmission

Inspector General Michael E. Horowitz
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue NW
Washington, DC 20530

RE: Protected Whistleblower Disclosure Pursuant to 5 U.S.C. § 2303(a)(1)(B) and 50 U.S.C. § 3341(j)(1)(B) by Retired Federal Bureau of Investigation ("FBI") Employee with a Pending Request for Reconsideration of a Security Clearance Revocation

Dear Inspector General Horowitz:

INTRODUCTION

Empower Oversight Whistleblowers & Research ("Empower Oversight") is a nonpartisan, nonprofit educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. We work to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seek to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

BACKGROUND

Empower Oversight represents [redacted] ("client"), who recently retired from the FBI with a security clearance revocation appeal still pending.[1]

[1] Request for Reconsideration of Security Clearance Revocation (Apr. 14, 2024) (Exhibit 1).

Our client served the FBI honorably for 12 years, receiving cash awards and positive performance evaluations. Then-FBI Executive Assistant Director ("EAD") Jennifer Leigh Moore suspended our client's security clearance in March 2022, which led to an indefinite suspension without pay. Shortly thereafter, our client confidentially made protected disclosures to the House Judiciary Committee, alleging politicization and abuses of the security clearance process in this case and others.

A year later, in March 2023, after Empower Oversight began representing the client, we made an additional protected disclosure on our client's behalf to you directly and to the Whistleblower Protection Coordinator at the Office of Inspector General ("OIG") about the FBI's abuse of the security clearance process.[2] That disclosure included the following:

- While on personal leave, our client was in Washington, D.C. on January 6, 2021.
- After the violence that occurred that day, our client self-reported in good faith to the appropriate FBI security official having been among the crowds in the vicinity of the Capitol, peacefully observing.
- Fifteen months later, EAD Moore suspended our client's clearance in March 2022 pending an investigation.
- The FBI Security Division ("SecD") improperly pursued a broad, sweeping investigation into our client's political opinions, questioning other protected First Amendment activity and Second Amendment advocacy while off-duty.
- Our client denied knowingly entering any restricted area of the Capitol grounds, volunteered to take an OIG polygraph examination, and was told an OIG examiner found no deception on the question of whether he knew he was entering a restricted area.

In April 2023, EAD Moore revoked our client's security clearance. Empower Oversight requested, pursuant to the FBI's internal appeal process, copies of the SecD investigative file. In January 2024, we received some (but not all) of the documents we believed necessary to draft our client's appeal.

The FBI did not respond to our request for an extension of time to file an appeal in order to obtain the additional documents, so we filed that appeal on the April 14, 2024, deadline with the information available at the time.[3] Given the indefinite and interminable delays the FBI is capable of imposing in the security clearance process on employees whose pay and health benefits are indefinitely suspended, as outlined in your May 2024 Management Advisory Memorandum,[4] our client decided to retire. The FBI had not decided on our appeal.

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[2] Email from Jason Foster, Empower Oversight Founder and Chair, to the Justice Department OIG (Mar. 22, 2023). Empower Oversight simultaneously made this same protected disclosure to Members of the House and Senate Judiciary Committees.

[3] Exhibit 1.

[4] *Available at* https://oig.justice.gov/sites/default/files/reports/24-067.pdf.

Nevertheless, since a security clearance has value for post-FBI employment opportunities, our client would still have an economic interest in having the appeal granted.

NEW PROTECTED WHISTLEBLOWER DISCLOSURE

I write today to formally disclose to you on our client's behalf shocking documents in SecD's investigative file that evidence an abuse of authority and a violation of our client's rights under the First Amendment. The documents appear to demonstrate SecD's political bias and abuse of the security clearance process to purge the FBI of employees who expressed disfavored political views or concerns about the COVID-19 vaccine requirement.[5]

While supposedly investigating a legitimate concern about risk to national security, SecD used a pre-printed interview outline in April 2022 to interrogate FBI employees about our client's political opinions and views about the COVID-19 vaccination. According to the pre-printed interview outlines, SecD investigators warned our client's FBI colleagues, "You have a duty to reply to the questions posed during this interview. Should you refuse to answer or fail to reply fully and truthfully, action against your security clearance may be undertaken and you may be referred to the Inspection Division for possible disciplinary action."

After inquiring whether the interviewed individual socialized with our client, the pre-printed interview outline then lists the following questions, among others, about our client's First Amendment-protected activities:

- "Vocalize support for President Trump?"
- "Vocalize objection to Covid-19 vaccination?"
- "Vocalize intent to attend 01/06/2021?"

The outline with these questions was used in at least three interviews of FBI employees who worked with our client.[6]

LEGAL ANALYSIS

The Supreme Court has observed: "'If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein.'" *Elrod v. Burns*, 427 U.S. 347, 356 (1976) (quoting *Board of Education v. Barnette*, 319 U.S. 624, 642 (1943). "[T]he First Amendment protects political association as well as political expression." *Id.* at 357 (internal quotation omitted). "These protections reflect our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,' . . . . " *Id.* (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

[5] Exhibit 1 at 12.
[6] *See* Exhibit 2.

For these reasons, the Supreme Court held that terminating public employees for political patronage purposes—belonging to the wrong political party—"to the extent it compels or restrains belief and association is inimical to the process which undergirds our system of government and is at war with the deeper traditions of democracy embodied in the First Amendment." *Id.* (internal quotation omitted). Although the FBI has a legitimate interest in limiting access to classified material of employees who seek to overthrow the United States, as the Supreme Court has observed:

> The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.

Keyishian v. Bd. of Regents of Univ. of State of N.Y., 385 U.S. 589, 602 (1967) (internal quotation omitted). For that reason, the Court held that a law allowing the removal of public school teachers for "treasonable or seditious utterances or acts" was vague and violated the First Amendment. *Id.* at 604.

The three pre-printed questions that SecD asked our client's fellow employees show that the FBI systematically compelled them to report on our client's personal political beliefs and views of the COVID-19 vaccine. The information SecD compelled FBI employees to disclose about our client is completely irrelevant to any legitimate security risk determination, and reliance on it to revoke a security clearance obviously violates the First Amendment. Based on these documents, it is reasonable for our client to believe that SecD has been doing this more broadly in many other cases in an effort to purge employees with disfavored views from the FBI.

That belief is reinforced by evidence that Empower Oversight provided to your office on June 21, 2023, indicating that the second-highest FBI official, Paul Abbate, had told FBI special agents in charge that "anyone who questions the FBI's response or his decisions regarding the response to January 6th did not belong in the FBI and should find a different job."[7]

In this case, the effort to purge employees worked. Due to economic necessity imposed by the FBI's Kafkaesque, never-ending internal appeal process and the procedural limits on any timely external remedy, our client chose to retire early rather than wait indefinitely for the FBI to rule on our appeal. The FBI forced our client to forego years of additional retirement credits, health benefits, and employment opportunities for expressing views that are supposed to be protected by the First Amendment.

Our client quickly and voluntarily self-disclosed attendance at the protest on January 6, 2021, after it descended into a riot. SecD had a legitimate reason to investigate whether our client committed any crimes, advocated any illegal acts, or did anything else that raised a

[7] Letter from Tristan Leavitt, Empower Oversight President, to Michael Horowitz, Justice Department Inspector General (Jun. 21, 2023), *available at* https://empowr.us/wp-content/uploads/2023/06/2023-06-21-TL-to-DOJ-IG-FBI-WB-affidavit-Final-w-Aff.pdf.

legitimate security concern. The FBI also has legitimate reasons to revoke the security clearances of employees who engage in or support unlawful acts, particularly those designed to disrupt the peaceful transfer of power.

But our client did not do any of those things. Revoking a security clearance for being near those who did or merely sharing some similar political views as others who acted unlawfully is pure guilt by association.

CONCLUSION

Instead of limiting its investigation to legitimate issues, SecD acted as if support for President Trump, objecting to COVID-19 vaccinations, or lawfully attending a protest was the equivalent of being a member of Al Qaeda or the Chinese Communist Party. The FBI's intentions are made clear by the questions it chose to put in black and white on a government document.

Our client makes this protected whistleblower disclosure to you based on the reasonable belief that the FBI violated the First Amendment not only in this case but likely on a systemic basis in many others. Last summer, Empower Oversight provided you with evidence that purging the FBI of employees with certain disfavored views appears to be a goal articulated by the Deputy Director. Now, this new evidence raises a reasonable suspicion that the FBI is methodically abusing the security clearance process as a pretext to achieve that goal.

Empower Oversight respectfully requests that your office investigate to uncover the scope of these abuses and identify of the individuals responsible. We also request that you provide a comprehensive report to the FBI's oversight committees in Congress to assist in identifying which FBI executives at SecD or elsewhere, at any level, were aware and allowed this misconduct to occur.

Cordially,

/Tristan Leavitt/
Tristan Leavitt
President

EXHIBIT 1

[intentionally omitted from redacted version]

EXHIBIT 2

FBI Security Division

Security Integrity and Investigations Section/Clearance Investigations Unit

Date: 4/19/2022 2 PM

CIU Explanation

Name: P

EOD: [redacted] DOB: S

[redacted]

SSN: xxx-xx P-1

"This is an administrative investigation regarding an allegation [redacted] engaged in conduct that calls into question his ability to maintain a Top Secret security clearance, pursuant to the National Security Adjudicative Guidelines. You are being asked to provide information as a fact witness as part of the investigation conducted by the Security Division. You have a duty to reply to the questions posed to you during this interview. Should you refuse to answer or fail to reply fully and truthfully, action against your security clearance may be undertaken and you may be referred to Inspection Division for possible disciplinary action."

Y – N

1. Relationship [redacted]

    a. How long known? [redacted]

    b. In what capacity?

    c. Socialize? [redacted]

2. Vocalize support for President Trump? very significantly supported. would listen to talk shows. Trump did not lose. Dems stole it. Militant point of view. Never implied would do anything aggressive/physical.

3. Vocalize objection to Covid-19 vaccination? Very against mask and vaccinated, not vaccinated and would try not to wear mask. Connected to anti-vaccinated FBI groups to discuss and figure out how to avoid getting vacc. No anti-FBI rhetoric.

4. Vocalize intent to attend 01/06/2021? planned to go. Told bld robin. Have twice but would not go there. He knew no one [redacted] planned to go. Made clear was going. others advised him not to. Intended to go anyway's.

[redacted]

[redacted]

[redacted]

[redacted]

10. Other employees?

Vacc - yes.

Temp - No

11. Aware he attended the Richmond Lobby Day event on 01/18/2021?

Gun act. Went to all 2nd amendment gatherings.

Talked about going to myriad of events.

RLD not familiar.

No promotion of violence.

12. Additional Information:

FBI Security Division

Security Integrity and Investigations Section/Clearance Investigations Unit

Date: 9/20/2022 0900

CIU Explanation

Name: P

EOD: [redacted] DOB: S

Position: [redacted]

SSN: xxx-xx- P-1

"This is an administrative investigation regarding an allegation [redacted] engaged in conduct that calls into question his ability to maintain a Top Secret security clearance, pursuant to the National Security Adjudicative Guidelines. You are being asked to provide information as a fact witness as part of the investigation conducted by the Security Division. You have a duty to reply to the questions posed to you during this interview. Should you refuse to answer or fail to reply fully and truthfully, action against your security clearance may be undertaken and you may be referred to Inspection Division for possible disciplinary action." Y - N

1. Relationship [redacted]

   a. How long known? [redacted]

   b. In what capacity? [redacted]

   c. Socialize? [redacted]

2. Vocalize support for President Trump? Did not know at time of event. Knew had right wing views. Nothing extreme.

3. Vocalize objection to Covid-19 vaccination? Didn't buy into vaccine. Did not get vaccine. Anti-vaccer. Did testing to continue working. Talked about alternatives to stay healthy. No anti-FBI rhetoric. Did not agree but did what was required. Would try to find loop holes to get around mandates. Nothing seemed extreme.

4. Vocalize intent to attend 01/06/2021?

Did not know.

[redacted]

[redacted]

9. Other employees? No. Co-workers in shop generally rolled eyes.

10. Aware he attended the Richmond Lobby Day event on 01/18/2021? Yes
[redacted] told about. Lots of guns and militia but
2nd amendment protest for being kept out of Capitol.
picked up own trash.

[redacted]

FBI Security Division

Security Integrity and Investigations Section/Clearance Investigations Unit

Date: 4/20/2022 1030

CIU Explanation

Name: P [redacted]

EOD: [redacted] DOB: [redacted] S

Position: [redacted]

SSN: xxx-xx- P-1

"This is an administrative investigation regarding an allegation [redacted] engaged in conduct that calls into question his ability to maintain a Top Secret security clearance, pursuant to the National Security Adjudicative Guidelines. You are being asked to provide information as a fact witness as part of the investigation conducted by the Security Division. You have a duty to reply to the questions posed to you during this interview. Should you refuse to answer or fail to reply fully and truthfully, action against your security clearance may be undertaken and you may be referred to Inspection Division for possible disciplinary action." Y – N

1. Relationship [redacted]

   a. How long known? [redacted]

   b. In what capacity? [redacted]

   c. Socialize? [redacted]

2. Vocalize support for President Trump? Def Trump supporter. Stay republican values.

3. Vocalize objection to Covid-19 vaccination? Definitely. Printed out reg that authorized not using mask due to health issues. Would use to get out of masks outside office. Wore mask in office. Quest/test hold outs re: vaccination. Did not get. Was doing required testing. Complied w/ requirements. Vocalized disapproval but complied w/ all FBI requirements in office & reporting/testing. No anti-US or anti-FBI statements. Spent a lot of time in office – not productive so attempting to find "back door".

4. Vocalize intent to attend 01/06/2021?

Planned to go. Told not a good idea to go. Acting VC P advised not to go.

[redacted]

[redacted]

9. Aware he attended the Richmond Lobby Day event on 01/18/2021? may activate in 2nd Th gathering. went to R.L.D. usual supporting - went for local events no anti-gov/violence/disruption talk.

[redacted]

11. Other employees? No.