

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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July 18, 2023

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, DC 20535

Dear Director Wray:

On July 12, 2023, you testified under oath before the Committee during a hearing on “Oversight of the Federal Bureau of Investigation.”¹ During the hearing, you made several statements about the FBI’s actions relating to misinformation and disinformation that are contradicted by the findings of a federal court and information obtained by the Committee. We write to provide you with an opportunity to amend your testimony.

In response to a question from Congressman Mike Johnson, you testified that the FBI’s “focus is on malign foreign disinformation; that is, foreign hostile actors who engage in covert efforts to abuse . . . our social media platforms”² You also stated unequivocally that “the FBI is not in the business of moderating content or causing any social media company to suppress or censor” speech.³ Instead, you testified that while the FBI may notify social media companies about certain content, “at the end of the day, we [the FBI] are very clear that it’s up to the social media companies to do something or not.”⁴

Your testimony conflicts with the findings of the federal court in *Missouri v. Biden*, which specifically noted that the FBI flagged domestic speech as potential disinformation and that the FBI “significant[ly] encourage[d]” social media platforms to take certain actions with respect to content. The court also noted that FBI had likely participated in “the most massive attack against free speech in [the] United States’ history.”⁵ Specifically, in its ruling prohibiting the FBI from pressuring social media platforms to remove lawful speech, the court found that:

¹ *Oversight of the Federal Bureau of Investigation: Hearing Before the H. Comm. on the Judiciary*, 118th Cong. (July 12, 2023).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Missouri v. Biden*, No. 3:22-cv-01213 (W.D. La. Jul. 4, 2023), ECF No. 293, at 2 (memorandum ruling granting preliminary injunction) (emphases added).

“Domestic disinformation” was also flagged by the FBI for social-media platforms. Just before the 2020 election, information would be passed from other field offices to the FBI 2020 election command post in San Francisco. The information sent would then be relayed to the social-media platforms where the accounts were detected. **The FBI made no attempt to distinguish whether those reports of election disinformation were American or foreign.**⁶

Additionally, the FBI was included in Industry meetings and bilateral meetings, received and forwarded alleged misinformation to social-media companies, and actually mis[led] social-media companies in regard to the Hunter Biden laptop story. The Court finds this evidence demonstrative of significant encouragement by the FBI Defendants.⁷

The Court has evaluated Defendants’ conduct under the “coercion” and/or “significant encouragement” theories of government action, and finds that **the FBI Defendants likely exercised “significant encouragement” over social-media companies.** Through meetings, emails, and in-person contacts, the FBI intrinsically involved itself in requesting social-media companies to take action regarding content the FBI considered to be misinformation. The FBI additionally likely misled social-media companies into believing the Hunter Biden laptop story was Russian disinformation, which resulted in suppression of the story a few weeks prior to the 2020 Presidential election. Thus, Plaintiffs are likely to succeed in their claims that the FBI exercised “significant encouragement” over social-media platforms such that the choices of the companies must be deemed to be that of the Government.⁸

The court’s findings are based on discovery the plaintiffs obtained in the case and are consistent with communications that the Committee has independently obtained pursuant to its oversight, which confirm that the FBI was flagging alleged election-related “misinformation” and “disinformation” for social media platforms.⁹ For example, in one e-mail, FBI Special Agent Elvis Chan warned Facebook about “a Facebook user who is posting disinformation about the

⁶ *Id.* at 65.

⁷ *Id.* at 107.

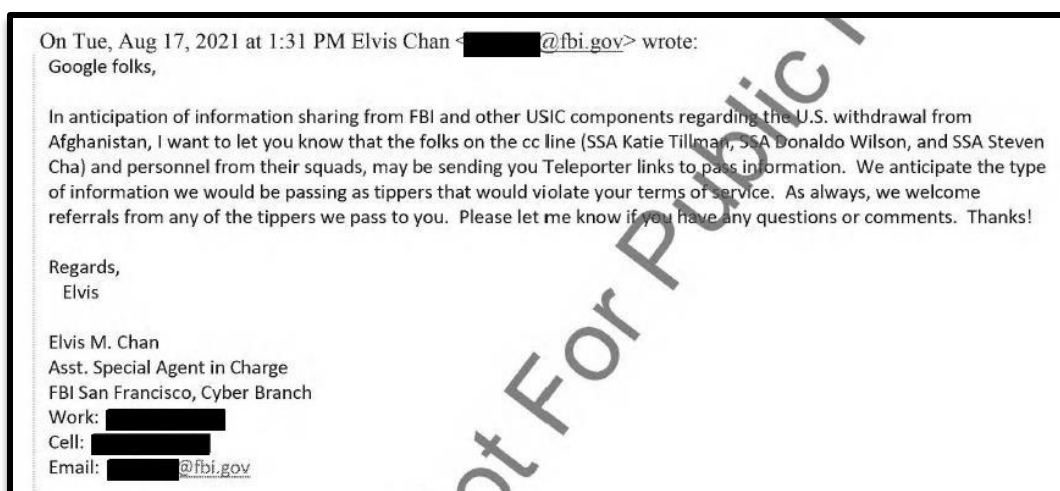
⁸ *Id.* at 108.

⁹ *See, e.g.*, e-mail from Elvis Chan to Facebook employee (Sept. 15, 2020, 3:08 PM) (on file with the Comm.); e-mail from Elvis Chan to Facebook employee (Oct. 4, 2020, 2:31 PM) (on file with the Comm.).

elections.”¹⁰ Agent Chan continued, “[w]e believe this may violate your terms of service. We would appreciate if you could review this information and let us know if you take any actions.”¹¹

The Committee and the Select Subcommittee on the Weaponization of the Federal Government have obtained documents showing that the FBI did more than merely notify social media companies about alleged disinformation. The FBI often followed up with the companies,¹² requested that the companies notify the FBI if they removed the flagged accounts,¹³ and provided unsolicited input regarding whether content did or would violate the companies’ respective terms of service.¹⁴

For instance, on August 17, 2021, Agent Chan sent an e-mail to several Google employees regarding social media activity concerning the United States’ withdrawal from Afghanistan. Agent Chan wrote: “We anticipate the type of information we would be passing as tippers that would violate your terms of service.”¹⁵



The FBI also sought to ensure that its flagged content had, in fact, been taken down, even offering legal process to support the removal of content.¹⁶ For example, in one communication on March 9, 2022, an FBI agent e-mailed a Facebook employee, writing, “Would you be able to tell me if these accounts were taken down, or if you need some legal process from us?”¹⁷ The FBI’s offer to provide “legal process” for the flagged accounts, which, in this case, included

¹⁰ E-mail from Elvis Chan to Facebook employee (Sept. 15, 2020, 3:08 PM) (on file with the Comm.).

¹¹ *Id.*

¹² *See e.g.*, e-mail from Elvis Chan to Facebook employee (Apr. 7, 2021, 1:04 PM) (on file with the Comm.).

¹³ *See, e.g.*, e-mail from Elvis Chan to Facebook employees (Sept. 8, 2020, 4:50 PM) (on file with the Comm.).

¹⁴ *See, e.g.*, e-mail from Elvis Chan to Google employees (Aug. 17, 2021, 1:31 PM) (on file with the Comm.).

¹⁵ *Id.*

¹⁶ *See, e.g.*, e-mail from Patrick Miller to Facebook employee (Mar. 9, 2022, 9:33 AM) (on file with the Comm.).

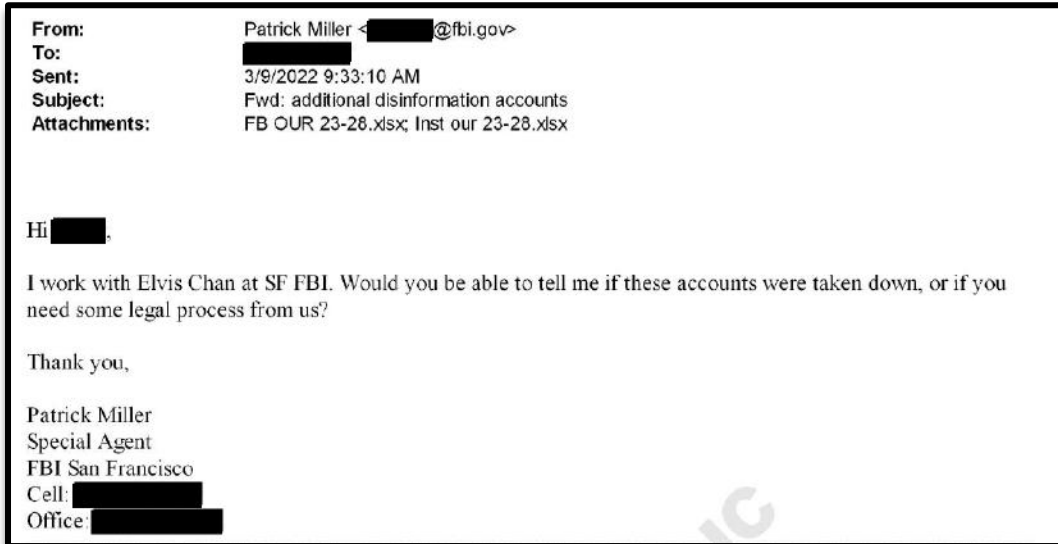
¹⁷ *Id.*

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Americans engaging in lawful speech,¹⁸ does not comport with your assertion that the social media companies simply acted of their own volition with respect to the FBI's referrals of accounts allegedly engaged in "disinformation."¹⁹



Your testimony to the Committee appears to be at odds with other information available to the Committee. Contrary to your testimony, the FBI did not passively relay information to the social media companies and leave it for the companies to decide what content moderation decisions to make. Instead, the FBI was an active participant in this process—flagging content for companies, following up with them to ensure the content had been removed, and offering legal process for the content's removal. This discrepancy between your testimony and the information we have obtained leads us to conclude that either you misled the Committee about the FBI's interactions with social media companies or that you were not fully aware of the egregious and unconstitutional actions of the FBI you administer. Either scenario is alarming. Accordingly, we invite you to amend your testimony.

Sincerely,



Jim Jordan
Chairman



Mike Johnson
Chairman
Subcommittee on the Constitution
and Limited Government

cc: The Honorable Jerrold L. Nadler, Ranking Member

¹⁸ STAFF OF SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE FBI'S COLLABORATION WITH A COMPROMISED UKRAINIAN INTELLIGENCE AGENCY TO CENSOR AMERICAN SPEECH, at 10–12 (Comm. Print 2023).

¹⁹ *Oversight of the Federal Bureau of Investigation*, *supra* note 1.