

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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MEMORANDUM

July 24, 2023

To: Democratic Members of the Committee on Oversight and Accountability

Fr: Democratic Staff

Re: Chairman Comer and Senator Grassley's Decision to Publicly Release FBI Form FD-1023

On July 20, 2023, Chairman Comer and Senator Charles Grassley publicly released a copy of a Federal Bureau of Investigation (FBI) Form FD-1023 memorializing the second-hand allegations of Mykola Zlochevsky, a Ukrainian oligarch and the owner of the energy company Burisma, as relayed to the FBI by a confidential human source (CHS) years after the fact.¹ The FBI had already made the form available to Members of the Committee for *in camera* review in early June, and warned that public disclosure of the document “could eliminate or chill important collection, undermine the FBI’s confidential human source program, jeopardize investigations, and result in significant risk of physical harm to sources based on their historic and ongoing collection.” Chairman Comer’s and Senator Grassley’s decision to release this document further amplifies conspiracy theories at the cost of endangering the safety of FBI sources.² Furthermore, the allegations in the form have been debunked repeatedly, including by Donald Trump’s own Justice Department and Rudy Giuliani’s failed campaign to collect dirt on President Biden in Ukraine.

The CHS himself, senior Republican leaders, and even Donald Trump’s Justice Department have repeatedly undercut the allegations contained in the document. Those

¹ Senator Grassley, *Press Release: Grassley Obtains & Releases FBI Record Alleging VP Biden Foreign Bribery Scheme* (July 20, 2023) (online at www.grassley.senate.gov/news/news-releases/grassley-obtains-and-releases-fbi-record-alleging-vp-biden-foreign-bribery-scheme).

² Letter from Acting Assistant Director Christopher Dunham, Federal Bureau of Investigation, to Chairman James Comer, Committee on Oversight and Accountability (June 5, 2023) (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/FBI.230605.Response%20to%20Comer%20re%20Subpoena%20Form%201023.pdf>); *See also* Letter from Acting Assistant Director Christopher Dunham, Federal Bureau of Investigation, to Chairman James Comer, Committee on Oversight and Accountability (June 9, 2023) (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/FBI.230609.Response%20to%20Comer%20re%20Subpoena%20-%20Form%201023.pdf>).

allegations, attributed to Mykola Zlochevsky, the founder of Burisma, include an account of an effort to pay Hunter Biden and “another Biden” in order to “deal” with the Ukrainian Prosecutor General Viktor Shokin. Mr. Zlochevsky explicitly and directly contradicted the allegations, as did Lev Parnas, a central participant in Mr. Giuliani’s campaign to procure damaging information about the Bidens from dubious Ukrainian sources in 2019 and 2020.

I. FORMER GIULIANI ASSOCIATE LEV PARNAS’S FIRST-HAND ACCOUNT CONFIRMS ALLEGATIONS IN FORM FD-1023 ECHO CONSPIRACY THEORY PEDDLED BY GIULIANI

In a new firsthand account, described in a detailed, ten-page, July 18, 2023, letter to Chairman Comer, Lev Parnas explained that the Form FD-1023 reiterated false allegations peddled as part of a “campaign orchestrated by Giuliani and Trump to dig up dirt on the Bidens, and to spread misinformation about them through various networks including government officials, journalists, and FOX News personnel.” In the letter, Mr. Parnas recounted his key role in Mr. Giuliani’s attempts to pressure Ukrainian individuals, including government officials, to provide false evidence that President Biden’s 2016 call for Mr. Shokin’s ouster was part of a corrupt deal. This campaign included offers to exchange political or legal support from the Trump Administration for false statements regarding President Biden. Mr. Parnas stated that “throughout all these months of work, the extensive campaigns and networking done by Trump allies and Giuliani associates, including the enormously thorough interviews and assignments that I undertook, there has never been any evidence that Hunter or Joe Biden committed any crimes related to Ukrainian politics.”³

Mr. Parnas also described an effort to pressure Mr. Zlochevsky to make false allegations about President Biden by telling him he could be “an enemy or a friend of Trump.” Mr. Giuliani transmitted a list of “12-14 questions about the Bidens” for Mr. Zlochevsky.⁴ Mr. Zlochevsky’s written responses explicitly contradicted the Republicans’ theory and the statements attributed to him in the Form FD-1023. Specifically, Mr. Zlochevsky denied (1) that anyone at Burisma had “any contacts” with then former Vice President Biden or his representatives while Hunter Biden served on the Burisma board, and (2) that former Vice President Biden or his staff “in any way” assisted Mr. Zlochevsky or Burisma.⁵ In response to Mr. Zlochevsky’s written responses, Mr. Giuliani “turned red and yelled, ‘What is this shit? This is bullshit. Make sure nobody sees this. Bury this.’”

³ Letter from Lev Parnas to Chairman James Comer, Committee on Oversight and Accountability (July 18, 2023) (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/Parnas%2C%20COA%20Letter%2C%20July%2018%2C%202023.pdf>).

⁴ *Id.*

⁵ Mr. Zlochevsky’s responses are contained in a document that was produced to Congress in January 2020 during the first impeachment inquiry involving former President Trump and has been available to both Republicans and Democrats since that time. Committee on Oversight and Accountability, *Press Release: Ranking Member Raskin Shares Key Evidence Directly Contradicting Bribery Allegations Touted by Giuliani and Oversight Chairman Comer* (June 29, 2023) (online at <https://oversightdemocrats.house.gov/news/press-releases/ranking-member-raskin-shares-key-evidence-directly-contradicting-bribery>).

In response to Mr. Giuliani, even Mr. Shokin “conceded that there was no evidence of either Hunter or Joe Biden doing anything that interfered with Ukrainian law.” Mr. Parnas concluded:

Never, during any of my communications with Ukrainian officials or connections to Burisma, did any of them confirm or provide concrete facts linking the Bidens to illegal activities. In fact, they asked me multiple times why our team was so concerned with this idea. The truth is that everyone [involved in this effort to discredit the Bidens] knew that these allegations against the Bidens were false. There has never been any actual evidence, only conspiracy theories spread by people who knew exactly what they were doing.

II. THE UNVERIFIED, SECONDHAND ALLEGATIONS IN THE FORM FD-1023 HAVE BEEN REPEATEDLY DEBUNKED BY MANY OTHERS

In addition to Mr. Parnas, many others, including the CHS himself, senior Republican leaders, and even Donald Trump’s Justice Department have undermined the truthfulness of the allegations described in the Form FD-1023. In the form itself, the CHS noted that he could not provide any “opinion as to the veracity of Zlochevsky’s statements.” He further explained that “it is extremely common for businessmen in post-Soviet countries to brag or show off.”⁶ In 2020, Attorney General Barr warned that “[t]here are a lot of agendas in the Ukraine, there are a lot of cross-currents, and we can’t take anything we receive from the Ukraine at face value.”⁷ Last month, Senator Johnson, who led Senate Republicans’ 2020 investigation into the allegations involving Burisma, conceded the issues with the Form FD-1023: “That’s what this person says, but again, take that with a grain of salt. This could be coming from a very corrupt oligarch who could be making this stuff up.”⁸ Senator Grassley also tacitly questioned the truthfulness of the allegations in the Form FD-1023 when he admitted he was “not interested” in whether the accusations in the form “are accurate or not.”⁹

The FBI confirmed to Chairman Comer and Ranking Member Raskin during a June 5, 2023, briefing on the Form FD-1023 that the statements about purported corruption in the FD-1023 are substantially the same allegations originally made by Rudy Giuliani.¹⁰ After Mr.

⁶ Federal Bureau of Investigation, Form FD-1023 (June 30, 2020) (online at www.grassley.senate.gov/imo/media/doc/fd_1023_obtained_by_senator_grassley_-_biden.pdf).

⁷ *Barr Confirms Justice Department Is Receiving Giuliani Information About Ukraine*, CNN (Feb. 10, 2020) (online at www.cnn.com/2020/02/10/politics/justice-department-rudy-giuliani-ukraine/index.html).

⁸ *Non-Men*, The Vicki McKenna Show (June 14, 2022) (online at www.listennotes.com/podcasts/the-vicki-mckenna/the-vicki-mckenna-show-non-men-aqpGXnv4FsL).

⁹ *Sen. Chuck Grassley Rips FBI Handling of Biden Document: ‘Not good enough,’* Fox News (June 1, 2023) (online www.foxnews.com/video/6328608995112).

¹⁰ Letter from Ranking Member Jamie Raskin, Committee on Oversight and Accountability, to Director Christopher Wray, Federal Bureau of Investigation (June 16, 2023) (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2023-06-16.JBR%20to%20Wray-FBI%20re%20Subpoena%20Briefing%20FINAL.pdf>).

Giuliani passed these allegations along to the Trump Department of Justice (DOJ), former President Trump's Attorney General, William Barr, handpicked Scott Brady, then the U.S. Attorney for the Western District of Pennsylvania, to investigate Mr. Giuliani's allegations. Under U.S. Attorney Brady, the DOJ and FBI thoroughly investigated the allegations as part of an eight-month formal assessment, which included interviewing Mr. Giuliani and the CHS, and reviewing suspicious activity reports (SARs) from banks. The FBI also confirmed to Chairman Comer and Ranking Member Raskin during the June 5, 2023, briefing that Mr. Brady's assessment was closed in August 2020 because his team found insufficient evidence to warrant escalating the probe from an assessment to a preliminary or full investigation.¹¹

III. FACTS SURROUNDING SHOKIN DISMISSAL FURTHER REFUTE REPUBLICAN CONSPIRACY THEORY

As part of Senate Republicans' investigation into Mr. Giuliani's allegations in 2020, State Department officials made clear that the dismissal of Viktor Shokin by the Ukrainian Parliament in 2016 was not based on any attempt to benefit Burisma. Rather, calls for Mr. Shokin's dismissal stemmed from his failure to pursue corruption in Ukraine rather than any investigation of Burisma.¹² Indeed, as has been widely reported, any probe by Ukrainian authorities into Burisma actually became *dormant* once Mr. Shokin was appointed Prosecutor General in 2015.¹³ Senior State Department officials also confirmed that U.S. policy in Ukraine was not influenced by, and did not benefit, Hunter Biden.¹⁴

Furthermore, the Ukrainian Parliament dismissed Mr. Shokin in 2016 with the broad support of U.S. and other Western nations, as well as international organizations such as the International Monetary Fund, because he failed to prosecute corruption in Ukraine and continued to protect Ukrainian oligarchs.¹⁵ At the time, Senator Johnson himself supported the U.S. policy towards Ukraine that conditioned funds to Ukraine on the removal of Mr. Shokin.¹⁶

¹¹ *Id.*

¹² Senate Committee on Homeland Security and Governmental Affairs and Senate Finance Committee Minority Staff Report, *Election Interference: Majority Investigation Amplifies Russian Attack on 2020 Election* (Sept. 23, 2020) (online at www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/200923_FullReport_PetersHSGACWydenFinance.pdf).

¹³ E.g., *Was Ukrainian Prosecutor Viktor Shokin Prosecuting Burisma?*, CNN (online at www.cnn.com/factsfirst/politics/factcheck_3fae078e-8724-4c28-9340-2c154688af43) (accessed June 11, 2023); FactCheck.Org, *Trump Revives False Narrative on Biden and Ukraine* (Oct. 15, 2020) (online at www.factcheck.org/2020/10/trump-revives-false-narrative-on-biden-and-ukraine/).

¹⁴ Senate Committee on Homeland Security and Governmental Affairs and Senate Finance Committee Minority Staff Report, *Election Interference: Majority Investigation Amplifies Russian Attack on 2020 Election* (Sept. 23, 2020) (online at www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/200923_FullReport_PetersHSGACWydenFinance.pdf).

¹⁵ *Ukraine Ousts Viktor Shokin, Top Prosecutor, and Political Stability Hangs in the Balance*, New York Times (Mar. 29, 2016) (online at www.nytimes.com/2016/03/30/world/europe/political-stability-in-the-balance-as-ukraine-ousts-top-prosecutor.html).

¹⁶ Senate Committee on Homeland Security and Governmental Affairs and Senate Finance Committee Minority Staff Report, *Election Interference: Majority Investigation Amplifies Russian Attack on 2020 Election*

IV. REPUBLICANS' RELEASE OF FORM FD-1023 COMPROMISES SAFETY OF FBI SOURCES

Chairman Comer's and Senator Grassley's release of the Form FD-1023 into the public domain revealed the names of several individuals in Ukraine whose identities the FBI had sought to protect. The version of the Form FD-1023 they decided to make public contains the same redactions as the version that the FBI made available to the Committee, except that it discloses the names of the individuals in Ukraine named by the CHS, as well as certain minor additional details such as specific locations, which were redacted in the FBI version. Chairman Comer and Senator Grassley chose to expose those additional details despite repeated cautioning from the FBI about the critical need to protect the safety of its human sources and its ability to conduct investigations effectively.¹⁷

To justify the public release of the form, Senator Grassley and Chairman Comer claimed that the DOJ and FBI engaged in "obstructive conduct" by refusing to produce an unredacted version of the FD-1023 in response to Chairman Comer's subpoena.¹⁸ Chairman Comer's and Senator Grassley's accusation ignores that last month the FBI provided a minimally redacted version of the form for *in camera* review by all Members of the Oversight Committee, following a series of additional accommodations the FBI had made to balance the provision of responsive information to the Committee with protecting its sources and the integrity of its investigations.¹⁹ Even before the FBI made the redacted Form FD-1023 available to the Committee, a whistleblower had made the document available to Senator Grassley and Chairman Comer and appears to be the source of the version of the document released yesterday.²⁰

(Sept. 23, 2020) (online at www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/200923_FullReport_PetersHSGACWydenFinance.pdf).

¹⁷ Letter from Acting Assistant Director Christopher Dunham, Federal Bureau of Investigation, to Chairman James Comer, Committee on Oversight and Accountability (June 5, 2023) (noting that the copy of the Form FD-1023 made available for Chairman Comer and Ranking Member Raskin to review contained "minimal redactions to protect information that could potentially identify the confidential human source.") (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/FBI.230605.Response%20to%20Comer%20re%20Subpoena%20Form%201023.pdf>).

¹⁸ Letter from Chairman James Comer, Committee on Oversight and Accountability, and Ranking Member Charles E. Grassley, Senate Committee on the Budget, to Attorney General Merrick Garland, Department of Justice, and Director Christopher Wray, Federal Bureau of Investigation (July 20, 2023).

¹⁹ Those additional accommodations included providing two staff-level briefings on its CHS program on May 15, 2023, and May 23, 2023, making a minimally redacted version of the Form available for *in camera* review by all Members of the Committee, and providing Chairman Comer and Ranking Member with a briefing on the context surrounding the Form, which lasted more than an hour.

²⁰ *Rep. James Comer Plots Next Move with FBI in Biden Bribery Probe: 'Cut their budget'*, Fox News (June 20, 2023) (online at www.foxnews.com/video/6329818390112); *Grassley Reveals He Has Already Seen The Bombshell Whistleblower Doc The FBI Is Hiding*, The Federalist (June 2, 2023) (online at <https://thefederalist.com/2023/06/02/grassley-reveals-he-has-already-seen-the-bombshell-whistleblower-doc-the-fbi-is-hiding/>); *Sen. Chuck Grassley Reveals He's Read Biden Bribe Claim, Says FBI Offer 'Not Good Enough'*, New York Post (June 1 2023) (online at <https://nypost.com/2023/06/01/sen-grassley-slams-fbi-director-chris-wray-for-not-making-biden-file-public/>).

V. CONCLUSION

Chairman Comer's and Senator Grassley's decision to publicly release the form is in brazen disregard of the safety of FBI human sources and the integrity of its investigations. Contrary to Republican messaging, the form provides no new or additional support for their corruption allegations against the President or Hunter Biden. Instead, its release merely seeks to breathe new life into years-old conspiracy theories, initially peddled by Rudy Giuliani, that have been thoroughly debunked.