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Project Veritas says the FBI declared it part of media

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Project Veritas, a conservative organization known for undercover video stings of mainstream news outlets and liberal activists, contends in a new court filing that the FBI deemed the outlet to be part of the news media even though prosecutors later argued that what the operation does is not journalism.

Project Veritas says it learned the FBI's initial characterization of it from an unnamed FBI agent who considered the actions against the organization to be improper. The agent sat for a video interview with Project Veritas' founder, James O'Keefe, and provided O'Keefe a copy of an FBI document he said detailed the opening of an investigation into the group days before the presidential election in 2020, according to the filing in U.S. District Court in Manhattan.

The federal probe centered on the alleged theft of a diary and other personal effects from President Joe Biden's daughter, Ashley Biden, and led to FBI raids at the home of O'Keefe and two other individuals affiliated with the group in November 2021.

The raids touched off a pitched legal battle between the Justice Department and the conservative video outlet, whose founder and attorneys contend that the organization's activities amount to journalism and deserve all the protections accorded to reporters under federal law and Justice Department regulations.

Justice Department officials in Washington have declined to comment on whether the search warrants and data seizures aimed at Project Veritas were approved under federal guidelines that strictly limit investigative actions involving the news media.

However, federal prosecutors in the U.S. Attorney's Office for the Southern District of New York have dismissed the idea that what the video-sting purveyors do is akin to ordinary reporting.

"Project Veritas is not engaged in journalism within any traditional or accepted definition of that word," prosecutors wrote in a court filing in November. "Its 'reporting' consists almost entirely of publicizing non-consensual, surreptitious recordings made though unlawful, unethical, and or/dishonest means."

The conservative organization says in its submission Wednesday that those arguments are in tension with the details in the FBI's computer systems indicating the probe into Project Veritas was opened as a "sensitive investigative matter" on the grounds that it involved the "news media."

That designation would have required approval by at least two other FBI officials beyond the case agent, including a Bureau attorney, according to former FBI agent Michael German.

"The SIM process isn't a particularly difficult obstacle so it would be easier to follow the process than to argue its non-application," said German, now with the Brennan Center for Justice. "The bigger problem is that FBI agents often don't comply with the SIM requirements."

German noted that a Justice Department inspector general audit from 2019 found that non-compliance with the SIM rules was common. The audit, obtained by the Cato Institute and first reported by the Washington Times, identified 747 compliance errors related to "sensitive" case designations or rules.

The two-page document Project Veritas filed with the court indicates that the "full investigation" involving the organization was opened on October 29, 2020, five days before the presidential election.

The designation of the probe as a "sensitive investigative matter" meant that detailed information about the inquiry were not widely available in FBI systems, the case-opening record shows.

"It is evident from this Report that the government recognized on Day #1 that Project Veritas is a member of the 'News Media,'" Florida lawyer Paul Calli and other attorneys for the organization wrote.

Calli said the FBI's description of the group "cannot be reconciled" with the arguments prosecutors put forward in November as they opposed a request by Project Veritas to appoint a respected outside lawyer to act as a special master and review information seized in the raids before it is turned over to prosecutors.

"The Report's 'SIM' designation of 'News Media' exposes the prosecutors' deceit," Calli wrote. "Fortunately, the First Amendment does not yield to the whims of prosecutors who dislike journalists or their audiences, and Project Veritas' journalism continued unabated."

The new court filing also notes that the FBI document includes designations and tags describing the probe as one into potential election crimes, violence, harm, extortion and coercion. Calli called those terms "inflated" and "inflammatory."

A spokesperson for the FBI did not respond to a message seeking comment. A spokesperson for the U.S. Attorney's Office declined to comment.

Project Veritas has asked U.S. District Court Judge Analisa Torres to order the return of all the materials seized by the government. The organization has said that it obtained the purported

Ashley Biden diary from individuals who said they acquired it legally after she abandoned it in a Florida home where she'd been staying. Calli has acknowledged that the group "agreed to pay money for the right to publish" the diary.

O'Keefe has said his group was unable to authenticate the diary and eventually turned it over to police in Delray Beach, Fla. Project Veritas never published anything about the diary, but portions of the document were published online by another conservative website in October 2020.

The ongoing investigation by the FBI and the U.S. Attorney's Office appears to center on alleged trafficking in stolen property, based on information in the search warrants. In addition to the diary, FBI agents appear to be investigating the handling of other personal effects of Ashley Biden that were allegedly taken from the same house and were provided to Project Veritas as part of what it says was an effort to confirm the authenticity of the diary. Those materials were also turned over to the police in November 2020 by a Tampa-based attorney.

"Project Veritas and its journalists committed no crime," Calli wrote in the filing Wednesday.