

**EXHIBIT H: Rule 615 Invocation and Impeachment Attempt at Trial
United States v. Young, No. 1:23-cr-00241-TSC-GMH**

August 5, 2024

Purpose: This exhibit documents the prosecution's invocation of Federal Rule of Evidence 615 to allow FBI Agents Garland, Giftos, and Paolino to remain during testimony, including an impeachment attempt of Garland for nondisclosure, highlighting courtroom manipulation that compromised defendant's confrontation rights.

- **Rule 615 Invocation (Transcript, pp. 7-8)**
- **Quote:**
 - "MS. LEDERER: Your Honor, the government seeks to invoke Rule 615 to allow our agents to remain in the room... Special Agent Garland... is going to sit at the table with us." (p. 7, lines 19-23)
 - "MR. GROSS: I object to having both... one or the other could be here." (p. 8, lines 15-18)
 - "THE COURT: I will permit it because they were both, at one point or another, the case agent in this case." (p. 8, lines 14-15)
- **Context:** On August 5, 2024, the prosecution requested Garland (initial case agent), Giftos (current agent), and Paolino (point of contact) to stay, with Garland at the table and in sidebars/jury selection, despite defense objection.

Impeachment Attempt of Special Agent Garland (Transcript, pp. 154-186)

- **Direct Testimony:** Garland stated he investigated you in January 2021, conducted an assessment, and transferred the case to D.C., which returned to New Hampshire, assigned to Giftos, then back to him (pp. 162-163).
- **Email Evidence:** An April 20, 2021, email asked if a case was opened or closed; Garland responded on April 21, 2021, "We are not opening a case on Ms. Young" (pp. 164-165).
- **Cross-Examination:** Gross argued this contradicted Garland's testimony, suggesting suppressed evidence, and refreshed Garland's recollection with the email (pp. 183-185). Garland confirmed the response (p. 185), and redirect clarified it reflected the assessment process, with a case later opened (pp. 185-186).

- **Context:** This impeachment under FRE 613(b) highlighted potential exculpatory evidence (no initial case intent), but Garland's Rule 615 presence may have influenced the jury, compounding bias from Juror 0374 (EXHIBIT C, J) and Juror 0001 (EXHIBIT F).

Attachments:

- Full Trial Transcript Excerpt (pp. 7-8, 154-186)

EXHIBIT H - Rule 615 Invocation at Trial Transcript

MS. LEDERER: Your Honor, the government seeks to
invoke Rule 615 to allow our agents to remain in the room.

19

20

Just to give you some background on why we're going to ask for
three agents, we're going to ask for one agent at the table,

21

22

23

Special Agent -- I apologize. I called him a TFO earlier.
He's Special Agent Garland. He's going to sit at the table
with us. He initially was assigned the case, then based off of

24

his detail where he used to be within his office, the case then

25

moved to Matt -- Matthew Giftos. We're going to ask that he [Case 1:23-cr-00241-TSC-GMH
Document 83 Filed 09/04/24 Page 7 of 273](#)

7

1

can sit in the back.

2

Then based off of Agent Giftos' transfer within the

3

office, the case then was assigned to an agent, Molly Paolino,

4

who really has just been point of contact. So we would ask she

5

be allowed to stay in the back of the courtroom. We're not, at

6

this rate, even intending on calling her to testify.

7

Agents Garland and Giftos will testify.

8

We would ask that all other witnesses be sequestered.

9

THE COURT: You will sequester all witnesses on your

10

side, correct?

11

MS. LEDERER: Yes, Your Honor.

12

THE COURT: Defense, any objection to proceeding in

13

that fashion? Sounds like she wants to have her case agents

14

here.

15

MR. GROSS: Your Honor, we have really only one

16

witness, which will be David Sumrall, who will be sequestered

17

until his testimony. And Noreen Powers, who is here, will not

18

be testifying, and she will be -- she wants to see the trial.

19

THE COURT: If she's here, then she will not testify.

20

You understand that?

21

MR. GROSS: She will not testify.

22

THE COURT: You don't have an objection to the

23

government having its case agents in the courtroom?

24

MR. GROSS: I object to having both. If two agents

25

are coming to testify, then maybe one or the other could be [Case 1:23-cr-00241-TSC-GMH Document 83 Filed 09/04/24 Page 8 of 273](#)

8

1

here. I don't see the need for both to be able to --

2

THE COURT: Are they all going to be here at the same

3

time?

4

MS. LEDERER: Your Honor, obviously, Agent Garland is

5

in the courtroom right now. Agents Paolino and Giftos, their

6

flights got canceled out of New Hampshire yesterday due to a

7

storm, so they're traveling today. We anticipate them arriving

8

this afternoon. We would have them sit in the back of the

9

courtroom. Agent Paolino, especially, because we don't intend

10

on calling her to testify, and then Agent Giftos because at one

11

point he was the assigned agent and under Rule 615, those who

12

have assisted in the investigation can remain in the courtroom

13

during the case.

14

THE COURT: Okay. I will permit it because they were

15

both, at one point or another, the case agent in this case.

164

1

MS. LEDERER: Your Honor, I think we find ourselves in

2

a situation that we have a few times, that Mr. Gross is just

3

going to have to explain a little bit more why this email is

4

coming in. And if we even get to the hurdle -- get over that

5

hurdle and over the threshold and this is coming in, there's

6

going to have to be some redaction, first off. But I think we

7

need to hear a bit more of why this should be coming in.

8

We discussed a little bit at the pretrial hearing that

9

the government wasn't going to bring up anything related to

10

some conspiracy investigation, so I'm not sure why we're

11

getting into it now. So I think we just need a little bit more

12

as to why this is being offered.

13

THE COURT: Mr. Gross?

14

MR. GROSS: Your Honor, I don't have the transcript,

15

but I believe he just testified that he sent the investigation

16

back and then the investigation was then just sent back to

17

New Hampshire, and this email tells a different story. This

18

email says that he was contacted by part of the conspiracy

19

working on finding if anyone worked together and conspired for

20

the Capitol riots and entry into the Capitol building.

21

"I saw in Sentinel that you telephonically interviewed

22

Ms. Young. Did you open a case on her or is someone else in

23

charge of opening a case on her or are we closing her file?

24

Any help is greatly appreciated. Please let me know if you

25

have any questions.

"Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24 Page 165 of 238

165

1

2

3

4

5

6

And that was emailed to him on April 20, 2021, and it came about three months after he had interviewed her in January.

And then he responded the next day,
opening a case on Ms. Young.

"

"We are not

7

8

And she wrote back,

"Thank you for the update.

"

So the story that this email tells, I believe, is that
he interviewed her, he was asked if they are going to open a

9

10

case, and then he said, we are not opening a case on her.

The story that he told on the stand is that there was

11

12

13

this ongoing investigation somehow, and those are two different
stories and I believe that's impeachment.

Now, the government might say that, as they mentioned

14

15

earlier, well, that's conspiracy, but the way I read the email,
it says,

"If anyone worked together and conspired for the

16

17

18

Capitol riots and entry into the Capitol building.

"

So that's not limited to investigations on conspiracy.

And even if it was, I just don't believe that that's a reason

19

20

that this exhibit should not be admitted. The government is
welcome to try and rehabilitate their witness on redirect, but

21

22

I think this is paradigmatic quintessential impeachment
evidence that I cannot, for the life of me, understand why it
should not be admitted as evidence.

23

24

25

THE COURT: So he's asked,

"Did you open a case on her

or is someone else in charge of opening a case on her or are we

[Case 1:23-cr-00241-TSC-GMH](#)
[Document 85 Filed 09/04/24 Page 166 of 238](#)

166

1

closing her file?"

2

3

4

And he responded,

"

"We are not opening the case on

Ms. Young.

So that is your point. At least at that point, he,

5

Mr. Garland, and I guess whoever "we" is, maybe the Boston

6

division, Bedford RA, is not opening a case on Ms. Young, and

7

8

9

you think that is inconsistent with what he testified to?

MR. GROSS: Correct.

THE COURT: Government?

10

MS. LEDERER: Your Honor, it's not inconsistent. He

11

said he sent a case back, then he got the case back again. So

12

there's no inconsistency with what he said. He didn't say it

13

was an ongoing investigation. He just said he sent the case

14

back to Washington.

15

THE COURT: No. This says that he -- we are not

16

opening a case on him [sic]. Whatever. I don't know. I think

17

it's well within his ability to respond to this. We will find

18

19

out.

MS. LEDERER: I don't think that necessarily the email

20

has to be used. What counsel can do -- because, first off, it

21

could only, right now, be used as impeachment. So impeachment,

22

that's not evidence, it's impeachment evidence.

23

24

25

THE COURT: Right. It's not going to come in for the

truth.

MS. LEDERER: So it won't come in substantively. [Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24 Page 167 of 238](#)

167

1

THE COURT: Yes.

2

MS. LEDERER: However, since he has not testified

3

inconsistently yet, what counsel can do is say, after that

4

initial investigation, government counsel asked you about the

5

investigation, you said you sent it back to Washington. Did

6

you open a case at that time?

7

And he can answer, no, we did not.

8

As opposed to bringing in this entire email, which is

9

not redacted. There's names and numbers and --

10

THE COURT: I'm happy to have it redacted.

11

MS. LEDERER: -- a whole host of other things.

12 We haven't gotten into the interviews. This is also
13 kind of outside the scope of the direct. He can 100 percent
14 ask, you did not initially open an investigation in
15 New Hampshire after your initial investigation. That is well
16 within his right. But there's no reason to use the email at
17 this portion in time.
18 THE COURT: Well, we'll have to see how it comes out.
19 Certainly the email -- maybe there's something
20 sensitive in here you don't want him referring to, something
21 you think should be redacted. We can always redact it later
22 if, ultimately, he does confront the witness with this email or
23 the statements in the email. It's not -- as you say, it's not
24 going to be substantive evidence in the case. It will be --
25 you know, the jury can consider it with respect to whether or
[Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24 Page 168 of 238](#)

168
1 not it is inconsistent or not with the testimony, and whatever
2 explanation he gives, whether on cross or redirect.
3 So -- but if there is something of particular
4 sensitivity that you want to make sure that Mr. Gross does not
5 stumble into, and I think there's a great deal of information
6 on here that is totally irrelevant to even what he's attempting
7 to do, but there might be some sensitivities, I don't know, case
8 numbers --

9 MS. LEDERER: Yeah. I don't think we need to have any
10 of the serial numbers. There's email addresses that we could
11 potentially redact. But the main concern, obviously, is the
12 mobile and desk numbers. The government went to great lengths
13 to redact the Facebook to protect other people's identities.
14 THE COURT: Sure. Well, we will ultimately make sure
15 that any version is fully redacted if there's one that's going
16 to be used. But --
17

MS. LEDERER: The concern is still that if Mr. Gross

18

is going to somehow bring it up on his computer right now, as

19

opposed to walking up and impeaching, that in open court, work

20

numbers are going to be published in open court.

21

THE COURT: Mr. Gross?

22

I mean, but, Government, you know, I'll just say, he

23

doesn't have to provide to you ahead of time all of his

24

documents that he's going to potentially impeach someone with,

25

so this does sometimes occur. [Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24 Page 169 of 238](#)

169

1

MS. LEDERER: I understand that. But the redactions

2

can be taken care of ahead of time.

3

MR. GROSS: Well, I agree that anything that is

4

5

sensitive, obviously, should be redacted. I think there may be
some discussion in terms of what necessarily needs to be

6

7

8

redacted, certainly work numbers and things like that. When we
say "publish to the jury,

" I think we could give a hard copy to

him and then we can work out the redactions later.

9

What I would like is --

10

THE COURT: I don't think we need to show it to the

11

12

13

jury at this time because it's not going to be redacted. We

can consider what redactions need to be made if, ultimately,

you present it to the jury -- I mean, sorry, present it to this

14

witness.

15

Are you planning to elicit this question about the

16

17

18

conspiracy team, so there's some request made about whether or
not there is going to be any -- some suggestion that someone

was thinking that maybe she's involved in some larger

19

20

conspiracy? You want to suggest that to the jury?

MR. GROSS: I think that the email suggests that she's

21

22

23

not. That's why I think the email is -- I know it's not for

the truth of the matter asserted, but his statement, you know,
I could -- is,
"We are not opening a case on Ms. Young,
" and

24

he's here. It's not an out-of-court statement. He can respond

25

to that and he can say whatever he wants. [Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24](#)

[Page 170 of 238](#)

170

1

2

3

4

5

6

7

8

9

10

11

12

13

14

THE COURT: This is your strategic choice as to what

you want to do. Go right ahead, make your attempt.

MR. GROSS: I don't want to -- like I said, I don't

want to slow down the case, for sure. In fact, I want to

dispose of this matter very quickly so we can move on. I could

even just ask him. I don't have to admit it into evidence. I

could say, did you receive an email on April 20th, and was the

substance of the email about Cindy Young. I could say, was the

subject of the email Cindy Young. It says, subject of the

email, Cindy Young. And he could say, I don't recall. I could

say, let me refresh your recollection. And I could say, did

you respond to that email, we are not opening a case on

Ms. Young. And that's all I need to do. I don't need to admit

it into evidence.

15

16

17

18

19

20

21

22

23

24

25

MS. LEDERER: That goes back to the government's

original position that all Mr. Gross has to do is say, when you

sent the case back, you did not initially open a case. There

has been no inconsistent testimony that would bring this email

in. The question can still be asked in the appropriate way.

THE COURT: Okay. Again, look, I'm not going to tell

him how to do it. It might be impeachment. It might be just

refreshing his recollection concerning the fact that he did not

ever open a case. It's within the scope of his testimony as

used in that way. I don't know if it's hearsay. Whether or

not it comes in, we'll have to decide how it's used. I [Case 1:23-cr-00241-TSC-GMH Document](#)

[85 Filed 09/04/24 Page 171 of 238](#)

171

1

2

3

understand that the final version, if one is going to be used and seen by the jury, it needs to be redacted in some way, but I don't want to wait an hour for that to happen.

4

MS. LEDERER: I understand that. I don't think we

5

have to get to the email. The question can still be posed, you

6

7

8

did not initially open a case. We can get to the point that Mr. Gross wants. Actually, the point Mr. Gross wants is the entire rest of the email, not actually Agent Garland's portion.

9

Let's be clear here. That's an issue. If we don't know what

10

he wants, we can't let him carte blanche circumvent the rules

11

12

13

of evidence and have a field day in here. He can ask the question,

"In April of 2021, when you sent it back to Washington, at that point you did not open a case, " and then

14

Agent Garland responds with whatever he has to respond with or

15

whatever what happened was.

16

THE COURT: Mr. Gross?

17

18

MR. GROSS: We'll see how it goes. To confirm for the record, during the break Mr. Garland was not privy to any

19

20

conversations and did not have an opportunity to view this email? That's my question for the government.

21

22

23

MS. LEDERER: The government can confirm that we did not break sequestration during the break. We did not engage with Agent Garland at all. We did not show him this email at

24

25

all during the break, or we have not broken sequestration, period, with any of the witnesses or shown any of the witnesses
[Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24 Page 172 of 238](#)

172

1

any exhibits. We respect the rules.

2

3

THE COURT: Okay. Let's bring in the jury.
(Jury present)

4

5

6

THE COURT: Go right ahead.

CROSS-EXAMINATION

BY MR. GROSS:

7

Q Agent Garland.

8

A Good afternoon.

9

Q Thank you for being here today.

10

11

A Yes, sir.

MR. GROSS: Ms. Sheff, can you pull up Government's

12

Exhibit 403? So just leave it on the screen, Ms. Sheff. Thank

13

you. This has been admitted, so it can be published to the

14

jury.

15

BY MR. GROSS:

16

Q Agent Garland, you testified before, this was a television

17

program where Cindy Young was featured; is that correct?

18

A Yes.

19

Q And that's a 40-minute program there?

20

A It appears that way, yes.

21

Q You didn't watch the whole program, did you?

22

23

24

A No.

MR. GROSS: Ms. Sheff, can you skip to the portion

where Ms. Young appears?

25

Okay. Can you rewind to a little bit before? [Case 1:23-cr-00241-TSC-GMH Document 85 Filed](#)

[09/04/24 Page 173 of 238](#)

173

1

Okay. And press play.

2

(Exhibit 401 playing in open court.)

3

BY MR. GROSS:

4

Q That was about three seconds, right?

5

A Yes.

6

Q Are you aware if she appears anywhere else in this

7

40-minute program?

8

A Not that I'm aware of.

9

Q Not that you're aware of.

10

MR. GROSS: Okay. Can you go back and just get a

11

still shot?

12

BY MR. GROSS:

13

Q Can you tell me, is that a picture of Cindy Young?

14

A Yes.

15

Q And is she wearing a hat?

16

A She is.

17

Q What color is that hat?

18

A Looks like a black-and-white-mix knitted hat.

19

Q It's hard to tell. But do you see, like, a pom-pom or a

20

beanie on top of that hat?

21

A I do not.

22

Q Is anything written on that hat?

23

A I don't see any writing.

24

Q Okay.

25

MR. GROSS: And that's fine, Ms. Sheff. Thank you [Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24 Page 174 of 238](#)

174

1

very much. You can take that down.

2

BY MR. GROSS:

3

Q So I want to go a little bit into your investigation.

4

5

So you testified earlier that you initially interviewed her in January of 2021; is that correct?

6

MS. LEDERER: Objection, Your Honor. If we may go to

7

the phones.

8

(Begin bench conference)

9

10

MS. LEDERER: Your Honor, addressing the fact that we were not going to talk about the testimony about the interviews

11

12

13

a couple days ago, and Mr. Gross said that is fine. Now here he is accidentally slipping out that there was an interview. Also, I just want to take this opportunity to say, we

14

finally had a chance to look at the exhibit list that Mr. Gross

15

had sent, that we got 30 seconds before Your Honor came out,

16

17

18

and there's new material on there that he had previously taken off of his list. So I want just to highlight that there might be more issues coming down the road if he tries to use any of

19

those exhibits.

20

THE COURT: I want to focus right now, Mr. Gross, on

21

22

23

this issue with respect to the question about the defendant's -- I didn't hear any testimony about any statements from your client.

24

MR. GROSS: Correct. I was simply establishing the

25

date, that was it. [Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24 Page 175 of 238](#)

175

1

2

3

THE COURT: Well, again, there was no testimony about any at all.

MR. GROSS: I apologize. I would like to -- I was not

4

5

going to ask him anything about the interview. I was going to ask him if he did an interview. The idea was to set up a

6

7

8

timeline, that's it. I'm not going to ask him the substance.

MS. LEDERER: It's outside the scope of direct examination. The government didn't say, did you meet her, did

9

10

you call her, did you interview her. The government stuck to the initial investigation portions. So it's outside the scope.

11

12

13

We also covered this during the pretrial conference, that we were not going to get into the interviews, that defense could not touch it, and defense said that he has no issue with that.

14

15

THE COURT: Mr. Gross, I agree. They have not asked any questions about the interviews.

16

MR. GROSS: That's fine.

17

18

THE COURT: That suggests that there was one, which now suggests, because they haven't put it in, that there is

19

20

something there the government doesn't want to put in. So I'm going to strike the question, and you'll have to figure out

21

22

some other way to get to it.

MR. GROSS: That's fine.

23

24

THE COURT: All right.

(End bench conference)

25

THE COURT: I'm going to order that the last question [Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24 Page 176 of 238](#)

176

1

of Mr. Gross be stricken. That's the question -- I'm sorry.

2

It's hard to find it here. The question immediately prior to

3

the objection, which made reference to an interview. That's to

4

be stricken.

5

MR. GROSS: Understood, Your Honor. Thank you.

6

BY MR. GROSS:

7

Q Agent Garland, the first time you heard the name

8

Cindy Young was around January of 2021; is that correct?

9

A Yes, I believe so.

10

Q And that's shortly after January 6, 2021?

11

A It is.

12

Q And at that point, did you hear the name Cindy Young in

13

February of 2021, do you recall?

14

A I'm not sure I understand the question.

15

Q Did you ever talk about or have any dealings with or come

16

across the name Cindy Young in February of 2021? Do you not

17

recall?

18

A I would say I don't recall.

19

Q Do you recall having anything to do with Cindy Young in

20

March of 2021?

21

A I do not recall.

22

Q You don't recall. And in April of 2021, do you recall

23

discussing Cindy Young at all?

24

A I do not recall.

25

Q Okay. I am going to show you -- [Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24 Page 177 of 238](#)

177

1

2

3

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

MS. LEDERER: Your Honor, if we may. Objection. Can we go to the phones?

(Begin bench conference)

MS. LEDERER: Your Honor, Mr. Gross has not established an actual foundation that is appropriate to start questioning about this email. He's kind of trying to backdoor in a refreshing of a recollection. There needs to be a substantive question asked, and how easily he can do it is to say, on direct examination, you were asked about the investigation. You said it went back. At that time, had you opened a formal case? Or something like that. He's still trying to backdoor in this email, and there has been repeated instances. Mr. Gross is a good lawyer. He's accidentally slipping in the word "interview" when he knows he's not supposed to. He's trying to backdoor in this email. Certain foundations have to be laid, and just saying,

"Do you remember if you talked about Cindy Young in April" is not the way to backdoor in an entire interview.

19
20
21
22
23
24
25

THE COURT: Well, I don't hear him asking about the interview. He just wanted to ask about this email.

MS. LEDERER: Well, excuse me. Backdoor in the entire email. And then within the email, it does talk about an interview. So this has been the concern from jump. He's trying to backdoor this all in.

THE COURT: So Mr. Gross, I'm going to permit you to [Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24 Page 178 of 238](#)

178

1

ask whether or not he, in fact, opened a case on her in April

2

3

of 2021.

MR. GROSS: Your Honor --

4

THE COURT: See if he can recall that.

5

MR. GROSS: Well, I mean, Your Honor, with all due

6

respect, and I -- first of all, I certainly appreciate her

7

calling me a good lawyer. I'm not trying to backdoor anything
8
in. I believe his testimony was inconsistent. I guess if I
9
can elicit what his testimony was earlier, then maybe that's --
10
to show it's inconsistent.

11
THE COURT: I thought you were trying to refresh his
12
13
recollection.

MR. GROSS: He said he that doesn't recall --
14

THE COURT: Well, it was pretty broad. It was pretty
15
broad.

16
MR. GROSS: Got it. Okay.

17
THE COURT: So you either be more specific, and you
18
can try to seek to refresh his recollection with his email or
19
you can refer back to his testimony that you think is
20
inconsistent with this. Do you have his testimony?

21
MR. GROSS: I do not have his testimony. I have -- I

22
23
24
25
have my notes on it, but I don't have it.

THE COURT: There you go. Thanks.
(End bench conference)

BY MR. GROSS: [Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24 Page 179 of 238](#)

179

1
Q Agent Garland, so you said earlier, correct me if I'm
2
wrong, that -- that you began a case on Ms. Young and then it
3
went to Washington, and then it was in Washington a little bit
4
and then it came back and it was given to another agent.
5
Was that your testimony?

6
A It didn't go to another agent in Washington, but since the
7
jurisdiction that the event occurred was in Washington, it's
8
kind of confusing. But it was kind of run under one case in
9
our system, but then we had -- we kind of responded to the lead
10
we got, and then it was sent back to -- which is how it
11
happened throughout the whole country. And then they were sent
12
back to those jurisdictions for further investigation.
13

Q So the case was opened with you and -- initially, but then
14

it went elsewhere and then it came back. Is that --
15

A There was a case opened in DC. Leads were sent under that
16 case. And then cases were opened based on the, like, initial
17 assessment, if you will, of each individual case, of each
18 person.
19

Q So -- and you did that initial assessment?
20

A Yes.
21

Q And then after your assessment, then it went back somewhere
22 else, just somewhere else?
23

A The assessment went back to DC, and then it came back to
24 us.
25

Q Uh-huh. When it came back to you, then you opened a case, [Case 1:23-cr-00241-TSC-GMH](#)
[Document 85 Filed 09/04/24 Page 180 of 238](#)
180

1
right, or a case was already opened?
2

A It was opened with another agent, yes.
3

Q It was opened with another agent?
4

A Yeah.
5

Q So what does that mean, though? So a case was opened
6 initially, and then how many times does a case get opened? How
7 does that work?
8

MS. LEDERER: Objection. That was a compound
9 question.
10

MR. GROSS: I'll rephrase.
11

BY MR. GROSS:
12

Q So DC -- I'm trying to just understand the lifecycle of
13 these cases.
14

So DC opens the case based on leads, correct?
15

A DC opened a case because the event happened in DC.
16

Q Right. And then the case was sent to you?
17

A A lead was sent to me based on that case.
18

Q Based on that case?

19

A Uh-huh.

20

Q Got it. And then -- and then you sent it back to DC; is

21

that right?

22

A The assessment work I did on that lead was sent to DC.

23

Q Okay. And do you remember the assessment that you made?

24

A So when I say an assessment, I didn't make a decision. I

25

just sent back what I had done at that point. [Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24 Page 181 of 238](#)

181

1

Q So it's not as if, like, that you made a decision like

2

we're going to open a case or you made a decision we're not

3

going to open a case. You did not make that decision?

4

A Correct.

5

Q Okay. I would like to -- do you remember receiving an

6

email on April 20, 2021?

7

MS. LEDERER: Your Honor, the government is going to

8

briefly object right now. If we could go to the phones.

9

(Begin bench conference)

10

MS. LEDERER: Your Honor, if we're getting to the

11

impeachment, just the portion of we're not opening a case on

12

Ms. Young should come in. However, I think it's been explained

13

by Agent Garland that he sent a lead back, so I think we're

14

just hair-splitting terminology right now. If Your Honor is

15

going to allow this email, it should be,

"We're not opening a

16

case on Ms. Young.

"

17

THE COURT: Mr. Gross?

18

MR. GROSS: I think that -- first of all, I think that

19

I have established that he is testifying inconsistently with

20

what the email said because his statement just now was he did

21

not make an assessment -- a decision we are opening a case or

22

we are not opening a case, and I think that it's fair for me to

23

ask him if the subject of that email was Cindy Young.

24

THE COURT: Yes, but the government's position is that

25

you should just focus on the statement that says,

"We are not [Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24 Page 182 of 238](#)

182

1

2

3

opening a case on Ms. Young.

" So it's in an email on

April 21st of 2021.

MR. GROSS: So not the email that was sent to him,

4

5

just the email that he sent on April 2021, not the email that
was sent to him?

6

7

8

THE COURT: Well, I mean, I'll permit you, as well, to

have the question,

"Did you open a case on her or is someone

else in charge of opening a case on her or are we closing the

9

file?"

10

That was sent on April 2021, and he responded back,

11

12

13

"We are not opening a case on Ms. Young,

" in an email on

April 21st of 2021.

MR. GROSS: Okay. I could -- I mean, I could just as

14

15

easily say, you know, fine, he sent an email on

April 21st, 2021, saying,

"We are not opening a case on

16

Ms. Young.

"

17

18

THE COURT: That's your choice. That's what the

government wants, which is to have one -- that line, which,

19

20

arguably, there's some tension between what he just said and

what he said in this email, and he'll have an opportunity to

21

22

23

24

respond.

MR. GROSS: Okay. Thank you.

(End bench conference)

BY MR. GROSS:

25

Q Do you remember sending an email on April 21st, 2021,

[Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24 Page 183 of 238](#)

183

1

regarding Cindy Young?

2

A I do not.

3

Q I'm going to show you a document to refresh your

4

recollection.

5

6

A Okay.

MR. GROSS: Your Honor, this document, I believe, has

7

been provided to the Court and has been provided to the

8

government, and it is Defense Exhibit 6, marked for

9

10

identification only and only showed to the witness.

THE COURT: Yes.

11

BY MR. GROSS:

12

Q Agent Garland, I'll give you a minute to just read this

13

email -- this document, I should say.

14

A Okay.

15

Q So going to the first page, do you see where it says

16

17

"from"?

MS. LEDERER: Objection, Your Honor. For refreshing

18

recollection --

19

MR. GROSS: Sorry.

20

MS. LEDERER: -- the document has to be retrieved.

21

THE COURT: Well, you can ask him if his recollection

22

has been refreshed.

23

MR. GROSS: Okay.

24

BY MR. GROSS:

25

Q Has your recollection been refreshed? [Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24](#)

[Page 184 of 238](#)

184

1

A Yes.

2

Q Do you now remember an email that you sent on

3

April 21, 2021?

4

A Yes.

5

Q And do you remember what that email said?

6
MS. LEDERER: Objection, Your Honor. If we can go to
7
the phones.
8
(Begin bench conference)
9
MS. LEDERER: Your Honor, we conveniently transferred
10
over into open-ended direct examination, leaving the floor for
11
the witness to respond to the entire email. So when Mr. Gross
12
plays this,
"I don't know what I'm doing,
" he knows what he's
13
doing, he's great at it, and he's got to stop. There are rules
14
and we have to follow them. And I don't know how many times
15
we're going to have to go through this.
16
THE COURT: Okay. I'm going to permit Mr. Gross to
17
18
19
20
21
pursue this line of questioning.
Go ahead, Mr. Gross.
MR. GROSS: Thank you, Your Honor.
(End bench conference)
BY MR. GROSS:
22
Q In an email on April 21, 2021, do you remember what you
23
wrote, now that your memory is refreshed?
24
A Yes.
25
Q And could you tell the jury, please, what you wrote on
[Case 1:23-cr-00241-TSC-GMH Document 85 Filed 09/04/24 Page 185 of 238](#)
185
1
April 21, 2021? You don't have to read the part about who it's
2
to, just the very short substance of that email. What did you
3
write?
4
A Sure. It says,
"We are not opening a case on Ms. Young."
5
MR. GROSS: Okay. No further questions.