

Congress of the United States

Washington, DC 20515

August 28, 2023

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Garland:

The Committees on the Judiciary, Ways and Means, and Oversight and Accountability are continuing their oversight of the Department of Justice's (Department or DOJ) commitment to impartial justice and the veracity of statements made in response to congressional inquiries related to the investigation of Hunter Biden. On August 11, 2023, after the Department's apparently unprecedented plea deal with Mr. Biden fell apart under scrutiny from a federal judge, you appointed U.S. Attorney David Weiss as Special Counsel over this matter.¹ Your appointment raises numerous concerns considering earlier statements from you and Mr. Weiss that Mr. Weiss already had "ultimate" authority—free of any political pressure—to pursue the investigation where, when, and how he sought fit. Now, recently reported information raises additional concerns about the Department's unusual actions in this matter, and suggests that the Department under your leadership has been attempting to circumvent the rule of law in favor of Hunter Biden, President Biden, and the Biden family. Given the extremely serious nature of these issues, the Committees expect unfettered cooperation with our oversight from both you and the Department.

The Department Deviated Substantially from Standard Investigative Practice During its Investigation of Hunter Biden's Criminal Conduct

Since the early days of its investigation concerning Hunter Biden, DOJ has deviated from its standard investigative procedure and afforded Hunter Biden special privileges not afforded to other Americans. For instance, according to whistleblowers, the Department tipped off Hunter Biden's counsel that investigators would search a storage unit Hunter Biden owned before investigators could conduct the search.² In another instance, the Department allowed the statute of limitations to lapse on charges for the 2014 and 2015 tax years, including felony charges of

¹ OFF. OF THE ATT'Y GEN., ORDER NO. 5730-2023, APPOINTMENT OF DAVID C. WEISS AS SPECIAL COUNSEL (2023).

² Transcribed Interview of Gary A. Shapley, Jr., Supervisory Special Agent, Internal Revenue Serv., at 116 (May 26, 2023) [hereinafter Shapley Interview]; Transcribed Interview of Joseph Ziegler, Special Agent, Internal Revenue Serv., at 28 (June 1, 2023) [hereinafter Ziegler Interview].

tax evasion and filing a false or fraudulent tax return for the 2014 tax year, despite defense counsel's willingness to consent to an extension.³ These deviations took place while Mr. Weiss, with the full support and backing of the Department, oversaw the Hunter Biden investigation as U.S. Attorney—prior to receiving special counsel status. Whistleblowers who actively worked on the Hunter Biden investigation with Mr. Weiss have identified several other deviations from standard procedure, including:

- Attorneys from the Department's Tax Division suggested removing Hunter Biden's name from documents, including subpoenas.⁴
- FBI headquarters curtailed attempts to interview Hunter Biden by giving the presidential transition team and Secret Service a heads-up the night before the agents' planned day of action on December 8, 2020, preventing them from ever actually interviewing Hunter Biden.⁵
- Prosecutors at the U.S. Attorney's Office (USAO) in Delaware prohibited IRS and FBI investigators from asking about or referring to "the big guy" or "dad" in witness interviews.⁶
- Prosecutors at the Delaware USAO limited the number and substance of interviews investigators were allowed to conduct.⁷
- IRS investigators were excluded from meetings with defense counsel.⁸
- Prosecutors withheld a Tax Division charging memorandum regarding Hunter Biden's tax crimes from the IRS investigative team.⁹
- Delaware USAO and Tax Division prosecutors slow walked search warrants to obtain and preserve records.¹⁰
- Delaware USAO and Tax Division prosecutors instituted unnecessary approval processes for investigative actions.¹¹

³ Shapley Interview at 26.

⁴ Shapley Interview at 10; Ziegler Interview at 25.

⁵ Shapley Interview at 18-19; Ziegler Interview at 119.

⁶ Shapley Interview at 18.

⁷ Ziegler Interview at 29.

⁸ Shapley Interview at 64; Ziegler Interview at 94.

⁹ Shapley Interview at 64-65.

¹⁰ Ziegler Interview at 27.

¹¹ Ziegler Interview at 29.

- Prosecutors refused investigators’ requests to follow up on seemingly incriminating WhatsApp messages between Hunter Biden and representatives of a Chinese corporation.¹²

All of these, and numerous other, deviations were the result of actions by Department employees and occurred when Mr. Weiss, per your own admission, “supervised” the investigation in his role as U.S. Attorney.¹³

The Department Brokered an Apparently Unprecedented Plea Deal for Hunter Biden

In May 2023, around the time that the whistleblowers first testified to Congress about irregularities in the Department’s investigation and shortly after a meeting between Hunter Biden’s former lawyer Chris Clark, Mr. Weiss, and Associate Deputy Attorney General Bradley Weinsheimer,¹⁴ DOJ began formally negotiating with Hunter Biden’s lawyers about potential plea and pretrial diversion agreements.¹⁵ The negotiations culminated in an agreement publicly announced on June 20, 2023.¹⁶

However, according to recent public reporting, Mr. Clark began pressuring the Department to settle in the spring of 2022.¹⁷ Mr. Clark threatened investigators that they faced career “suicide” if they pursued the investigation,¹⁸ he asked for meetings “with people at the highest levels of the [] Department,”¹⁹ and he threatened to call President Biden to testify as a fact witness for the defense.²⁰ Mr. Clark even went so far as to tell prosecutors that they would be creating a “Constitutional crisis” by pitting the President against the Department he runs.²¹

¹² *Hearing with IRS Whistleblowers About the Biden Criminal Investigation Before the H. Comm. on Oversight & Accountability*, 118th Cong. (2023) (statement of Gary Shapley, Supervisory Special Agent, Internal Revenue Serv.) (describing this as “one of the major deviations in this case.”).

¹³ *Review of the President’s Fiscal Year 2023 Funding Request for the U.S. Department of Justice: Hearing Before the Subcomm. on Com., Just., Sci., & Related Agencies of the S. Comm. on Appropriations*, 117th Cong. (2022). (statement of Merrick Garland, Att’y Gen., U.S. Dep’t of Just.). *See also Oversight of the Department of Justice: Hearing Before the S. Comm. on the Judiciary*, 118th Cong. (2023) (statement of Merrick Garland, Att’y Gen., U.S. Dep’t of Just.).

¹⁴ *See* Betsy Woodruff Swan, *In talks with prosecutors, Hunter Biden’s lawyers vowed to put the president on the stand*, POLITICO (Aug. 19, 2023) (reporting that Clark, Weiss, and Weinsheimer met on April 26, 2023 to discuss the charges, but noting that it is “not clear what happened in the meeting, which came at a sensitive moment for the probe”).

¹⁵ Defendant’s Response to the U.S. Motion to Vacate the Court’s Briefing Order, *U.S. v. Robert Hunter Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. Aug. 13, 2023). *See also* Jessica Lynch, *Hunter Biden began negotiating plea deal with DOJ right after IRS whistleblower first came forward, court docs show*, DAILY CALLER (Aug. 14, 2023).

¹⁶ Betsy Woodruff Swan, *In talks with prosecutors, Hunter Biden’s lawyers vowed to put the president on the stand*, POLITICO (Aug. 19, 2023).

¹⁷ *Id.*

¹⁸ *See* Shapley Interview at 27 (stating that Mr. Clark told prosecutors that they would be committing “career suicide” if they filed criminal charges against Hunter Biden); Ziegler Interview at 122 (same).

¹⁹ Betsy Woodruff Swan, *In talks with prosecutors, Hunter Biden’s lawyers vowed to put the president on the stand*, POLITICO (Aug. 19, 2023).

²⁰ *Id.*

²¹ *Id.*

The deal reached by Mr. Weiss’s team and Hunter Biden’s lawyers would have had Hunter Biden plead guilty to two misdemeanor tax charges, plus an agreement to dismiss a felony gun charge if Hunter Biden completed a two-year period of probation.²² The unconventional agreement shifted a broad immunity provision from the plea agreement to the pretrial diversion agreement, benefiting Hunter Biden with the aim of preventing the District Court from being able to scrutinize and reject that immunity provision.²³ It also gave the District Court the sole power to determine whether Hunter Biden breached the pretrial diversion agreement—a prerequisite for the Department to file the diverted charges against him in the future and a provision benefitting Hunter Biden for which prosecutors could cite no precedent.²⁴

On July 20, 2023, under scrutiny from a federal judge, it became apparent that parties did not agree as to whether the agreement would shield Mr. Biden from prosecution for other unrelated conduct.²⁵ At the conclusion of the hearing, the judge expressed discomfort with the structure of the plea and pretrial diversion agreements and the constitutionality of the provision that would prevent prosecutors from filing future charges against Hunter Biden without judicial approval.²⁶ The judge ultimately concluded that she could not accept the plea agreement and postponed the proceedings.²⁷ The Department later dismissed these proceedings before announcing Mr. Weiss’s special counsel appointment.²⁸

The Appointment of David Weiss as Special Counsel is Further Evidence of Concern

It is not clear why you have only now, after the investigation has been going on for five years, opted to appoint Mr. Weiss as special counsel, especially after you and the Department represented that Mr. Weiss already had “ultimate” authority over the case.²⁹ Indeed, the only explanation you have offered is that “extraordinary circumstances” require the appointment.³⁰

²² Josh Gerstein et al., *Hunter Biden reaches plea deal with feds to resolve tax issues, gun charge*, POLITICO (June 20, 2023).

²³ See Letter from Chairmen Jim Jordan, Jason Smith, and James Comer, to Merrick B. Garland, Att’y Gen., U.S. Dep’t of Just. (July 31, 2023). See also Transcript of Record at 46-47, 107, *U.S. v. Robert Hunter Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. July 26, 2023).

²⁴ Transcript of Record at 95, *U.S. v. Robert Hunter Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. July 26, 2023).

²⁵ Transcript of Record at 54-55, *U.S. v. Robert Hunter Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. July 26, 2023).

²⁶ Transcript of Record at 95-98, *U.S. v. Robert Hunter Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. July 26, 2023).

²⁷ *Id.*; see also, Transcript of Record at 54-55, *U.S. v. Robert Hunter Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. July 26, 2023).

²⁸ U.S. Motion to Voluntarily Dismiss Criminal Tax Information Without Prejudice so that Tax Charges Can Be Brought in a District Where Venue Lies, *U.S. v. Robert Hunter Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. Aug. 11, 2023).

²⁹ See Ziegler Interview at 17 (stating the investigation began in November of 2018).

³⁰ Letter from Merrick B. Garland, Att’y Gen., U.S. Dep’t of Just., to House and Senate Judiciary Committees (Aug. 11, 2023).

The order appointing Mr. Weiss as special counsel is similarly lacking in any meaningful explanation.³¹

The relevant Department regulations require that you appoint a special counsel “with a reputation for integrity and impartial decision making, with appropriate experience to ensure . . . that the investigation will be conducted ably, expeditiously and thoroughly”³² Mr. Weiss’s conduct in this matter—overseeing an investigation that deviated from normal procedures and approving an unusual plea deal that disintegrated under judicial scrutiny—call into question his decision making. In addition, recent news reports indicate that Mr. Weiss had a close and personal relationship with Mr. Biden’s deceased brother, Beau, further undermining his impartiality.³³

Additionally, your appointment of Mr. Weiss as special counsel suggests that previous statements made by you and Mr. Weiss about Mr. Weiss’s authority were misleading and/or untruthful. On March 1, 2023, you told the Senate Judiciary Committee that Mr. Weiss “has full authority . . . to bring cases in other jurisdictions if he feels it’s necessary.”³⁴ If that were truly the case, then there would be no reason to now appoint Mr. Weiss as a special counsel and authorize him to “prosecute federal crimes in any federal judicial district arising from the investigation of these matters.”³⁵ Mr. Weiss has also changed his story several times. On June 7, 2023, Mr. Weiss wrote to the Judiciary Committee, “I have been granted ultimate authority over this matter, including responsibility for deciding where, when, and whether to file charges”³⁶ On June 30, Mr. Weiss changed his tune, claiming “my charging authority is geographically limited to my home district. If venue for a case lies elsewhere, common Departmental practice is to contact the United States Attorney’s Office for the district in question and determine whether it wants to partner on the case. If not, I may request Special Attorney status from the Attorney General pursuant to 28 U.S.C. § 515.”³⁷

* * *

The Department pulled punches in this investigation, handicapping veteran investigators and preventing them from freely pursuing the facts. The Department agreed to an apparently unprecedented plea deal with Hunter Biden after his attorneys threatened to call his father, President Biden, as a witness in the case. Now you have appointed as special counsel an individual who oversaw all the investigation’s irregularities, who spent the past two months

³¹ See OFF. OF THE ATT’Y GEN., ORDER NO. 5730-2023, APPOINTMENT OF DAVID C. WEISS AS SPECIAL COUNSEL (2023).

³² 28 C.F.R. § 600.3(a).

³³ See Michael Kranish, *Before investigating Hunter Biden, prosecutor worked with brother Beau*, WASH. POST (Aug. 20, 2023).

³⁴ *Oversight of the Department of Justice: Hearing Before the S. Comm. on the Judiciary*, 118th Cong. (2023) (statement of Merrick Garland, Att’y Gen., U.S. Dep’t of Just.).

³⁵ OFF. OF THE ATT’Y GEN., ORDER NO. 5730-2023, APPOINTMENT OF DAVID C. WEISS AS SPECIAL COUNSEL (2023).

³⁶ Letter from David C. Weiss, U.S. Att’y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 7, 2023).

³⁷ Letter from David C. Weiss, U.S. Att’y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 30, 2023).

claiming that he did not need special counsel status, and who was responsible for the plea agreement that collapsed in court and is widely viewed as an embarrassment for the Department. In light of Mr. Weiss's record leading this investigation, we have concerns with his appointment as special counsel. To advance our oversight and inform potential legislative reforms, please provide the Committees with the following documents for the period January 20, 2021, to the present:

1. All documents and communications referring or relating to U.S. Attorney David Weiss's appointment as special counsel; and
2. Any additional scope memoranda, directives, or instructions from the Office of the Attorney General referring or relating to U.S. Attorney David Weiss's appointment as special counsel.


Please provide the information and documents responsive to the requests listed above as soon as possible, but not later than 5:00 p.m., on September 11, 2023.


The Supreme Court has recognized that Congress has a "broad and indispensable" power to conduct oversight, which "encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them."³⁸ Pursuant to Rule X of the Rules of the House of Representatives, the Committee on the Judiciary has jurisdiction over criminal justice matters in the United States.³⁹ The Committee on Ways and Means is authorized to conduct oversight of the Internal Revenue Service and the administration of the Internal Revenue Code. The Committee on Oversight and Accountability may examine "any matter" at any time.

Thank you for your prompt attention to this matter.

Sincerely,


Jim Jordan
Chairman
Committee on the Judiciary


Jason Smith
Chairman
Committee on Ways and Means


James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Jerrold L. Nadler, Ranking Member

³⁸ *Trump v. Mazars LLP*, 140 S. Ct. 2019, 2031 (2020) (internal quotation marks and citations omitted).

³⁹ Rules of the U.S. House of Representatives, R. X (2023).

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Committee on the Judiciary

The Honorable Richard E. Neal, Ranking Member
Committee on Ways and Means

The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability