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Partner

August 14, 2023

VIA ELECTRONIC MAIL

Hon. David C. Weiss
Special Counsel for the Department of Justice
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Wilmington, DE 19801

Leo J. Wise
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Assistant United States Attorneys
United States Attorney's Office
District of Delaware
1313 N. Market Street, Suite 400
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Re: Robert Hunter Biden

Dear Messrs. Weiss, Wise, Hines, and Wallace:

I am writing to follow up on the recent call defense counsel had with your Office on July 31, 2023, concerning our ongoing concerns about the consistent and unabated improper disclosures of information about this investigation and its effects on Mr. Biden's rights.

To be clear, we do not seek to temper *legitimate* whistleblowing activity. But what is occurring here is the illegal disclosure of grand jury, tax return, and other confidential investigatory information under the guise of legitimate whistleblower activity, and it is unprecedented. Indeed, while purported "whistleblower" allegations relate to purported *prosecutorial* misconduct, the leaks of information by agents addresses commentary and impressions of the facts of the investigation, disclosure of witness interviews, discussion of contemplated and executed grand jury subpoenas, release of information gleaned from those subpoenas and raw intelligence, and one-sided case conclusions that were ultimately rejected or disputed by other investigators or prosecutors engaged with this matter.

A. Federal Agents Have Repeatedly and Illegally Disclosed Grand Jury, Taxpayer, and Other Protected Information

On a July 31, 2023, call, Assistant United States Attorney Wise stated he was “not aware” of any leak of grand jury information by the Government during the course of the Government’s investigation of our client. Such a statement was surprising given that Mr. Biden’s counsel have discussed such leaks with the Government on multiple occasions over the past two years and addressed these leaks in at least four prior letters and countless telephone calls with your Office.¹ We incorporate by reference counsels’ prior correspondence on these issues, enclosed herewith as Exhibits A – D.

As early as July 2022, agents leaked to the press that the Government was discussing “bringing charges that could include alleged tax violations and making a false statement in connection with Biden’s purchase of a firearm at a time he would have been prohibited from doing so because of his acknowledged struggles with drug addiction.”² These and subsequent leaks by federal agents disclose grand jury, tax return, and other confidential information that is prohibited by law from disclosure, and were designed to improperly influence the course of the investigation of our client. The Government’s agents’ statements and actions go far beyond any *legitimate* claim of “whistleblowing.” As the prior letters have already addressed many of the earlier disclosures, the below recounts your agents’ more recent illegal conduct.

The Government had assured us several times that steps were being taken to quell such illegal leaks and to protect the fidelity of this investigation, which have been unprecedented in both scope and their prejudice to our client. The denial on July 31 by the Office that any leaks have occurred is therefore concerning and counterfactual.³ It also raises questions about the steps the Government has taken to protect both our client’s rights and the sanctity of the grand jury process. What follows are some examples of the obvious improper disclosures that have occurred.

¹ Mr. Wise’s statement on July 31 is also impossible to reconcile with the position your Office is taking with Congress, in which your Office has expressly relied upon grand jury secrecy as a basis to decline Congress’s requests concerning matters that the Government’s agents have leaked about this investigation. See Letter from the Hon. David C. Weiss to the Hon. Jim Jordan (June 7, 2023) (explaining that your Office was “not at liberty to respond” to the Committee’s request, including because the Committee’s request “implicated” “confidentiality interests ... includ[ing] legally protected materials (including grand jury information, protected by Rule 6(e) of the Federal Rules of Criminal Procedure, and taxpayer information, protected by 26 U.S.C. Section 6103); [as well as] information the disclosure of which might ... constitute an unnecessary invasion of privacy”); Letter from the Hon. David C. Weiss to the Hon. Jim Jordan (June 30, 2023) (“reaffirm[ing] the contents of the June 7 letter drafted by my office and reiterat[ing] that I am not at liberty to provide the materials you seek.”).

² E. Perez, *Federal investigation of Hunter Biden reaches critical juncture, sources say*, CNN (July 20, 2022), available at <https://www.cnn.com/2022/07/20/politics/hunter-biden-investigation-critical-juncture/index.html>.

³ Mr. Shapley and Mr. Ziegler in sworn testimony acknowledged leaks related to this case. See G. Shapley May 26, Tr. at 150 (“So there was a leak, I’m not sure what outlet, on October 6th, of 2022 – it appeared to come from the agent’s level, who was critical of the prosecutors for not charging the case. . . . And there have been multiple leaks in this case going back [months or years].”); J. Ziegler Tr. at 55 (“Prior to [the October 6 article in the *Washington Post* describing a potential charging decisions], there were other leaks. After our day of action in December of 2020, we got word that a couple of the news sources were going to release an article on the investigation. That was a couple of days prior to us going public.”)

1. Congressional Testimony

In addition to the various leaks before contacting Congress, Mr. Shapley and Mr. Ziegler testified about this investigation before the Ways and Means Committee on Friday, May 26 and June 1, 2023, respectively. The contents of both of the leakers' testimony was ostensibly to address *government misconduct during the investigation*. Yet the actual testimony provided by both individuals went far beyond this. The testimony of Messrs. Shapley and Ziegler, as well as certain of the exhibits appended thereto, are replete with illegally disclosed grand jury and tax return information, as well as fruits of search warrants that evidently have been sealed by court order, all arising from the Government's and the grand jury's investigation of our client.

Apparently taking no steps to protect disclosure, all of this testimony was released publicly on June 22, 2023, in an unparalleled attack on our client's rights as a private citizen and a blatant attempt to infect any judicial proceedings in which our client was or would be involved. Mr. Shapley and Mr. Ziegler then both testified in a public hearing on July 19, 2023, again disclosing similar information.

The transcripts are replete with illegal leaks of grand jury information, going far beyond disclosing *government misconduct*, the whole point of *legitimate* whistleblowers. But as the Government contends it is not aware of any such leaks, the below is just a handful of examples:

- Mr. Shapley and Mr. Ziegler spoke extensively about Mr. Biden's purported tax liabilities from 2014 to 2019, in detail, including specific deductions and the Government's assessment of those deductions. Much of the information disclosed was necessarily gleaned from confidential grand jury material and tax return information, and was completely irrelevant to purported government misconduct during the investigation.⁴ Not only was it unnecessary for the agents to discuss any of this publicly—the “facts” disclosed and conclusions reached are either false, legally incorrect, or were otherwise addressed during the various meetings between defense counsel and your Office.⁵
- Mr. Shapley and Mr. Ziegler provided purported findings of fact, again predicated in part on grand jury testimony and documents subpoenaed by the grand jury, with respect to how or why certain of Mr. Biden's business entities were supposedly created, and their conclusions regarding the purported criminality of those enterprises.⁶ Again, notwithstanding that this information was

⁴ See, e.g., J. Ziegler June 1, 2023 Tr. at 103 (“He deducted payments that were made to who he called his West Coast assistant, but she was essentially a prostitute.”); J. Ziegler June 1, 2023 Tr. at 53 (“There were Venmo transactions that were paid to family and friends. And some of these Venmo transactions were deducted.”); J. Ziegler June 1, 2023 Tr. at 81 (“He also had members of his family, including Lunden Roberts, on his payroll. We know that during the time period she was paid, she did not work for him.”).

⁵ Mr. Shapley and Mr. Ziegler admit they were not afforded an opportunity to hear counsel's assessment of such allegations, yet apparently have no compunction with releasing their one-sided (and incorrect) accounts under the guise of “whistleblowing.”

⁶ See, e.g., G. Shapley May 26, 2023 Tr. at 25 (“The years in question included foreign income from Burisma and a scheme to evade his income taxes through a partnership with a convicted felon.”); *id.* at 130 (“There was a scheme to evade in 2014 by using Rosemont Seneca Bohai to divert income from Burisma under Devon Archer's entity.”); J. Ziegler June 1, 2023 Tr. at 37 (“We ended up looking at the evidence, and we found emails that actually showed that Hunter Biden had planned for what happened that cause him to essentially evade his taxes for 2014.”)

gleaned through the grand jury process and should never have been disclosed, it is one-sided and misinformed.

- One of the reasons grand jury secrecy exists is to protect citizens from baseless, uncharged allegations.⁷ This makes it all the more appalling that the Government has taken no action in response to its agents publicly discussing conduct that was evidently investigated by the grand jury, but that was so obviously ridiculous that it has never been charged, and never would be. *See, e.g.*, G. Shapley May 26, 2023 Tr. at 22 (“Through interviews and review of evidence obtained, it appears there may be campaign finance criminal violations.”); J. Ziegler June 1, 2023 Tr. at 155 (“There were expenditures for one of – he called it his West Coast assistant, but we knew her to also be in the prostitution world or believed to be in the prostitution world. And he deducted expenses related to her. She relates to the sex club issue. . . . [] There were some flying people across State lines, paying for their travel, paying for their hotels. They were what we call Mann Act violations.”).⁸ Mr. Ziegler also disclosed information regarding Mr. Biden’s 2020 returns, quotes from those returns, and suggests an ongoing investigation into those returns. J. Ziegler June 1, 2023, Tr. at 101.
- Mr. Shapley and Mr. Ziegler described detailed testimony of Mr. Biden’s accountants and then shaded the testimony to support their narrative.⁹ Mr. Ziegler also discussed specific materials produced or obtained through grand jury subpoenas.¹⁰
- Mr. Shapley recounted a detailed purported understanding of Mr. Biden’s relationship with Eric Schwerin, presumably gleaned during grand jury testimony and documents subpoenaed by the grand jury, including (according to Mr. Shapley) that because Mr. Biden “often had these large taxes due and owing, and then he couldn’t pay them. And he used to have problems and that stuff. So [Mr. Schwerin] was brought in the help bring Hunter Biden into tax compliance.” G. Shapley May 26, 2023, Tr. at 84-85. *See also, e.g.*, G. Shapley May 26, 2023, Tr. at 49 (“So Owasco P.C., through the evidence that we obtained, was basically created with [Mr. Biden’s] partner Eric Schwerin. And the crux of this, as I understand it, is that Hunter Biden had a history of

⁷ The Supreme Court has recognized that grand jury-secrecy exists, in part, to ensure that persons who are accused but exonerated by the grand jury will not be held up to public ridicule. *See Douglas Oil Co. of Cal. v. Petrol Stops Nw.*, 441 U.S. 211, 219 (1979).

⁸ Incredibly, again, Mr. Ziegler also offered to turn over material concerning these purported Mann Act violations, including presumably grand jury material, to the House Ways and Means Committee. *See, e.g.*, House Oversight and Accountability Hearing Minutes, July 19, 2023 (“So regarding Mann Act violations, what we can do is given by the statute we can turn those over to the House Ways and Means Committee and then we can – they can decide to vote to turn them over to you. Regarding Mann Act.”)

⁹ *See* G. Shapley May 26, 2023 Tr. at 93 (“So it becomes apparent to the accountants during this interaction that he’s putting things on here that aren’t expenses, that aren’t true business expenses. So the accountants create a representation letter that basically they said they have never done before. And they had him sign this document, and it was basically because they didn’t believe what he was saying, but they didn’t – if they were going to prepare his return, they had to listen to what he was saying. I mean, I guess they could have just chosen not to prepare his tax return would have been their only out.”).

¹⁰ *See* Opening Statement of J. Ziegler at 3 (“Mr. Biden’s accountants requested that he sign a representation letter stating that all deductions were for business purposes and were being reported appropriately.”)

noncompliance with his taxes, and he would often get large sums of money and wouldn't withhold.”). Mr. Ziegler even quoted from non-publicly released emails, again presumably obtained by grand jury subpoena, between Mr. Biden and Mr. Schwerin (both stated they did not obtain materials unlawfully published on the internet¹¹). *See* J. Ziegler June 1, 2023, Tr. at 72.

- Mr. Ziegler also appears to have disclosed communications between Mr. Biden and his counsel, again which presumably could only have been obtained through the grand jury process. J. Ziegler June 1, 2023, Tr. at 66 (“So one more step to this is Hunter to his counsel told them about this scheme. So basically said – [“]Devon Archer was handling the taxes and I was taking some of the money as loans.[”] So there’s documentation of this and the date, everything. So we viewed that as he’s lying to his attorney.”). Again, this is false, and no attorney has ever claimed that Mr. Biden was anything other than honest regarding his understanding of his tax liabilities.
- On several occasions during their testimony, Mr. Shapley and Mr. Ziegler discussed a sealed search warrant, and showed and discussed with the Committee certain fruits of that sealed search warrant.¹² Because we have never been notified of any such “electronic search warrant for iCloud backup”—nor of any other warrant to search for and seize any property of our client¹³—we must presume that Mr. Shapley and Mr. Ziegler were discussing, in violation of a sealing order, a search warrant that has been sealed. Nevertheless, Mr. Shapley purportedly produced WhatsApp messages that are the fruit of these warrants, and they have now been published.¹⁴ Moreover, Mr. Ziegler offered to produce to the House Oversight and Accountability Committee *additional* and more fulsome grand jury materials concerning these messages, with the intent of making such materials public.¹⁵ These disclosures have no legitimate whistleblower purpose, and, as with prior leaks, act solely as a subterfuge to release otherwise protected information to the public.¹⁶

¹¹ Internet websites maintained by confessed right-wing operatives have actually posted Suspicious Activity Reports (SARs) and grand jury subpoenas and have boasted they received this highly protected documents from “whistleblowers.” *See, e.g.*, marcopolousa.org.

¹² *See, e.g.*, Opening Statement of IRS Supervisory Special Agent Gary Shapley, July 19, 2023 (“[A]n electronic search warrant of Hunter Biden’s Apple iCloud account led us to WhatsApp Messages with several CEFC China Energy executives where he claimed to be sitting and discussing business with his father Joe Biden.”); G. Shapley May 26, 2023 Tr. at 159 (“So there was an electronic search warrant for iCloud backup, and these messages were in that backup and provided ... from a third party, from iCloud.”); *id.* at 14 (“[I]n August 2020, we got the results back from an iCloud search warrant.”); *see also* Opening Statement of Special Agent J. Ziegler, July 19, 2023 (“In response to a Search Warrant, the investigative team found these WhatsApp messages on Hunter Biden’s Apple iCloud account.”).

¹³ The Government, as you know, is required by law to immediately notify our client of such warrants, unless the Government has sought and obtained a court’s authorization to delay notification. *See* 18 U.S.C. § 2703(c)(1)(A); 18 U.S.C. § 3103a(b).

¹⁴ *See* Ex. 11 to G. Shapley May 26, 2023 Tr. at 158.

¹⁵ *See* House Oversight and Accountability Hearing Minutes, July 19, 2023 (“There was a long WhatsApp message . . . [W]hat we can do or what we can go back is we can turn that over to the House Ways and Means Committee, they can vote to release it and then that information can be available for you.”).

¹⁶ Mr. Ziegler also disclosed various other subpoenas through which confidential information was retained. *See* J. Ziegler June 1, 2023 Tr. at 22 (“So throughout that time period we were obtaining multiple electronic search warrants, so email accounts. There were QuickBooks accounts. There was a Dropbox. There was an Apple iCloud. There was the laptop.”).

These, of course, are only a few illustrations of the wide-ranging issues raised by the testimony of Messrs. Shapley and Ziegler, as the entirety of their disclosures relate and refer to a grand jury investigation into our client and their deliberations and discussions regarding the same. As discussed in prior correspondence, the Government *has already acknowledged in email communications to these individuals that this material is protected Rule 6(e) material and must be protected.*

2. Televised Interviews

Beginning in May 2023, federal agents have been giving interviews on nationally televised broadcasts to further leak information. These widely disseminated interviews have been designed to unduly pressure the Department to further punish and embarrass our client or to taint any judicial proceeding or trial, notwithstanding the overabundance of factual, legal, and procedural issues demanding a different result. These interviews have been replete with disclosure of tax return, grand jury, and confidential information. To name just a few appearances:

- On May 24, 2023, Mr. Shapley told a CBS Evening News broadcast that the Government's investigation of our client involved "deviations from the normal process" that were "way outside the norm."¹⁷
- On June 27, 2023, in an interview with Mr. Shapley that aired on CBS Morning News, Mr. Shapley stated, among other things, "[i]f this [investigation were of] any other person, he would have likely served his sentence."¹⁸ Mr. Shapley delved into his purported investigation findings, gratuitously noting on national news, "[t]here were personal expenses that were taken [by Mr. Biden] as business expenses: prostitutes, sex club memberships, hotel rooms for purported drug dealers." He also disclosed that Mr. Biden purportedly owed "from 2014 to 2019 . . . 2.2 million dollars" in taxes.
- On July 19, 2023, Mr. Ziegler appeared on CBS Evening News, and stated, brazenly, that Mr. Biden improperly wrote off personal expenses as business payments, including "hotels he was blacklisted from, payments that were made to escorts, payments that were made to no-show employees...."¹⁹
- On July 20, 2023, Mr. Ziegler appeared on a CNN broadcast for a lengthy interview by Jake Tapper, which was broadcast live.²⁰ During the interview, Mr. Ziegler disclosed, among other

¹⁷ See J. Axelrod, M. Kaplan, A. Bast, *IRS whistleblower speaks: DOJ "slow walked" tax probe said to involve Hunter Biden*, CBS NEWS (May 24, 2023), available at <https://www.cbsnews.com/news/irs-whistleblower-tax-probe-hunter-biden/>.

¹⁸ J. Axelrod, A. Bast, *IRS whistleblower in Hunter Biden probe says he was stopped from pursuing investigative leads into 'dad' or the 'big guy'*, CBS NEWS (June 27, 2023), available at <https://www.cbsnews.com/news/hunter-biden-investigation-irs-whistleblower-gary-shapley-says-he-was-stopped-from-pursuing-leads/>.

¹⁹ C. Herridge, *Hunter Biden IRS whistleblower doesn't think other taxpayers would get same treatment*, CBS NEWS (July 19, 2023), available at <https://www.cbsnews.com/video/joseph-ziegler-hunter-biden-irs-whistleblower/>.

²⁰ J. Tapper, *IRS whistleblower reacts to high-profile oversight hearing into Hunter Biden*, CNN (July 20, 2023), available at <https://www.cnn.com/audio/podcasts/the-lead-with-jake-tapper/episodes/873820de-862e-475a-8bfc-b0450176b03d>.

things, a storage unit utilized by Mr. Biden that his team had considered for a subpoena. He also stated on several occasions that, “meeting with the . . . assigned attorneys . . . we all agreed for felony and misdemeanor tax charges related to 2017, 2018, and 2019.” Such a disclosure of internal deliberations on charges *not brought* during a pending criminal investigation is incredibly prejudicial. Mr. Ziegler also noted he was working with Congress “to [get] any records that Congress has asked for related to this investigation.” We are unaware of any mechanism where a government agent can go back and search for grand jury material that can then be disclosed to Congress. Such disclosures, without any word or acts of the Government to prevent them, create a dangerous precedent, particularly with respect to individuals under investigation who may serve as political targets, such as Mr. Biden.

- On July 21, 2023, Mr. Ziegler appeared on FOX News’ “Special Report”, again to discuss the investigation and make explicit statements about what he learned during the grand jury investigation, stating, “Let me be clear . . . there’s a thing called willfulness; whether someone intentionally with knowledge either evaded their income taxes or filed a false return. . . . And in this case, we provided a ton of evidence that showed willfulness.”²¹
- On July 25, 2023, Mr. Ziegler appeared on a “Just the News” podcast, *The Solomon Report*.²² During the wide-ranging interview, Mr. Ziegler disclosed tax return information and other confidential information, noting: “You have statements being made in [Mr. Biden’s] book that are talking about going out to California, leaving your life and then going to start this new life. Yet, on your tax return you’re essentially stating things that are completely different.” Mr. Ziegler also noted he was collecting WhatsApp and other messages beyond those already made public, from 2017, to be delivered to Congress, that were obtained through the investigation process, including “via an electronic search warrant that was done on Apple related to Hunter Biden’s iCloud account.” During the podcast, Mr. Ziegler also discussed specific deductions taken by Mr. Biden, including a purported hotel business expense.

Shockingly, these acts have continued to accelerate *after Mr. Biden entered his plea of not guilty* on July 26, 2023. For example:

- On July 29, 2023, Mr. Ziegler appeared in a televised interview on CNN’s “Smerconish,” where Mr. Ziegler stated, with respect to the miscategorization of certain of Mr. Biden’s expenses, “We finished the tax investigation. We proved the felony tax counts for 2017, 2018, and 2019. And I think that’s so utterly important that the statement of facts that was represented in court, it actually stated that [Mr. Biden] miscategorized expenses. I don’t

²¹ S. Bream, IRS whistleblower ‘X,’ Joseph Ziegler: ‘Independent attorney’ needed for full jurisdiction in Hunter case, FOX NEWS (July 21, 2023), available at <https://www.foxnews.com/video/6331637244112>.

²² J. Solomon, *IRS Whistleblower Ziegler: Hunter Biden’s ‘contradicting’ statements in autobiography used to prove his tax fraud*, JOHN SOLOMON REPORTS (July 24, 2023), available at <https://art19.com/shows/john-solomon-reports/episodes/707ed9fd-610d-45d9-80f6-3f8541a5c4d0>.

know how anyone could consider [the Chateau Mormont] a miscategorization. . . .”²³ An agent, during a criminal matter, stating that he has already *proved* that a crime was committed, not only raises serious disclosure issues, but is a patent violation of our client’s due process rights.

- And just last week, on August 11, 2023, Mr. Shapley again appeared on CNN’s “The Source” reiterating some of his prior statements.

In these and other interviews, Mr. Shapley and Mr. Ziegler have discussed the Government’s investigation of Mr. Biden, the supposed guilt or innocence of our client, and specific line-items of our client’s tax returns. Whatever the purported reasons for reaching out to Congress, there is no justification or cognizable legal protection for their disclosures of confidential grand jury and tax information on nationally televised news broadcasts or media outlets, and such disclosures are not protected by any exceptions to either Rule 6(e) or Section 6103. Mr. Shapley’s and Mr. Ziegler’s disclosures, including through interviews with various news outlets, are quite simply crimes.²⁴

B. The Leaking of Grand Jury and Taxpayer Information Is an Unprecedented Injustice and Immeasurably Prejudicial

Since December 2020, Mr. Biden’s counsel have stated one consistent and straightforward request in connection with all of the interactions with the Government—that our client be treated no better, but no worse, than any other individual before this Office. Your Office gave assurances consistently that the request for fair and equal treatment would be honored. Yet, given your Office’s inaction in the face of a torrent of illegal leaks about your investigation of Mr. Biden, and now your reinvented denial that leaks ever happened at all—your Office’s assurances are being rendered false.

The release of the purported details regarding the investigation of our client is unprecedented. Mr. Biden cannot receive due process where the very rules established to protect that process have been routinely and egregiously violated by the Government’s own case agents. We are particularly concerned

²³ M. Smerconish, *IRS Whistleblower calls for Hunter Biden Special Counsel*, CNN (July 29, 2023), available at <https://www.cnn.com/videos/politics/2023/07/29/smr-whistleblower-ziegler.cnn>.

²⁴ The Government can and does prosecute knowing violations of Rule 6(e) pursuant to district courts’ contempt powers under Section 401(3) of Title 18, as well as pursuant to multiple felony criminal statutes. *See generally* Justice Manual, CRM 156 (observing that disclosure of “grand jury material with the intent to obstruct an ongoing investigation . . . may be prosecuted for obstruction of justice under 18 U.S.C. § 1503,” and that an individual who “improperly disseminates grand jury materials may be prosecuted for the theft of government property under 18 U.S.C. § 641”) (collecting cases). Any willful violation of Section 6103 by an officer of the United States likewise constitutes a felony, which the Government can and does prosecute pursuant to Section 7213(a)(1), *See, e.g.*, Plea Agreement and Statement of Facts, *United States v. Hunt*, No. 8:10-CR-101-RWT (D. Md. filed Sep. 8, 2010) (reflecting terms of IRS agent’s plea agreement for violation of Sections 6103 and 7213(a)(1), for having illegally disclosed taxpayer information).

that these agents' leaks were calculated to undermine scheduled proceedings in this matter and in fact have done so.²⁵

Before the May 2023 leaks, discussions with your Office involved a consensual non-prosecution resolution to *all* conduct under investigation, where the resolution proposed by both sides did not include *any* guilty plea. On May 24, during negotiations to conclude this investigation, an IRS senior supervisory special agent went on national television and publicly criticized the Office's investigation, and in the process illegally disclosed grand jury and tax return information. Approximately one day later, the Government withdrew its own initial settlement proposal (a diversion agreement as to both the tax and firearm charges), and instead said it would require a misdemeanor guilty plea on the tax charges. Thereafter, the parties again came to an agreement, and publicly announced it on June 20. The deal was met with yet more illegal and biased disclosures by the Government's investigating agents, which were facilitated and then amplified by partisan foes of Mr. Biden's father—the agents and their enablers acted in concert to put unrelenting political pressure on your Office to renege on the deal.

Their efforts unfortunately paid off. In the July 26 hearing the Government attempted to alter the finalized resolution on-the-fly in open court. And now, it appears the Office, in a bizarre attempt to deny the obvious, is stating that it never executed such an agreement to begin with. At this point it is irrefutable that federal agents' criminal acts have inflicted irreversible damage and prejudiced a fair and objective review of the facts, evidence, and process in this case. Among other ways, these agents, still employed by the Government, would likely be witnesses should any tax charge you file ever be tried. It is unprecedented for Government officials who are the investigators or prosecutors in the case and would be witnesses and trial counsel to conduct themselves in this manner which seeks to try the issues in the court of public opinion rather than properly in a court of law. That conduct itself (in addition to the various other infirmities with the Government attempting to bring charges against Mr. Biden²⁶) would support dismissal of any charges you have filed or would try to so file in the future.²⁷

In the Government's August 11, 2023, filing, you indicated that "The Government now believes that the case will not resolve short of a trial." We do not agree that is possible, but if it was, how will you explain the conduct of these agents who would then be trial witnesses and how will you try to erase their attempt to taint the legal proceedings with their extra-judicial statements and conduct?

* * *

²⁵ See, e.g., Post Editorial Board, *Freeze Hunter's plea deal until we know which prosecutors lied to save him*, THE NEW YORK POST (June 27, 2023) (<https://nypost.com/2023/06/27/freeze-hunter-biden-plea-deal-until-we-know-who-lied/>); Op-Ed, Eileen J. O'Connor, *Throw Hunter Biden's Plea Deal in the Trash*, THE WALL STREET JOURNAL (June 27, 2023).

²⁶ To be clear, we do not believe the Government could validly bring charges against our client concerning these issues given the express language of the agreed-upon Diversion Agreement.

²⁷ Courts recognize that the crime of leaking or disclosing such information by Government agents sworn to uphold the law is often more egregious than the crimes those agents are charged with investigating. See, e.g., *United States v. Walters*, No. 17-2373 (2d Cir. Dec. 4, 2018) (Jacobs, J., concurring) ("[T]he leak of grand jury testimony is in some respects more egregious than anything [Defendant] did [(insider trading)]—the FBI supervisor took an oath to uphold the law and was acting in a supervisory capacity to discharge an important public function.") (emphasis added).

Considering the prejudice that our client has already suffered, and the irreversible harm that he stands to suffer if these illegal acts are not remedied, we set forth the following requests.

First, consistent with the Government's duties to prevent the further dissemination of grand jury materials and other confidential information gathered in the investigation of Mr. Biden, we demand that the Government take action immediately and identify all steps taken to date concerning same.

Second, although we see no basis in law or fact for any position to the contrary, should the Government disagree with the above, we seek that the Government advise as much in writing, along with the basis for its decision.

Sincerely,

A handwritten signature in blue ink, appearing to read "Abbe David Lowell".

Abbe David Lowell
WINSTON & STRAWN LLP
1901 L Street, NW
Washington, D.C. 20036

cc: Counsel of Record
Michael E. Horowitz (Inspector General, Department of Justice)