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8 Attorneys for Plaintiff
 9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 ROBERT HUNTER BIDEN,

16 Defendant.

No. CR 23-cr-00599-MCS

GOVERNMENT’S RESPONSE TO
 DEFENDANT’S FOURTH MOTION *IN*
 LIMINE TO EXCLUDE REFERENCE TO
 ALLEGED IMPROPER POLITICAL
 INFLUENCE AND/OR CORRUPTION

Hearing Date: August 21, 2024

Hearing Time: 1:00 p.m.

Location: Courtroom of the
 Hon. Mark C. Scarsi

17 Plaintiff United States of America, by and through its counsel, hereby responds to
 18 defendant’s fourth motion *in limine* to exclude reference to alleged improper political
 19 influence and/or corruption. (Dkt. 163) (the “Motion”).
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1 This opposition is based upon the attached memorandum of points and authorities,
2 the attached declaration of Derek E. Hines, the filings and records in this case, and any
3 further argument as the Court may deem necessary.

4
5 Dated: August 7, 2024

Respectfully submitted,

6 DAVID C. WEISS
7 Special Counsel

8 LEO J. WISE
9 Principal Senior Assistant Special Counsel

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12 _____
13 DEREK E. HINES
14 Senior Assistant Special Counsel

15 Attorneys for Plaintiff
16 UNITED STATES OF AMERICA

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The defendant has moved to exclude six (6) different topics, framing his overall
4 motion as a request to exclude “alleged improper political influence and/or corruption.”
5 Motion at 1. At the outset, the government notes that the defendant has accurately
6 represented the government’s position on only one of the six topics he raises. As explained
7 below, the defendant did not even seek the government’s position on four of the topics he
8 raises and misstated the government’s position on another.

9 The defendant provides no factual basis to support his assertion that “many
10 exhibits” the government seeks to introduce are “outside the scope of the Indictment” other
11 than two exhibits on an exhibit list that was provided to the defense in May 2024. Motion
12 at 5 (referencing GX-267 and GX-262). His motion is an outdated copy-and-paste of a
13 motion he previously filed before he asked the Court to continue the June trial date to
14 September. The two exhibits he references in the motion are not on the amended exhibit
15 list that the government provided to the defendant on July 18, 2024, prior to the defendant
16 filing the instant motion on July 31, 2024. Hines Decl. at 2.

17 Absent from the defendant’s motion is any reference to facts and evidence in the
18 *Jencks* production that he received on May 24, 2024. Hines Decl. at 3. In Section II, the
19 government provides a background summary of some of the evidence that will be admitted
20 at trial related to the payments the defendant received from his foreign business dealings,
21 which are relevant to the charges in this case. In Section III, the government addresses
22 each of the six topics the defendant seeks to exclude. For the reasons that follow, the
23 defendant’s motion should be denied.

24 **II. BACKGROUND**

25 As alleged in the indictment, the defendant’s roles as a lawyer, lobbyist, consultant,
26 and businessperson generated substantial income to him, including compensation from
27 foreign businesses in foreign countries. Indictment, Dkt. 1 at ¶ 1, 5. His foreign business
28 dealings included serving on the board of a Ukrainian industrial conglomerate and a

1 Chinese private equity fund. *Id.* at ¶ 2, 6, 8. He also entered into an oral agreement with
2 Business Associate 1 purportedly to help a Romanian businessperson, G.P., contest
3 bribery charges he was facing in Romania. *Id.* at ¶ 7.

4 The government anticipates Business Associate 1 will testify that¹:

- 5 • Business Associate 1 and the defendant were in the lobbying and consulting
6 business together.
- 7 • G.P. was a Romanian businessman who was under criminal investigation in
8 Romania.
- 9 • G.P. sought to retain Business Associate 1, the defendant, and Business
10 Associate 2, to attempt to influence U.S. government agencies to investigate
11 the Romanian criminal investigation of G.P, and thereby cause an end to the
12 investigation of G.P. in Romania.
- 13 • Business Associate 1 and the defendant were concerned that lobbying work
14 might cause political ramifications for the defendant’s father. Business
15 Associate 1 and G.P. signed a “Management Services Agreement” where
16 Business Associate 1’s legal entity would purportedly provide management
17 services to real estate properties in Romania, but that was not actually what
18 G.P. was paying for. In reality, Business Associate 1 and G.P. agreed that
19 Business Associate 1 would receive compensation for work by Business
20 Associate 1, the defendant, and Business Associate 2, to attempt to influence
21 U.S. government agencies to investigate the Romanian investigation of
22 G.P., and Business Associate 1 would pass approximately 1/3 to the
23 defendant as his compensation and approximately 1/3 to Business Associate
24 2 as his compensation.

25
26 ¹ Since the defendant has failed to provide the Court with any facts related to Business
27 Associate 1, the government is separately moving to file an exhibit under seal which is a
28 transcript of statements by Business Associate 1, and features some of the questions the
government may ask at trial. *See* Exhibit 1 (filed with separate motion).

1 As alleged in the indictment, Business Associate 1’s entity received approximately
2 \$3,101,258, which was split roughly into thirds between the defendant, Business Associate
3 1, and Business Associate 2. *Id.* at ¶ 7.

4 As alleged in the indictment, the government will also introduce at trial evidence of
5 the defendant’s business dealings with CEFC China Energy Co. Ltd (“CEFC”), a Chinese
6 energy conglomerate, and his compensation for his position on the board of a Ukrainian
7 energy industrial conglomerate. This evidence will *not* include evidence that the defendant
8 performed lobbying activity in exchange for this compensation. Rather, the evidence will
9 show the defendant performed almost no work in exchange for the millions of dollars he
10 received from these entities.

11 **III. ARGUMENT**

12 The first category of evidence the defendant seeks to exclude is any “reference to
13 *allegations* that Mr. Biden (1) acted on behalf of a foreign principal to influence U.S.
14 policy and public opinion . . .” Motion at 3 (emphasis added). The government does not
15 intend to reference *allegations* at trial. Rather, the government will introduce the evidence
16 described above, including that the defendant and Business Associate 1 received
17 compensation from a foreign principal who was attempting to influence U.S. policy and
18 public opinion and cause the United States to investigate the Romanian investigation of
19 G.P in Romania.

20 Federal Rule of Evidence 401 sets forth the test for relevant evidence, stating that
21 “[e]vidence is relevant” if both (1) “it has any tendency to make a fact more or less
22 probable than it would be without the evidence,” and (2) “the fact is of consequence in
23 determining the action.” Fed. R. Evid. 401. For Count 2, the government must prove that
24 the defendant owed taxes on his income for the calendar year ending December 31, 2017.
25 *See* Dkt. 159-1, Gov’t Proposed Instruction No. 34 (Failure to Pay). The purpose and
26 structure of the payments and the nature of the work described above are relevant because
27 they establish that the defendant received income when payments were made by Business
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1 Associate 1 and the year in which the defendant earned the income. *See United States v.*
2 *Hoegel*, 723 F. App'x 421, 424 (9th Cir. 2018) (unreported). Moreover, the evidence of
3 what the defendant agreed to do and did do for G.P. demonstrates the defendant's state of
4 mind and intent during the relevant tax years charged in the indictment. It is also evidence
5 that the defendant's actions do not reflect someone with a diminished capacity, given that
6 he agreed to attempt to influence U.S. public policy and receive millions of dollars
7 pursuant to an oral agreement with Business Associate 1 in an arrangement that concealed
8 the true nature of the work he was performing for G.P. *See id.* at Gov't Proposed
9 Instruction No. 29.1 ("Diminished Capacity").

10 Under Federal Rule of Evidence 403, a court "may exclude relevant evidence if its
11 probative value is substantially outweighed by a danger of one or more of the following:
12 unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or
13 needlessly presenting cumulative evidence." The defendant does not argue any specific
14 statement from Business Associate 1 is unfairly prejudicial; rather, he makes a general
15 claim that any "reference to improper political influence" is unfairly prejudicial. Business
16 Associate 1 has not said that the defendant engaged in *improper* political influence. With
17 respect to exhibits, the defendant does not claim that exhibits shown to Business Associate
18 1 risk confusion of issues or misleading the jury (nor does his motion cite to any exhibits
19 shown to Business Associate 1). Because there is no risk of unfair prejudice, and because
20 the relevant evidence has substantial probative value, the Court should deny the
21 defendant's motion as to this first category of evidence.

22 In his second and third categories, the defendant asks that the Court exclude
23 "allegations that Mr. Biden . . . (2) *violated* FARA, and (3) *improperly* coordinated with
24 the Obama Administration . . ." Motion at 2 (emphasis added). The government was asked
25 a different question by the defendant when he requested its position on categories 2 and 3.
26 The defendant asked for the government's position on introducing "testimony, evidence,
27 suggestion that Mr. Biden was acting on behalf of a foreign principal to influence US
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1 policy or public opinion, including *any references* to FARA or *alleged coordination* with
2 the Obama/Biden administration.” Hines Decl. at 4, Exh. 2. However, in their motion, the
3 defense’s request is narrower, asking the Court only to exclude “reference to *allegations*”
4 that the defendant “(2) *violated* FARA” and “(3) *improperly* coordinated with the Obama
5 Administration.” Motion at 2 (emphasis added). The government does not intend to
6 reference *allegations* that the defendant *violated* FARA or *improperly* coordinated with
7 the Obama Administration. However, as the defense is aware from the *Jencks* production
8 it received on May 24, 2024, and exhibits in the government’s amended exhibit list it
9 received on July 18, 2024, the government will introduce evidence that Business Associate
10 1 structured a business relationship in an effort to avoid having to register as a foreign
11 agent, and that the defendant and his business partners did reach out to government
12 officials, specifically the United States Department of State. That evidence is relevant
13 because it establishes that the defendant received income, when he earned the income, and
14 his state of mind was not consistent with someone with a diminished capacity. The
15 introduction of that evidence, however, does not mean that the government will also
16 reference *allegations* that the defendant *violated* FARA and that contacts with government
17 officials were *improper*; such allegations are not relevant to the charges in this tax case.
18 The defendant’s motion as to these issues is therefore moot.

19 In his fourth and fifth categories, the defendant asks the Court to exclude
20 “allegations that Mr. Biden . . . (4) received direct compensation from any foreign state”
21 and “(5) received compensation for actions taken by his father that impacted national or
22 international politics.” Motion at 2. The defendant never asked the government for its
23 position on these two categories. Hines Decl. at 4, Exh. 2. The government can confirm it
24 does not intend to introduce evidence in this tax case of *direct* compensation from a foreign
25 *state* or evidence that the defendant received compensation for actions taken by his father
26 that impacted national or international politics. The defendant’s motion as to these issues
27 is moot.

1 In his sixth category, the defendant asks the Court to exclude “allegations that Mr.
2 Biden . . . (6) funneled money to his father or any related alleged corruption.” Here, the
3 defendant misrepresents the position of the government by claiming the government
4 opposes this request. On May 17, 2024, defense counsel asked for the government’s
5 position on “Exclud[ing] evidence/testimony about a theory that Mr. Biden was trying to
6 funnel money to Joe Biden (or anything else related to Joe Biden and alleged corruption).”
7 Hines Decl. at 4, Exh. 2. The government responded on May 21, 2024, and confirmed,
8 “We do not intend to introduce evidence/argue that the defendant was trying to funnel
9 money to Joe Biden.” *Id.* The defendant’s motion claims the government opposes this
10 request, but it does not. The Court can therefore deny that aspect of the motion as moot.

11 **IV. CONCLUSION**

12 As explained above, the defendant did not ask for the government’s position on four
13 of the topics he raises and has misstated the government’s position on another; in light of
14 the government’s response, the Court should deny as moot the defendant’s motion as to
15 those five topics. With respect to his first topic, “allegations that Mr. Biden (1) acted on
16 behalf of a foreign principal to influence U.S. policy and public opinion,” the defendant
17 did receive compensation from a foreign principal to attempt to influence U.S. policy and
18 public opinion, as alleged in the indictment, and this evidence is relevant and not unfairly
19 prejudicial. Accordingly, the government respectfully requests that the Court deny the
20 defendant’s motion as to the first topic.

DECLARATION OF DEREK E. HINES

I, Derek E. Hines, declare as follows:

1. I am Senior Assistant Special Counsel and represent the government in the prosecution of United States of America v. Robert Hunter Biden, No. CR 23-cr-00599-MCS.

2. An Amended Exhibit List was provided to the defendant on or about July 18, 2024.

3. A discovery production containing *Jencks* materials, including statements of Business Associate 1, was provided to the defendant on or about May 24, 2024.

4. On Friday, May 17, 2024, at 6:54 PM, counsel for the defendant sent an email to government counsel requesting the government’s position on various motions in limine. On Monday, May 20, 2024, at 4:32 PM, counsel for the government responded to this email and provided the government’s positions. A true and correct copy of these two emails are attached as Exhibit 2.

5. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed in the Commonwealth of Pennsylvania on August 7, 2024.



DEREK E. HINES
Senior Assistant Special Counsel