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17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 UNITED STATES
20 Plaintiff,
21 vs.
22 ROBERT HUNTER BIDEN,
23 Defendant.

Case No. 2:23-cr-00599-MCS

Hon. Mark C. Scarsi

**MR. BIDEN’S REPLY IN
FURTHER SUPPORT OF
FOURTH MOTION *IN LIMINE*
TO EXCLUDE REFERENCE TO
ALLEGED IMPROPER
POLITICAL INFLUENCE
AND/OR CORRUPTION**

Hearing Date: August 21, 2024
Hearing Time: 10:00 a.m.
Courtroom: 7C

1 Defendant Robert Hunter Biden, by and through his counsel of record, hereby
2 submits this reply in further support of his Fourth Motion *in Limine* to exclude reference
3 to alleged improper political influence and/or corruption. This reply pertains to the first
4 three categories in the Motion, namely reference to allegations that Mr. Biden (1) acted
5 on behalf of a foreign principal to influence U.S. policy and public opinion, (2) violated
6 FARA, and (3) improperly coordinated with the Obama Administration, as those are
7 the three categories in dispute.

8 The fourth, fifth, and sixth categories are moot, as the Special Counsel confirmed
9 in its response that “[t]he government . . . does not intend to introduce evidence in this
10 tax case of direct compensation from a foreign state or evidence that the defendant
11 received compensation for actions taken by his father that impacted national or
12 international politics,” D.E. 181 at 5, nor does it “intend to introduce evidence/argue
13 that the defendant was trying to funnel money to Joe Biden,” *id.* at 6.

14 As for the Special Counsel’s assertion that Mr. Biden’s counsel only accurately
15 represented the government’s position on one of the six topics raised in the Motion, the
16 defense represented that the Special Counsel opposed the Motion (without specifying
17 the categories within the Motion), which is accurate.

18
19 Dated: August 11, 2024

Respectfully submitted,

20
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 The Special Counsel’s response to Mr. Biden’s Fourth Motion *in Limine* seeking
4 to exclude reference to foreign business sources, so-called improper political influence
5 and/or corruption makes clear that the Special Counsel is seeking to insinuate
6 extraneous, politically-charged matters into the trial which have no relevance to the tax
7 offenses Mr. Biden is accused of. While going through the motions of filing Business
8 Associate 1’s grand jury transcript under seal in support of its response to the Motion,
9 the government included an inflammatory and incomplete, and therefore misleading,
10 characterization of that testimony¹ in a public filing, surely knowing it would make
11 news. While the Special Counsel later mentions in its response that Business Associate
12 1 has *not* said that Mr. Biden (or he) engaged in improper political influence (and
13 therefore claims there is no risk of confusion of the issues or misleading the jury), D.E.
14 181 at 4, the whole of the Special Counsel’s filing and its characterization of Business
15 Associate 1’s grand jury testimony gives the contrary impression, as was widely
16 reported by the mainstream media. *See, e.g.,* Alanna Durkin Richer, *Hunter Biden was*
17 *hired by Romanian businessman trying to ‘influence’ US agencies, prosecutors say,*
18 ASSOCIATED PRESS (Aug. 7, 2024), [https://apnews.com/article/hunter-biden-taxes-](https://apnews.com/article/hunter-biden-taxes-special-counsel-romanian-businessman-9c1b15a548df02935e2bfa856e485ada)
19 [special-counsel-romanian-businessman-9c1b15a548df02935e2bfa856e485ada](https://apnews.com/article/hunter-biden-taxes-special-counsel-romanian-businessman-9c1b15a548df02935e2bfa856e485ada);
20 Rebecca Beitsch and Emily Brooks, *DOJ says Hunter Biden work with Romanian*
21 *businessmen designed to skirt US law,* THE HILL (Aug. 8, 2024),
22 [https://thehill.com/regulation/court-battles/4818240-hunter-biden-doj-romanian-](https://thehill.com/regulation/court-battles/4818240-hunter-biden-doj-romanian-businessman-fara/)
23 [businessman-fara/](https://thehill.com/regulation/court-battles/4818240-hunter-biden-doj-romanian-businessman-fara/). If journalists closely following the case are confused as to the
24 implication of Business Associate 1’s testimony, jurors are sure to be as well. The
25 Special Counsel’s showcasing of these matters on the eve of Mr. Biden’s trial—*when*
26

27 ¹ It is telling that the Special Counsel does not provide any page citations for its
28 “summary” of what “[t]he government anticipates Business Associate 1 will testify” to.
D.E. 181 at 2.

1 *there is no mention of political influence in the 56-page Indictment*²—is not presented
2 for a proper purpose. The Special Counsel’s unnecessary change of tactic merely
3 echoes the baseless and false allegations of foreign wrongdoing which have been touted
4 by House Republicans to use Mr. Biden’s proper business activities in Romania and
5 elsewhere to attack him and his father. *See, e.g., The Bidens’ Influence Peddling*
6 *Timeline*, Committee on Oversight and Accountability (last accessed on Aug. 10, 2024),
7 <https://oversight.house.gov/the-bidens-influence-peddling-timeline/>.

8 Putting aside why such irrelevant and politically-charged material would be
9 included in the filings, it has no place in a trial where the only issue in the years in which
10 Mr. Biden’s business is at issue has nothing to do with any source of income and all as
11 to whether his filings and payments willfully violated the law. The Court should not
12 allow a side show in which issues far beyond the charges have to be explained and
13 litigated in a tax case. Disallowing this unnecessary detour will ensure that Mr. Biden,
14 like any other person accused, gets the fair trial that he deserves.

15 **ARGUMENT**

16 **I. EVIDENCE OF MR. BIDEN’S “FOREIGN BUSINESS DEALINGS” IS** 17 **NOT RELEVANT TO THE CHARGED TAX CRIMES.**

18 The Special Counsel does not need to explain how Mr. Biden earned his income
19 to prove its tax charges; it just needs to demonstrate that he earned income that he did
20 not pay taxes on. Nevertheless, the Special Counsel claims Mr. Biden’s “foreign
21 business dealings” are relevant to the charges in this case because for one of the nine
22 counts (Count 2), “the government must prove that the defendant owed taxes on his
23 income for the calendar year ending December 31, 2017.” D.E. 181 at 3-4. The Special
24 Counsel further claims that “[t]he purpose and structure of the payments and the nature
25 of the work described above are relevant because they establish that the defendant
26

27 ² *See* D.E. 1 ¶ 7 (“In the fall of 2015, the Defendant entered into an oral agreement with
28 Business Associate 1 purportedly to help a Romanian businessperson, G.P., contest
bribery charges he was facing in his home country.”).

1 received income when payments were made by Business Associate 1 and the year in
2 which the defendant earned the income.” *Id.* at 4. This can be done by way of IRS
3 filings, bank statements, and the government agents’ testimony. Alternatively, Mr.
4 Biden can and is willing to stipulate to the amount and timing of the income he received.
5 The source of such income³ or the purpose for which it was paid are irrelevant.⁴

6 The Special Counsel’s claim that Business Associate 1’s testimony is relevant to
7 proving Mr. Biden’s state of mind and intent as to Count 2 is implausible because that
8 testimony concerns the wrong timeframe. The relevant time-period for Mr. Biden’s
9 state of mind for Count 2 is shortly before April 17, 2018, when the taxes for the prior
10 year were first due, or shortly before February 18, 2020, when he allegedly chose not
11 to pay any of his outstanding 2017 tax liability. *See* D.E. 149 at 5; D.E. 1, ¶ 72. But a
12 review of the transcript demonstrates that the events Business Associate 1 would testify
13 to do not go beyond May of 2017, making his testimony irrelevant to Mr. Biden’s intent
14 during the relevant time period. D.E. 190 [Tr. 36:4-5]; *see also* D.E. 1, ¶ 7.

15 The Special Counsel makes the same claims of relevance for the second and third
16 topics (to exclude any allegations⁵ that Mr. Biden violated FARA or improperly
17 coordinated with the Obama Administration”), but those claims fail for the same reason.
18 *See* D.E. 181 at 5. Again, the amount and timing of Mr. Biden’s income can be
19 proven—even stipulated to—without a prejudicial exploration of whether there was
20

21 ³ As for the source of the income, it is alleged that Business Associate 1’s entity received
22 the compensation from a foreign principal, a third of which was distributed to Mr.
23 Biden. *See* D.E. 181 at 3 (citing D.E. 1 ¶ 7). It is therefore wholly irrelevant that a
foreign principal was even involved, because *no* funds flowed directly to Mr. Biden
from any such foreign principal.

24 ⁴ Whether Mr. Biden “received compensation from a foreign principal who was
25 attempting to influence U.S. policy and public opinion,” D.E. 181 at 3, even if true
26 (which did not happen that way), has no tendency to make the fact of whether Mr. Biden
timely filed or paid his returns more or less probable than it would be without the
evidence. *See* Fed. R. of Evid. 401.

27 ⁵ The Special Counsel’s argument about reference to “allegations” is pure semantics.
28 By seeking to exclude the aforementioned allegations, Mr. Biden is seeking to exclude
his *alleged* violation of FARA and his *alleged* improper coordination with the Obama
Administration”; he is not seeking to exclude any allegations relevant to the charges.

1 anything improper in how that income was earned. “[E]vidence that Business Associate
2 1 structured a business relationship in an effort to avoid having to register as a foreign
3 agent, and that the defendant and his business partners did reach out to government
4 officials, specifically the United States Department of State,” *id.*, even if true (this does
5 not accurately describe the events), has no tendency to make the fact of whether Mr.
6 Biden timely filed or paid his returns more or less probable than it would be without
7 such evidence and it is unnecessarily prejudicial. *See* Fed. R. Evid. 401, 403.

8 Equally irrelevant and prejudicial is the evidence the Special Counsel intends to
9 offer showing Mr. Biden’s “business dealings with CEFC China Energy Co. Ltd
10 (“CEFC”), a Chinese energy conglomerate, and his compensation for his position on
11 the board of a Ukrainian energy industrial conglomerate.” D.E. 181 at 3. The Special
12 Counsel does not make any claim as to how and why such evidence is relevant. Rather,
13 the Special Counsel merely argues “[t]his evidence will *not* include evidence that the
14 defendant performed lobbying activity in exchange for this compensation. Rather, the
15 evidence will show the defendant performed almost no work in exchange for the
16 millions of dollars he received from these entities.” *Id.* But whether Mr. Biden may
17 have engaged in lobbying activities or how much work he did for what compensation
18 he received are irrelevant to the tax offenses he is charged with, and the admission of
19 such evidence risks suggesting to the jury that Mr. Biden did not perform enough work
20 to substantiate the income he received—something he is not charged with.

21 **II. ANY PROBATIVE VALUE OF THESE UNSUBSTANTIATED CLAIMS**
22 **IS SUBSTANTIALLY OUTWEIGHED BY THE RISK OF UNFAIR**
23 **PREJUDICE, CONFUSING THE ISSUES, AND MISLEADING JURORS.**

24 The extensive media coverage of the allegations contained in the Special
25 Counsel’s response demonstrates the confusion that would be caused by allowing the
26 jury to hear evidence of Mr. Biden’s foreign business dealings. At the close of trial, the
27 jury is not going to be instructed on what type of foreign influence is improper, on the
28

1 requirements of FARA, the propriety of coordination with the Obama administration,
2 or the investment strategy and compensation method of a joint ventures with a Chinese
3 business. Jurors will simply be left with the impression Mr. Biden did something wrong,
4 even if that is irrelevant to the actual tax charges they must decide. Moreover, this
5 would essentially create the to-be-avoided mini-trial within the trial and distract the jury
6 from the core issues in this case. Courts have cautioned against these types of mini-
7 trials on a collateral issue. *See, e.g., United States v. Singh*, 995 F.3d 1069, 1080-81
8 (9th Cir. 2021).

9 The Special Counsel does not address the binding Ninth Circuit authority cited
10 in the Motion holding that “[w]here the evidence is of very slight (if any) probative
11 value, it’s an abuse of discretion to admit it if there’s even a modest likelihood of unfair
12 prejudice or a small risk of misleading the jury.” *United States v. Hitt*, 981 F.2d 422,
13 424 (9th Cir. 1992); *see also United States v. Figueroa-Juarez*, 2023 WL 8053742, at
14 *1 (9th Cir. Nov. 21, 2023). Instead, the Special Counsel relies on a single *unreported*⁶
15 decision, which is both factually and legally distinguishable. In *United States v. Hoegel*,
16 723 F. App’x 421, 424 (9th Cir. 2018), the court held that the challenged testimony was
17 relevant to proving the defendant *falsified* her tax returns. Moreover, because the
18 testimony was not objected to at trial, the evidentiary rulings were reviewed for plain
19 error (a standard even more deferential than review for abuse of discretion). *Id.* at 423.

20 CONCLUSION

21 For the foregoing reasons, the Special Counsel should be precluded from making
22 any reference or eliciting any testimony that Mr. Biden (1) acted on behalf of a foreign
23 principal to influence U.S. policy and public opinion, (2) violated FARA, and (3)
24 improperly coordinated with the Obama Administration.

25
26 ⁶ As stated in a footnote of the opinion, “[t]his disposition is not appropriate for
27 publication and is not precedent except as provided by Ninth Circuit Rule 36-3.” Ninth
28 Circuit Rule 36-3 provides that “[u]npublished dispositions and orders of this Court are
not precedent, except when relevant under the doctrine of law of the case or rules of
claim preclusion or issue preclusion.” Ninth Cir. R. 36-3.

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Date: August 11, 2024

Respectfully submitted,

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