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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT HUNTER BIDEN,

Defendant.

Case No. 2:23-cr-00599-MCS-1

**ORDER TO SHOW CAUSE RE:
MOTION TO DISMISS FOR LACK
OF JURISDICTION (ECF NO. 133)**

1 Defendant Robert Hunter Biden moves to dismiss the indictment on the basis that
2 Special Counsel David Weiss’s prosecution of this case violates the Appointments and
3 Appropriations Clauses of the United States Constitution. (Mot., ECF No. 133.)

4 The Court orders Mr. Biden’s counsel to show cause why sanctions should not
5 be imposed for making false statements in the motion. The local rules of this Court
6 require compliance with the California Rules of Professional Conduct. C.D. Cal. R. 83-
7 3.1.2; *see* C.D. Cal. Crim. R. 57-1 (“When applicable directly or by analogy, the Local
8 Rules of the Central District of California shall govern the conduct of criminal
9 proceedings before the District Court, unless otherwise specified.”). Violation of a
10 professional responsibility rule may serve as the basis for discipline, striking of
11 pleadings, or imposition of other sanctions. C.D. Cal. Rs. 83-3.1, 83-3.1.2; *Ready*
12 *Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010); *Smith v. Frank*, 923
13 F.2d 139, 142 (9th Cir. 1991). Rule 3.3(a)(1) of the California Rules of Professional
14 Conduct prohibits lawyers from “knowingly mak[ing] a false statement of fact . . . to a
15 tribunal.”

16 In support of his motion, Mr. Biden asserts, several times, that Special Counsel
17 Weiss “brought no charges [against Mr. Biden] until after he received the Special
18 Counsel title” (Mot. 5; *accord id.* at 6 (“Special Counsel Weiss . . . brought no
19 charges in this investigation with his U.S. Attorney position but, as Special Counsel,
20 initiated legal proceedings on both sides of the country against Mr. Biden in Delaware
21 and California”); *id.* at 7 (“Mr. Weiss . . . sought Special Counsel status before
22 bringing any charges.”).) These statements, however, are not true, and Mr. Biden’s
23 counsel knows they are not true.

24 In his role as U.S. Attorney for the District of Delaware, Mr. Weiss brought
25 charges by Information, including two of the misdemeanor offenses subsequently
26 charged by indictment in this Court. Information, *United States v. Biden*, No. 1:23-cr-
27 00061-MN (D. Del. June 20, 2023), ECF No. 2; Information, *United States v. Biden*,
28 No. 1:23-mj-00274-MN (D. Del. June 20, 2023), ECF No. 2; *see* Fed. R. Crim. P.

1 7(c)(1), (e) (using the verb *charge* to refer to offenses stated in an indictment or
2 information); (*cf.* Indictment ¶¶ 89, 107, ECF No. 1). And, in an earlier motion before
3 this Court, Mr. Biden’s counsel recognized that U.S. Attorney Weiss brought criminal
4 charges against Mr. Biden prior to his Special Counsel appointment. Specifically,
5 counsel acknowledged that U.S. Attorney David Weiss:

6 filed two separate Informations against Mr. Biden on June 20,
7 2023. One information *charged* Mr. Biden with a single count
8 of felony unlawful possession of a firearm as a user of a
9 controlled substance under 18 U.S.C. § 922(g)(3). The other
10 Information *charged* Mr. Biden with two misdemeanor tax
11 offenses: (1) failure to timely pay taxes due April 17, 2018
12 under 26 U.S.C. § 7203, and (2) failure to timely pay taxes
13 due April 15, 2019 under 26 U.S.C. § 7203.

14 (Immunity Mot. 1, ECF No. 25 (emphases added).)¹

15 The misstatements in the current motion are not trivial. Mr. Weiss’s institution
16 of charges against Mr. Biden in his capacity as U.S. Attorney offers a meaningful
17 distinction between this case and the nonbinding district court decision on which Mr.
18 Biden bases his motion. But Mr. Biden’s motion does not engage with this distinction;
19 instead, counsel avoids the issue by misrepresenting the history of the proceedings.

20 This Court has little tolerance for lack of candor from counsel. *See, e.g., Carroll*
21 *Shelby Licensing, Inc. v. Halicki*, 643 F. Supp. 3d 1048, 1053–54 (C.D. Cal. 2022)
22 (Scarsi, J.) (admonishing parties for “embellish[ing] facts in their briefing,” and
23 reminding counsel to “be mindful of their obligations to be candid with the Court”);
24 *Sliding Door Co. v. Glass Door Co., Inc.*, No. 2:22-cv-07500-MCS-MAA, 2023 U.S.

25
26 ¹ As Mr. Biden recognized, U.S. Attorney David Weiss brought these charges on June
27 20, 2023. Attorney General Merrick Garland appointed Mr. Weiss to serve as a Special
28 Counsel for the Department of Justice on August 11, 2023. (*See* Geragos Decl. Ex. C,
ECF No. 133-4.)

1 Dist. LEXIS 231510, at *2–3 (C.D. Cal. June 23, 2023) (Scarsi, J.) (directing correction
2 of briefs in light of counsel’s “continuing obligation of candor to the Court”); *Reliastar*
3 *Life Ins. Co. v. M.S.*, No. 2:19-cv-09628-MCS-AGR, 2022 U.S. Dist. LEXIS 236223,
4 at *17–18, 17 n.8 (C.D. Cal. Dec. 15, 2022) (Scarsi, J.) (declining to make a disciplinary
5 referral but noting “several issues” with counsel’s representation “ripe for inclusion on
6 a law school professor’s professional responsibility examination, such as . . . candor”);
7 *cf. United States v. Mitchell*, No. CR-22-01545-001-TUC-RM (EJM), 2024 U.S. Dist.
8 LEXIS 83638, at *12–14 (D. Ariz. May 7, 2024) (admonishing counsel for failure to
9 comport with the duty of candor); *United States v. Carson*, No. SA CR 09-77-JVS, 2010
10 U.S. Dist. LEXIS 166122, at *10–12 (C.D. Cal. Oct. 21, 2010) (same); *United States v.*
11 *Vega-Soto*, No. 06cr1241 DMS, 2008 U.S. Dist. LEXIS 146154, at *35–38 (S.D. Cal.
12 July 7, 2008) (imposing monetary sanctions on counsel for failure to comply with the
13 duty of candor).

14 Counsel for Mr. Biden shall respond in writing to this order to show cause within
15 seven days. Failure to file a timely and satisfactory response will result in sanctions
16 without further notice. Mr. Biden may withdraw or amend the motion, *see* Cal. R. Prof.
17 Conduct 3.3(a)(1) (requiring counsel “to correct a false statement of material
18 fact . . . previously made to the tribunal by the lawyer”), but doing so will not obviate
19 counsel’s obligation to respond to this order.

20
21 **IT IS SO ORDERED.**

22
23 Dated: July 24, 2024



24 MARK C. SCARSI
25 UNITED STATES DISTRICT JUDGE
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