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11  
12  
13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 vs.

18 ROBERT HUNTER BIDEN,

19 Defendant.

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

*Hon. Mark C. Scarsi*

**DEFENDANT’S REPLY IN  
SUPPORT OF HIS MOTION TO  
DISMISS THE INDICTMENT FOR  
DUE PROCESS VIOLATIONS  
BASED ON OUTRAGEOUS  
GOVERNMENT CONDUCT**

Hearing Date: March 27, 2024  
Time: 1:00 PM  
Place: Courtroom 7C

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23 REDACTED  
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## INTRODUCTION

1  
2 The prosecution does not refute (indeed it acknowledges) the fundamental basis  
3 for Biden having brought this motion: two former IRS agents once charged with  
4 investigating him, and who referred and later publicly lobbied for criminal tax charges  
5 against him, broke the law by publicly disclosing confidential information in violation  
6 of 26 U.S.C § 6103 and Rule 6(e). (DE42 at 2.) Rather than reject that premise, the  
7 prosecution claims that whether the agents engaged in unauthorized and unlawful  
8 disclosures “is irrelevant” because a “judicially created remed[y]” would be improper.  
9 (*Id.* at 1.) As described in Biden’s opening motion, such conduct is incredibly germane  
10 to the events that resulted in the instant prosecution, in which Biden has been indicted  
11 on nine tax charges in this District (and three felony gun charges in the District of  
12 Delaware) based upon the conduct of the two agents. This conduct included  
13 unauthorized grand jury and taxpayer disclosures and a public pressure campaign  
14 calling for criminal charges in countless TV interviews, which upped the ante and  
15 forced the hand of then-U.S. Attorney Weiss to renege on a plea deal with Biden, only  
16 to bring these charges several months later.

17 The prosecution offers a narrow, distorted view of what actually “resulted” from  
18 Shapley and Ziegler’s conduct. (*Id.* at 4, 8–9.) Specifically, it claims “the defendant  
19 offers no evidence to support his contention that Shapley and Ziegler’s public  
20 statements ‘result[ed]’ in the Special Counsel charging [Biden] with nine tax counts.”  
21 (*Id.* at 9.) Yet the prosecution completely ignores the agents’ activities leading up to  
22 (and after) July 26, 2023. After five years of a thorough investigation, DOJ was  
23 satisfied with its determination that a felony tax prosecution of Biden was unnecessary,  
24 and sent Biden’s counsel a framework for a non-charge resolution (a DPA) in May 2023  
25 (DE25-5, Clark Decl. at ¶¶13–14), only to later require a plea to two tax misdemeanors  
26 (but no felonies). Then, after the USAO docketed a misdemeanor tax Information on  
27 June 20, 2023 in Delaware, Shapley and Ziegler intervened and took to the halls of  
28 Congress and the airwaves (making numerous media appearances) with claims that DOJ

1 and the Biden Administration were interfering with the investigation of Biden’s taxes.<sup>1</sup>  
2 (DE28 at 6–7.) A few weeks later, after the agents provided closed-door testimony to  
3 Congress and hired outside counsel, Republicans in the House Ways and Means  
4 Committee voted to release *hundreds* of pages of confidential grand jury material and  
5 taxpayer information received from Shapley and Ziegler earlier that spring—in  
6 violation of numerous federal laws. (*Id.* at 12.) In so doing, Shapley and Ziegler *caused*  
7 to be dumped into the public the IRS’s investigative case files of Biden.

8 This unprecedented disclosure of confidential grand jury and taxpayer materials  
9 for an active investigation—including confidential return information, DOJ and IRS  
10 interview memos, agents’ timelines and handwritten notes, subpoenaed records, private  
11 text and WhatsApp messages, and agents’ and prosecutors’ email communications—  
12 together with the two agents’ media campaign in spring and summer 2023, prompted  
13 unrelenting congressional investigation by three GOP House committees.<sup>2</sup> The  
14 pressure reached a fever-pitch by the time of Biden’s plea hearing in Delaware on July  
15 26, 2023, and by August, Weiss seemingly decided a plea deal resolving the tax case  
16 with just two tax misdemeanor charges was no longer politically palatable, and sought  
17 Special Counsel status in Biden’s case on August 11. With no change in either the *facts*  
18 or *law* in Biden’s case, the Special Counsel reneged on the deal he himself had helped  
19 negotiate and filed gun and then tax charges against Biden in Delaware and California,  
20 which now included felonies for the first time.

21  
22  
23 <sup>1</sup> See, e.g., *IRS Whistleblower In Hunter Biden Case Says He ‘Felt Handcuffed’ During*  
24 *5-Year Investigation*, CBS (July 19, 2023); *IRS Whistleblower Joseph Ziegler Joins The*  
*Lead In His First Televised Interview Since Testifying Before Congress*, CNN (July 20,  
2023).

25 <sup>2</sup> The same Republicans who applaud the acts of these IRS agents as purported  
26 “whistleblowers” who unlawfully publicly disclosed Biden’s confidential tax  
27 information have hypocritically attacked the Biden Administration for not insisting on  
28 more severe punishment of an IRS agent who unlawfully leaked Donald Trump’s  
confidential tax information. See *Ways And Means Republicans Demand DOJ Answer*  
*For Inadequate Charging Decisions For ProPublica Leaker* (Nov. 8, 2023), *available at*  
<https://waysandmeans.house.gov>. That leaker actually was prosecuted and sentenced  
to prison for five years, however, while the two agents praised by Republicans have not.

1 **ARGUMENT**

2 **I. BIDEN HAS DEMONSTRATED CLEAR MISCONDUCT BY THE**  
3 **INVESTIGATING AGENTS, WHICH WARRANTS DISMISSAL OF**  
4 **THE INDICTMENT**

5 The misconduct of the agents leading up to July 26, and after, that eventually  
6 resulted in tax charges is not “irrelevant” in this story, as the prosecution claims, and  
7 the Court should not ignore that their conduct above all else spawned the cascading  
8 events that culminated in Weiss reneging on the deal and indicting Biden on nine tax  
9 charges in this District. As The New York Times noted, Weiss was at one point “willing  
10 to forgo any prosecution of Mr. Biden at all,” without even as much as a plea deal before  
11 the IRS agents accused DOJ of interfering.<sup>3</sup> That position was no longer politically  
12 tolerable after Shapley and Ziegler made it their mission to intervene. As noted, *supra*  
13 at 2, the required “nexus between” (DE42 at 6) the agents’ outrageous misconduct,  
14 which led to the government’s formal withdrawal of the plea and diversion agreements  
15 on August 9, 2023, and the tax charges then brought, could not be any clearer. *See, e.g.,*  
16 *United States v. Samango*, 607 F.2d 877, 885 (9th Cir. 1979) (testimony by an  
17 investigating agent laden with conclusory statements about events in which the agent  
18 was not involved led to an eleventh-hour indictment of defendant).

19 For its part, the prosecution blatantly ignores the evidence offered by Biden that  
20 shows “the charges *resulted from* Shapley and Ziegler’s conduct.” (DE42 at 1  
21 (emphasis added); *see also id.* at 4 (claiming Biden “offers no evidence that the charges  
22 in this case ‘resulted from’” the agents’ misconduct).) For instance, on the very evening  
23 (December 8) that the prosecution filed nine tax charges in this District—based on the  
24 same tax issues that had been investigated and then referred for criminal prosecution by  
25 then-case agents Shapley and Ziegler—Shapley and Ziegler issued a joint statement,  
26

27 <sup>3</sup> Michael Schmidt et al., *Inside The Collapse Of Hunter Biden’s Plea Deal*, N.Y. Times  
28 (Aug. 19, 2023), <https://www.nytimes.com/2023/08/19/us/politics/inside-hunter-biden-plea-deal.html>. The article does not disclose the source.

1 hailing the Indictment as “complete vindication of our thorough investigation . . .”<sup>4</sup>  
2 (DE28 at 12.) Thus, the tax Indictment of Biden was a *direct result* of Ziegler and  
3 Shapley’s public conduct—both their testimony to Congress in May and June 2023 and  
4 their efforts to unlawfully share confidential taxpayer and grand jury information about  
5 the investigation, and their repeated TV appearances, which forced Weiss’s hand to  
6 renege on the deal he had agreed to. A joint statement by the very law enforcement  
7 agents once charged with leading the investigation of Biden (let alone a supervisor like  
8 Shapley) is unprecedented.<sup>5</sup> Appearing on Fox News on December 14, 2023 to discuss  
9 the charges, Shapley again discussed evidence and testimony he and Ziegler provided  
10 to Congress, which he believed support the tax charges in this prosecution. (*Id.* at 13.)

11 On the issue of Shapley and Ziegler’s Section 6103 violations, the prosecution  
12 falls back on *United States v. Michaelian*, 803 F.2d 1042 (9th Cir. 1986), to suggest that  
13 dismissal of the Indictment is not warranted here (DE42 at 3), and instead emphasizes  
14 alternative remedies available to Biden for Section 6103 violations. (*Id.* at 2–3.) But  
15 the prosecution misstates Biden’s argument. He is not claiming that a Section 6103  
16 violation alone warrants dismissal, but rather constitutes one more data point in the  
17 larger panoply of government misconduct that, when taken together, demonstrates an  
18 obvious and gross violation of his constitutional rights.

19 And so of course the prosecution ignores that Biden described *more* than just  
20 Section 6103 violations by these two agents. He explained that “[b]etween May 24 and  
21 December 14, 2023, Messrs. Shapley and Ziegler gave roughly 10 public interviews in  
22

23 <sup>4</sup> Brooke Singman, *IRS Whistleblowers: Hunter Biden Indictment Is A ‘Complete Vindication’ Of Investigation, Allegations*, Fox News (Dec. 8, 2023).

24 <sup>5</sup> The prosecution’s complaint that Biden has not cited a single case in which a court  
25 dismissed an indictment where law enforcement agents’ public statements were made  
26 when “they were no longer working on” the case is completely disingenuous and lacks  
27 any merit. (DE 42 at 9.) Such an argument may carry water when the agents *had said*  
28 *or disclosed* one thing or another, were quickly removed from the case, and just moved  
on. The present situation is completely opposite. These agents were removed but they  
did not just go home or find the next investigation at IRS; instead, they breached the  
IRS chain of command, took to the air waves, and launched a public campaign in the  
media to pressure Weiss to change his decision and renege on his deal with Biden.

1 which they discussed the ongoing investigation of Mr. Biden [and] confidential grand  
2 jury information *in breach of Rule 6(e)*.” (DE28 at 3 (emphasis added).) Moreover, the  
3 agents’ “duties to protect . . . *Rule 6(e) information* were unambiguously violated here.”  
4 (*Id.* at 17 (emphasis added).) On this point, the prosecution’s reliance on *United States*  
5 *v. Williams* is unavailing—where the conduct at issue “violates ‘clear’ rules designed  
6 to protect the fairness of the . . . grand jury,” dismissal of an indictment is warranted.  
7 (DE42 at 15 (citing 504 U.S. 36, 45–46 (1992)).) The “clear” rule designed to protect  
8 Biden and confidential grand jury information in this scenario, Rule 6(e), was  
9 deliberately violated by Shapley and Ziegler once they learned that Weiss intended to  
10 resolve the investigation without prosecution and agreed in June to only two tax  
11 misdemeanors with Biden.

12 Additionally, the prosecution tries to hide behind the claim—albeit incorrectly—  
13 that “[t]he agents’ actions came after their participation in the investigation [had]  
14 *concluded*” (DE42 at 2 (emphasis added)), and the at-issue conduct was only “after they  
15 *ceased working on this case.*” (*Id.* at 1 (emphasis added); *see also id.* at 9–10.) That is  
16 not true. The declaration of Special Agent Michael Batdorf makes clear that only in  
17 May 2023 did IRS-CI take “steps to replace” the two agents and other members of the  
18 investigative team (new investigators were assigned on May 15, 2023). (DE42-1,  
19 Batdorf Decl. ¶5.) However, public statements disclosing Biden’s confidential return  
20 information began, at the latest, a month prior, when then-case agents Shapley and  
21 Ziegler went public with claims that DOJ was interfering with the investigation of  
22 Biden’s taxes. On April 19, 2023, Shapley, through his lawyer, sent a letter to Congress  
23 disclosing confidential return information about Biden—described as an “ongoing and  
24 sensitive investigation of a high-profile, controversial subject.”<sup>6</sup> (DE28 at 3.) Shapley  
25 then requested that he be allowed to disclose, among other things, “examples of  
26

27 <sup>6</sup> Letter from Mark D. Lytle, Attorney of Mr. Shapley, to Members of Congress at 34  
28 (April 19, 2023), [https://waysandmeans.house.gov/wp-content/uploads/2023/06/Whistleblower-1-Transcript\\_Redacted.pdf](https://waysandmeans.house.gov/wp-content/uploads/2023/06/Whistleblower-1-Transcript_Redacted.pdf).

1 preferential treatment and politics improperly infecting decisions and protocols.” (*Id.*  
2 at 34–35.) National media outlets immediately reported that the letter was referring to  
3 the investigation of Biden. (*Id.* at 3–4.)

4 **II. THE GOVERNMENT DID NOT TAKE DECISIVE STEPS TO PREVENT**  
5 **THE AGENTS’ MISCONDUCT, WHICH FURTHER WARRANTS**  
6 **DISMISSAL OF THE INDICTMENT**

7 The prosecution also wants the Court to believe, mistakenly, that the government  
8 (i.e., the IRS) “took” certain decisive action to “address Shapley and Ziegler’s decision  
9 to make public statements.” (DE42 at 10.) Its principal argument is that on May 25,  
10 2023, the day before Shapley testified to Congress for the first time, IRS officials sent  
11 an agency-wide email to all IRS personnel, including these two agents, “providing  
12 guidance on ‘options’ for reporting ‘potential wrongdoing involving’” Section 6103 and  
13 Rule 6(e) information. (*Id.* at 11.) To be clear: sending (and relying upon) a  
14 communication to *all* IRS Services and Enforcement employees in no way constitutes  
15 “taking action” to curtail specific misconduct. An agency-wide email to *all* employees  
16 is hardly an act of telling Shapley and Ziegler to cease their disclosures or doing further  
17 congressional and TV appearances. Indeed, the prosecution’s reliance on this as  
18 justification that it “took” action to stop these whistleblowers demonstrates just how  
19 desperate the government is to make it seem as though it acted at all in those moments.

20 Additionally, the prosecution offers a flimsy justification that [REDACTED]  
21 [REDACTED]  
22 [REDACTED] [REDACTED] [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED] [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 In fact, after the [REDACTED], Shapley and Ziegler continued unabated to engage  
15 in unlawful disclosures and Rule 6(e) violations. To note just a few examples:

- 16 • June 28: Shapley told CBS News that punishment for Biden’s conduct was  
17 warranted and described alleged “[p]ersonal expenses that were taken as  
18 business expenses—prostitutes, sex club memberships, hotel rooms for  
19 purported drug dealers” and claimed that “from 2014 to 2019 [Biden owed] \$2.2  
20 million [in unpaid taxes].” (DE28 at 8);
- 21 • July 20: Ziegler stated on CNN that “the four assigned prosecutors to [Biden’s]  
22 case agreed with recommending felony and misdemeanor charges for Hunter  
23 Biden.” Ziegler also stated that he recommended that Biden should be charged  
24 with “felony and misdemeanor tax charges related to 2017, 2018 and 2019” for  
25 evasion of income tax. (*Id.* at 9);



- 1 • July 24: Ziegler asserted on a podcast there were “deduction[s] that [were] taken  
2 on [Biden’s] tax return” that contradicted statements made in his book of  
3 business and alleged Biden incorrectly described certain payments as loans,  
4 which constituted “clear cut tax evasion.” Ziegler also claimed that Biden had  
5 “delinquent taxes” and his activities showed “a willful intent to either deceive or  
6 make it so that income is not reported.” (*Id.* at 9–10); and
- 7 • August 11: Shapley appeared on CNN and repeated many of his prior comments,  
8 stating again that Biden was “provided preferential treatment” and “[the United  
9 States Attorney’s Office] stymied investigative steps.” He publicly disclosed  
10 Biden’s confidential return information and his potential tax liability. (*Id.* at 11.)

11 At no point after ██████████, did DOJ or the IRS instruct Shapley or Ziegler, either  
12 personally or through their authorized legal representatives, to refrain from publicly and  
13 unlawfully disclosing protected taxpayer and grand jury information, much less take  
14 decisive steps to prevent either employee from doing so.

15 One of only two actions the prosecution can concretely point to is on May 19,  
16 2023, when an IRS Assistant Special Agent in Charge emailed Ziegler re: “Reminder-  
17 Chain of Command” to remind him of his obligations, and offered the following rebuke:

18 You have been told several times that you need to follow your chain of  
19 command. IRS-CI maintains a chain of command for numerous reasons to  
20 include trying to stop unauthorized disclosures. Your email yesterday *may have*  
21 *included potential grand jury (aka 6e material)* in the subject line and contents  
22 of the email, and you included recipients that are not on the 6e list. . . .

23 (DE28 at 17 (emphasis added).) Ziegler, however, ignored this warning from ASAIC  
24 Watson and despite being told of potential 6(e) violations, he went on to do several other  
25 media appearances and public interviews in which he discussed and revealed Biden’s  
26 confidential return information and grand jury details, without authorization to do so.  
27 If there was any “doubt” about whether Ziegler had willfully and knowingly violated  
28 Rule 6(e), the proof was staring him in the face.

1 The other “responsible step” (DE42 at 10) that prosecutors claim the government  
2 took is addressed in Exhibit 2 (under seal, Order at DE44), [REDACTED]

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 [REDACTED] To this day, other  
18 than removing them from the case in May 2023, it does not appear the government has  
19 reprimanded (let alone investigated or charged) these agents, and by the time something  
20 gets done it may already be too late in Biden’s case.

21 In sharp contrast to how DOJ and the IRS usually treat those who leak  
22 confidential tax information, neither Shapley nor Ziegler have been prosecuted, fired  
23 from their jobs, or even instructed to stop making unlawful disclosures. In this same  
24 time frame, another high-profile IRS leaker disclosed confidential tax information  
25 concerning former President Trump and was sentenced to prison for five years, although  
26 he was not as brazen as Shapley and Ziegler by committing his crime repeatedly on live  
27 television. *See United States v. Charles E. Littlejohn*, No. 23-cr-00343-ACR (D.D.C.  
28 2023). Without acknowledging the blatant hypocrisy, many extremist politicians

1 complain that Trump’s leaker got off easy, but praise Shapley and Ziegler for their  
2 unlawful disclosures concerning Biden.<sup>7</sup>

3 **CONCLUSION**

4 There is no doubt that the agents’ actions in spring and summer 2023 substantially  
5 influenced then-U.S. Attorney Weiss’s decision to renege on the plea deal last summer,  
6 and resulted in the now-Special Counsel’s decision to indict Biden in this District. In  
7 the process, the agents’ duties to protect confidential grand jury, taxpayer, and Rule 6(e)  
8 information were unambiguously violated and their conduct has robbed Biden of his  
9 right to due process of law. Accordingly, the Court should dismiss the Indictment filed  
10 against Biden as the first step in preventing prejudice and further harm to Biden and to  
11 restore some semblance of justice here.

12 Date: March 18, 2024

Respectfully submitted,

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<sup>7</sup> *Chairman Jordan Opens Inquiry Into DOJ’s Sweetheart Deal For Trump Tax Return Leaker*, H. Judiciary Comm. (Feb. 8, 2024), available at <https://judiciary.house.gov/>; Arjun Singh, *Top GOP Rep Calls On More Whistleblowers To Come Forward, Pledges ‘Zero Tolerance’ For Retaliation*, Daily Caller (July 19, 2023).