

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA)	
)	
v.)	Criminal Action No. 1:23-cr-00061-MN
)	
ROBERT HUNTER BIDEN,)	
)	
Defendant.)	
)	
)	

**MR. BIDEN’S REPLY IN SUPPORT OF HIS MOTION *IN LIMINE* TO EXCLUDE
REFERENCE TO THE PENDING TAX CHARGES AND PROCEEDINGS IN
CALIFORNIA**

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Mr. Biden, by and through undersigned counsel, respectfully submits this Reply in support of his Motion *in limine* to exclude any reference to the pending tax charges and proceedings in California. (DE 135.) The Special Counsel argues that the “government should be allowed to cross examine the defendant regarding his truthfulness on his tax returns and to argue at closing from the evidence in the record that the defendant lied on his taxes and is not credible.” (DE 168 at 1.) This is incorrect. At this stage, the charges against Mr. Biden in California are just that—charges. Thus, they ought not be mentioned in the Delaware case. If the Special Counsel wants to ask Mr. Biden, should he testify, about the issues underlying the California charges, that turns the Delaware case into the yet-to-be-tried California case. Moreover, if this occurs, Mr. Biden will have to be allowed to discuss what the prosecutors preceding the Special Counsel said about the facts of the tax years in question and why no charges were brought.

The Special Counsel has not proven the tax charges, and “the indictment is not evidence.” *United States v. McDade*, 28 F.3d 283, 301 (3d Cir. 1994). Thus, the allegations in the California indictment are not “probative of the character for truthfulness or untruthfulness” (Fed. R. Evid. 608(b)); the allegations are not probative of anything at all. Thus, reference to the tax charges and proceedings in California should not be admissible to impeach Mr. Biden’s credibility.

Finally, the probative value of such a cross-examination is dwarfed by the risk of unfair prejudice—as the California indictment is not evidence and Mr. Biden has a Fifth Amendment right against self-incrimination—and confusion of the issues. Fed. R. Evid. 403. The Special Counsel explicitly stated that he wants to “argue at closing from the evidence in the record that the defendant lied on his taxes” (DE 168 at 1), which will lead the jury to believe that whether or not Mr. Biden lied on his taxes is an issue they must consider. The phrase “mini-trial” is used a lot in litigation, but this is the exact type of mini-trial on a collateral issue that court have cautioned

against. *See, e.g., Johnson v. City of Philadelphia*, 2018 WL 11053491, at *2 (E.D. Pa. July 20, 2018) (granting motion *in limine* precluding evidence concerning sufficiency of police department’s investigation because its admission “will create a mini-trial on the collateral issue of [the police’s investigation] . . . and distract the jury”).

Accordingly, Mr. Biden respectfully requests that this Court grant his Motion *in limine* to exclude any reference to the pending tax charges and proceedings in California.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May, 2024, I filed the foregoing Reply in support of Motion *in Limine* with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all counsel of record.

/s/ Abbe David Lowell
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