

**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 CONCERNING HIS RULE 33 MOTION FOR A NEW TRIAL ON
ALL COUNTS FOR LACK OF JURISDICTION**

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Referencing the procedure used by the Clerk of the Third Circuit explained in the Special Counsel’s opposition, Mr. Biden withdraws his Rule 33 motion for a new trial based on the absence of a mandate. Federal Rule of Appellate Procedure 41(b) requires that a mandate “must issue” within seven days after certain decisions concerning an appeal have passed, while noting that a Court of Appeals can “shorten or extend the time [for doing so] by order.”¹ The Third Circuit usually does the same, issuing a mandate after an appeal has been dismissed for lack of jurisdiction.

However, no mandate was issued by the Third Circuit. Instead, the Clerk of the Court’s signature block, not the Order itself, contains “Certified Order Issued in Lieu of Mandate” language. As it appears that the Third Circuit views issuing a certified order “in lieu” of a mandate as compliant with Rule 41’s procedure for shortening the time for issuance of a mandate, Mr. Biden withdraws his motion.

Dated: July 9, 2024

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Respectfully submitted,

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¹ Consistent with Rule 41, the Ninth Circuit, for example, dismissed Mr. Biden’s appeal on May 14, 2024, denied his petition for rehearing and rehearing en banc on June 25, 2014, and then issued its mandate on July 3, 2024. Case No. 24-2333, Dkt. 19.1

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2024, I filed the foregoing reply 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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