



emptywheel, LLC
1321 Upland Dr. #7594
Houston, TX 77043

emptywheel.net

January 22, 2024

The Honorable Maryellen Noreika
J. Caleb Boggs Federal Building
844 N. King Street
Unit 19
Room 4324
Wilmington, DE 19801-3555

Re: Request for unsealing of dockets and warrants identified in US v. Biden 1:23-cr-00061 Docket 68 at 7-8

Dear Judge Noreika:

I am an independent journalist with 17 years experience covering federal trials. I have been covering the proceedings in US v. Biden 1:23-cr-00061.

I respectfully submit this letter to seek an order unsealing materials related to searches conducted in this case. Specifically, I request that the Court unseal the dockets and search warrants described in Special Counsel's response to Mr. Robert Hunter Biden's selective and vindictive prosecution claim, docket 68 at 7-8.

That filing identifies four warrants that provided the legal basis to seize electronic communications the filing attributes to Mr. Biden, listed in the table below.

Special Counsel describes the month and date of the first warrant, along with the subject offenses: "tax violations." The filing describes the subject offenses for the most recent warrant, "federal firearms violations," but does not describe the month or year (by docket number, it appears to date to last year). It provides less detail, beyond the docket number, about the other two warrants, though public reporting, including congressional testimony from IRS Supervisory Special Agent Gary Shapley, dates the warrant

Wheeler 2

for a laptop to December 13, 2019 and the follow-up iCloud warrant to sometime before August 2020, when investigators received the returns.¹

Docket	Month	Year	Items to be searched	Subject Offenses
DE Case No. 19-234M	August	2019	Apple iCloud	“tax violations”
DE Case No. 20-165M	Not described	Not described	Apple iCloud	Not described
DE Case No. 19-309M	Not described	Not described	Laptop left at computer store	Not described
DE Case No. 23-507M	Not described	Not described	Apple iCloud content	“federal firearms violations”

I make this request pursuant to the public’s right of access to judicial records, grounded in both the federal common law and the First Amendment.

The Third Circuit has held that “the existence of a common law right of access to . . . inspect judicial records is beyond dispute.” *Publiker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1066 (3d Cir. 1984). This right “attaches to any document that is considered a ‘judicial record,’ which ‘depends on whether [the] document has been filed with the court, or otherwise somehow incorporated or integrated into a district court’s adjudicatory proceedings.’” *United States v. Wecht*, 484 F.3d 194, 208 (3d Cir. 2007) (quoting *In re Cendant Corp.*, 260 F.3d 183, 192 (3d Cir. 2001)). By identifying these warrant dockets and discussing their timing and subject offenses in the response filing, Special Counsel has made the warrant dockets and scope a judicial record.

The public has a particularly strong interest in transparency regarding the scope and timing of the searches involving content attributed to Mr. Biden. The investigation has been the subject of sustained congressional inquiry since April 2023 and is one prong of an impeachment inquiry authorized by the House of Representatives on December 13, 2023.² These warrants have been one topic of that inquiry. Not only have Mr. Shapley and IRS Special Agent Joseph Ziegler described the circumstances of these warrants, but they have provided filter terms and selected content obtained with the warrants.³

In response to an email request, Special Counsel has declined to provide more information on the timing of these warrants, specifically whether the warrant to search Mr. Biden’s electronic communications for

¹ See Transcript, Gary Shapley, House Ways and Means Committee, May 26, 2023, at 14 and Exhibit 6; available at https://waysandmeans.house.gov/wp-content/uploads/2023/06/Whistleblower-1-Transcript_Redacted.pdf.

² H.Res. 918, December 13, 2023.

³ See Shapley Transcript at 14, 159-163, and Exhibit 11; Statement of Joseph Ziegler, House Ways and Means Committee, Joseph Ziegler’s Affidavit 3, September 8, 2023; Exhibit 315C: Appendix A – Laptop Filter Keywords for Laptop Filter; and Exhibit 402, Example of WhatsApp Message between Hunter Biden and James Biden, available at <https://waysandmeans.house.gov/event/meeting-on-documents-protected-under-internal-revenue-code-section-6103-2/>.

Wheeler 3

evidence of firearms violations precedes or post-dates the indictment charging firearms offenses obtained on September 14, 2023. I have had no contact with Mr. Biden or his attorneys regarding this request.

At this time, I am not seeking to unseal the affidavits supporting the warrants. I request an order unsealing only the dockets themselves, the warrants, and Attachments A and B to those warrants, with appropriate redactions to protect investigative personnel and interests.

If Your Honor is not the appropriate person to whom to address this request, I respectfully request that I be redirected to the appropriate chambers.

I appreciate the Court's consideration of this matter. Please do not hesitate to contact me at +1-734-332-1652 or emptywheel@gmail.com.

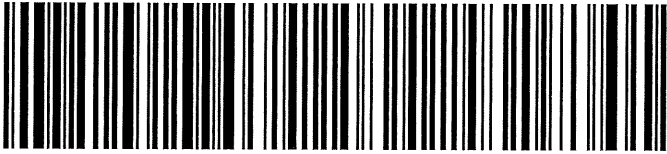
Respectfully submitted,

A handwritten signature in black ink, consisting of a long, sweeping horizontal line that curves slightly upwards at the left end and ends in a small hook at the right end.

Marcy Wheeler
emptywheel.net

cc via email: Counsel of Record

712533X1X1XPRI

E	PRIORITY MAIL EXPRESS U.S. POSTAGE PAID C2M eVS
PRIORITY MAIL EXPRESS®	
emptywheel@gmail.com emptywheel, LLC 1321 Upland Dr #7594 Houston, TX 77043 WAIVER OF SIGNATURE REQUESTED The Honorable Maryellen Noreika J. Caleb Boggs Federal Building 844 N King St Unit 19 RM 4324 Wilmington, DE 19801-3519	
USPS TRACKING # eVS  9270 1901 5266 1900 1966 1839 78	

