

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

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

**MR. BIDEN'S NOTICE OF SUPPLEMENTAL AUTHORITY:  
THE SMIRNOV INDICTMENT**

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Mr. Biden files this notice of supplemental authority in support of his motion to dismiss for selective and vindictive prosecution and his motion for discovery. (DE 63, 64.) When Mr. Biden filed his reply briefs, he noted that the Special Counsel had indicted Alexander Smirnov for making false bribery allegations against Mr. Biden and his father, President Biden. (DE 89 at 4–5 (citing *United States v. Smirnov*, No. 2:24-cr-00091-ODW (C.D. Cal. unsealed Feb. 15, 2024).) Mr. Biden noted that the Special Counsel stated it began investigating Smirnov’s claims in July 2023, which coincided with the urging of extremist Republicans for such actions, despite FBI and DOJ officials previously concluding they were baseless thirty-four months earlier and closing the investigation in August 2020. Now there is additional information supporting Mr. Biden’s motions.

Although the Special Counsel claims that its investigation of Smirnov’s fantastical claims about Mr. Biden and President Biden receiving millions of dollars in bribes began in July 2023, Mr. Weiss and his team became aware of Smirnov’s claims years earlier. In October 2020, the FBI and then-U.S. Attorney Scott Brady (W.D.P.A.) passed Smirnov’s allegations to then-U.S. Attorney Weiss, and the Delaware U.S. Attorney’s Office was briefed on the claims contained in the now infamous FD-1023 alleging a fabricated foreign bribery scheme involving Mr. Biden and his father.<sup>1</sup> Again, the FBI and DOJ had closed this investigation in August 2020 because they found Smirnov’s allegations baseless, and Mr. Weiss apparently agreed because he took no action based on them for over three years.

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<sup>1</sup> Transcribed Interview of Scott Brady before the H. Judiciary Comm. (Oct. 23, 2023) at 21, 27–30, 35. Following the unsealing of the *Smirnov* indictment, House Judiciary Committee Ranking Member Jerrold Nadler urged the DOJ Inspector General to investigate former U.S. Attorney Brady for providing false or misleading testimony to the Committee by repeatedly claiming that he had vetted and found credible statements made by Smirnov, whose allegations have turned out to be complete fabrications. See Letter to Hon. Merrick Garland and Hon. Michael E. Horowitz from J. Nadler (Feb. 22, 2024).

Then, in May 2023, it is uncontradicted that extremist Republicans in the House of Representatives pushed for the FBI (even threatening to hold its Director in contempt of Congress) to release the FD-1023 in an effort to publicly air these sensational allegations against Mr. Biden and President Biden, despite those allegations being baseless. Against its wishes, the FBI relented in July 2023.<sup>2</sup> With extremist Republicans and right-wing press outlets reviving interest in Smirnov’s claims, the Special Counsel apparently reopened its investigation days or weeks later. By the end of that month (July), the then-U.S. Attorney’s Office, instead of addressing with Mr. Biden’s counsel the specific questions this Court asked on July 26, instead abruptly backed away from a Plea Agreement that it signed and proposed to this Court and reneged on the Diversion Agreement. The connection between the reopening of the Smirnov allegations and the then-U.S. Attorney’s Office’s total rejection of the Agreement it made has, at the least, the appearance of catering to the shouts of extremist Republicans to scuttle the deal and keep an investigation into Mr. Biden alive.

From the filings in *Smirnov* and other disclosures, it turns out that a Russian intelligence operation has the same goal of spreading disinformation to influence the U.S. presidential election in Russia’s favor. At a subsequent detention hearing in Smirnov’s case, Mr. Wise explained that Smirnov “met with Russian intelligence agencies on multiple occasions, and the U.S. intelligence community has concluded that Russian intelligence interfered in the 2020 election and continues to interfere in our elections by spreading misinformation.” *United States v. Smirnov*, No. 2:24-MJ-00166-DJA (D. Nev. Feb. 20, 2024) (Ex. 1 at 20). Mr. Wise explained that Smirnov’s “disinformation story” is part of a Russian intelligence operation “aimed at denigrating President

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<sup>2</sup> Annie Grayer et al., *Grassley Releases Internal FBI Document About Unverified Biden Bribery Allegations*, CNN (July 20, 2023).

Biden” and “supporting former President Trump.” *Id.* at 20–21, 33. Russia’s support of President Trump makes sense, as President Trump has praised the dictatorship of President Putin repeatedly and he continues to favor Russia over U.S. allies. *See, e.g.,* Kate Sullivan, *Trump Says He Would Encourage Russia To ‘Do Whatever The Hell They Want’ To Any NATO Country That Doesn’t Pay Enough*, CNN (Feb. 11, 2024). The Special Counsel told the Nevada Court: “The effects of Smirnov’s false statements and fabricated information continue to be felt to this day.” *Smirnov*, DE 15 at 8 (Ex. 2 at 8); *see also* Govt’s Memo. in Support of App. for Review of Bail Order, *United States v. Smirnov*, No. 2:24-cr-00091-ODW, DE 11 (C.D. Cal. Feb. 21, 2024) (Ex. 3).

This case illustrates the very continuing harm identified by the Special Counsel. The Special Counsel tells us Russian intelligence sought to influence the U.S. presidential election by using allegations against Hunter Biden to hurt President Biden’s reelection.<sup>3</sup> And what did the now-Special Counsel do? The Office abandoned the Agreement it signed and filed felony gun and tax charges against Mr. Biden in two jurisdictions, which public records and DOJ policy indicate are not brought against people with similar facts as Mr. Biden. In these actions, the Special Counsel has done exactly what the Russian intelligence operation desired by initiating prosecutions against Mr. Biden. The chain of events that is only partially revealed by the public filings supports the conclusion that the Special Counsel found some pretext to renege on the Agreement it signed, actually caved to political pressure in doing so, and brought unprecedented

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<sup>3</sup> In fact, it has been reported that the specific ask that was passed on to law enforcement by former President Trump’s personal attorney and advisor, Rudy Giuliani, was to initiate a tax investigation of Mr. Biden. *See* Adam Entous, *The Ukrainian Prosecutor Behind Trump’s Impeachment*, *The New Yorker* (Dec. 16, 2019) (in January 2019, Ukrainian prosecutor general Yuriy Lutsenko suggested to Mr. Giuliani “that U.S. authorities could interview Hunter and [Devon] Archer. ‘Did they pay taxes in America?’”). That request was then passed to the U.S. Attorney in Pennsylvania, and that same month (January 2019), the Delaware U.S. Attorney’s Office opened an investigation into Hunter Biden. *Opening Statement of Testimony of IRS Special Agent Joseph Ziegler*, H. Comm. on Oversight & Accountability (July 19, 2023) at 6–7.

charges—all originating with the now-revealed and totally discredited Russian disinformation campaign given to two U.S. Attorneys' Offices and fueled by operatives of former President Trump, knowingly or blind to the fact that they were carrying out the plan of Russian intelligence. In viewing the pending motion to dismiss for selective and vindictive prosecution (or what would be revealed by the discovery being sought if dismissal is not now clear), this Court must take into account these new revelations and grant the motions.

Dated: March 11, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of March, 2024, I filed the foregoing 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  
Abbe David Lowell

*Counsel for Robert Hunter Biden*