

DAVID WEISS' FBI FARA HEADFAKE TO CREATE A HUNTER BIDEN TAX MULLIGAN

Last week, CNN reported that the President's brother, James Biden, is among some number of people who have received a grand jury subpoena for ongoing investigations into Hunter Biden. The investigative steps are unsurprising. As I noted, David Weiss spoke with Los Angeles US Attorney Martin Estrada on September 19 of this year about something that "goes to an ongoing investigation."

According to materials released by Joseph Ziegler, the IRS interviewed James Biden on September 29, 2022, the last interview in the investigation before the failed plea deal. He was asked about a range of topics: a payment he received from Owasco before he was working with them, his and Hunter's interactions with CEFC, Hunter's relationship with Kevin Morris, and about several dodgy people whom Hunter paid in 2018 – payments he wrote off on his taxes. Prosecutors had discussed at least two of those people with Hunter's legal team during the summer in 2022.

James Biden's September 2022 interview was voluntary, suggesting investigators obtained any documents discussed in the interview – all but two of which appear to predate April 2019, and so might be among the non-Google materials that investigators first obtained from the laptop provided by John Paul Mac Isaac – via other means, including the laptop and warrants obtained downstream of the laptop. Again, any Google content is an exception to this; it appears the IRS obtained the first Google warrant for Hunter's Rosemont Seneca account before getting the laptop, but it also appears that the government did not obtain things normally available in a Google warrant—such as

attachments and calendar notices—with that warrant and so instead relied on the laptop.

As CNN describes, thus far the subpoenas seek documents; it's unclear whether anyone (besides someone from the new IRS team put on the case after Weiss removed Gary Shapley and Joseph Ziegler) has or will testify in person. There are certainly documents that the IRS didn't seem to have in last year's interview with James Biden, such as details of his trips to California in 2018 to try to save his nephew from the throes of addiction.

But it's also possible Weiss is using subpoenas to obtain records that otherwise would be tainted by the laptop.

When Estrada testified to the House Judiciary Committee about the recommendations about this case his senior prosecutors made in three different reports, recommendations he adopted and conveyed to Weiss in a call on October 19, 2022, he referenced Justice Manual rules. "We look at whether a Federal offense has been committed and whether we believe that there is admissible evidence sufficient to prove to an unbiased trier of fact that an individual has committed an offense beyond a reasonable doubt." So the quality of evidence obtained in this investigation could be one reason Estrada's career prosecutors advised him not to partner on this case.

The details about a renewed investigation into Hunter Biden are not surprising – Estrada's testimony already suggested as much.

More interesting, however, is CNN's report that the FBI has completed its part of the investigation, pertaining to FARA and money laundering, and expects no charges.

The FBI, which oversaw the money laundering and FARA portions of the investigation, concluded its findings and didn't anticipate charges to emerge from those allegations, people briefed on the matter told CNN.

That's important because potential FARA charges are the reason why this case didn't end in a plea in July – or at least, the excuse David Weiss and his sheep-dipped prosecutor, Leo Wise, referenced to sustain a claim that the investigation was ongoing.

On July 10, in the wake of a Republican uproar about the Hunter Biden plea deal and public comments from Bill Barr about the FD-1023, Weiss told Lindsey Graham that the allegations of bribery Mykola Zlochevsky made, after outreach from Rudy Giuliani and sometime around when Bill Barr's DOJ dropped their investigation of him, "relate to an ongoing investigation." That was probably the second clue that Hunter's legal team got that the investigation they believed had concluded remained (re)open – the first being Weiss' press release on the charges on June 20. And in the failed July 26 plea hearing, a potential FARA charge is the specific criminal exposure Leo Wise raised which led Hunter to plead not guilty to a deal significantly negotiated by Delaware AUSA Lesley Wolf.

THE COURT: All right. So there are references to foreign companies, for example, in the facts section.

Could the government bring a charge under the Foreign Agents Registration Act?

MR. WISE: Yes.

THE COURT: I'm trying to figure out if there is a meeting of the minds here and I'm not sure that this provision isn't part of the Plea Agreement and so that's why I'm asking.

MR. CLARK: Your Honor, the Plea Agreement –

THE COURT: I need you to answer my question if you can. Is there a meeting of the minds on that one?

MR. CLARK: As stated by the government

just now, I don't agree with what the government said.

THE COURT: So I mean, these are contracts. To be enforceable, there has to be a meeting of the minds. So what do we do now?

MR. WISE: Then there is no deal.

Leo Wise refused to agree that FARA charges were off the table, even though – if you believe Abbe Lowell's version of events – Lesley Wolf led Hunter's team to understand, weeks earlier, that FARA charges were off the table. And based on that, Hunter refused to plead guilty.

That's what gave David Weiss the opportunity to ask to be made Special Counsel: a claim, made after he had already filed tax and a gun charge on June 20, that he was still pursuing an investigation tied to the FD-1023, which would be bribery and money laundering. That's what led to the three felony gun charges for owning a gun for 11 days in 2018. And that's what led to a renewed investigation in Los Angeles. And now, David Weiss is using a Los Angeles grand jury to obtain evidence from James Biden that he didn't think he needed a year ago.

That potential FARA charge is the excuse Weiss used to limit a deal his office had entered into a month earlier. And now, less than two months into any new investigative focus in Los Angeles, CNN says the evidence doesn't support FARA charges. That's not surprising. Joseph Ziegler and Gary Shapley released numerous documents showing Weiss' team discarded various FARA theories months and years ago (though a CEFC theory was still active as of July 2022).

But it means, at least per CNN, the rationale Weiss and Wise used to sustain the investigation proved short-lived.

That's important background to Hunter Biden's request for subpoenas for Trump and others in advance of pretrial motions that Hunter Biden

will likely file next month, which I will discuss in more length in a follow-up. Contrary to what some smart commentators, like Popehat, have repeatedly argued, there's no reason to believe Biden is pursuing this "to develop more evidence that Trump people have it in for him that he can use in future prosecutions," if Trump returns to the presidency.

Indeed, Abbe Lowell said these subpoenas are, "relevant and material to a fundamental aspect of issues in his defense that will be addressed in pre-trial motions."

Lowell further explained he needs the subpoenas to figure out whether Weiss' "change of heart" regarding charges was a "response to political pressure."

From a Fifth Amendment perspective, it is essential for Mr. Biden to know whether anyone improperly discussed, encouraged, endorsed, or requested an investigation or prosecution of him, and to whom and under what circumstances. The information sought would demonstrate that fact. This is especially true in light of the fact that no new evidence related to these charges emerged between June 20 (when the plea deal was first presented to the Court) and July 26 (when the prosecution reneged on its deal), and in fact only more favorable case law on this issue has developed since then.¹⁸ Thus, the prosecution's change of heart appears to be in response to political pressure, rather than anything newly discovered in the investigation of Mr. Biden. Because such evidence, only some of which has been disclosed already, would tend to undermine the prosecution's allegation that this case was free from any political inference and was not of a selective or vindictive nature, Mr. Biden's requests are relevant and material under the requirements of Rule

17(c). [my emphasis]

I imagine that if David Weiss is ever forced to explain what led to the head fake with the plea, he will claim that it had to do with the way he tried to sheep dip the investigation after he decided to charge the case even in spite of Shapley and Ziegler's efforts to force the issue.

Last December, according to IRS Director of Field Operations Michael Batdorf's September 12 testimony, Batdorf and Darrell Waldon made the decision to remove Shapley and Ziegler from the Hunter Biden investigation. They didn't implement it, though, until May, after and because Weiss decided he would charge the case, at which point the IRS assigned a completely new team.

Having an objective set of eyes – complete objective set of eyes on the case where the new investigative team came in and the case is good, the evidence is good, that was something that we just said, let's – we removed the cooperating revenue agent that was doing tax calculations. We just got an entire new investigative team in there.

[snip]

My concern was the opposite, that if they remained on the case, the case would not go forward

[snip]

It was my interpretation from the phone conversation that we had in December [with Weiss] that there were concerns with the investigation and investigative team, and adding up all those concerns, so having a harder time jumping over that, you know, moving forward with this prosecution.

He never specifically stated that we had to remove the investigative team. He

stated that he does not control IRS resources, and he understands that. But part of the concern of moving forward was our investigative team.

[snip]

There was no more investigative activities to take. We can get this to prosecution with a new investigative team.

Partly, this may have just been an effort to avoid having to provide Jencks material, some of which Ziegler and Shapley have since already provided Congress. Even last year, Weiss recognized that Ziegler couldn't present the revenue assessments at trial that he has spent months sharing with Congress. With a new IRS team, Weiss has secured witnesses who can take the stand without requiring that Weiss share documentation of an obsession with charging Hunter Biden and, frankly, of including his father in the investigation.

It may also be an attempt to insulate any charges from a claim that a law enforcement official found by his supervisor to be making, "unsubstantiated allegations [about Weiss] of motive, intent, and bias" had forced a prosecutor's decision. After which Shapley and Ziegler have spent months trying to do just that!

But it may not have been just the IRS team. Batdorf described that there had also been a change in AUSA, which would include Lesley Wolf, around the same time.

A It's my understanding that there had been a change in the AUSA, the prosecution team.

Q And when was the change made? Do you know?

A I believe that was made in roughly – I think it was May or June of this year when we decided to move forward with the

investigation.

When staffers asked FBI Special Agent in Charge Thomas Sobocinski in his September 7 interview the same question, he wasn't sure whether that was true or not. "I don't know that your statement is factually correct," Sobocinski responded to an investigator asking why she had been taken off pleadings.

What Sobocinski did know, however, was that Lesley Wolf had received threats. It's "fair" to say that "she may have concerns for her own safety," Sobocinski agreed.

Weiss might argue that once Leo Wise took over as AUSA – if that's what happened – then Weiss left prosecutorial decisions to Wise as a way to insulate charges from claims (made by the IRS agents trying to force more serious charges) that Wolf was biased.

The problem with that is that, on June 7, Lesley Wolf sent out what appears to be the final language on the immunity agreement tied to the plea deal.

Over the course of a few more emails, lawyers on both sides kept line-editing the deal. And on June 7, Wolf sent Clark a version that included the final language shielding Biden from future charges. The language is technical, but it would have immense consequences. Here it is in full:

"The United States agrees not to criminally prosecute Biden, outside of the terms of this Agreement, for any federal crimes encompassed by the attached Statement of Facts (Attachment A) and the Statement of Facts attached as Exhibit 1 to the Memorandum of Plea Agreement filed this same day. This Agreement does not provide any protection against prosecution for any future conduct by Biden or by any of his affiliated businesses."

The language refers to two different statements of facts; one would accompany the guilty plea and the other would accompany the pretrial diversion agreement. Together, the two statements included substantial detail about the first son's business dealings and drug use. The statements highlighted his time on the boards of a scandal-dogged Ukrainian energy company and a Chinese private equity fund, as well as his business venture with the head of a Chinese energy conglomerate. Wolf included those statements in her June 7 email.

Wolf was still on the prosecutorial team – and negotiating a plea deal that would have ruled out FARA charges – on June 7.

That's the same day Weiss sent the first response, to a May 25 letter Jim Jordan sent Merrick Garland about the IRS agents' complaints of being removed from the investigation. In it, he cited Rod Rosenstein's explanation to Chuck Grassley in 2018 how congressional interference might politicize an investigation (in that case, the Mueller investigation).

The information sought by the Committee concerns an open matter about which the Department is not at liberty to respond. As then-Deputy Attorney General Rod Rosenstein wrote in 2018 in response to a request for information from the Honorable Charles Grassley, Chairman of the Senate Committee on the Judiciary:

Congressional inquiries during the pendency of a matter pose an inherent threat to the integrity of the Department's law enforcement and litigation functions. Such inquiries inescapably create the risk that the public and the courts will perceive undue political and Congressional influence over law

enforcement and litigation
decision.

Less than two months after telling Grassley to butt out, or the public would believe the Mueller investigation faced undue political influence, Rosenstein would grovel to keep his job, assuring President Trump he could “land the plane.” In practice, the reference was not exactly a guarantee of prosecutorial independence, but if Weiss hoped Jordan would understand that, the all-star wrestler didn’t take the hint that corn farmer Grassley took to heart.

Weiss might *claim* that he replaced Wolf with Wise and in the process had Wise reassess the prior prosecutorial decisions. But, given the date of that letter, there was never a moment he had done so before the political pressure started. David Weiss cannot claim he did so before being pressured by Jim Jordan.

And Jordan’s letter wasn’t the only political pressure. On the same day that Weiss said he couldn’t share information – the likes of which Shapley had already started sharing – because it might politicize an ongoing investigation, Bill Barr (one of the people Lowell wants to subpoena) publicly intervened in the case, insisting the FD-1023 recording Mykola Zlochevsky making a new allegation of bribery had been a live investigative lead when it was shared with Weiss in October 2020, the FD-1023 Weiss specifically said he could not address because it was part of an ongoing investigation.

On a day when Lesley Wolf remained on the case, both Jordan and Barr had already intervened. And because there was never a time that Weiss had replaced Wolf with Wise before the political pressure started, there was little time he had done so before the physical threats followed the political pressure.

In fact, when Congressional staffers asked Sobocinski whether he and David Weiss spoke

about Shapley and Ziegler's testimony after it went public on the day the plea deal was announced, Sobocinski described that both agreed that Shapley's testimony would have an effect on the case. "We both acknowledged that it was there and that it would have had it had an impact on our case." But that effect was, to a significant extent for Sobocinski, about the threats that not just investigators, but also their family members, were getting.

I am solely focused on two things, and they're not mutually exclusive. The first thing is, like every investigation, I want to get to a resolution in a fair, apolitical way. The second thing, and it's becoming more important and more relevant, is keeping my folks safe. And the part that I never expected is keeping their families safe. So that, for me, is becoming more and more of a job that I have to do and take away from what I was what I signed up to do, which was investigate and do those things. So when you talk about potential frustrations with communication, I am personally frustrated with anything that places my employees and their families in enhanced danger. Our children, their children didn't sign up for this.

In Weiss' testimony to HJC, he described threats too. But unlike Sobocinski, he may not have pointed to the effect Shapley's now debunked claims had in eliciting them.

Weiss said people working on the case have faced significant threats and harassment, and that family members of people in his office have been doxed.

"I have safety concerns for everybody who has worked on the case," he said.

He added that he doesn't know what motivates the people who have threatened his team.

"I've certainly received messages, calls, emails from folks who have not been completely enamored of my – with my role in this case," he added, noting that he is also concerned for his family's safety.

Weiss' testimony that he wasn't sure what motivated the people who threatened his team may not help him insulate his case, because Shapley's testimony likely *wasn't* the only likely source of threats.

Among the things Lowell cited in his request for subpoenas were the four Truth Social posts Trump made between the plea deal first was posted and the day the plea failed, one of which criticized Weiss by name and called for Hunter Biden's death.

Trump Truth Social posts on June 20, 2023:

- *"Wow! The corrupt Biden DOJ just cleared up hundreds of years of criminal liability by giving Hunter Biden a mere 'traffic ticket.' Our system is BROKEN!"*
- *"A 'SWEETHEART' DEAL FOR HUNTER (AND JOE), AS THEY CONTINUE THEIR QUEST TO 'GET' TRUMP, JOE'S POLITICAL OPPONENT. WE ARE NOW A THIRD WORLD COUNTRY!"*
- *"The Hunter/Joe Biden settlement is a massive COVERUP & FULL SCALE ELECTION INTERFERENCE 'SCAM' THE LIKES OF*

WHICH HAS NEVER BEEN SEEN IN OUR COUNTRY BEFORE. A 'TRAFFIC TICKET,' & JOE IS ALL CLEANED UP & READY TO GO INTO THE 2024 PRESIDENTIAL ELECTION. . . ."

Trump Truth Social post on July 11, 2023:

"Weiss is a COWARD, a smaller version of Bill Barr, who never had the courage to do what everyone knows should have been done. He gave out a traffic ticket instead of a death sentence. Because of the two Democrat Senators in Delaware, they got to choose and/or approve him. Maybe the judge presiding will have the courage and intellect to break up this cesspool of crime. The collusion and corruption is beyond description. TWO TIERS OF JUSTICE!"⁹ [my emphasis]

There is, thanks in significant part to Jim Jordan, abundant documentation that between the time Lesley Wolf first sent out language seemingly promising Hunter Biden he would not be charged with FARA and the time Leo Wise told Judge Maryanne Noreika that he still could be, Republicans started pressuring David Weiss about his decisions. Thanks to Jordan, there are also multiple witnesses who have described that between the time Lesley Wolf shared immunity language and the time when – Abbe Lowell claims – David Weiss reneged on that language, the investigative team started having to fend off credible threats, not just to themselves, but also their family members.

To be sure, between the time Hunter's lawyers made clear they planned to argue Weiss reneged

on a deal and the time Lowell asked for subpoenas, in part, "possibly as impeachment of a trial witness," Weiss testified that he always planned on continuing the investigation.

At the time, Biden's lawyers signaled that the deal meant the Justice Department's probe of the president's son was over. But, according to Weiss, the investigation hadn't ended at that point.

"I can say that at no time was it coming to a close," he said. "I think, as I stated in the one statement I made at the time, the investigation was continuing. So it wasn't ending there in any event."

Yet according to CNN, two months after Weiss spoke to Estrada, seemingly to renew investigative activity in Los Angeles, any FARA investigation has ended. Instead, Weiss appears to be conducting new investigative steps in the tax case, investigative steps that started a *week after* IRS' head of Field Operations testified that he understood "there was no more investigative activities to take."

Both David Weiss and Leo Wise have publicly suggested that the ongoing investigation which Weiss insisted to Congress had always been planned was FARA or bribery related. That claim seems to have served no other purpose than to have given themselves a chance to reconsider tax charges both once claimed could be settled with misdemeanor charges.

Update: Batdorf link corrected.