

SMIRNOV AND [A]BLOW

There should be a slew of Hunter Biden filings coming in today, most in CA.

I'll post them here until I do a longer read.

But they've filed their first one – a reply on their motion to compel – that we can have fun with in the meantime.

Hunter's lawyers mock David Weiss, first, for mistaking sawdust for cocaine (they cite me), and then raise the arrest of Alexander Smirnov.

The Smirnov bit is the more important argument, because it makes the same (in my very humble opinion) compelling argument I did: That the renewed focus on the Smirnov allegations are probably what led David Weiss to renege on a plea deal.

Another development, just last week, further informs Mr. Biden's request for an now motion to compel discover. On February 15, 2024, Special Counsel David Weiss unsealed the remarkable indictment of former FBI informant Alexander Smirnov. *United States v. Smirnov*, 2:24-cr-00091-ODW (C.D. Cal.). The Special Counsel's indictment notes that Mr. Smirnov expressed his "bias" against President Biaden and was telling a farcical tale that Burisma, a Ukrainian company, enlisted Mr. Biden as an unregistered foreign agent and paid bribes to him and then-Vice President Biden that proved to be so outlandish and unsubstantiated that the FBI field team recommended its investigation be closed and the then-FBI Deputy Director and thenPrincipal Associate Deputy Attorney General (Richard Donoghue) agreed in August 2020. 3 (Id. DE1 at ¶ 40 ("Smirnov Indict.")). Nevertheless, with prodding from extremist Republican Members of Congress (who initiated an impeachment inquiry of President Biden

based on the same baseless allegations) and the right-wing media, the prosecution team that was already pursuing Mr. Biden resuscitated the baseless investigation of Mr. Smirnov's ridiculous claims against Mr. Biden thirty-four months later. (Id. ¶ 41.) It now seems clear that the Smirnov allegations infected this case, and why, on July 26, 2023, the Special Counsel answered as it did the Court's question about whether the Diversion Agreement's immunity provision would bar charges under the Foreign Agents Registration Act (7/26/23 Tr. at 55). 4

Lo and behold, some seven months later, the Special Counsel finally figured out that Mr. Smirnov was lying—which should have been obvious to everyone, certainly by August 2020 when DOJ closed the investigation. The Special Counsel charged Mr. Smirnov with lying and obstruction, but the more interesting part of this story is not that Mr. Smirnov lied. It is more remarkable that beginning in July 2023, the Special Counsel's team would follow Mr. Smirnov down his rabbit hole of lies as long as it did. (Smirnov Indict. ¶¶ 41–46.) Disclosure about why the Special Counsel abandoned its June/July 2023 agreements with Mr. Biden and the role played by the Smirnov allegations may reveal flaws worse than mistaking sawdust for cocaine.⁵ Despite the prosecution's strong words in its opposition to this motion, its actions demonstrate that the prosecution has gotten much wrong and provides good cause for Mr. Biden to question whether it has gotten its discovery obligations right.

3 Mr. Biden's DOJ requests (see *infra* at 18–19), as well as his Rule 17 subpoena requests (DE 58) seeking communications and records from, among others,

Principal Associate Deputy Attorney General Richard Donoghue and former U.S. Attorney for the Western District of Pennsylvania Scott Brady, bear directly on and are probative of the allegations in the Smirnov Indictment. The fact that Special Counsel Weiss handled the Smirnov investigation and is prosecuting the case makes Mr. Biden's requests all the more important.

4 The discussion about the scope of the immunity agreement appears shaped by the prosecution's investigation of the Smirnov allegations, which it began looking into just days before the July 26, 2023 hearing. (Smirnov Indict. ¶ 41 (noting the prosecution team began investigating Smirnov's claims in July 2023).) While a host of possible crimes had been investigated, the defense understood that the FARA/bribery investigation had been closed and that the only pending issues concerned gun and tax charges. The Diversion Agreement resolved the gun and tax charges, which is why defense counsel believed the immunity agreement covered everything and would conclude the investigation. The push back from the prosecution and its discussion of an "ongoing" investigation—apparently tied to the Smirnov allegations—came as a surprise to defense counsel. (7/26/23 Tr. at 50, 54.) Having taken Mr. Smirnov's bait of grand, sensational charges, the Diversion Agreement that had just been entered into and Plea Agreement that was on the verge of being finalized suddenly became inconvenient for the prosecution, and it reversed course and repudiated those Agreements.

5 The prosecution's outrage over criminal activity by those associated with its investigation remains rather selective. Last month, a former

government contractor working at the IRS, who unlawfully leaked private taxpayer information concerning former President Trump, was sentenced to five years in prison—a significant sentence for a serious crime. *United States v. Charles E. Littlejohn*, No. 23-cr-00343-ACR (D.D.C. 2023). Nevertheless, two IRS agents on the prosecution’s team investigating Mr. Biden blatantly and publicly did the same thing, on television no less, and yet they have not been prosecuted or even fired by the IRS. Mr. Biden raised the agents’ misconduct several times with the Inspector General and Mr. Weiss. Neither have yet acknowledged the complaint. Thus, Mr. Biden brought a civil action based on these agents’ misconduct and their agency’s failure to act. *Biden v. IRS*, No. 23-cv-02711-TJK (D.D.C. 2023). Still, however, neither the IRS nor the prosecution has taken action against them. Ironically, the same extremist Republican voices who now angrily complain that Mr. Trump’s leaker got off too easy simultaneously claim the two IRS agents who leaked confidential tax information concerning Mr. Biden should be hailed as courageous “whistleblowers.”

Chairman Jordan Opens Inquiry into DOJ’s Sweetheart Deal for Trump Tax Return Leaker, H. Judiciary Comm. (Feb. 8, 2024), <https://judiciary.house.gov/media/press-releases/chairman-jordan-opens-inquiry-dojs-sweetheartdeal-trump-tax-return-leaker>; Arjun Singh, Top GOP Rep Calls On More Whistleblowers To Come Forward, Pledges ‘Zero Tolerance’ For Retaliation, *Daily Caller* (July 19, 2023), <https://dailycaller.com/2023/07/19/jason-smith-irs-whistleblower-retaliation/>.

The prosecution’s various actions and inactions send the very message that Mr.

Biden's motions to dismiss allege—
misbehave when dealing with former
President Trump and there will be
consequences; do the same in the
unprecedented charges against Mr. Biden
and you will be praised.

This will be the last briefing Judge Maryellen
Noreika gets before deciding on the motions to
dismiss, so the timing of the Smirnov indictment
becomes important.

Anyway, I'll update when those other filings get
posted.