

# DAVID WEISS DONS HIS “LET’S GO BRANDON” FRAME

In a bid to defeat a motion in limine from Alexander Smirnov prohibiting mention of his nine lawfully owned guns, David Weiss’ prosecutors revealed that they only want to use the guns, if necessary, to prove ownership of *other* things found in a search of Smirnov’s home, including an anti-Biden hat.

On February 21, 2024, after securing a search warrant signed by United States Magistrate Judge Brenda Weksler, FBI agents executed a search of the defendant’s residence in Las Vegas. During the search, agents found nine firearms. Agents also found other items, including electronic devices, and other evidence, such as a hat emblazoned with an anti-Public Official 1 euphemism. These items are directly relevant to the charges in this case. For example, the government plans to introduce communications found on the defendant’s electronic devices that similarly evidence bias against Public Official 1. And the hat seized from his residence demonstrates the same bias, which bears on the defendant’s motive in providing the FBI with false derogatory information about Public Official 1, who was a candidate for President of the United States, in the months leading up to the 2020 election.

On one level, by all means, show us Alexander Smirnov’s Let’s Go Brandon hat! It’ll work wonders in Los Angeles!

On another level, I can’t help but think that David Weiss’ team has just given Smirnov (who might well get a pardon anyway after Trump is

inaugurated) a case for selective prosecution.

Smirnov, recall, is accused of lying to the FBI and in so doing causing the filing of a false report.

But these very same prosecutors – Derek Hines and Leo Wise – were *in the last year* faced with witnesses with an anti-Biden bias, the guy who sold Hunter Biden a gun in 2018 and the Delaware cop who first spoke to the gun shop owners, the former of whom (according to a filing from Abbe Lowell) similarly caused a false document to be filed, the gun purchase form to which his staffer belatedly added a claim that Hunter had provided a second form of ID when he purchased the gun. Hines and Wise have not charged *those people*, even though they reportedly sent WhatsApp texts during the 2020 election in an effort to publicize the gun purchase, the same kind of biased messages that Hines and Wise intend to submit to prove their case against Smirnov.

It also reveals a now-exposed attempt by the gun store to fabricate a false narrative about the gun sale. Palimere said the addition of the seller transaction serial number (“5,653”) may have been added on October 26, 2018. (TAB 4, Palimere FD-302 at 4). He said the vehicle registration reference was added in 2021. Yet, the government provided WhatsApp communications from October 2020 and February 2021 between Palimere, friends of his, and then-Delaware state trooper Vincent Clemons<sup>3</sup> (see TABs 6 – 6C), all of which refer to the form, a plan to send it to others, needing to get their stories straight about what occurred in 2020, and wanting the gun sale issue and the form exposed during the Presidential campaign.

<sup>3</sup> Not to be lost is the fact that Clemons was the Delaware State Police officer who first arrived at Janssens’ grocery store on October 23, 2018 when

Hallie Biden threw a bag containing the handgun into a trash can in front of the store. It was Clemons who took statements about the handgun from both Hallie and Hunter Biden and was part of filling out an official police report on the issue. Two years later, he is in the communications with Palimere about the Form 4473, one of which states: “Yep your side is simple – Hunter bought a gun from you, he filled out the proper forms and the Feds approved him for a purchase.” (emphasis added). Palimere later responded, “I’ll keep it short and sweet as well: Hunter bought a gun. The police visited me asking for verification of the purchase and that’s all I can recall from that day. It was over 2 years ago.” (TAB 6B, 10/26/20 Palimere-Clemons Texts at 4, 6.) The reference to filling out the “proper forms” is not lost on defense counsel given what transpired thereafter. And, despite the importance of Clemons (e.g., the person who actually took the statements), the Special Counsel is foregoing him as a witness to call two other Delaware officers instead.

I’m at a loss to imagine how Hines and Wise would distinguish the doctored gun form from the FD-1023 from Smirnov they claim is false. Both were an effort to criminalize the Biden family during the 2020 election. If anything, the retroactively doctored gun purchase form was more dangerous. And yet Hines and Wise charged Smirnov but didn’t charge the gun shop owner. Indeed, they successfully buried precisely the kind of texts showing bias they want to use against Smirnov.

This apparent double standard regarding doctored forms comes even as prosecutors are trying to prevent Smirnov from invoking Hunter’s failed plea hearing to claim (falsely) that Hunter got a sweetheart plea deal. In a filing signed by

Wise, prosecutors claim that Smirnov was not mentioned at Hunter's failed plea hearing, and so he would have no evidentiary reason to rely on the transcript.

[C]ontrary to the defendant's representation, in the 110 pages of transcript attached to his motion, there is not a single reference to (1) the defendant or this prosecution, (2) "the sitting President," (3) any accusations against the defendant, (4) the defendant's "loyal service" to the FBI, or (5) that the defendant was a "Russian Spy."

I asked Weiss' spox whether Leo Wise was *really* claiming that Smirnov went unmentioned. "We will decline to comment beyond our statements and filings in court," he replied.

But when Leo Wise responded to Judge Maryellen Noreika that, yes, even though Hunter Biden had been assured a month earlier there was no ongoing investigation, that *there was* in fact was an ongoing investigation,

THE COURT: All right. So you said there might be additional charges. Are you at liberty to tell us what you're thinking those might be or is that just a hypothetical that there might be?

MR. WISE: It was a hypothetical response to your question.

THE COURT: Is there an ongoing investigation here?

MR. WISE: There is.

THE COURT: May I ask then why if there is we're doing this piecemeal?

MR. WISE: Your Honor may ask, but I'm not in a position where I can say.

And then said he could still charge FARA violations,

MR. WISE: So I can tell you what I think we can't charge. I can't tell you what the ongoing investigation is. So, for instance, I think based on the terms of the agreement, we cannot bring tax evasion charges for the years described in the factual statement to the Plea Agreement. And I think we cannot bring for the firearms charges based on the firearm identified in the factual statement to the Diversion Agreement.

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.

And then got Special Counsel status that would only be required if Weiss were pursuing something implicating Joe Biden – like Smirnov's bribery claim – he almost certainly was invoking Alexander Smirnov.

Wise made that claim even while Smirnov was still fighting to obtain material on David Weiss' decision to chase the Smirnov allegation (there was a hearing on this yesterday, but nothing is docketed on it yet).

The Defendant requested communication related to the request that U.S. Attorney David Weiss's team "assist" with "an investigation of allegations" related to the FD-1023. The government refuses to produce this material and ignores that fact that the government chose to include the following language in the Indictment: "In July 2023, the FBI requested that the U.S. Attorney's Office for the District of Delaware assist the FBI in an investigation of allegations related to the 2020 1023. At

that time, the United States Attorney's Office for the District of Delaware was handling an investigation and prosecution of Businessperson 1." Accordingly, not only did the government, in its Indictment, place the communications at issue, it is clear that the communication are relevant and discoverable. This request has been outstanding since March 5, 2024.

And the apparent double standard comes as Smirnov is attempting to put the conduct of Smirnov's FBI handler – the guy who didn't take alarm when Smirnov sent him already debunked Fox News disinformation – at issue.

The dispute over the handler's conduct is taking two forms. First, prosecutors are trying to exclude Smirnov's expert witness Gregory Scott Rogers, a former FBI agent who would testify to errors that Smirnov's handler made. They're also trying to exclude the content of three reports on the handling of Smirnov.

It has, predictably, declined into a display of prosecutorial dickishness.

In their motion to exclude Rogers, for example, the same prosecutorial team who claimed sawdust was cocaine made much of the that Smirnov's expert witness said "upmost" instead of "utmost."

Next, the disclosure states, "A CHS providing the type and amount of information provided by Smirnov should be handled with the upmost [sic.] diligence." Disclosure at 5. According to Merriam-Webster, "upmost is frequently used as a mistaken spelling of utmost in its adjective and noun forms." <https://www.merriamwebster.com/grammar/utmost-vs-upmostdifference#:~:text=In%20its%20dictionary%20sense%2C%20upmost,its%20adjecti>

ve% 20and%20noun%20forms (last viewed by author on November 1, 2024). The government assumes that Rogers meant to say “utmost,” but the fact that he can’t even produce an error free disclosure speaks to the quality of his proposed testimony. In any event, like his opinion that the defendant was “poorly handled,” his opinion that the defendant should have been handled with the “upmost diligence” is also undefined. So what does “upmost diligence” mean? The disclosure doesn’t tell us.

Of course, these prosecutors aren’t above making their own typos, as when a filing signed by Leo Wise uses “again” instead of “against.”

For example, the government plans to introduce communications found on the defendant’s electronic devices that similarly evidence bias against Public Official 1.

Yet they want to treat far more significant errors made by Smirnov’s handler as “essentially ministerial errors.”

Among the errors documented in the Source Reports include getting Smirnov’s name and birth country wrong.

The reports are also critical to the defense, including based on the anticipated testimony of the Defendant’s noticed expert. For example, in the February 13, 2013, Field Office Annual Source Report, FOASR, the following deficiencies were noted:

1. The Handler failed to give the CHS extraterritorial travel admonishments;
2. The Handler allowed the CHS to conduct otherwise illegal activity, OIA, outside of approved time periods;
3. The Handler documented the CHS’s true

name in the wrong CHS subfile;

4. The Handler placed an unrelated CHS's NCIC record in this CHS's file;

5. The Handler identified the wrong country of birth for this CHS in his file;

6. The Handler failed to document appropriate receipts for payments to the CHS;

7. CHS was allowed to conduct personal international travel without appropriate approval and documentation in his file.

In a later Standard Validation Report covering 2013-2021 it was noted:

1. HA continued to fail to appropriately obtain approval and document CHS's international travel;

2. Derogatory information reported about the CHS and more unreported/undocumented otherwise illegal activity, OIA.

In the Source Validation Report for the period March, 2021-November, 2023 FBIHQ recommended that FBI Seattle, the office where the HA had transferred to from FBI San Francisco in 2019 and brought Smirnov's file with him, stop operating the CHS noting that they believed that the CHS was no longer fully under the HA's control, may be committing unauthorized illegal activity, UIA, and concern that the media's reporting of the CHS's information concerning the Biden family's influence peddling in Ukraine would vitiate his ability to continue to function as a CHS. In that same document, it was recommended that CHS be polygraphed. Based upon the records provided by the government, it does not appear that a polygraph of Mr. Smirnov was ever scheduled or conducted.



Smirnov claims he can prove that he said and did things with his handler that did not get documented. If he *can* prove that, then it's going to be hard for prosecutors to prove that Smirnov's claims are lies rather than that the FBI agent fucked up.

That said, there's something more interesting about the validation reports on Smirnov: They go through November 2023 *and still treat him as a viable informant*. November is when, on November 7, David Weiss said the Brady side channel would only appear in his final report. November is when, on November 15, Abbe Lowell asked for discovery on the side channel. And November is when, on November 16, CNN reported that the FBI had dropped its pursuit of FARA and bribery allegations.

Smirnov's lawyers are right there's a tie between how Hunter Biden was treated and why he was charged. But they've got the emphasis wrong.

All the evidence suggests that prosecutors had to charge him or risk their Hunter Biden case too.

## **Filings**

September 26: Smirnov motion to continue

September 27: Weiss response on motion to continue

October 14: Smirnov warns of motion to compel

- March 5 discovery letter asking for communications involving Pittsburgh
- May 28 discovery letter reiterating request for all FD-1023s
- August 28 discovery letter asking for request Hunter Biden made of State
- September 27 letter asking

(among other things) for all  
FD-1023s from Smirnov and  
his handler

- October 2 email following up  
on discovery requests

October 15: Judge Otis Wright denies continuance

October 28: Government response to discovery

- April 5 discovery letter
- August 13 Ken Vogel story

October 31: Smirnov reply on discovery

October 31: Smirnov motions in limine

- Preclude reference to  
lawfully owned guns
- Preclude reference to  
disloyalty
- Take judicial notice of  
Hunter Biden's failed plea  
hearing
- Preclude reference to  
September 27, 2023 interview

November 1: Government motions in limine

- Preclude expert witness  
Gregory Scott Rogers  
(regarding handling errors)
  - Expert notice
- Exclude handling agent's  
alleged mistakes
- Exclude evidence of honesty
- Exclude defects in  
prosecution
- Exclude irrelevant factual  
issues

November 4: Renewed bid to continue trial based

on delayed discovery

November 5: Motion to dismiss for discovery violations

November 5: Opposition to renewed bid to continue

- Derek Hines declaration
- FD-1023s

November 8: Judge Wright denies motion to compel

November 12: Response to motion to dismiss on discovery violations

November 15: Defense response to motions in limine

- Preclude expert witness Gregory Scott Rogers
- Exclude handling agent's alleged mistakes
- Exclude evidence of honesty
- Exclude defects in prosecution
- Exclude irrelevant factual issues

October 31: Government response to motions in limine

- Preclude reference to lawfully owned guns
- Preclude reference to disloyalty
- Take judicial notice of Hunter Biden's failed plea hearing
- Preclude reference to September 27, 2023 interview