

Hearing Before the U.S. House of Representatives
Committee on Ways and Means

Opening Statement of IRS Supervisory Special Agent Gary Shapley
December 5, 2023

This last spring, when I put my career on the line to make whistleblower disclosures to Congress, I wish I could have seen the future. In my transcribed interview with staff from this committee I shared evidence documenting the Justice Department's actions that let politics infect the Hunter Biden case resulting in preferential treatment. The Justice Department slow-walked the investigation for years, and after President Biden took office, his Attorney General Merrick Garland swore to Congress that politics would not affect the case because a Trump-appointed U.S. Attorney, David Weiss, was calling the shots alone.

Except that was not true. Now DOJ has chosen to mislead Congress and the American people to cover up the malfeasance they never expected to be held accountable for.

We now know that DOJ leadership directed Mr. Weiss to consult with Biden-appointed U.S. Attorneys in D.C. and California despite their obvious conflict of interest. Just as I initially testified, when Mr. Weiss asked for the special authority he needed to charge the President's son outside Delaware, DOJ did not grant him that authority. Instead he was told to "follow the process," which meant involving Biden political appointees.

Career IRS professionals had recommended felony tax charges against Hunter Biden. Mr. Weiss and his staff had agreed with that recommendation. That is why he sought special charging authority before the statute of limitations expired on the charges in D.C.

Those D.C. charges were for the 2014 and 2015 income tax years, when Hunter Biden evaded federal income taxes on income from Ukrainian energy company Burisma—taxes that are still not paid, to the best of my knowledge.

But DOJ did not grant Mr. Weiss special authority to bring those, or any, charges outside Delaware until after the case was presented to the Biden-appointed U.S. Attorney in D.C. and after the statute of limitations on those charges expired.

Why not? That's the key question Congress needs to have answered. It has asked Mr. Weiss. He refused to answer. He has not been compelled to answer.

My disclosures were about much more than just these procedural questions about what authority USA Weiss actually had and when. Yet that seems to be the only part DOJ wants to talk about. Among other things, DOJ has refused to explain to Congress:

1. Why did DOJ require that Mr. Weiss include the President Biden-appointed U.S. attorneys in D.C. and CA?

2. Why, if Mr. Weiss had ultimate authority, did he not pursue charges in D.C. and CA after those USA's declined to partner, when the sole purpose of engaging with those U.S. Attorneys was to seek the permission needed to charge in those districts?
3. Why did Mr. Weiss allow Biden family attorneys to write the guilty plea agreement on behalf of the government?
4. Why did Mr. Weiss pressure IRS senior leadership into retaliating against me and Special Agent Ziegler by threatening that the case would not be moving forward unless we were removed from the investigation?
5. Why did Mr. Weiss allow intervention by Main DOJ on this investigation?
6. Why was the Biden presidential transition office tipped off about a planned law enforcement operation related to his son?
7. Why was the Biden legal defense team tipped off about planned search warrants?
8. Why were search warrants of the Biden Delaware residence not pursued despite the lead prosecutor's agreeing that there was ample probable cause?

At the time I made my protected disclosures to Congress, it appeared the case was headed for no prosecution at all. We now know that after my attorneys sent an initial letter to Congress with a broad outline of my disclosures, prosecutors offered Hunter Biden a deferred prosecution agreement that would have required no guilty plea whatsoever. About a month later, just as my interview with this committee was about to be released to the public, the government announced a misdemeanor plea deal for Mr. Biden.

Attorney General Garland then made several statements that began the ever-evolving narrative from DOJ. News accounts reported he "scoffed" at the idea Mr. Weiss would ask for additional authority,¹ claiming: "Mr. Weiss had, in fact, more authority than a special counsel would have."²

Then that plea deal fell apart, and Mr. Weiss finally requested the very authority Mr. Garland had previously claimed he did not need. Only then did Mr. Garland finally grant Mr. Weiss special counsel authority.

Mr. Weiss's authority is what DOJ would like to distract us with instead of answering any of the questions raised by my original disclosures. The heart of my disclosures focused on how the Hunter Biden case was tainted by preferential treatment due to actions and inaction by DOJ to include Mr. Weiss himself and his office throughout the investigation.

Mr. Weiss cannot credibly investigate the actions his own office took prior to his appointment as special counsel, and he clearly has no plans to do so. So who will investigate the conduct of David Weiss and the Delaware U.S. Attorney's Office? No report written by Mr. Weiss can be taken seriously, as it will be a document full of self-serving justifications to defend himself against the allegations that he engaged in unethical conduct and allowed Hunter Biden preferential treatment. We need a special counsel to investigate Mr. Weiss, the DOJ, and the IRS's handling of the Hunter Biden investigation.

¹ <https://www.nytimes.com/2023/06/23/us/politics/garland-irs-weiss-hunter-biden-investigation.html>.

² <https://www.c-span.org/video/?c5075852/ag-garland-maintains-david-weiss-full-authority-hunter-biden-case>.

Congress has not required any clarity from the inspectors general for Justice or the IRS about the scope and status of their investigations initiated in response to my disclosures. Congress has not compelled DOJ or the IRS to produce documents about my disclosures. And Congress has allowed DOJ and IRS witnesses to define the scope of their own voluntary testimony, so that they avoid the toughest questions about why they pulled punches in this investigation for the benefit of the President's son.

While I understood that some would only focus on playing political offense or defense with my disclosures, my conscience forced me to put my career on the line out of an honest, perhaps naive, expectation that enough people of good faith on both sides of the aisle in Congress would see the evidence and do what was right.

It has been an extremely rude awakening.

Elected officials who believed my disclosures helped their political party have hailed me as a hero. Elected officials who believed my disclosures hurt their political party have obfuscated and spun the evidence, doing virtually everything they can to hide the truth on this issue from the public. Worse, members of this body have actively worked to discredit the two career government agents who believed they were honoring the rule of law and their oath to the Constitution by providing this evidence to Congress. This unquestionably deters any future whistleblowers who may ever consider making protected disclosures to Congress.

For example, the Ranking Member of this committee recently issued a press release incorrectly claiming SAC Darrell Waldon took responsibility for the decision to remove my team from the Hunter Biden case when in fact Mr. Waldon told Congress nothing about the conversations with USA Weiss that led to our removal. This is central to my retaliation case because USA Weiss had only recently before those conversations read my protected disclosures to IRS leadership for the first time—and then refused to work with me any longer.

While it had already become clear to me through the Hunter Biden investigation how some seek to protect powerful individuals, when I made my disclosures I still wouldn't have believed that some of my colleagues would work with attorneys at DOJ to carefully craft a patchwork of contradictory testimony that has the effect of misleading Congress.

Nevertheless, various congressional interviews and media reports have corroborated the following:

- Contrary to DOJ's continued talking point that a "Trump-appointed U.S. Attorney" was in charge, USA Weiss was forced to seek the cooperation of two President Biden-appointed U.S. Attorneys.
- USA Weiss could not charge in D.C. or California because both U.S. Attorneys declined to partner, and contrary to USA Weiss's June 30, 2023 letter to Congress, he was not given the special authority he needed to charge outside of Delaware.
- USA Weiss took steps to charge in both D.C. and California, but after his interactions with those President Biden-appointed U.S. Attorneys, he did not charge there.

- USA Weiss could not charge Hunter Biden with criminal violations of the tax code without the approval of the Biden administration DOJ Tax Division, which answers to the politically-appointed Deputy Attorney General.
- When USA Weiss was preparing to bring those charges in the District of Columbia in early 2022, he requested special charging authority from the Biden Justice Department. Justice Department leadership instead directed that he go through the “normal” process, requiring him to contact the U.S. Attorneys appointed by President Biden to request their participation in charging the President’s son.
- The investigation into Hunter Biden took longer than it should have.
- Biden family attorneys pressured DOJ to retaliate against Agent Ziegler and I, even being so brazen as to demand we be criminally investigated and prosecuted.
- In the fall of 2020, the Delaware U.S. Attorney’s Office repeatedly refused a briefing from the Pittsburgh U.S. Attorney’s Office that we now know included allegations Vice President Joe Biden might have been bribed by Burisma.
- In December 2020, the Biden Presidential Transition team was tipped off about plans to approach Hunter Biden.
- The Justice Department limited what investigators were able to ask some witnesses and prevented IRS investigators from interviewing multiple other key witnesses, including some adult relatives of Hunter Biden.
- In early 2022, IRS senior leadership and DOJ prosecutors concurred with charging multiple felonies and/or misdemeanors for tax years 2014 through 2019.
- Hunter Biden’s defense counsel told prosecutors it would be “career suicide” to bring a case against the President’s son, that DOJ’s reputation would be harmed by charging the son of the President, and that defense would call President Biden as a witness if they charged. Mr. Weiss himself refused to deny this occurred.
- On October 7, 2022, USA Weiss told me and several other witnesses about having requested special charging authority from Justice Department headquarters and being told to follow the normal process, something USA Weiss himself has confirmed in closed-door testimony.
- Mr. Weiss also told us that he intended to let the statute of limitations expire on charges against Hunter Biden for the 2014 and 2015 tax years, which included felony charges for evading taxes on Burisma income obtained during the time Joe Biden was Vice President. He did this even after he told Mr. Graves, per Mr. Graves’ testimony, that he wanted to bring the case against Hunter Biden to D.C., and took the steps necessary to do so until Mr. Graves refused to join the case bringing charges against the President’s son.
- I objected in that meeting to allowing the statute of limitations expire on those charges because it would result in the unequal treatment of American taxpayers to the benefit of the President’s son.
- USA Weiss, after reviewing protected disclosures I made to IRS leadership, refused to communicate with me, resulting in my retaliatory removal from the case.

Many tried to cast doubt on our disclosures before the witness interviews occurred. But, after it became clear that we were right about all of these details, the goalposts moved. Then new narratives developed to claim there is nothing to see here.

For instance, when the *New York Times* independently confirmed that Weiss's office presented felony charges against Hunter Biden in the Central District of California, it corroborated our disclosures and contradicted claims that USA Weiss had the sole and unfettered authority to make charging decisions without the involvement of the President Biden's political appointees. Mr. Weiss and both Biden-appointed U.S. Attorneys in D.C. and California have now confirmed that Mr. Weiss approached them to charge in their districts. So, now apologists changed their tune to claim that for these Biden appointees to decline to bring the case didn't technically prevent Mr. Weiss from bringing charges there if he truly wanted to because he could always go back to get the special authority he had been promised but never given.

Similarly, various witnesses interviewed by the House echoed the Attorney General's "scoff[ing]" that Mr. Weiss would have requested additional charging authority from the Justice Department. Yet when Mr. Weiss recently confirmed he did just that, many brushed it off as no big deal.

Meanwhile, witness after witness has contradicted themselves before Congress or provided highly improbable testimony.

- A fellow IRS official and two leaders from the FBI's Baltimore Field Office testified that they did not "recall" whether USA Weiss in the October 7, 2022 meeting talked about asking for special authority from the Justice Department and being told to "follow the process" instead. Yet Mr. Weiss admitted to Congress he had done just that, something I would never have known had we not been told in the October 7 meeting.
- Those same witnesses said they did not recall USA Weiss saying in that meeting that he was "not the deciding person" and that DOJ Tax had to approve first. But witness testimony from the head of DOJ Tax, and others, confirmed that USA Weiss required DOJ Tax approval before he could charge.
- Witness recollections concerning the main points of the October 7 meeting have all been contradicted by other witnesses and by what actually occurred during the investigation. Specifically, DOJ leadership required Mr. Weiss go to Biden appointees in D.C. and CA to be able to charge there rather than giving him special authority to do it himself, and D.C. had already declined to join before the October 7 meeting.
- The FBI Assistant Special Agent in Charge claimed to congressional staff her boss had never asked at that meeting if anyone thought the case had been politicized. However, the FBI SAC acknowledged to investigators he had, just as I described in my protected disclosures.
- Both FBI officials claimed they took no notes in the meeting, despite the FBI's well-known reputation and law enforcement standard practice for documenting meetings. The IRS official, Darrell Waldon, testified he did take notes at the meeting, but despite learning not long thereafter that I was blowing the whistle on the issues raised in that meeting, said he destroyed the notes.
- Although Mr. Waldon said that he recommended in February of this year that I be removed from the Hunter Biden case, he testified that he played no role in the actual decision to reassign me. Yet when staff interviewed Mr. Waldon's supervisor Michael Batdorf, Batdorf revealed that he and Waldon had already made the decision in December 2022 to remove me from the case because of U.S. Attorney Weiss's refusal to work with

me after my protected disclosures. No one informed me of that decision at the time and I've seen no corroborating documentation.

- Mr. Waldon testified his recommendation in February 2023 was due to what he “perceived to be unsubstantiated allegations about motive, intent, [and] bias,” but Mr. Batdorf specifically testified that my removal had nothing to do with any sort of misconduct on my part, and last month I received the highest rating on my performance evaluation—just as I have in previous years.
- Mr. Batdorf told Congress the IRS would only remove me if Delaware prosecutors decided to move forward with the case, but instead, I now know I was removed the very day prosecutors reached out to offer Hunter Biden a deferred plea agreement requiring *no* guilty plea to *any* charge. Therefore Mr. Batdorf’s assertion that he would not assign a new team until he knew the case was moving forward was clearly not accurate.

Of course, the most glaring contradictions are the representations to Congress of U.S. Attorney Weiss himself.

- Mr. Weiss has repeatedly told Congress he had ultimate authority over the Hunter Biden case, but admits his charging authority was limited to his home district and required the approval of Tax Division officials at Justice Department headquarters *plus* other U.S. Attorneys or Justice Department leadership approval.
- Mr. Weiss wrote to Congress on June 30 of this year that “common” Departmental practice when venue lies outside of a U.S. Attorney’s district is to contact the relevant U.S. Attorney and determine whether it wants to partner. Yet U.S. Attorney Graves called such an approach “exceedingly rare” and something he had never seen done before.
- U.S. Attorney Graves testified that USA Weiss told him it was his intention to bring felony tax charges against Hunter Biden in D.C. This corroborates what he and prosecutors said to investigators in countless meetings. USA Weiss testified that his communications with USA Graves did not change his mind in any respect. Yet, he provided no explanation for why he didn’t bring the felony charges against Hunter Biden in D.C. before the statute of limitations expired.

These and other contradictions have not been resolved because, seven months after we sat for transcribed interviews, Congress has obtained no documents from the government regarding our disclosures other than what we provided. As investigators, Special Agent Ziegler and I are trained to conduct interviews and write reports based on documentary evidence rather than allowing witnesses to simply spin their own narratives of past events. But Congress doesn’t have any documents to confront these witnesses with beyond those that have been provided by myself or Special Agent Ziegler.

To be clear, we have provided significant evidence of our allegations. In my last submission to this committee, which it voted to release on September 27, 2023, I provided documentation of:

- How the case was delayed at various times surrounding elections, including even mid-term elections with no Biden on the ballot;
- The obstruction and preferential treatment to Hunter Biden perpetrated by Assistant U.S. Attorney Lesley Wolf;

- The tipoff to Hunter Biden’s legal team;
- The role DOJ Tax Division played in approving or disapproving even basic investigative steps;
- The support IRS leadership and various DOJ entities showed for bringing felony charges against Hunter Biden, only for the charges to have to go through Biden political appointees; and
- How USA Weiss retaliated against me after I voiced objections in the October 22, 2022 meeting and after Weiss reviewed in discovery the protected disclosures I had made about his office’s handling of the case.

Unfortunately, although my disclosures focused primarily on DOJ misconduct, the hard truth is that IRS leadership has failed to support Agent Ziegler and me in overcoming DOJ hurdles to move the Hunter Biden case forward. This failure occurred even though we continually reached out to them *for years* disclosing unethical conduct in this case by DOJ. IRS leadership abandoned me and my team to deal with this controversial case as best we could. As early as October 2020, I attempted to tell then-Special Agent in Charge Kelly Jackson that the Chief of IRS-CI should be made aware of certain issues leading up to the day of action planned for after the election. Her response was, “He doesn’t need to know any of the details.” When I attempted to inform *her* of the issues, she interrupted me and said, “I don’t want to know anything that I don’t need to know.” She further directed me to take over direct communications with USA Weiss. When SAC Jackson retired and SAC Darrell Waldon took over in early 2021, that dynamic did not change. I remained the IRS-CI leader charged with communicating with USA Weiss directly.

As memoranda and emails provided have shown, I attempted to raise issues on a continual basis up through my chain of command, having no success with SAC Waldon or his reports. This is why I began communicating directly to DFO Batdorf on the Hunter Biden investigation. I routinely worked directly with Mr. Batdorf and the other two DFOs on a recurring basis, as was directed by Chief Jim Lee on other issues. Mr. Batdorf’s testimony to Congress, which every IRS-CI agent should read when it is available, notes that I was the “only” Supervisory Special Agent who communicated with him directly, implying that was something unusual that I chose to do. However, he knew why I was going straight to him. He had encouraged me to do so, but he omitted that context from his testimony.

Mr. Batdorf’s story is that on a call with USA Weiss and SAC Waldon on December 22, 2022, he decided to remove me from the investigation. SAC Waldon’s story is that he recommended I be removed in February 2023. The IRS did not formalize or communicate this decision until May of 2023, a month after I had approached Congress to blow the whistle. Why would SAC Waldon “recommend” I be removed in February 2023 if the decision had already been made in December 2022? What kind of leaders remove an entire team from a high-profile case without telling them? How seriously could the case really be worked with no action and no transition from the old team to the new team for months on end? Despite all the evidence obtained over a five-year investigation, I fear the new IRS investigative agents will only be shown the evidence that supports DOJ’s conclusions.

Mr. Batdorf's testimony is also contradicted by the fact that even though he said he wasn't going to tell me he removed me until he was sure the case was going to move forward, we since learned the Delaware USAO had offered Hunter Biden a deferred prosecution agreement on May 15, 2023. That happened to be the exact day I was removed, meaning the case was *not* moving forward and would have needed *no* further agent support.

Congress and the inspectors general need to focus on the evidence and what actually happened rather than the carefully crafted narrative from DOJ lawyers. The facts are simply incompatible with DOJ's official narrative offered to Congress.

The gross mismanagement by IRS-CI leadership was what put me and my team at the tip of the spear to lead the investigation of the President's son that others just wanted to avoid. That is the dynamic that left us hanging out to dry when IRS leaders should have been more supportive of their hardworking agents who were raising serious questions in good faith about improper handling of the case at DOJ.

As more and more IRS and IRS-CI employees contact me to thank me for doing the right thing or ask me advice on how to blow the whistle on something, I am encouraged that the risk I took coming forward is not for nothing. We have extraordinary agents and some outstanding leaders as well at the agency and they deserve better. To all the IRS employees who know exactly what I'm talking about and support me either publicly or privately—thank you. Your support has helped more than you know.

As I've said from the beginning, I'm not asking you to take my word for it. What about registered Democrat SA Ziegler here? What about the FBI agent who corroborated that the President Biden transition team was tipped off about law enforcement plans to interview Hunter Biden and other witnesses in December 2020? What about AG Garland saying USA Weiss had everything he needed—but then for some reason feeling it necessary to give a person with “ultimate authority” Special Counsel authority after a generous plea deal fell apart?

There are countless other examples if you objectively look at the facts.

I will walk out of here today knowing—regardless of either side's political agendas, excuses, or rationalizations—what I witnessed was wrong. As a career law enforcement officer with no agenda but the truth, I did my best to right that wrong. This country is the greatest the earth has ever seen and I will fight for it until my last breath.

When I came forward to make my disclosures to Congress, I put my career on the line. I put my trust in this institution. Each of you have taken the same oath to the Constitution that I have taken as a government agent. Please honor that oath by obtaining the facts the American people deserve. The American people deserve elected officials who honor that oath and faithfully put the interests of the American people ahead of their political party. For those who don't, American's should hold them accountable at the ballot box.