



March 3, 2023

Via E-mail – fara.public@usdoj.gov

FARA Unit
National Security Division
ATTN: Matthew G. Olsen, Assistant Attorney General for National Security
U.S. Department of Justice
175 N Street, NE, Constitution Square Building 3-Room 1.300
Washington, D.C. 20002

American First Legal Foundation Complaint Against Hunter Biden for Failing to Register under the Foreign Agent Registration Act

Dear Mr. Olsen:

The Foreign Agent Registration Act, 22 U.S.C. 611 *et seq* (the “FARA”) was enacted “to protect the national defense, internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the Government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in the light of their associations and activities.”¹ Accordingly, America First Legal Foundation (AFL) brings this complaint against Hunter Biden because there is now clear evidence that he was subject to FARA and therefore required to register as a foreign agent as the result of his activities on behalf of the Ukrainian corporation known as Burisma Holdings Ltd. AFL requests that you fully investigate this matter, particularly because of the substantial evidence suggesting potential civil or criminal violations of federal law, including conspiracy, money laundering, tax evasion, and wire fraud.²

INTERESTS OF THE COMPLAINANT

Complainant AFL is a national, nonprofit legal foundation working to promote the rule of law, prevent executive overreach, protect due process and equal protection, and educate Americans about the individual rights guaranteed under the

¹ *Meese v. Keene*, 481 U.S. 465, 469 (1987) (quoting 56 Stat. 248, 77 Cong. Ch. 263, (Apr. 29, 1942) (cleaned up).

² See National Legal and Policy Center Complaint Against Hunter Biden; the Truman National Security Project; and the University of Pennsylvania and its Penn Biden Center for Failing to Register under FARA (Oct. 31, 2020), tinyurl.com/h7xja53a.

Constitution and laws of the United States. Our mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and media, including social media platforms, all to educate the public and to keep government officials accountable for their duty to faithfully execute, protect, and defend the Constitution and laws of the United States.

FARA REQUIREMENTS

A “foreign principal” under FARA includes a “corporation ... organized under the laws of or having its principal place of business in a foreign country.”³ Until its dissolution on February 16, 2023, Burisma Holdings Limited was a limited company registered in Cyprus and principally doing business in Ukraine.⁴ At all times relevant, Burisma was thus a “foreign principal.”

An “agent of a foreign principal” under FARA includes “any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal.”⁵ It also includes “any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal.”⁶ Similarly, a “public relations counsel” under FARA is “any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal.”⁷

An agent of a foreign principal must register under FARA if he or she acts within the United States “under the direction or control, of a foreign principal” and, “for or in the interests of” that foreign principal, “engages ... in political activities”; “acts ... as a public relations counsel, publicity agent, information-service employee or political consultant”; “solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value”; or “represents the interests of such foreign principal before any agency or official of the Government of the United States.”⁸

Furthermore, a FARA registration statement must be “detailed”⁹ with a “degree of specificity necessary to permit meaningful public evaluation of each of the significant steps taken by a registrant to achieve the purposes of the agency

³ 22 U.S.C. § 611(b).

⁴ Business Register, Cyprus Department of Registrar of Companies and Intellectual Property, (last accessed Mar. 3, 2023), <https://tinyurl.com/3mux6ey2>.

⁵ 22 U.S.C. § 611(c)(1).

⁶ 22 U.S.C. § 611(c)(2).

⁷ 22 U.S.C. § 611(g).

⁸ 22 U.S.C. § 611(c)(1)(i)-(iv).

⁹ 22 U.S.C. §612.

relation.”¹⁰ Department of Justice regulations also require registrants to “keep and preserve” eight different categories of “books and records,” including “communications to and from all foreign principals and all other persons, relating to the registrant’s activities on behalf of, or in the interest of any of his foreign principals”; communications “relating to political activity on the part of any of the registrant’s foreign principals”; and “bookkeeping and other financial records.”¹¹ Such records must be kept “readily accessible for inspection” by the Department of Justice.¹²

Any person who willfully violates any provision of FARA or any regulation thereunder shall, upon conviction thereof, be punished by a fine of not more than \$250,000 or by imprisonment for not more than five years.¹³

HUNTER BIDEN WAS REQUIRED TO REGISTER UNDER FARA

In a joint investigative report, the United States Senate Committee on Homeland Security and Government Affairs and the Committee on Finance found Hunter Biden’s appointment to Burisma’s board was “problematic and did interfere in the efficient execution of [U.S.] policy with respect to Ukraine.”¹⁴ Records obtained by AFL from the National Archives and Records Administration reveal that the Obama administration and the Office of Vice President Biden received substantial press inquiries concerning Hunter Biden’s appointment at Burisma.¹⁵ On May 13, 2014, in replying to a press inquiry forwarded from then-Vice President Biden’s press secretary (Kendra Barkoff), Hunter Biden advised the Office of Vice President about how to respond:

Interesting. Burisma is completely independent of Ukrainian government with an independent board of directors. NZ served as Minister of Ecology and resigned in 2010. **I joined the board as legal adviser and Burisma also engaged the law firm I am of counsel to Boies Schiller Flexner on matters pertaining to corporate governance, transparency and expansion. Alana Apter former head of Morgan Stanley Europe is chairman of the board.**

RHB¹⁶

¹⁰ 28 C.F.R. § 5.210.

¹¹ 28 C.F.R. § 5.500.

¹² 28 C.F.R. § 5.500(b).

¹³ See 22 U.S.C. § 618(a); 18 U.S.C. § 3571.

¹⁴ Majority Staff Report, U.S. Senate Committee on Homeland Security and Governmental Affairs & U.S. Senate Committee on Finance, Hunter Biden, Burisma, and Corruption: The Impact on U.S. Government Policy and Related Concerns (Sept 23, 2020), at 4, <https://tinyurl.com/24ybhknc>.

¹⁵ See America First Legal, Biden NARA VP Foreign Business Dealings, NARA Production 1 Hot Docs, <https://tinyurl.com/4tsnjwjm>.

¹⁶ *Id.* at 4.

(Emphasis added.) In another e-mail exchange from that same day, Kendra Barkoff wrote, “[t]hanks for talking to me. let me know who I should refer folks to,” and Hunter Biden responded with the following advice about how the Office of the Vice President should respond to inquiries:

Ok-

What exactly are they asking? For the time being I’d just refer them to my office. FYI I joined the board of Burisma Holdings Ltd. (Burisma.com) an independent/private natural gas producer in Ukraine along with the former president of Poland. I think the press release is on their website.

RHB¹⁷

In the afternoon of May 13, 2014, Barkoff sent an e-mail to Hunter Biden providing to him the text of the statement the Office of the Vice President was using to respond to inquiries about Hunter Biden’s Burisma involvement:

“Hunter Biden is a private citizen and a lawyer. The Vice President does not endorse any particular company and has no involvement with this company. For any additional questions, I refer you to Hunter’s office.”¹⁸

Apparently, Hunter Biden had ongoing discussions about the matter with the Office of Vice President that continued for nearly a month and a half. On June 26, 2014, Hunter Biden wrote to Kendra Barkoff about the need to cancel a planned call:

K-

I am really sorry but I have to cancel call today.

RHB¹⁹

Burisma is a “foreign principal” under FARA.²⁰ Hunter Biden is Burisma’s agent and subject to FARA registration because he was an officer of Burisma and represented Burisma’s interests to the Office of the Vice President in addition to advising on a public relations matter. As an officer, Hunter Biden acted “at the order, request, or under the direction or control, of a foreign principal.”²¹ In advising the Office of the Vice President how to respond to press inquiries about his appointment, Hunter Biden “represent[ed] the interests of such foreign principal before any agency or official of the Government of the United States.”²² Further, Hunter Biden, while employed at Burisma, represented Burisma in a public relations matter relating to the public interests and relations of Burisma by advising the Office of the Vice

¹⁷ *Id.* at 13.

¹⁸ *Id.* at 9.

¹⁹ *Id.*

²⁰ 22 U.S.C. § 611(b).

²¹ 22 U.S.C. § 611(c)(1)(i).

²² 22 U.S.C. § 611(c)(1)(iv).

President about responding to press inquiries concerning his appointment at Burisma.²³

There exists clear evidence that Hunter Biden failed to register as a foreign agent under FARA given his role in advising the Office of Vice President Biden in responding to media inquiries about Burisma.

CONCLUSION

AFL requests that the Department of Justice investigate whether Hunter Biden engaged in activities covered by FARA and unlawfully failed to register as an agent of a foreign principal.

Respectfully submitted,

/s/ Gene Hamilton

Gene Hamilton

Vice President and General Counsel

America First Legal Foundation

²³ 22 U.S.C. § 611(g).