

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICA FIRST LEGAL FOUNDATION,

*Plaintiff,*

v.

MERRICK GARLAND, Attorney General of  
the United States,  
in his official capacity, 950 Pennsylvania  
Ave., NW  
Washington, DC, 20530,

DEPARTMENT OF JUSTICE,  
950 Pennsylvania Ave., NW  
Washington, DC 20530,

*Defendants.*

Civil Action No.: 23-2070

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

1. The Foreign Agents Registration Act, Pub. L. No. 75–583, as amended, requires certain agents of foreign principals who are engaged in political or other specified activities to make periodic public disclosure of their agency relationship and of the activities, receipts, and disbursements in support of thereof.

2. The Act is the paradigmatic public disclosure statute, enacted for the express purpose of ensuring citizens are “informed as to the identities and activities of [foreign agents]” so that they will “be better able to appraise them and the purposes for which they act.” H.R. Rep. No. 89-1470, at 2 (1966), <https://tinyurl.com/5ca6r4r6>.

3. The Act protects the public's right to know what foreign governments and corporations are up to, protecting our national defense, economic security, and Constitutional system. Among other things, foreign agent registration provides a window into the foreign business relationships and entanglements of high-ranking political officials and their family members, and a critical path for exposing influence peddling.

4. No later than November 2019, when it obtained possession of and verified the authenticity of Hunter Biden's laptop computer, the Department of Justice had actual knowledge that Hunter Biden has been a statutorily defined foreign agent of (at a minimum) Ukrainian and Chinese principals and therefore was legally obligated to register as such. However, the Department has neither required Mr. Biden to register nor undertaken a waiver rulemaking.

5. America First Legal Foundation is a national nonprofit legal foundation that advocates for "America First" policies to protect our sovereignty, economic security, and Constitutional order. To that end, it gathers official information, analyzing and disseminating it through reports, press releases, media, and communications with congressional oversight committees. *See, e.g.,* AMERICA FIRST LEGAL FOUNDATION, *America First Legal Releases More of Biden's Vice Presidential Records Revealing Influence Peddling and Corruption Between the White House and Hunter's Private Foreign Business Dealings* (May 3, 2023), <https://tinyurl.com/5d3bs938>; Letter from Reed D. Rubinstein, Senior Couns. and Dir. of Oversight and Investigations, to Matthew G. Olsen, Assistant Att'y Gen. for Nat'l

Sec., U.S. Dep't of Just. (Mar. 15, 2023), <https://tinyurl.com/mr26u53b> (copying members of Congress). Foreign agent registration information helps America First Legal, and those with whom it communicates, evaluate the policies and public opinion messaging of the Biden Administration, its allies, and foreign economic and political actors.

6. On March 3, 2023, America First Legal asked the defendants to comply with the Act by requiring Mr. Biden's registration. If the Department of Justice becomes aware that a certain individual is required to register under the Foreign Agents Registration Act, but that such registration has not occurred, then the Department has a nondiscretionary duty either to require it or to undertake a waiver rulemaking. Nevertheless, to date, the defendants have refused to do either of these things.

7. The defendants' refusal to require Mr. Biden to register as a foreign agent denies America First Legal information which must be publicly disclosed pursuant to the Foreign Agents Registration Act, and for which it has a statutory right.

8. Furthermore, this information is directly related both to America First Legal's informed participation in the political process with respect to its advocacy of America First policies aimed at protecting our nation's sovereignty, borders, economic security, and Constitution; and to its core public education mission of disclosing relevant information regarding the operation of the government and the integrity of public officials.

9. The defendants have therefore caused America First Legal the very harm that Congress sought to prevent by requiring disclosure in the first place, inflicting injury in fact. *Campaign Legal Ctr. v. Fed. Election Comm'n*, 31 F.4th 781, 789 (D.C. Cir. 2022); *Elec. Priv. Info. Ctr. V. Presidential Advisory Comm'n on Election Integrity*, 878 F.3d 371, 378 (D.C. Cir. 2017).

10. Accordingly, America First Legal seeks relief under the Administrative Procedure Act, 5 U.S.C. § 706.

### **Jurisdiction and Venue**

11. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 702.

12. Venue is proper under 28 U.S.C. §§ 1391(b)(1) and 1391(b)(2).

### **Parties**

13. The plaintiff America First Legal Foundation 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 Constitution and laws of the United States. America First Legal's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, media, and communications with congressional oversight committees, 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. America First Legal's email list contains over 78,000 unique addresses, its Twitter page has 151,000 followers, the Twitter page of its

Founder and President has over 482,000 followers, its Facebook page has 139,000 followers, and it has approximately 31,900 followers on GETTR.

14. The defendant Department of Justice is a federal agency.

15. The defendant Merrick Garland is the Attorney General of the United States. He is sued in his official capacity.

## **Background**

### The Foreign Agents Registration Act

16. The Foreign Agents Registration Act, Pub. L. 75–583, as amended (codified at 22 U.S.C. § 611 *et seq.*) protects the “national defense, internal security, and foreign relations of the United States” by requiring public disclosure of the persons engaging in influence and advocacy 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.” *See Meese v. Keene*, 481 U.S. 465, 469 (1987) (quoting 56 Stat. 248, 77 Cong. Ch. 263, (Apr. 29, 1942) (cleaned up)); JACOB R. STRAUS, CONG. RSCH. SERV., R46435, FOREIGN AGENTS REGISTRATION ACT (FARA): BACKGROUND AND ISSUES FOR CONGRESS at 7–9 (2020), <https://tinyurl.com/57xbzue3>.

17. The Act was amended in the 89th Congress to shift its focus from propaganda to advocacy activities. During the Senate debate, Sen. James Fulbright explained why:

The basic purpose of the bill is to update the Foreign Agents Registration Act to reflect the changes in the nature of the U.S. role in world affairs today. A

quarter of a century ago, the original targets of this act were the subversive agent and propagandist. But as our interests throughout the world have multiplied, the efforts of foreign interests to influence American foreign and domestic politics have become correspondingly greater and more subtle. *The place of the old foreign agent has been taken by the professional lobbyists and public opinion manipulators* whose object is not [to] subvert the Government but to influence its policies to the satisfaction of his client. The trench coat has been replaced by the gray flannel suit.

111 CONG. REC. 6984 (1965) (emphasis added), <https://tinyurl.com/4acjkkwf>.

18. Currently, the Act defines a “foreign principal” as a “corporation” that is “organized under the laws of or having its principal place of business in a foreign country.” 22 U.S.C. § 611(b).

19. The Act further defines an “agent of a foreign principal” as “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.” 22 U.S.C. § 611(c)(1). 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.” 22 U.S.C. § 611(c)(2).

20. The Act further defines a “public-relations counsel” as “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.” 22 U.S.C. § 611(g).

21. The Act requires the agent of a foreign principal to register 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.” 22 U.S.C. § 611(c)(1)(i)–(iv).

22. The Act further requires the registration statement to contain the “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 relation.” 28 C.F.R. § 5.210; *see also* 22 U.S.C. § 612.

23. The Department of Justice’s regulations 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.” 28 C.F.R. § 5.500(a). Such records must be kept “readily accessible for inspection” by the Department. 28 C.F.R. § 5.500(b).

24. The Act further requires that “[r]egistration statements, informational materials, Dissemination Reports, and copies of political propaganda filed under

section 4(a) of the Act, shall be available for public examination at the Registration Unit on official business days, during the posted hours of operation.” 28 C.F.R. § 5.600; *see also* 22 U.S.C. § 616(a).

25. The Act further requires registration statements “to be filed with the Attorney General.” 22 U.S.C. § 611(k). It allows the Attorney General “by regulation” to provide for an exemption from registration. 22 U.S.C. § 612(f). However, neither the publication of registration statements nor the rulemaking required for waivers is committed to the Attorney General’s discretion.

26. On its website, the Department of Justice invites members of the public to “Report a Violation” of the Act. *See* U.S. DEP’T OF JUSTICE, *FARA Enforcement* (updated Mar. 15, 2023), <https://www.justice.gov/nsd-fara/fara-enforcement>.

#### Hunter Biden

27. No later than November 2019, when it gained control over and verified the authenticity of Mr. Biden’s laptop computer, the Department of Justice had actual knowledge that Mr. Biden was acting as a foreign agent and therefore required to register under the Foreign Agents Registration Act.

#### *Ukraine*

28. Until its dissolution on February 16, 2023, Burisma Holdings Limited was a limited company registered in Cyprus and principally doing business in Ukraine. Business Register, Cyprus Department of Registrar of Companies and Intellectual Property (last updated July 13, 2023), <https://tinyurl.com/3mux6ey2>. At all times relevant, Burisma was thus a “foreign principal.”

29. Then-Vice President Biden's son, Hunter Biden, while a director of Ukrainian gas company Burisma, and through his lobbying firm Rosemont Seneca, was personally involved in at least one phone call between the Vice President and then-Ukrainian President Poroshenko. E-mail from John S. Flynn, Senior Advisor to VPOTUS, to Robert L. Peters [sic], VPOTUS (May 26, 2016, 22:08:00 -0400) (attached as Exhibit 1) (also available at *2023-0022-F: Email Messages To and/or From Vice President Biden and Hunter Biden related to Burisma and Ukraine*, NAT'L ARCHIVES AND RECS. ADMIN., <https://tinyurl.com/48xsh8ar>); *see also* Letter from Paul D. Kamenar, Esq., Couns. for Nat'l Legal and Pol'y Ctr., to John C. Demmers, Assistant Att'y Gen. for Nat'l Sec. (Oct. 31, 2020), [tinyurl.com/h7xja53a](https://tinyurl.com/h7xja53a) (last visited July 17, 2023).

30. 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." Majority Staff Report, S. Comm. on Homeland Sec. and Gov'tal Affs. & S. Comm. on Fin., 116TH CONG., *Hunter Biden, Burisma, and Corruption: The Impact on U.S. Government Policy and Related Concerns* at 4 (Sep. 23, 2020), <https://tinyurl.com/24ybhknc> (last visited July 17, 2023).

31. For example, records obtained by America First Legal 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. *See* America First Legal, Biden NARA VP Foreign Business Dealings, NARA Production 1 Hot Docs, <https://tinyurl.com/4tsnjwjm> (last visited July 18, 2023).

32. 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.*

RHB

*Id.* at 4 (emphasis added).

33. 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.*

RHB

*Id.* at 13.

34. 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.”

*Id.* at 9.

35. Apparently, Hunter Biden had ongoing discussions about the matter with the Office of the 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.  
RHB

*Id.*

36. Burisma is a “foreign principal” under 22 U.S.C. § 611(b).

37. At all times relevant, the defendants knew or should have known that Hunter Biden was obligated to register under the Foreign Agent Registration Act. For example:

- a. As a corporate officer, Mr. Biden acted “at the order, request, or under the direction or control, of a foreign principal” under 22 U.S.C. § 611(c)(1)(i).

- b. In advising the Office of the Vice President how to respond to press inquiries about his appointment, Mr. Biden “represent[ed] the interests of such foreign principal before any agency or official of the Government of the United States” under 22 U.S.C. § 611(c)(1)(iv).
- c. Also, Mr. Biden represented Burisma in a public relations matter relating to the public interests and relations of Burisma by advising the Office of the Vice President about responding to press inquiries concerning his appointment at Burisma under 22 U.S.C. § 611(g).

*The People’s Republic of China*

38. China Energy Fund Committee (“CEFC”) and CEFC Energy Company Limited (“CEFC China”) were, at all times relevant, “foreign principals.” See Sealed Indictment, ECF No. 2, *United States v. Luft*, Case No. 22-CRIM-597 (S.D.N.Y. Nov. 1, 2022) at 3 ¶ 5; see also Press Release, U.S. ATTORNEY’S OFFICE, SOUTHERN DISTRICT OF NEW YORK, *U.S. Attorney Announces Charges Against Co-director of Think Tank for Acting as an Unregistered Foreign Agent, Trafficking in Arms, Violating U.S. Sanctions Against Iran, and Making False Statements to Federal Agents* (July 10, 2023), <https://tinyurl.com/3f9m9dd9> (last visited July 17, 2023).

39. Ye Jianming, founder of CEFC China and chairman of the board of CEFC, is a Chinese national. Majority Staff Report, *supra* ¶ 30 at 71. Ye Jianming was, at all times relevant, a “foreign principal.”

40. In their supplemental investigative report, the United States Senate Committee on Homeland Security and Government Affairs and the Committee on

Finance found, among other things, that Hunter Biden helped Ye Jianming on “staff visas and some more sensitive things” and “was key in relationship set up, messaging the good will” around Ye Jianming and CEFC China. Majority Staff Report Supplemental, S. Comm. on Homeland Sec. and Gov’tal Affs. & S. Comm. on Fin., 116TH CONG. at 5 (Nov. 18 2020), <https://tinyurl.com/48evyc74> (last visited July 17, 2023).

41. According to whistleblower testimony obtained by the House Committee on Ways and Means, a large portion of Hunter Biden’s \$8.3 million income came from Chinese entities, including CEFC China. Press Release, H. Comm. on Ways and Means, *Six Key Takeaways from the Released IRS Whistleblower Transcripts* (July 12, 2023), <https://tinyurl.com/28v29f7f> (last visited July 18, 2023).

42. Hunter Biden sent a WhatsApp message to a CEFC China official where he wrote:

I am sitting here with my father and we would like to understand why the commitment made has not been fulfilled. Tell the director that I would like to resolve this now before it gets out of hand, and now means tonight. And, Z, if I get a call or text from anyone involved in this other than you, Zhang, or the chairman [Ye Jianming], I will make certain that between the man sitting next to me and every person he knows and my ability to forever hold a grudge that you will regret not following my direction.

*Id.*

43. Hunter Biden was apparently aware of the burdens of having “to register as foreign agents,” so he suggested setting up a “separate entity” called “CEFC America” to avoid registration. Jerry Dunleavy, *Hunter Biden Aimed to Avoid*

*Violating Foreign Corrupt Practices Act in Pursuit of Chinese Business Deal*, WASH. EXAMINER (Oct. 27, 2020), <https://tinyurl.com/mv95ttns> (last visited July 17, 2023).

44. While these foreign principals paid Hunter Biden and his business associates significant amounts of money, the Department has only indicted Gal Luft for violating the Foreign Agents Registration Act by engaging in political activities in the United States on their behalf. Letter from James Comer, Chairman, H. Comm. on Oversight and Accountability, to the Hon. Christopher Wray, Director, FBI (July 12, 2023), <https://tinyurl.com/ysk7727x> (last visited July 17, 2023).

**Claim for Relief**

*Violation of the Administrative Procedure Act*

45. America First Legal repeats paragraphs 1–44.

46. The Attorney General has a ministerial and non-discretionary duty to ensure that Mr. Biden files a “true and complete registration statement” under oath and on a form prescribed by the Attorney General under 22 U.S.C. § 612(a).

47. On March 3, 2023, America First Legal filed a complaint with the Department alleging that Hunter Biden was required to register as a foreign agent. *See* Letter from Gene Hamilton, Vice President and Gen. Couns., AFL, to Matthew G. Olsen, Assistant Att’y Gen. for Nat’l Sec., U.S. Dep’t of Just. (Mar. 3, 2023), <https://tinyurl.com/3kydjbf5> (attached as Exhibit 2). To date, the Department has neither adjudicated this complaint nor required Mr. Biden to register as a foreign agent, thereby unlawfully withholding and unreasonably delaying nondiscretionary agency action.

48. Also, on July 10, 2023, the Department unsealed an indictment against Mr. Luft alleging that unlawfully failed to register as a foreign agent of CEFC, CEFC China, and Ye Jianming. The Department has known for many years that Ye Jianming and the entities he controlled, including CEFC and CEFC China, paid Mr. Biden millions more for similar services, but arbitrarily and capriciously refuses to require him to register as a foreign agent.

49. The defendants' refusal to require Mr. Biden to file a registration statement has deprived America First Legal of access to information for which it has a statutory right. This information is directly related both to America First Legal's informed participation in the political process with respect to its advocacy of America First policies aimed at protecting our nation's sovereignty, economic security, and Constitution; and to its core public education mission of disclosing relevant information regarding the operation of the government and the integrity of public officials. Therefore, America First Legal has suffered an injury in fact.

50. Congress directed the defendants first to require Mr. Biden and others like him, to file registration statements. Then, it directed the defendants to make those statements public.

51. The Administrative Procedure Act was enacted, in part, to ensure organizations like America First Legal may seek judicial review and a compliance order when Executive Branch agencies wrongfully fail or refuse to turn over public information, thereby fortifying Congress's constitutional oversight function. *See* Mathew D. McCubbins & Thomas Schwartz, *Congressional Oversight Overlooked:*

*Police Patrols Versus Fire Alarms*, 28 AM. J. POL. SCI. 168–169 (1984) (describing Congress as using administrative procedures to delegate oversight responsibilities); McNollGast, *Administrative Procedures as Instrument of Political Control*, 3 J. L. ECON. & ORG. 254 (1987) (same); DANIEL Z. EPSTEIN, *THE INVESTIGATIVE STATE: REGULATORY OVERSIGHT IN THE UNITED STATES* (forthcoming Sep. 2023) (providing empirical evidence that Congress’s capacity to conduct oversight depends upon regulated parties reporting violations of administrative procedures).

52. Accordingly, America First Legal is entitled to relief under 5 U.S.C. §§ 706(1) and 706(2)(A), to vindicate its informational rights.

### **Prayer for Relief**

WHEREFORE, America First Legal respectfully requests that this Court:

A. Compel the defendants to require Mr. Biden to register as a foreign agent in compliance with the Foreign Agent Registration Act under 5 U.S.C. § 706(1).

B. Hold unlawful the defendants’ refusal to require Mr. Biden’s registration as a foreign agent under the Foreign Agent Registration Act under 5 U.S.C. § 706(2)(A).

C. Grant it appropriate fees, costs, expenses, and disbursements, including reasonable attorneys’ fees; and

D. Grant it such additional relief as the Court deems just.

[signature page follows]

July 18, 2023

Respectfully submitted,

/s/ Michael Ding

REED D. RUBINSTEIN (D.C. Bar 400153)

JAMES K. ROGERS (AZ Bar No. 027287)\*

MICHAEL DING (D.C. Bar 1027252)

AMERICA FIRST LEGAL FOUNDATION

611 Pennsylvania Ave SE #231

Washington, D.C. 20003

Tel.: (202) 964-3721

E-mail: reed.rubinstein@aflegal.org

E-mail: james.rogers@aflegal.org

E-mail: michael.ding@aflegal.org

*Counsel for America First Legal Foundation*

*\*Application for Pro Hac Vice forthcoming*

**Sent:** Thu, 26 May 2016 22:08:00 -0400  
**From:** "Flynn, John S. EOP/OVP" <john\_s\_flynn@ovp.eop.gov>  
**To:** "Peters, Robert L." <robert.l.peters@pci.gov>  
**Cc:** Hunter Biden <hbiden@rosemontseneca.com>  
**Subject:** Friday Schedule Card  
[5.27.16 Friday Schedule Card.docx](#)

Boss--8:45am prep for 9am phone call with Pres Poroshenko. Then we're off to Rhode Island for infrastructure event and then Wilmington for UDel commencement. Nate will have your draft remarks delivered later tonight or with your press clips in the morning.

Respectfully,  
John

[Redacted]

FOIA-6

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**Friday, May 27, 2016**

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8:45 AM      **PREP** for Call with President  
Poroshenko of Ukraine  
*Room 3420*

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9:00 AM      **CALL** with President  
Poroshenko of Ukraine  
*Room 3420*

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10:00 AM     **Depart** Hotel en route  
LaGuardia Airport  
*[Drive Time: 30 min]*

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10:40 AM     **Wheels Up** LaGuardia Airport  
en route Providence, RI  
*[Flight Time: 45 min]*

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11:35 AM     **Depart** Airport en route East  
Providence Dept. of  
Transportation Maintenance  
Facility

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12:20 PM     **PHOTOLINE**  
*Backstage*

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12:30 PM     **REMARKS** at Infrastructure  
Event with Governor  
Raimondo

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**DAILY U.S. TROOPS UPDATE**

# US Troops Died in Iraq/Afghanistan:  
6,745

# US Troops Wounded in Iraq/Afghanistan:  
52,392

US Troop Levels:  
Afghanistan (Security Assistance, Advisory  
and CT): 10,000  
Iraq (Security Assistance): 4,000

*VPOTUS Miles Traveled: 1,104,154*

*Backstage*

1:45 PM **Depart** Site en route Airport

2:15 PM **Wheels Up** Providence, RI  
en route New Castle Airport  
*[Flight Time: 1 hr, 5 min]*

3:30 PM **Depart** Airport en route Lake  
House

3:45 PM **Depart** Lake House en route  
Bob Carpenter Center

4:00 PM **ATTEND** University of DE  
Commencement  
*Bob Carpenter Center*

6:15 PM **Depart** Bob Carpenter  
Center en route Lake House

RON Lake House

1:30 PM **TAPE** Local Interview with  
Dan Jaehnig (WJAR)



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March 3, 2023

**Via E-mail** – [fara.public@usdoj.gov](mailto: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.”<sup>1</sup> 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.<sup>2</sup>

**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

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

<sup>2</sup> 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](https://tinyurl.com/h7xja53a).

611 Pennsylvania Ave SE #231  
Washington, DC 20003

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.”<sup>3</sup> Until its dissolution on February 16, 2023, Burisma Holdings Limited was a limited company registered in Cyprus and principally doing business in Ukraine.<sup>4</sup> 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.”<sup>5</sup> 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.”<sup>6</sup> 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.”<sup>7</sup>

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.”<sup>8</sup>

Furthermore, a FARA registration statement must be “detailed”<sup>9</sup> 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

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<sup>3</sup> 22 U.S.C. § 611(b).

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

<sup>5</sup> 22 U.S.C. § 611(c)(1).

<sup>6</sup> 22 U.S.C. § 611(c)(2).

<sup>7</sup> 22 U.S.C. § 611(g).

<sup>8</sup> 22 U.S.C. § 611(c)(1)(i)-(iv).

<sup>9</sup> 22 U.S.C. §612.

relation.”<sup>10</sup> 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.”<sup>11</sup> Such records must be kept “readily accessible for inspection” by the Department of Justice.<sup>12</sup>

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.<sup>13</sup>

### **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.”<sup>14</sup> 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.<sup>15</sup> 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.**

RHB<sup>16</sup>

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<sup>10</sup> 28 C.F.R. § 5.210.

<sup>11</sup> 28 C.F.R. § 5.500.

<sup>12</sup> 28 C.F.R. § 5.500(b).

<sup>13</sup> See 22 U.S.C. § 618(a); 18 U.S.C. § 3571.

<sup>14</sup> 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>.

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

<sup>16</sup> *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.

RHB<sup>17</sup>

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.”<sup>18</sup>

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.

RHB<sup>19</sup>

Burisma is a “foreign principal” under FARA.<sup>20</sup> 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.”<sup>21</sup> 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.”<sup>22</sup> 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

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<sup>17</sup> *Id.* at 13.

<sup>18</sup> *Id.* at 9.

<sup>19</sup> *Id.*

<sup>20</sup> 22 U.S.C. § 611(b).

<sup>21</sup> 22 U.S.C. § 611(c)(1)(i).

<sup>22</sup> 22 U.S.C. § 611(c)(1)(iv).

President about responding to press inquiries concerning his appointment at Burisma.<sup>23</sup>

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

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<sup>23</sup> 22 U.S.C. § 611(g).



<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
 1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi-district Litigation  
  7 Appeal to District Judge from Mag. Judge  
  8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 Violation of APA, U.S.C. § 706(1), failing to require Mr. Biden to register as a foreign agent under FARA

**VII. REQUESTED IN COMPLAINT**

CHECK IF THIS IS A CLASS ACTION UNDER F R C P 23

**DEMAND \$**  
**JURY DEMAND:**

Check YES only if demanded in complaint  
 YES  NO

**VIII. RELATED CASE(S) IF ANY**

(See instruction)

YES  NO

If yes, please complete related case form

**DATE:** 07/18/2023

**SIGNATURE OF ATTORNEY OF RECORD** /s/ Michael Ding

**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.