

WHAT HAPPENED TO HUNTER BIDEN'S PLEA AGREEMENT

Because people who ignored the motion to dismiss proceedings have now decided to weigh in on what happened with Hunter Biden's failed plea agreement last year, I wanted to lay out what is actually known to have happened, rather than what pretty faces like Ken Dilanian falsely claim happened.



Ken Dilanian 
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In retrospect, the decision by Hunter Biden's team not to agree to a plea deal they didn't like (because it didn't grant him immunity from FARA violations) was a catastrophic one.

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The timeline makes several things clear: First, Weiss did revoke the terms of the immunity agreement he offered in June 2023. But that's not what killed the plea deal. Hunter was willing to accept a narrowed plea deal. What killed it was Judge Noreika's intervention in the Diversion Agreement. Once she gave David Weiss the opportunity, he withdrew all remaining meaningful terms of the plea deal, got Special Counsel status, and chased the Alexander Smirnov hoax.

Weiss was personally involved in a plea offer on June 6 that would have immunized Hunter against further charges on the fact set under discussion (so guns, taxes, drugs, and FARA). It remains uncontested that Weiss' office told Chris Clark on June 19 there was no ongoing investigation.

On July 20, Probation agreed to changes to the Diversion Agreement, seemingly indicating approval. But then, as Wise and Hunter were signing the Diversion Agreement on July 26, the head of Probation told AUSA Ben Wallace she would not sign the Diversion Agreement; no one ever told Hunter this in the hearing or the negotiations immediately after the hearing, but

it appears that Judge Maryellen Noreika knew Probation was not going to sign.

Before any specific discussion of scope of immunity, Judge Noreika suggested Probation could veto Diversion Agreement because grant of immunity is too broad. After that, she complained over and over and over that she didn't get to sign the Diversion Agreement.

At the plea hearing, Leo Wise asserted (contrary to earlier assurances) there was an ongoing investigation. After Wise said the immunity permitted FARA charges and there would be no deal if FARA were excluded, Clark agreed to orally modify the scope of immunity, and by the end of the hearing both Wise and Noreika recognized that. At that point, Hunter believed he had a signed Diversion Agreement covering guns, taxes, and drugs (but no longer FARA).

After complaining that she didn't get to sign the Diversion Agreement over and over, Noreika deferred the plea, and ordered more briefing.

Hunter pled not guilty.

In their first offer after the plea hearing, Weiss proposed getting rid of judicial arbitration and also eliminating all immunity, effectively throwing out the plea. After Hunter didn't immediately accept the no-immunity, no-arbiter plea, Weiss got Special Counsel status.

Hunter was willing to take a plea without FARA immunity. But because Noreika wanted the ability to veto the scope of immunity, she didn't approve the plea. And that led Weiss' office to immediately revoke all meaningful substance of a plea offer.

Timeline

June 6, 2023: Chris Clark spoke to David Weiss and told him any "Agreement's immunity provision must ensure Mr. Biden that there would be finality and closure of this investigation." In response, Lesley Wolf proposed this language, to

which Chris Clark agreed on Hunter's behalf:

The United States agrees not to criminally prosecute Biden, outside of the terms of this Agreement, for any federal crimes *encompassed* by the attached Statement of Facts (Attachment A) and the Statement of Facts attached as Exhibit 1 to the Memorandum of Plea Agreement filed this same day.

June 7: Bill Barr tells Margot Cleveland that the Smirnov FD-1023 had been sent to David Weiss for further investigation.

It's not true. It wasn't closed down," William Barr told The Federalist on Tuesday in response to Democrat Rep. Jamie Raskin's claim that the former attorney general and his "handpicked prosecutor" had ended an investigation into a confidential human source's allegation that Joe Biden had agreed to a \$5 million bribe. "On the contrary," Barr stressed, "it was sent to Delaware for further investigation."

June 19: Per claim from Chris Clark that Weiss never contested in Motions litigation, Weiss' First AUSA told him that there was not another open or pending investigation into Hunter Biden.

Shortly after that email, I had another phone call with AUSA Hanson, during which AUSA Hanson requested that the language of Mr. Biden's press statement be slightly revised. She proposed saying that the investigation would be "resolved" rather than "concluded." I then asked her directly whether there was any other open or pending investigation of Mr. Biden overseen by the Delaware U.S. Attorney's Office, and she responded there was not another open or pending investigation.

July 19: Chief of Probation Margaret Bray recommends Hunter for 24-month diversion.

July 20: AUSA Benjamin Wallace tells Noreika's Courtroom Deputy that the government, Hunter's team, and Probation have agreed to changes in the diversion agreement.

The parties and Probation have agreed to revisions to the diversion agreement to more closely match the conditions of pretrial release that Probation recommended in the pretrial services report issued yesterday.

July 20: Chuck Grassley and James Comer release Smirnov FD-1023.

July, ND (per indictment): FBI requests Weiss assistance in investigation of FD-1023.

July 26 Plea agreement (note, the links to the transcript come from references Judge Noreika made in her order denying immunity under the Diversion Agreement, as well as all the complaints about not getting to sign the Diversion Agreement which she left out; the order is best understood as an effort to refashion her own intervention):

- Before Noreika enters the room: Leo Wise and Hunter Biden sign Diversion Agreement
- As Wise and Biden are signing Diversion Agreement, Wallace approaches Bray regarding Diversion agreement, and she, "expressly declined to sign the draft diversion agreement" [at this point, the prosecution and Probation know she has

refused to sign, but Hunter does not; for reasons I laid out here, it appears Noreika did know Bray was not going to sign]

- 12: Noreika does plea colloquy
- 40: Hunter says he's relying on promises in Diversion Agreement
- 42: Noreika asks whether this is a plea under Rule 11(c)(1)(B) or Rule 11(c)(1)(A)
- 43: Clark says the plea stands alone
- 45: Clark says government has reassured him they'll stand by Diversion Agreement
- 47: **Noreika suggests Probation could reject the Diversion** because immunity grant was too broad; Wise says that's discretion of DOJ
- 48: Wallace – the only prosecutor who definitely knew Probation had refused to sign – agrees that if the immunity were in the plea, it'd be under Rule 11(c)(1)(A)
- 51: **Wise says there's an ongoing investigation** (conflicting with reassurance offered by Weiss' office in June)

- 51: Noreika complains she can't sign the Diversion Agreement
- 52: Clark says the Diversion Agreement has been approved by Probation; no one corrects him
- 52: Noreika complains the Diversion Agreement treats her as a rubber stamp
- 56: Wise says they could bring FARA charges
- 56: **Wise says if FARA is included, then "there is no deal"**
- 58: **Clark agrees to orally modify immunity provision to apply to only drugs, guns, and taxes**
- 84: Wise says the parties to the Diversion Agreement are DOJ and Hunter
- 90: Wise states that the immunity paragraph has been orally modified to apply only to drugs, guns, and taxes
- 93: Noreika complains that there's no place for her to sign off on Diversion Agreement
- 96: Noreika complains that DOJ won't be able to charge Hunter if she doesn't agree he has violated Diversion Agreement
- 102: Wise repeats that

they've agreed to terms of Diversion Agreement

- 105: Noreika complains that she doesn't have the ability to sign off on immunity
- 105: Noreika defers plea
- 106: Noreika asks for briefing on why it's a plea under Rule 11(c)(1)(B)
- 106: Noreika recognizes Clark has orally modified the scope of immunity, but tells him to put it into writing
- 110: Hunter pleads not guilty

July 31 DOJ proposes changes:

- Eliminate judge as arbiter
- Delete immunity provision
- Eliminate cross reference between plea and Diversion agreements

August 7: Clark insists on retaining judge as arbiter and retaining immunity provision

August 9: Wise withdraws all agreements by August 11

August 10: Clark asks to have until August 14

August 11: Before Hunter can respond, Weiss withdraws tax agreement and Garland names Weiss Special Counsel

August 29: FBI interviews Smirnov handler

August 29: Weiss tells Lowell they insist on felony pleas, claims they don't have to rely on laptop

September 27: FBI interviews Smirnov