

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<https://oversight.house.gov>

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VIA ELECTRONIC TRANSMISSION

Ms. Hilary Axam
National Human Trafficking Coordinator
U.S Department of Justice

Ms. Kristina Rose
Director, Office for Victims of Crime
U.S. Department of Justice

Ms. Axam and Ms. Rose:

The Department of Justice (DOJ) should uphold the rights of any victim who was sexually exploited by Robert Hunter Biden (Hunter Biden). Pursuant to the Justice Manual, “[i]f a prosecution is to be concluded pursuant to a plea agreement, the defendant should be required to plead to a charge or charges . . . [t]hat ordinarily include *the most serious readily provable offense*”¹ DOJ appears to have ignored its own policies by only charging Hunter Biden with two misdemeanor tax charges. But more disturbing, the Committee is concerned DOJ disregarded the victims who were sexually exploited by Hunter Biden.² Specifically, Congressional testimony indicates that Hunter Biden paid prostitutes—victims—and used such payments as tax expenses for one of his companies. These testimonies also indicated DOJ was investigating Hunter Biden for Mann Act violations.

We seek to analyze legislation that penalizes federal prosecutors who do not uphold victims’ rights—regardless of the defendant’s last name or political affiliation—and ensures that funds designated for victim related programs are used appropriately by DOJ. As the National Human Trafficking Coordinator and Director of the Office for Victims of Crimes at DOJ, you bear responsibility to ensure victims, including the women Hunter Biden allegedly sexually exploited, receive their statutory rights.

¹ See Justice Manual 9-27.430 – Selecting Plea Agreement Charges.

² See *The Attorney General Guidelines for Victim and Witness Assistance*, at 64 (“Actions taken at each stage of a case—from investigation, to charging, plea negotiations, and sentencing—all affect whether victims will receive full and timely restitution.”) (Mar. 31, 2023).

A. Victims' Rights and the Hunter Biden Prosecution

On June 20, 2023, the United States Attorney's Office for the District of Delaware (USAO Delaware) filed two separate Informations against Hunter Biden.³ The first Information charged Hunter Biden with two misdemeanors for willful failure to pay federal income tax under 26 U.S.C. § 7203 ("tax Information").⁴ The second Information charged Hunter Biden with a felony firearm offense in violation of 18 U.S.C. § 922(g)(3).⁵ U.S. Attorney Weiss submitted a cover letter dated June 20, 2023 to the clerk's office asserting DOJ and Hunter Biden "executed copies of the Memorandum of Plea Agreement related to the tax Information"⁶

On June 22, 2023, the House Ways and Means Committee made transcripts publicly available related to its interview of two IRS whistleblowers who were investigating Hunter Biden's criminal conduct.⁷ During an interview, the IRS special agent explained how Hunter Biden used payments to prostitutes as deductions through his professional corporation:

- I started this investigation in November of 2018 after reviewing bank reports related to another case I was working on a social media company. Those bank reports identified Hunter Biden as paying prostitutes related to a potential prostitution ring.⁸
- "I discussed with Mark" – Mark Daly, DOJ Tax Attorney – "that interviews we had planned for the end of the month should be a priority as they relate to a former employee, previous business partners, and some 2018 expenditures. I will have those subpoenas for those interviews in California to the pros team by next week so we don't have this issue again."

And so, again – end of the month I request [to the prosecutors that] subpoenas go out – or I request document requests go out – to go out and travel. And Mark Daly, DOJ Tax Attorney, says in an email to me on September 20th – and these were document requests relating to prostitutes that Hunter was paying.⁹

- So standard practice is – for any transaction, you want to go out – and a lot of our job is hitting the pavement, going out and talking to people. There was a lot of different investigative steps that we took, that even going and

³ *United States v. Robert Hunter Biden*, Case No. 1:23-cr-00061-UNA, Doc. 2, (D.C. Del. Jun. 20, 2023); *United States v. Robert Hunter Biden*, Case No. 1:23-cr-274M (D.C. Del. Jun. 20, 2023).

⁴ *Id.*

⁵ *Id.*

⁶ Letter from David C. Weiss, United States Attorney for the District of Delaware, to U.S. District Court Clerk's Office dated June 20, 2023.

⁷ See Smith: Testimony of IRS Employees Reveals Biden IRS, DOJ Interfered in Tax Investigation of Hunter Biden, Revealing Preferential Treatment for Wealthy and Politically Connected (Jun. 22, 2023).

⁸ See Transcribed Interview of Case Agent, Internal Revenue Service, at 17 (Jun. 1, 2023) (emphasis added).

⁹ *Id.* at 30 (emphasis added).

talking to the prostitutes, we found multiple people that he called his employees that were also prostitutes, and that he would have them clean his hotel room or – there were a lot of these interviews that we ended up going and doing and talking to people that were so worth it, even though someone might – we were always being told by the prosecutors, you guys are wasting your time going and doing that. It’s not worth it. And literally, I would surprise them every time and find everyone.¹⁰

According to the special agent, some of the prostitutes’ payments were used as business expenses in the 2018 tax year—the same year charged in Count Two of the tax Information.

Counsel: During our discussion of the 2018 tax year, you mentioned that Hunter Biden was making business expenses for prostitutes?

Special Agent: Yes, in some circumstances.¹¹

The special agent also explained how DOJ was investigating potential violations of the Mann Act and that DOJ was “compiling them together.”¹²

Special Agent: There were expenditures for one of – he called it his West Coast assistant, but we knew her to also be in the prostitution world or believed to be in the prostitution world. And he deducted expenses related to her. She relates to the sex club issue.

And then there were – and I know that my counsel brought this up earlier. There were some flying people across State lines, paying for their travel, paying for their hotels. They were what we call Mann Act violations. . . .

Counsel: And were those Mann Act violations referred to the Justice Department?

Special Agent: I know that they were compiling them together. I don’t know what they ended up doing with them. I know there was an effort at some point to compile them, but I don’t know what ultimately happened with them.¹³

Gary Shapley, an IRS whistleblower who was a supervisory special agent on the investigation, also explained how Hunter Biden expensed prostitutes:¹⁴

¹⁰ *Id.* at 53 (emphasis added).

¹¹ *Id.* at 154.

¹² See 18 U.S.C. § 2421 et seq. (“Cases arising under the Mann Act . . . are investigated by the Federal Bureau of Investigation and are referred directly to the appropriate United States Attorneys. The Child and Exploitation and Obscenity Section of the Criminal Division is responsible for supervision of the Act.” See Justice Manual: Criminal Resource Manual § 2720. Mann Act (Jan. 17, 2020)).

¹³ See Transcribed Interview of Case Agent, at 155 (emphasis added).

¹⁴ See Transcribed Interview of Gary Shapley, Internal Revenue Service, at 97 (emphasis added).

- There were multiple examples of prostitutes that were ordered basically, and we have all the communications between that where he would pay for these prostitutes, would book them a flight where even the flight ticket showed their name. And then he expensed those.

Based on this testimony, it appears Hunter Biden concealed illegal payments to prostitutes—victims—by claiming business expenses through one of his companies. Put simply, Hunter Biden’s criminal conduct harmed these women, and such harm appears to involve the 2018 tax charge for which he is now pleading guilty:¹⁵

Counsel: What do you think happened between 2014 and 2018? You told us that he had utilized this Eric Schwerin fellow to try to get his taxes in order so he pays his taxes, but we get to 2018, and he’s trying to expense prostitutes and whatnot.

SSA Shapley: Yeah, and –

Counsel: And for purposes of his tax returns, he’s expensing them to what business?

SSA Shapley: To Owasco P.C., I believe.

Several issues are clear from the IRS agents’ testimony: (1) the prosecution team identified and interviewed women to whom Hunter Biden paid to have sex and may have facilitated their travel in interstate commerce to commit an illegal act, potentially in violation of the Mann Act, (2) Hunter Biden allegedly used payments to prostitutes as tax expenses in 2018, which appears related to Count Two in the tax Information, (3) Hunter Biden allegedly used his professional corporation associated with his law firm, Owasco, P.C., to conceal such payments; (4) DOJ compiled a list of these women and agents identified many of the victims; and (5) Hunter Biden is being charged for tax crimes related to his 2017 and 2018 filings, which should include conduct related to expensing payments to prostitutes.

B. The Crime Victims’ Rights Act and DOJ Policies Protecting Victims

The CVRA defines a “crime victim” as “a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.”¹⁶ The Committee is concerned DOJ will not afford the victims their statutory rights. This is despite the statements of Attorney General Merrick Garland on February 13, 2023, when he stated, “[t]he horrors of human trafficking are well known to this group. At the Justice Department, we are committed to combatting this heinous crime from every angle. This includes . . . vindicating the rights of victims and survivors.”¹⁷ Attorney General Garland has also boasted about the amount of money the Office for Victims of Crime disbursed to victims related to human trafficking in

¹⁵ *Id.* at 98.

¹⁶ *See* 18 U.S.C. § 3771(e)(2).

¹⁷ *See* Attorney General Merrick B. Garland Delivers Remarks at the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons (Feb. 13, 2023) (emphasis added).

fiscal year 2023.¹⁸ I hope you will agree that any person who has been trafficked for prostitution is a “crime victim” under the CVRA and DOJ policy, and the men who pay for sex perpetuate these crimes and harm their victims.¹⁹

Regardless of your opinion, the CVRA enumerates certain statutory rights to victims:

- The right to be reasonably protected from the accused.
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- The reasonable right to confer with the attorney for the Government in the case.
- The right to full and timely restitution as provided in law.
- The right to proceedings free from unreasonable delay.
- The right to be treated with fairness and with respect for the victim’s dignity and privacy.
- The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
- The right to be informed of the rights under this section and the services described in section 503(c) of the Victims’ Rights and Restitution Act of 1990 and provided contact information for the Office of the Victims’ Rights Ombudsman of the Department of Justice.²⁰

¹⁸ *Id.*

¹⁹ Both FBI and DOJ on their public websites describe prostitutes as “victims.” *See* <https://www.fbi.gov/investigate/violent-crime/human-trafficking> (“Traffickers use violence, manipulation, or false promises of well-paying jobs or romantic relationships to exploit victims. ***Victims are forced to work as prostitutes***”) (emphasis added); *see the Attorney General Guidelines for Victim and Witness Assistance*, at 21 (“Victims of human trafficking may be considered victims for purposes of the prosecutions of such crimes despite any legal culpability that the victims may have for ancillary offenses, such as immigration or prostitution crimes.”) (Mar. 31, 2022).

²⁰ *See* 18 U.S.C. § 3771(a).

In addition to the rights enumerated in the CVRA, on March 31, 2023, Attorney General Garland issued *The Attorney General Guidelines for Victim and Witness Assistance*.²¹ According to this guidance, rights of victims should be a consideration when determining appropriate charges.²² The Committee seeks to ensure DOJ is upholding victims' rights, including the right to be informed about plea agreements and reasonably heard at public proceedings.

Additionally, the Committee is concerned about the narrow scope of the charges that the DOJ chose to bring despite available evidence to other, more serious crimes. The limited charging decisions may directly affect the victims' ability to obtain relief. In choosing to ignore more severe criminal charges or omit relevant offense conduct, the DOJ opted to leave victims out of the conversation—a statutory right under the CVRA.

C. DOJ Funding Should Ensure Victims Receive Statutory Rights

There is a clear statutory framework established for victims' rights. Congress envisioned victims' involvement in critical stages of criminal prosecution, including plea negotiations, change of plea hearings, and sentencing proceedings.²³ It is in the interest of justice for the Committee to pursue legislative checks and balances that would ensure victims' rights are sought after regardless of who is being prosecuted.

When DOJ chooses to forgo particular charges in an investigation because of an individual's last name or political affiliation, they run the risk of foreclosing victims' rights. The Hunter Biden plea agreement sets a dangerous precedent and one that the American people deserve an answer for. Accordingly, we seek transparency related to whether the DOJ consulted with victims in the plea negotiation process with Hunter Biden; what DOJ did with the information that was compiled by law enforcement agents related to these victims; whether such victims have been notified of the change of plea hearing and potential sentencing dates; and whether they can submit victim impact statements during court proceedings.

To that end, in 2022, DOJ requested funding of \$2.65 billion for the Crime Victims Fund, which "grants to states and territories to support compensation and services for victims of crimes."²⁴ In 2022, \$1.786 billion was obligated for crime victims grants and assistance.²⁵ Furthermore, in 2023, the Crime Victims Fund requested a \$1.75 billion budget, and it is worth noting that the Office of Justice Programs specifically mentioned their intent to prioritize the "rights, access and equity for all victims of crime."²⁶ With a budget of this magnitude, the

²¹ See Merrick B. Garland, et al., *The Attorney General Guidelines for Victim and Witness Assistance*, U.S. Dept. of Just. (Mar. 31, 2023).

²² *Id.* at 4.

²³ *United States v. Boeing*, 617 F.Supp.3d 502, 507, 511 (N.D. Tex. 2022) (quoting *Hughey v. United States*, 495 U.S. 411, 418 (1990)).

²⁴ U.S. Dep't. of Just., *FY 2022 Budget Request At A Glance*, Off. of Just. Prog., at 139 (May 27, 2021); The White House, *Dept. of Justice - Justice Operations, Management, and Accountability – Federal Funds*, https://www.whitehouse.gov/wp-content/uploads/2023/03/jus_fy2024.pdf, at 734 (Mar. 2023).

²⁵ *Id.* at 733.

²⁶ U.S. Dep't. of Just., *FY 2023 Budget Request At A Glance*, Off. of Just. Prog., at 144-46 (Mar. 31, 2022).

Committee is interested in obtaining a more detailed briefing related to DOJ's grants and expenditures on victims' rights.

D. The Mandatory Victim Restitution Act

Federal prosecutors are also required to consider how charges will affect a victim's rights to restitution.²⁷ By only charging two misdemeanor violations for the tax Information and Plea Agreement under Title 26—instead of Title 18—federal prosecutors have foreclosed any restitution under the Mandatory Victim Restitution Act (MVRA).²⁸ A victim cannot recover mandatory restitution pursuant to the MVRA under Title 26 offenses whereas the Mann Act would have allowed for full and timely restitution under the law because it is a Title 18 offense.

As stated in *The Attorney General Guidelines for Victim and Witness Assistance*:

The amount of restitution that a court may order is affected by the crimes charged because restitution is generally only legally required for victims of the conduct of conviction. When exercising their discretion to include or exclude charges in an indictment [and information], prosecutors should give due consideration to the need to provide full restitution to the victims of federal criminal offenses.²⁹

Like our concerns related to the CVRA as laid out above, the DOJ chose charges that precluded victims from being able to find relief under the MVRA. The Committee is therefore also interested in finding legislative solutions that would ensure the DOJ remains committed in their responsibility to serve justice to all parties throughout the criminal process, including under the MVRA. In doing so, we seek to ensure that charges are chosen in such a way that considers victims are made whole in every case and DOJ funding is being spent appropriately.

In order to assist the Committee, please provide the following information by August 4, 2023:

1. Did anyone at the United States Attorney's Office for Delaware contact anyone at DOJ regarding potential victims in the investigation of Hunter Biden?
2. Who at DOJ received the compiled list of women who were allegedly sexually exploited by Hunter Biden and what did those persons do with that information?
3. Was the U.S. Probation Office informed of relevant offense conduct involving victims?

²⁷ See Justice Manual 9-27.420 – Plea Agreements—Considerations to be Weighed (Feb. 2018).

²⁸ See 18 U.S.C. § 3663A.

²⁹ See *The Attorney General Guidelines for Victim and Witness Assistance*, at 65.

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4. Whether DOJ conferred with any victims pursuant to the CVRA prior to entering into the plea agreement(s) with Hunter Biden's attorneys?
5. Were any victims notified of the change of plea hearing?
6. Does DOJ intend to notify victims of the sentencing hearing so they can submit victim impact statements to the Court?
7. Was the U.S. Attorney for Delaware or another DOJ component responsible for handling victim issues related to the investigation of Hunter Biden?

Additionally, the Committee seeks a briefing to discuss how DOJ has allocated and used funds for grants and other expenditures related to the Crime Victims Fund since 2021. Please contact Committee Majority staff at (202) 225-5074 to schedule a briefing.

The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

Thank you for your prompt attention to this important investigation.

Sincerely,



James Comer
Chairman
Committee on Oversight and Accountability



Marjorie Taylor Greene
Member of Congress

cc: The Honorable Merrick Garland
Attorney General

The Honorable David C. Weiss
U.S. Attorney for Delaware

The Honorable Jamie B. Raskin, Ranking Member
Committee on Oversight and Accountability