



U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS
1139 LONGWORTH HOUSE OFFICE BUILDING
Washington, DC 20515

July 14, 2023

The Honorable Merrick B. Garland
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable David C. Weiss
United States Attorney
District of Delaware
1313 North Market Street
Wilmington, Delaware 19899

Re: *United States v. Robert Hunter Biden*, 1:23-mj-00274-MN

Dear Attorney General Garland and U.S. Attorney Weiss,

The U.S. House Committee on Ways and Means (Committee) recently voted to submit to the full House of Representatives (House)¹ the transcripts of whistleblower testimony provided by two Internal Revenue Service (IRS) employees regarding the investigation of Robert Hunter Biden.² Through that process, the transcripts became publicly available.³ These whistleblowers provided information to the Committee under 26 U.S.C. § 6103(f)(5) and did so through voluntary transcribed interviews under questioning from both majority and minority counsel on May 26, 2023, and June 1, 2023.

The testimony of the two whistleblowers raises serious concerns about the handling of this investigation and prosecution, and multiple congressional inquiries into the whistleblowers' allegations are ongoing. The whistleblowers alleged that prosecutors and Department of Justice

¹ H. Comm. on Ways and Means, Business Meeting, *Meeting on Documents Protected Under Internal Revenue Code Section 6103* (June 22, 2023), <https://waysandmeans.house.gov/event/meeting-on-documents-protected-under-internal-revenue-code-section-6103/>.

² The Committee is also aware of a related matter under a different case number: *United States v. Robert Hunter Biden*, 1:23-cr-00061-MN. Given the seeming connection between the two matters, we believe the judge should consider the attached material in the context of both matters as appropriate.

³ H. Comm. on Ways and Means, Business Meeting, *Meeting on Documents Protected Under Internal Revenue Code Section 6103* (June 22, 2023), <https://waysandmeans.house.gov/event/meeting-on-documents-protected-under-internal-revenue-code-section-6103/>.

officials engaged in unjustified delays and political interference that resulted, in part, in the statute of limitations expiring for tax years 2014 and 2015. According to the whistleblowers, the IRS recommended criminal charges be sought for tax years 2014 through 2019, including multiple felony counts. These represent only some of the allegations presented to the Committee by the whistleblowers, as they also provided numerous examples of unprecedented and unusual interference, delays, and roadblocks beyond what is described above, which appear to have hindered the investigation.

Over the course of a single week in June, the existence of a plea agreement in this matter became public, a plea hearing was scheduled, and the Committee submitted whistleblower testimony to the full House. Given the abruptness of the plea agreement announcement shortly after it became public that whistleblowers made disclosures to Congress, the seriousness of the whistleblower allegations, and the fact that multiple congressional investigations into the matter are ongoing, we ask that you file this letter and the attached information in the docket of the above referenced matter and confirm with the Committee that you have done so as soon as possible, but no later than 5pm on Tuesday, July 18, 2023.

Placing the attached materials into the record is critical because the testimony provided by the two IRS whistleblowers brings new and compelling facts to light, and because it is essential for the Judge in this matter to have relevant information before her when evaluating the plea agreement.

Judges can reject plea agreements and there is precedent for them to do so for a variety of reasons.⁴ Legal experts have described situations where judges rejected plea agreements “if judges believe the agreements do not adequately address the nature of the crimes, the rights of victims, or the interests of the public” or when judges “disagree with prosecutors’ proposed sentence in order to avoid any surprises at the later sentencing hearing.”⁵ For example, judges have rejected plea agreements because the plea agreement is “flawed” and they “don’t agree with

⁴ See e.g., Jonathan Allen, *In rare move, U.S. judge rejects plea agreement by Ahmaud Arbery’s murderers*, REUTERS (Jan. 31, 2022), <https://www.reuters.com/world/us/us-prosecutors-reach-hate-crime-plea-deals-ahmaud-arbery-murder-court-filings-2022-01-31/> (reporting on *U.S. v. Travis McMichael*, Change of Plea/Entry of Plea Minutes, Jan. 31, 2022, Case No. 2:21-cr-00022-LGW-BWC, ECF No. 154 (S.D. Ga. 2022)); Celine Castronuovo, *Judge rejects plea deal with man described as world’s largest child porn purveyor*, THE HILL (May 12, 2021), <https://thehill.com/regulation/court-battles/553183-judge-rejects-plea-deal-with-man-described-as-worlds-largest-child/> (reporting on rejection of a plea deal because the judge was inclined to give the defendant a longer sentence in *U.S. v. Eric Eoin Marques*, Transcript of Proceedings – Sentencing Hearing Before The Hon. Theodore D., May 12, 2021, Case No. 8:19-cr-00200-TDC, ECF No. 93 (D. Md. 2021)); Kristen Weaver, *Judge Rejects Tulsa Murder Suspect’s Plea Deal, Orders Him To Stand Trial*, NEWS ON 6 (July 14, 2021), <https://www.newson6.com/story/60ef9b140a26b00c04ee6447/judge-rejects-tulsa-murder-suspects-plea-deal-orders-him-to-stand-trial-> (reporting on *U.S. v. Sago*, Minute Sheet – Sentencing, July, 13, 2021, Case No. 4:20-cr-00094-GKF, ECF No. 45 (N.D. Okla. 2021)).

⁵ Jonathan Allen, *In rare move, U.S. judge rejects plea agreement by Ahmaud Arbery’s murderers*, REUTERS (Jan. 31, 2022), <https://www.reuters.com/world/us/us-prosecutors-reach-hate-crime-plea-deals-ahmaud-arbery-murder-court-filings-2022-01-31/>.

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the outcome;”⁶ the judge finds “the sentencing options available strikingly deficient;”⁷ the plea agreement “falls short given the backdrop of the parties’ motivation, [the individual’s] trusted employment position, and the threats to national and global security...that [the parties’] actions caused;”⁸ and “[i]t was not in the best interest of the community, or the country, to accept the[] plea agreements.”⁹

In one state court proceeding, a judge rejected a plea agreement because “[i]t is contrary to justice. Justice in this society cannot be seen as being able to buy oneself out of a felony conviction.” The Judge also went on to say, “[m]any in our community steal much less and go to prison or to jail.... They steal much less and they don’t get a deferred judgment because they don’t have any money.”¹⁰

Thus, entering this information into the formal record will ensure that the Judge can review and consider this relevant information prior to the scheduled plea hearing on July 26, 2023. Please find attached the materials the Committee submitted to the full House. Thank you for your prompt attention to this matter. Again, we ask that you respond to the Committee by 5pm on Tuesday, July 18, 2023.

Sincerely,



Jason Smith
Chairman
Committee on Ways and Means

⁶ *U.S. v. Eric Eoin Marques*, Transcript of Proceedings – Sentencing Hearing Before The Hon. Theodore D., May 12, 2021, Case No. 8:19-cr-00200-TDC, ECF No. 93 (D. Md. 2021).

⁷ *Judge rejects plea deal in submarine secrets case, saying sentences were too light*, NPR (Aug. 17, 2022), <https://www.npr.org/2022/08/17/1117837082/judge-rejects-plea-deal-in-submarine-secrets-case-saying-sentences-were-too-light>; see also *U.S. v. Jonathan Toebbe and Diana Toebbe*, Order Rejecting Plea Agreements, Permitting Defendants to Withdraw Guilty Pleas and Setting Trial Dates 2, Aug. 18, 2022, Case No. 3:21-cr-00049-GMG-RWT, ECF No. 113 (N.D.W. Va. 2022) (rejecting a plea deal and noting “that while she generally honors plea agreements, in this case she said the sentencing options were ‘strikingly deficient’ considering the seriousness of the charges.”).

⁸ *U.S. v. Jonathan Toebbe and Diana Toebbe*, Order Rejecting Plea Agreements, Permitting Defendants to Withdraw Guilty Pleas and Setting Trial Dates 2, Aug. 18, 2022, Case No. 3:21-cr-00049-GMG-RWT, ECF No. 113 (N.D.W. Va. 2022).

⁹ *Id.*

¹⁰ Justin Wingerter, ‘*Contrary to justice*’: Judge rejects probation plea deal for Bachar in \$125K theft, BusinessDen (Mar. 13, 2023), <https://businessden.com/2023/03/13/contrary-to-justice-judge-rejects-probation-plea-deal-for-bachar-in-125k-theft/>.