

Congress of the United States

Washington, DC 20515

July 5, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Henry J. Kerner
Special Counsel
Office of Special Counsel

Dear Special Counsel Kerner:

The Department of Justice (DOJ) and Internal Revenue Service (IRS) have reportedly engaged in unlawful whistleblower retaliation against veteran IRS employees.¹ Multiple news reports indicate that the whistleblower and the investigative team were removed from the Hunter Biden investigation by the IRS at DOJ's request as retaliation for making protected whistleblower disclosures to Congress.² We are also aware that in response to these disclosures, Acting Special Agent in Charge (ASAC) Kareem Carter sent an email to supervisors, including to the whistleblower, stating that no information involving the investigation can leave the field office without first going through the chain of command directive by seeking approval from a supervisor.³

This email failed to include the anti-gag provision as required by 5 U.S.C. § 2302(b)(13), as well as included in the Consolidated Appropriations Act.⁴ The anti-gag provision prohibits the use of appropriated funds and the enforcement of a nondisclosure agreement or other restrictive policy, form, or agreement that does not specifically allow for lawful, protected disclosures and that each policy, form, or agreement must use specific language apprising the employee of their rights to make such disclosures.⁵ Specifically, the anti-gag provision prohibits the use of government funds to implement or enforce any nondisclosure policy, form, or agreement if it does not contain the following statement:

¹ Chris Pandolfo and Gillian Turner, *IRS whistleblower letter accuses DOJ of retaliation in Hunter Biden probe*, Fox News (May 16, 2023) <https://www.foxnews.com/politics/irs-whistleblower-letter-accuses-doj-retaliation-hunter-biden-probe>; Alayna Treene and Sara Murray, *IRS whistleblower who claims to have information of alleged mishandling of Hunter Biden probe removed from investigation*, CNN (May 16, 2023) <https://www.cnn.com/2023/05/16/politics/irs-whistleblower-congress/index.html>.

² Anders Hagstrom, *IRS whistleblowers claim retaliation in connection to Hunter Biden complaint*, Fox News (May 23, 2023) <https://www.foxnews.com/politics/irs-whistleblowers-claim-retaliation-connection-hunter-biden-complaint>; 5 USC § 7211.

³ House of Representatives Ways and Means Committee, *June 7, 2023 Letter*, (Jun. 7, 2023) https://waysandmeans.house.gov/wp-content/uploads/2023/06/June-7-2023-Letter_Redacted.pdf.

⁴ Pub. L. No. 117-328.

⁵ *Id.*

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.⁶

In addition, we have been made aware of an IRS email transmitted by Deputy IRS Commissioner for Services and Enforcement, Doug O'Donnell, to IRS employees regarding the lawful reporting of allegations of wrongdoing and protected whistleblower disclosures. In this email, the Deputy Commissioner states that he is writing because of concerns related to the reporting of allegations of wrongdoing and the lawful reporting of misconduct under 26 U.S.C. § 6103. While the email states the "IRS is deeply committed to protecting the role of whistleblowers," it fails to inform IRS employees of their Constitutional and statutory right to make protected disclosures to Congress.

Under 26 U.S.C. § 6103(f)(5), IRS employees have the right to make lawful disclosures to Congress if they believe a tax return or return information "may relate to possible misconduct, maladministration, or taxpayer abuse."⁷ However, the Deputy Commissioner's email states IRS employees may make disclosures to a supervisor, management, the DOJ Office of the Inspector General, or the Treasury Inspector General for Tax Administration but blatantly fails to provide that IRS employees have the right to make lawful disclosures to Congress.⁸ This is another example of the IRS seeking to chill whistleblowers from reporting wrongdoing to Congress.

The importance of protecting whistleblowers from unlawful retaliation and informing whistleblowers about their rights under the law cannot be understated. After all, *it is the law*. Accordingly, we request that you immediately investigate all allegations of retaliation against these IRS whistleblowers and all violations related to the IRS's failure to include the anti-gag provision as required by law. In addition, we request that you immediately seek the appropriate disciplinary actions against all who engaged in unlawful conduct against these whistleblowers. The DOJ and IRS must be held accountable for all instances of whistleblower retaliation and misconduct, and federal agencies cannot conceal their wrongdoing behind illegal nondisclosure directives and related documents.

⁶ *Id.*

⁷ 26 U.S.C. § 6103(f)(5).

⁸ 5 U.S.C. § 7211.

Given the importance of these matters, please schedule a briefing to discuss the steps you have taken with respect to our requests no later than July 19, 2023. Thank you for your prompt attention to this matter.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget



Ron Johnson
Ranking Member
Permanent Subcommittee on Investigations



Jason Smith
Chairman
Committee on Ways and Means



James Comer
Chairman
Committee on Oversight and Accountability



Jim Jordan
Chairman
Committee on the Judiciary

cc: The Honorable Michael E. Horowitz
Inspector General
Department of Justice

The Honorable J. Russell George
Inspector General
Department of the Treasury