

United States Senate
WASHINGTON, DC 20510

July 2, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick B. Garland
Attorney General
Department of Justice

Dear Attorney General Garland:

As you are all well aware, since 1984, the Crime Victims Fund (CVF) has provided critical resources to support victims and survivors of crime through grants for programs such as domestic violence shelters, victim advocacy centers, victim legal assistance, and children advocacy centers.¹ We write to you today to learn what concrete actions the Justice Department has taken to ensure the CVF remains solvent and has the critical resources to support victims and survivors of crime across the nation.

The CVF is unique because Congress established the fund to be self-sustaining through Justice Department prosecutions of criminals by requiring “all fines that are collected from persons convicted of offenses against the United States” be deposited into the CVF, with very limited exceptions.² However, over the years, deposits and the balance of the CVF have steadily decreased. To address these concerns, Congress took a number of recent and significant steps to increase the balance by making more funds available to be deposited into the CVF.³ For example, the Senate unanimously passed the VOCA Fix of 2021, which was enacted into law, that required additional criminal fines and penalties from deferred

¹ Office for Victims of Crime, *2023 Report to the Nation-FY 2021-2022*, <https://ovc.ojp.gov/2023-report-nation/message-director>.

² 34 U.S. Code § 20101(b) (these limited exceptions include fines collected by Treasury to pay awards to fish and wildlife whistleblowers under the Endangered Species Act and Lacey Act Amendment, and certain fines paid to the railroad unemployment insurance account, Postal Service Fund, navigable waters revolving fund, and county public school fund.)

³ Office for Victims of Crime, *Crime Victims Fund Overview*, <https://ovc.ojp.gov/about/crime-victims-fund>; *CVF Fund Balance and Deposits*, <https://ovc.ojp.gov/about/crime-victims-fund>; Lisa N. Sacco, *The Crime Victims Fund (CVF): Federal Support for Victims of Crime*, GAO-R42672 at 2, (May 21, 2024) <https://crsreports.congress.gov/product/pdf/R/R42672> (the Senate Unanimously passed the VOCA Fix of 2021 which required revenues collected from federal deferred prosecution and non-prosecution agreements be deposited into the CVF. Further, beginning in FY2023 Congress eliminated the transfer of money from the CVF to the Office on Violence Against Women (OVW) and decided to fund OVW through direct appropriations. CVF transfers to OVW varied over the years, but from FY2017-FY2022 \$326 million each year was transferred from the CVF to OVW); see also Department of Justice, *Office of Justice Programs FY 2023 Budget Request*, <https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/fy23budgetoverview.pdf>.

prosecution agreements (DPA) and non-prosecution agreements (NPA) be deposited into the CVF.⁴ At the time, an estimated \$4-\$7 billion of non-taxpayer money was estimated to be available for the fund over the next few years.⁵ At the signing of the VOCA Fix into law President Biden stated, “[t]his bill is going to allow us to make — make sure that all the fines and penalties that are from federal cases go into the victims — the Crime Victims Fund to rebuild this fund, because it’s badly needed.”⁶ However, the intent of the President’s statement is not currently reflected in the balance of the CVF or the data provided by the Justice Department.

Congress also took further action to protect the CVF by suspending the intragovernmental transfer from the CVF to fund the Office on Violence Against Women (OVW) beginning in Fiscal Year (FY) 2023 and funded OVW through separate appropriations.⁷ Transfers from the CVF to OVW fluctuated over the years, but from FY2017-FY2022 approximately \$326 million was transferred each year from the CVF to OVW, but through Congressional action, this amount now remains in the CVF.⁸ Despite these Congressional efforts to stabilize the CVF, data published by the Office for Victims of Crime (OVC) show the balance of the CVF remains historically low.⁹

On December 13, 2023, Senator Grassley wrote to the Justice Department about the historically low balance of the CVF and requested data concerning the deposits of criminal fines and penalties into the fund.¹⁰ On May 3, 2024, the Justice Department responded to Senator Grassley’s letter and provided data on the criminal fines and penalties deposited into the CVF from Criminal Division enforcement actions.¹¹ We are concerned about the data, which shows the Justice Department has allowed hundreds of millions of dollars in criminal fines and penalties from DPAs and NPAs that should be deposited into the CVF to be offset by what corporate criminals pay to foreign governments.¹² Further, without explanation, the Justice Department has taken millions of dollars in criminal fines and

⁴ Public Law No: 117-27, (Jul. 22, 2021) <https://www.congress.gov/bill/117th-congress/house-bill/1652/text>. Press Release, Grassley Joins Bipartisan Push To Strengthen Victims Of Crime Act, (Mar. 5, 2021)

<https://www.grassley.senate.gov/news/news-releases/grassley-joins-bipartisan-push-to-strengthen-victims-of-crime-act>.

⁵ Press Release, Grassley Joins Bipartisan Push To Strengthen Victims Of Crime Act, (Mar. 5, 2021)

<https://www.grassley.senate.gov/news/news-releases/grassley-joins-bipartisan-push-to-strengthen-victims-of-crime-act>.

⁶ Speeches and Remarks, Remarks by President Biden at Signing of H.R. 1652, the VOCA Fix to Sustain the Crime Victims Fund Act of 2021, (Jul. 22, 2021) <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/22/remarks-by-president-biden-at-signing-of-h-r-1642-the-voca-fix-to-sustain-the-crime-victims-fund-act-of-2021/>.

⁷ Lisa N. Sacco, *The Crime Victims Fund (CVF): Federal Support for Victims of Crime*, GAO-R42672 at 2, (May 21, 2024) <https://crsreports.congress.gov/product/pdf/R/R42672>

⁸ Lisa N. Sacco, *The Crime Victims Fund (CVF): Federal Support for Victims of Crime*, GAO-R42672 at 2, (May 21, 2024) <https://crsreports.congress.gov/product/pdf/R/R42672>

⁹ Office for Victims of Crime, *FY 2007 – FY 2024 Crime Victims Fund End of Year Balance*, (Mar. 31, 2024)

¹⁰ Letter from Senator Grassley to Attorney General Garland, (Dec. 13, 2023)

https://www.grassley.senate.gov/imo/media/doc/grassley_to_doj_-_crime_victims_fund_follow_up.pdf; see also, Letter from Senator Grassley to Attorney General Garland, (Feb. 27, 2023)

https://www.grassley.senate.gov/imo/media/doc/grassley_to_doj_-_crime_victims_fund.pdf; Letter from Senators Charles E. Grassley, Martha McSally, Mike Crapo, and Thom Tillis to Office for Victims of Crime, (Jun. 4, 2020)

<https://www.grassley.senate.gov/news/news-releases/grassley-colleagues-send-letter-doj-about-financial-status-crime-victims-fund>.

¹¹ Letter from the Justice Department to Senator Charles E. Grassley, (May 3, 2024)

https://www.grassley.senate.gov/imo/media/doc/doj_to_grassley_-_crime_victims_fund_follow_up.pdf.

¹² *Id.*

penalties from DPAs and NPAs and deposited them into the Justice Department's Working Capital Fund (WCF) instead of the CVF.¹³ According to the Department of Justice Office of the Inspector General (DOJ OIG) WCF audit report, the "WCF is a financing mechanism that allows DOJ to generate revenue from the sale of goods and services and recover operating expenses through payments by WCF customers, which are generally DOJ."¹⁴ For example, the report states that the Justice Department used the WCF for the management and procurement of IT equipment, such as computers and printers, for Justice Department components who then reimburse the WCF for these costs.¹⁵ The DOJ OIG report provides no indication that criminal fines and penalties are a legally authorized financing source for the Justice Department WCF.

In addition, the data provided by the Justice Department to Senator Grassley shows that since enactment of the VOCA Fix, more than a **billion dollars** in criminal fines and penalties from corporate offender guilty plea agreements were offset and not deposited into the CVF.¹⁶ For example, in the December 2022 case involving Danske Bank A/S, a Danish-based bank, which pled guilty to laundering billions of dollars in criminal and suspicious proceeds through U.S. financial systems, the guilty plea agreement states that the appropriate criminal fine in the case was \$285,760,000 based on U.S. Sentencing Guidelines.¹⁷ However, according to the terms of the guilty plea agreement and the data provided by the Justice Department, **zero dollars** of this criminal fine were deposited into the CVF to support victims and survivors of crime.¹⁸ The guilty plea agreement said that the Justice Department effectively forgave the criminal penalty and instead imposed a \$2.059 billion forfeiture penalty only, of which \$672.316 million was paid to Danish authorities, \$1.2 billion was paid to the Justice Department's Asset Forfeiture Fund, and the remainder was paid to the Securities and Exchange Commission, leaving nothing for victims and survivors of crime.¹⁹

The Justice Department acknowledges in their May 3 response to Senator Grassley that \$1.5 billion of the \$1.8 billion criminal fine from the Binance criminal guilty plea agreement will be deposited into the CVF.²⁰ However, the response fails to acknowledge that under the terms of the original November 21, 2023, plea agreement, the entire criminal fine was to be offset and **zero dollars** would be deposited into the fund.²¹ Moreover, the District Court filed an Order on December 6, 2023,

¹³ *Id.*

¹⁴ DOJ OIG Audit Report, *Audit of the Justice Management Division's Administration of Shared Information Technology Costs through the Working Capital Fund*, (Sep. 2022) <https://www.oversight.gov/sites/default/files/oig-reports/DOJ/22-117.pdf>.

¹⁵ *Id.* at 8.

¹⁶ May 3 Letter from the Justice Department to Grassley *supra* note 11.

¹⁷ *United States v. Danske Bank A/S*, S.D. of New York (Dec. 12, 2022) <https://www.justice.gov/opa/press-release/file/1557611/dl> (The Justice Department failed to include this fine in the data provided in their May 3 response).

¹⁸ *Id.* at 18; May 3 Letter from the Justice Department to Grassley *supra* note 11.

¹⁹ *Id.*

²⁰ May 3 Letter from the Justice Department to Grassley *supra* note 11.

²¹ *United States V. Binance*, Addendum to Plea Agreement, W.D. of Washington, (Dec. 11, 2023) https://www.law360.com/dockets/download/65788c54aeb11301c6a08355?doc_url=https%3A%2F%2Fecf.wawd.uscourts.gov%2Fdoc1%2F197110991379&label=Case+Filing.

finalizing the terms of the November 21, 2023, plea agreement.²² However, the Justice Department subsequently filed a Notice on December 11, 2023, alerting the court that the Justice Department modified the original plea agreement to deposit \$1.5 billion of the \$1.8 billion Binance criminal penalty into the CVF.²³ According to the filing, the Notice simply made the court aware of “certain nonmaterial changes to the plea agreement,” and the “revisions reflect the Department of Justice accounting changes only.”²⁴ The Notice states that the modification of the plea agreement to allow the \$1.5 billion to be deposited into the CVF does “not affect any material terms of the plea, Defendant’s rights, or the sentence agreed to by the parties” and “[n]o action by the Court is required.”²⁵ Thus, the Justice Department appears to have the ability to retroactively modify corporate resolution agreements to ensure criminal penalties are deposited into the CVF that would otherwise be deposited elsewhere. Accordingly, does the Justice Department intend to similarly modify other corporate criminal resolution agreements to shore up the CVF balance and avoid reductions in funding programs supporting victims and survivors of crime?

Finally, in the May 3 response, the Justice Department stated that when “any defendant, including corporate defendants, enter into guilty pleas with the Criminal Division, they pay their fines into the courts, not the Department” and “while the Department can confirm whether any given defendant has paid their fine, we cannot confirm whether and when courts deposited that given fine into the CVF.” The fact that the Justice Department can account for billions of dollars in criminal fines paid to support foreign governments as part of settlements but is apparently unable to confirm whether criminal fines are deposited into the CVF is a dereliction of duty to ensure adequate resources are available to support victims and survivors of crime. For example, the U.S. Attorneys’ Office Fiscal Year 2022 Annual Statistical Report provides that approximately \$1.05 billion in criminal debts owed to the federal government were collected.²⁶ However, OVC reported that only \$290 million in criminal fines and penalties, as well as gifts and donations, were deposited into the CVF in FY 2022.²⁷ Congress has acted time and again to ensure that the CVF has adequate funding streams; yet, the Justice Department apparently hasn’t done the work necessary to ensure funds that should be deposited in the CVF are in fact deposited. Simply put, this is absolutely unacceptable.

The Justice Department’s lack of oversight and responsibility to ensure criminal fines and penalties from criminal DPAs, NPAs, guilty pleas, and convictions are deposited into the CVF as

²² *United States V. Binance*, W.D. of Washington, (Dec. 6, 2023)

https://www.law360.com/dockets/download/6570ea14ee95d3064de10263?doc_url=https%3A%2F%2Fecf.wawd.uscourts.gov%2Fdoc1%2F197110983810&label=Case+Filing

²³ Binance Plea Agreement Addendum *supra* note 16; *see also* Senate Judiciary Committee, Questions from Senator Grassley to Acting AAG Argentieri, (Dec. 12, 2023) <https://www.judiciary.senate.gov/committee-activity/hearings/cleaning-up-the-c-suite-ensuring-accountability-for-corporate-criminals> (The modification to the original Binance guilty plea was filed the day before Acting Assistant Attorney General for the Criminal Division Nicole M. Argentieri faced questions from Senator Grassley about CVF deposits during the Senate Judiciary Committee hearing).

²⁴ Binance Plea Agreement Addendum *supra* note 16.

²⁵ Binance Plea Agreement Addendum *supra* note 16.

²⁶ Executive Office of US Attorneys, *United States Attorneys’ Annual Statistical Report Fiscal Year 2022*, <https://www.justice.gov/usao/file/1574596/dl?inline>.

²⁷ Office for Victims of Crime, *FY 2021 – FY 2024 Crime Victims Fund Cumulative Monthly Deposits*, (Mar. 31, 2024) <https://ovc.ojp.gov/about/crime-victims-fund/fy-2007-2024-cvf-annual-receipts.pdf>.

required by statute has created a lack of resources to fund victim assistance and compensation programs around the country. The decreasing CVF balance and deposits has put service providers across the country at significant risk of having to cut both programs and staff that support victims and survivors of crime.

The Justice Department must provide Congress and the American people more details with respect to the steps it has taken, or plans to take, within its authority to shore up the balance of the CVF to prevent cuts and disruptions to vital programs supporting victims and survivors of crime. Accordingly, so that Congress may conduct independent oversight concerning the CVF and the availability of resources to support victims and survivors of crime throughout the nation, please provide responses no later than July 16, 2024.

1. Please explain, in detail, why the Justice Department deposited criminal penalties from DPAs and NPAs into the Justice Department WCF and not the CVF, including the statutory rationale for the deposits.
2. Since the enactment of the VOCA Fix, provide all records²⁸ concerning the Justice Department's deposit of criminal fines and penalties into the WCF, including all guidance, policies, and related documents concerning these deposits.
3. Since the enactment of the VOCA Fix, how much in all criminal fines and penalties have been deposited into the WCF that was statutorily required to be deposited into the CVF? Provide all data.
4. Does the Justice Department have the authority to transfer funds from accounts, such as the WCF, into the CVF? If yes, please provide the authority.
5. Does the Justice Department request periodic accounting statements from the federal courts about the deposits of criminal fines from guilty pleas and convictions into the CVF? If not, why not? If so, how often? Provide all records.
6. Similar to the modification in the Binance case, does the Justice Department intend to review its current corporate DPAs, NPAs, and guilty plea agreements to determine whether additional criminal penalties should be deposited into the CVF rather than elsewhere? If not, why not? If so, provide the court case, the amount of money at issue, and when the money will be deposited into the CVF.

²⁸ Records" include any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (e-mails, email attachments, and any other electronically-created or stored information), calendar entries, inter-office communications, meeting minutes, phone/voice mail or recordings/records of verbal communications, and drafts (whether or not they resulted in final documents).

Thank you for your prompt review and responses. If you have any questions, please contact Brian Randolph or Silvia Symber on Senator Grassley's Committee staff at (202) 224-0642.

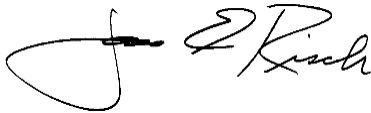
Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget



Mike Crapo
United States Senator



James E. Risch
United States Senator



Joni K. Ernst
United States Senator