

United States Senate
WASHINGTON, DC 20510

April 4, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Danny Werfel
Commissioner
Internal Revenue Service

Dear Commissioner Werfel:

Beginning in 2020, Internal Revenue Service (IRS) employees Gary Shapley and Joseph Ziegler made legally protected whistleblower disclosures to IRS officials concerning government misconduct relating to the Hunter Biden investigation.¹ As of May 15, 2023, Shapley and Ziegler were removed from the ongoing matter, and so was their entire IRS investigative team.² On May 26, 2023, and June 1, 2023, Shapley and Ziegler, respectively, provided legally protected disclosures to Congress.

Since that removal, they've been subjected to additional retaliatory actions by the IRS in violation of statutory protections for whistleblowers.³ On April 27, 2023, you stated to the House Committee on Ways and Means, "I can say without any hesitation there will be no retaliation for anyone making an allegation or a call to a whistleblower hotline."⁴ Your statement is inconsistent with how the IRS has treated Shapley and Ziegler.

By way of further background, after Shapley and Ziegler's attorneys notified Congress in April 2023 of their clients' intent to provide protected disclosures, on May 19, 2023, IRS Acting Special Agent in Charge Kareem Carter sent an email to IRS Criminal Investigation agents, including Shapley and Ziegler, stating that no case related information can be disclosed without first seeking and receiving approval from the chain of command.⁵ On May 25, 2023, Deputy

¹ Interview by H. Comm. on Ways and Means with Gary A. Shapley, Internal Rev. Serv. Criminal Supervisory Special Agent in Washington, D.C. (May 26, 2023), [WM146551 \(house.gov\)](https://www.house.gov/imo/media/doc/146551); Interview by H. Comm. on Ways and Means with Joseph Ziegler, Internal Rev. Serv. Criminal Supervisory Special Agent in Washington, D.C. (June 1, 2023), [WM152551 \(house.gov\)](https://www.house.gov/imo/media/doc/152551); Chris Pandolfo & 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>; Tom Winter & Dareh Gregorian, *Hunter Biden files lawsuit against IRS alleging unlawful release of tax information*, NBC NEWS (Sep. 18, 2023) <https://www.nbcnews.com/politics/joe-biden/hunter-biden-files-lawsuit-irs-alleging-unlawful-release-tax-information-rcna105557>.

² Letter from Rep. Jason Smith, Chairman, House Comm. on Ways and Means, to Daniel Werfel, Commissioner, Internal Rev. Serv. (May 16, 2023), <https://gop-waysandmeans.house.gov/wp-content/uploads/2023/05/05.16.23-Ltr-to-IRS-Commissioner-re-Whistleblower-Retaliation.pdf>.

³ Bart Jansen, *IRS whistleblower alleges removal of 'entire investigation team' from Hunter Biden probe*, USA TODAY (May 16, 2023) <https://www.usatoday.com/story/news/politics/2023/05/16/hunter-biden-investigation-irs-team-removed/70222248007/>; Pandolfo & Turner, *supra* note 1; Shapley and Ziegler Interview, *supra* note 1.

⁴ Steven Nelson, *IRS head vows 'no retaliation' against whistleblowers when pressed on alleged Hunter Biden tax fraud probe coverup*, N.Y. POST (Apr. 27, 2023, 4:35 PM), <https://nypost.com/2023/04/27/irs-head-vows-no-retaliation-for-whistleblowers-after-hunter-biden-claim/>.

⁵ See Letter from Sen. Charles Grassley, Ranking Member, S. Budget Comm., Sen. Ron Johnson, Ranking Member, S. Subcomm. on Investigations, Rep. Jason Smith, Chairman, H. Comm. on Ways and Means, Rep. James Comer, Chairman, H. Comm. on Oversight and Accountability, and Rep. Jim Jordan, Chairman, H. Comm. Judiciary to Henry J. Kerner, Special Counsel, Off. of Special Counsel (July 5, 2023), https://www.grassley.senate.gov/imo/media/doc/grassley_johnson_comer_jordan_smith_to_osc_-_whistleblower_retaliation.pdf.

IRS Commissioner Douglas O'Donnell sent an email to IRS employees concerning the lawful and unlawful disclosure of information when reporting misconduct; however, it failed to notify IRS employees of their Constitutional and statutory rights to make legally protected disclosures to Congress, just as the direction from Special Agent Carter failed to do.⁶ These two governmental messages create a chilling effect for future whistleblowing and violated federal law.

Then, Hunter Biden's attorneys went into overdrive to try and discredit these brave whistleblowers. A June 27, 2023, New York Times article reported that Hunter Biden's lawyers asserted to the Justice Department that Shapley broke federal laws by making legally protected whistleblower disclosures to Congress concerning the mishandling of the investigation into their client.⁷ Days after that article, on June 30, 2023, Hunter Biden's attorney sent a letter to House Ways and Means Chairman Jason Smith amazingly alleging that Shapley and Zeigler's legally protected whistleblower disclosures before Congress were unlawful.⁸ Recent filings in the criminal prosecution of Hunter Biden appear to indicate that the IRS and the Justice Department have done the bidding of Hunter Biden's attorneys and that the IRS whistleblowers may potentially be under investigation in connection with making legally protected disclosures. This requires immediate clarification from you.

Specifically, on March 11, 2024, U.S Attorney Weiss filed an opposition to Hunter Biden's motion to dismiss and requested the court seal the unredacted version. The *ex parte* application to seal the unredacted filing provides that the government made a version public with redactions to information pertaining to "a potential ongoing investigation in one paragraph of the filing, and the government has filed three exhibits that reference a potential ongoing investigation under seal."⁹ According to the filing, the Justice Department was:

advised by the Office of IRS Chief Counsel that the investigating entity referenced in each of Exhibits 2, 4, and 5 agreed that the documents could be provided to the government and used in a filing with the court provided that the government asked the court to seal these exhibits and certain references to those exhibits in order to protect the integrity of the potential ongoing investigation(s).¹⁰

⁶ *Id.*

⁷ Glenn Thrush & Michael S. Schmidt, *Competing Accounts of Justice Dept.'s Handling of Hunter Biden Case*, N.Y. TIMES (June 27, 2023) <https://www.nytimes.com/2023/06/27/us/politics/irs-official-justice-dept-hunter-biden.html>; Jim Axelrod, Michael Kaplan, & Andy Bast, *IRS whistleblower speaks: DOJ "slow-walked" tax probe said to involve Hunter Biden*, CBS NEWS (May 24, 2023), <https://www.cbsnews.com/news/irs-whistleblower-tax-probe-hunter-biden/>.

⁸ Rep. Jim Jordan, Chairman, H. Comm. on Judiciary, Rep. Jason Smith, Chairman, H. Comm. on Ways and Means, Rep. James Comer, Chairman, H. Comm. on Oversight and Accountability to Merrick B. Garland, Attorney General, Dep't of Justice (Sept. 12, 2023), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023-09-12-jdj-js-jc-to-garland-re-defense-atty-obstruction.pdf>; Matt Viser, *Hunter Biden attorney criticizes House GOP over IRS agent testimony*, THE WASHINGTON POST (July 5, 2023) <https://www.washingtonpost.com/politics/2023/06/30/hunter-biden-house-republicans-letter/>; Michael S. Schmidt et al., *Inside the Collapse of Hunter Biden's Plea Deal*, N.Y. TIMES (Aug. 19, 2023) <https://www.nytimes.com/2023/08/19/us/politics/inside-hunter-biden-plea-deal.html>

⁹ Government's Unopposed Ex Parte Application For Order Sealing Government's Unredacted Opposition To Defendant's Motion To Dismiss The Indictment For Due Process Violations Based On Outrageous Government Conduct And Three Exhibits, United States v. Robert Hunter Biden, C.D. Cal. No. CR 23-cr-00599-MCS (Mar 11, 2024).

¹⁰ *Id.*

The filing also provides that the “potential ongoing investigations are not references to any investigation of the defendant [Hunter Biden] conducted by the U.S. Department of Justice.”¹¹

On the one hand, the Justice Department has argued that a “potential ongoing investigation” is so sensitive that it cannot be publicly revealed and yet, on the other hand, it has precisely done that in a public filing. If this “potential ongoing investigation” relates to Shapley and Ziegler, its reference in public and sealed court documents can only be viewed as a Justice Department and IRS tactic to dirty up the very whistleblowers that exposed Justice Department and IRS misconduct. U.S. Attorney Weiss’s conduct would be the definition of a conflict of interest since he’d be investigating and potentially prosecuting whistleblowers that disclosed misconduct by him.

So that Congress may conduct objective and independent oversight concerning Shapley and Ziegler’s legally protected whistleblower disclosures to Congress and the IRS’s compliance with statutory whistleblower protections, please provide answers to the following no later than April 18, 2024:

1. Are Shapley and Ziegler the subject of an ongoing investigation? Is that investigation in any way connected to their disclosures to Congress?
2. On what basis, and when, did you authorize the IRS Chief Counsel to share information relating to this “potential ongoing investigation” with the Justice Department?
3. Did the IRS consider the potential and actual conflicts of interest that would be created by providing U.S. Attorney Weiss and his team investigative materials relating to Shapley and Ziegler? If so, what was done to mitigate those conflicts? If not, why not?
4. No later than April 22, 2024, provide a briefing to me regarding the scope and status of any ongoing investigation into Shapley and Ziegler.

Thank you for your prompt review and responses. If you have any questions, please contact my Committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget

¹¹ *Id.*

cc: The Honorable Michael Horowitz
Inspector General
Department of Justice

Ms. Heather M. Hill
Acting Inspector General for Tax Administration, Department of the Treasury

The Honorable Hampton Dellinger
Special Counsel, U.S. Office of Special Counsel