



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

December 2, 2022

MEMORANDUM FOR DIRECTOR, FEDERAL BUREAU OF PRISONS
DIRECTOR, UNITED STATES MARSHALS SERVICE
ALL FEDERAL PROSECUTORS

FROM: THE DEPUTY ATTORNEY GENERAL *Cesar M. Menendez*

SUBJECT: Prioritizing Restitution for Victims

On October 1, 2022, the Attorney General published revised Guidelines for Victim and Witness Assistance. Those Guidelines make clear that the Department is responsible not only for ensuring that those who commit crimes are prosecuted vigorously but also for achieving justice for victims. Because crimes can have a devastating financial effect on victims, the Department is responsible for ensuring that “victims receive full and timely restitution.” Guidelines art. V, § H. That obligation extends throughout the life of a case, including after judgment is entered.

Under the Crime Victims’ Rights Act, a crime victim has the right to “full and timely restitution as provided by law.” 18 U.S.C. § 3771(a)(6). The Department’s prosecutors should therefore be proactive in enforcing court-ordered restitution obligations, including where funds are held in accounts maintained by the Federal Bureau of Prisons (BOP) in trust during an inmate’s period of incarceration. Last year, I instructed BOP to strengthen monitoring and reporting related to these accounts, consistent with applicable law.¹ Pursuant to that directive, BOP has since enhanced guidance on monitoring inmate accounts; improved coordination with law enforcement partners, including the U.S. Marshals Service (USMS), on investigating and taking appropriate action against suspicious activity; and identified funds that should be encumbered to meet financial obligations. BOP is also strengthening the Inmate Financial Responsibility Program to apply additional funds towards restitution and has partnered with other Department of Justice components and federal agencies to ensure that funds are used to help meet those obligations.

The Department’s prosecutors have a critical role to play in these efforts. Consistent with 18 U.S.C. § 3613(a), a prosecutor may seek a court order to turn over non-exempt deposits held in a BOP trust account so that they may be applied toward a defendant’s outstanding criminal monetary penalty. Likewise, consistent with 18 U.S.C. § 3664(n) and applicable case law, a

¹ See Memorandum from the Deputy Attorney General to the Director of the Bureau of Prisons, Inmate Financial Accounts (Aug. 16, 2021).

prosecutor may seek to apply towards restitution “any substantial resources” received by a person “during a period of incarceration,” including those funds received by an individual in BOP custody and placed into a BOP trust account. Using these authorities, the Department has recently brought numerous successful motions to turn over funds held in BOP trust accounts.

Prosecutors should continue to prioritize these efforts moving forward. Consistent with the Guidelines for Victim and Witness Assistance, I encourage prosecutors to file restitution pleadings or to include restitution calculations in sentencing memoranda. Prosecutors should request that sentencing courts order that restitution be due and payable immediately, but if courts order otherwise, prosecutors should propose that payment plans be set at “the shortest time in which full payment can reasonably be made.” 18 U.S.C. § 3572(d)(2). Prosecutors should also request that courts include language specifying that any payment schedule represents a minimum payment obligation and does not preclude the Department from pursuing collection through all available means, including in accordance with 18 U.S.C. § 3664(m).

Prosecutors should also work proactively with BOP and USMS, as appropriate, including contacting BOP to encumber funds in trust accounts in advance of planned enforcement efforts as soon as prosecutors learn of the existence of such resources. Prosecutors should contact the Financial Litigation and Bankruptcy Coordinator within the Executive Office for United States Attorneys with any questions and review the Department’s intranet page for additional resources specific to the turnover of funds held in BOP trust accounts.

I am grateful for the work the Department’s prosecutors do every day to support victims and their families. Your continued efforts to collect restitution on behalf of victims are a vital part of the Department’s mission.