

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA)	
)	
v.)	Criminal Action No. 1:23-cr-61-MN
)	
ROBERT HUNTER BIDEN,)	
)	
Defendant.)	

**GOVERNMENT’S MOTION IN LIMINE TO EXCLUDE ARGUMENT OR
SUGGESTION THAT CHARGES ARE UNCONSTITUTIONAL**

The United States, by and through undersigned counsel, respectfully moves this Court to exclude argument, testimony, evidence or questioning related to the constitutionality of the firearms statute charged in the indictment because such argument or evidence is impermissible and invades the province of the Court. Counsel for government has discussed the subject matter of this motion with counsel for the defendant and the defendant does not object to this motion.

Arguments or evidence regarding the constitutionality of a statute invades the province of the Court in instructing the jury and is clearly impermissible. *See United States v. Willie*, 941 F.2d 1384, 1396 (10th Cir. 1991) (“Juries only decide facts, to which they apply the law given to them by the judge.”); *United States v. Wade*, 451 Fed. Appx. 173 (3d Cir. 2011) (finding that questions of law are for the Court, not the jury, and the defendant could not cross-examine on that legal issue nor present it to the jury). The defendant is not permitted to make assertions which could lead to jury nullification and confusion of the jurors’ role in determining the facts, not the law. *See e.g.*, Third Circuit Model Jury Instruction 1.02 “Role of the Jury” (“You must not

substitute your own notion or opinion about what the law is or ought to be. You must follow the law that I give to you, whether you agree with it or not.”)¹

For these reasons, the government requests that the Court enter the attached proposed order.

Respectfully submitted,

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¹ Available at <https://www.ca3.uscourts.gov/sites/ca3/files/2021%20Chapter%201%20for%20posting%20final.pdf>