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# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

KEITH B. ASHDOWN, STAFF DIRECTOR  
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March 3, 2015

The Honorable Michele M. Leonhart  
Administrator  
Drug Enforcement Administration  
U.S. Department of Justice  
700 Army-Navy Drive  
Arlington, VA 22202

Dear Administrator Leonhart:

I write to reiterate the Committee on Homeland Security and Governmental Affairs' request for material about the Drug Enforcement Administration's (DEA) actions concerning suspected drug diversion at the Department of Veterans Affairs Medical Center in Tomah, Wisconsin (Tomah VAMC). Since the Committee's initial request, the DEA has refused to cooperate with the Committee's examination of the tragedies at the Tomah VAMC. I ask that you direct your office to comply fully and promptly with the Committee's ongoing oversight work.

On January 28, 2015, I wrote to you to better understand the DEA's involvement and actions relating to suspected drug diversion at the Tomah VAMC.<sup>1</sup> In the letter, I requested relevant DEA material and a staff-level briefing to examine the matter. To date, the DEA has not complied with any of these requests.

On February 9, 2015, Committee staff spoke via telephone with a DEA Congressional Liaison, Matthew Strait, to discuss the Chairman's request.<sup>2</sup> During the phone call, Mr. Strait informed staff that the DEA had chosen not to provide a briefing on specific issues relating to the Tomah investigation, as requested by the Chairman, after consulting with the Justice Department Office of Legislative Affairs. Mr. Strait indicated the DEA also would not provide the requested information, although he acknowledged the DEA was not claiming that the information is privileged. Later the same day, another DEA Congressional Liaison, Eric Akers, confirmed that the DEA would not provide information to the Committee, but refused to explain the reasons for the DEA's actions.<sup>3</sup>

As the Committee has attempted to accommodate the DEA's law-enforcement interest in this matter, the DEA has refused to work collaboratively with the Committee. Instead, the DEA

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<sup>1</sup> Letter from Ron Johnson, Comm. on Homeland Sec. & Gov't Affairs, to Michele Leonhart, Drug Enforcement Admin. (Jan. 28, 2015).

<sup>2</sup> Phone conversation between Matthew Strait, Drug Enforcement Admin., and Comm. staff (Feb. 9, 2015).

<sup>3</sup> Phone conversation between Eric Akers, Drug Enforcement Admin., and Comm. staff (Feb. 9, 2015).



has refused to provide information on its actions at the Tomah VAMC on the basis that the Tomah VAMC is an “ongoing investigation.”<sup>4</sup> The DEA cited no constitutional or statutory prohibition on providing information to the Committee; indeed, Mr. Akers informed staff that he could not explain the reasons behind the DEA’s decision to not comply with the Chairman’s request. Moreover, the existence of an “ongoing investigation” in the past has not prevented other Justice Department bureau entities – such as the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the Federal Bureau of Investigation – from providing information to Congress about their actions in pending matters.<sup>5</sup>

The congressional investigative power is “an essential and appropriate auxiliary to the legislative function.”<sup>6</sup> This broad authority “is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.”<sup>7</sup> The congressional power of inquiry “encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.”<sup>8</sup> This Committee, in particular, is authorized under the Standing Rules of the Senate to investigate “the efficiency and economy of operations of all branches of the Government.”<sup>9</sup>

Considering the Justice Department and DEA are creations of Congress, Congress has the authority to investigate whether and how the Department is carrying out its mission.<sup>10</sup> The DEA’s refusal to cooperate with the Committee’s inquiry is troubling. The DEA’s noncooperation prevents Congress from carrying out its Constitutional oversight duties and limits the Committee’s ability to gather all the facts about the tragedies that occurred at the Tomah VAMC.

I am troubled by the DEA’s apparent disregard for the Committee’s oversight efforts. Accordingly, I ask that you immediately cease the DEA’s noncooperation with the Committee’s oversight of the Tomah VAMC. I request that you answer the questions and produce the requested documents outlined in my January 28, 2015 letter by no later than 5:00 p.m. on March 17, 2015. If the DEA has not fully complied with the request by that time, the Committee may consider the use of compulsory process. Thank you for your attention to this important matter.

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<sup>4</sup> E-mail from Matthew Strait to Comm. Staff (Feb. 6, 2015); see also, e-mail from Gary Owen to Comm. Staff (Feb. 13, 2015) (“[T]he existence of an ongoing investigation severely limits what DEA is able to provide at this time.”).

<sup>5</sup> See, e.g., H. COMM. ON OVERSIGHT & GOV’T REFORM & S. COMM. ON THE JUDICIARY, FAST AND FURIOUS: THE ANATOMY OF A FAILED OPERATION (2012); H. COMM. ON OVERSIGHT & GOV’T REFORM, THE INTERNAL REVENUE SERVICE’S TARGETING OF CONSERVATIVE TAX-EXEMPT APPLICANTS: REPORT OF FINDINGS FOR THE 113TH CONGRESS (2014).

<sup>6</sup> *McGrain v. Daugherty*, 273 U.S. 135, 151 (1927).

<sup>7</sup> *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 504 n.15 (1975).

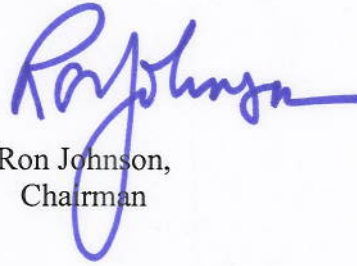
<sup>8</sup> *Watkins v. United States*, 354 U.S. 178, 187 (1957).

<sup>9</sup> S. Rule XXV(k); see also S. Res. 445, 108th Cong. (2004). Additionally, S. Res. 253 (114th Congress) and S. Res. 73 (114th Congress) authorize the Committee to examine “the efficiency and economy of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices . . . .” S. Res. 253 § 12, 113th Cong. (2013).

<sup>10</sup> *McGrain* at 177-78.

The Honorable Michele Leonhart  
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Sincerely,

A handwritten signature in blue ink, appearing to read "Ron Johnson", with a long horizontal stroke extending to the right.

Ron Johnson,  
Chairman

cc: The Honorable Thomas R. Carper  
Ranking Member

Enclosure