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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

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March 4, 2016

The Honorable Jeh Johnson
Secretary
Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Johnson:

The Committee continues to examine the adverse actions against Homeland Security Investigations (HSI) Senior Special Agent Taylor Johnson. It has come to my attention that Immigration and Customs Enforcement (ICE) terminated Agent Johnson's employment on or around February 5, 2016. I understand ICE chose to remove Agent Johnson from federal service despite ongoing investigations by the Office of Special Counsel (OSC) and the Department of Homeland Security Office of Inspector General (DHS OIG) relating to disclosures made by Agent Johnson about findings from an agency-approved investigation into a participant in the EB-5 Regional Center Program.

On November 6, 2014, ICE's Disciplinary and Adverse Action Panel (DAAP) proposed removing Agent Johnson from federal service based on an incident that occurred three years prior.¹ OSC informed ICE that this proposed removal contains inaccurate facts pertaining to one of the specifications.² For this specification, ICE alleged that Agent Johnson contacted a confidential informant over 2,000 times against instructions from her chain of command to discontinue communications with this person.³ The phone numbers cited in the investigative report prepared by the Office of Professional Responsibility (OPR), however, were in fact phone numbers of Agent Johnson's mother and of her friend. It is unclear how and why the phone numbers of Agent Johnson's mother and of her friend were entered into an ICE database of confidential informants.

Last year, in February 2015, I personally delivered to ICE Director Sarah Saldaña a letter requesting that she "direct HSI to immediately cease all retaliatory action against Ms. Johnson" and "to provide a briefing to my staff on reasons for Ms. Johnson's termination proceedings."⁴ ICE provided Committee staff a briefing on March 20, 2015 that discussed, in general, the

¹ Letter from Jennifer Cleary, Member, Disciplinary and Adverse Action Panel, Homeland Sec. Investigations, to Taylor Johnson, Special Agent, Homeland Sec. Investigations (Nov. 6, 2014).

² Letter from Peta-Gay Irving Brown, Att'y, Off. of Special Counsel Investigation and Prosecution Division, to James Douglas Whitaker, Esq., Off. of the Chief Counsel, U.S. Immigration and Customs Enforcement (July 31, 2015).

³ Jennifer Cleary, *supra* note 12.

⁴ Letter from Senator Ron Johnson, Chairman, S. Comm. on Homeland Sec. and Governmental Affairs, to Sarah Saldaña, Director, U.S. Immigration and Customs Enforcement (Feb. 11, 2015).

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process for proposing an adverse action against an ICE employee.⁵ However, this briefing did not touch on any specific facts or actions regarding the proposal to remove Agent Johnson from federal service as I requested.

ICE also produced documents to the Committee pursuant to this February 11, 2015 letter. During the March 20, 2015 briefing, my staff learned that DAAP based its decision to propose Agent Johnson's removal from federal service on an investigative report prepared by OPR. My staff requested that report during the briefing.⁶ ICE responded via email that it "cannot provide [the Committee] with the investigative report, at this time, due to the OSC investigation."⁷ After my staff asked ICE for the reason why ICE could not provide the report,⁸ ICE represented that the Office of the Principal Legal Advisor was evaluating privacy issues relating to producing the investigative report.⁹ On or around May 1, 2015, however, ICE produced the investigative report. Upon receipt of the investigative report, Committee staff informed ICE that the Committee would likely seek additional information about Agent Johnson's employment.¹⁰

On June 16, 2015, Agent Johnson testified before the Committee about the retaliation she has faced within ICE since cooperating with the DHS OIG's ongoing investigation.¹¹ Agent Johnson told the Committee how she began investigating a regional center approved under the EB-5 Regional Center Program and how she raised national security concerns discovered during this investigation through her chain of command.¹² After reporting these risks, Agent Johnson testified that she was removed from the investigation; escorted out of her office and reassigned to an office more than 50 miles from her residence; had her weapon, credentials, government vehicle, and access to all government databases revoked; and was alienated from her colleagues.¹³ Agent Johnson also received multiple absence notices by ICE for times that her chain of command knew she was meeting with DHS OIG and OSC.¹⁴ Both the DHS OIG and OSC continue to investigate the circumstances surrounding the adverse actions Agent Johnson experienced after cooperating with the OIG's investigation.¹⁵

⁵ CITE briefing

⁶ U.S. Immigration Customs and Enforcement briefing with Committee Majority staff (Mar. 20, 2015).

⁷ Email from U.S. Immigration and Customs Enforcement representative to Committee Majority staff (Mar. 26, 2015, 16:58 EDT).

⁸ Email from Committee Majority staff to U.S. Immigration and Customs Enforcement representative (Mar. 26, 2015, 17:24 EDT).

⁹ Email from Committee Majority staff to U.S. Immigration and Customs Enforcement representative (Apr. 14, 2015, 17:20 EDT).

¹⁰ *Id.*

¹¹ *Blowing the Whistle on Retaliation: Accounts of Current and Former Federal Agency Whistleblowers: Hearing Before S. Comm. on Homeland Sec. and Governmental Affairs, 114th Cong. (2015)*(statement of Taylor Johnson, Special Agent, Dep't of Homeland Sec. Off. of Homeland Sec. Investigations.)

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Email from Dep't of Homeland Sec. Off. of Inspector General representative to Committee Majority staff (May 27, 2015, 17:25 EDT). *See also* Email from Peta-Gay Irving Brown, Att'y, Off. of Special Counsel, to James D. Whitaker, Off. of Chief Counsel, U.S. Immigration and Customs Enforcement (Oct. 6, 2015, 17:04 EDT).

On February 6, 2016, my staff learned that ICE had terminated Agent Johnson. It is my understanding that Agent Johnson did not receive a standard 30-day notice of termination, but was instead instructed to vacate her office space upon being informed of her removal. I have also been informed that ICE asked Agent Johnson to sign a nondisclosure agreement in addition to the forms that require her signature in order to process the termination. According to Agent Johnson, when she requested to have her legal representatives review the nondisclosure agreement before signing, ICE management withdrew the agreement from the termination paperwork.

In December 2015, a news outlet reported that an ICE spokesperson made disparaging comments about Agent Johnson to a member of the press and then tried to negotiate an off-the-record conversation in exchange for turning over private employment information about Agent Johnson.¹⁶ The article noted how the ICE spokesperson asked to speak with the reporter off-the-record as a precondition to an official statement, “offering up confidential information in an attempt to discredit [Agent] Johnson.”¹⁷ In discussions with my staff, ICE personnel have admitted to being aware of this allegation but could not say whether ICE had opened an internal investigation into this allegation.¹⁸ My staff has made the DHS OIG aware of this allegation so that it may take further action.¹⁹ If these reports are accurate, it is disheartening that ICE would attempt to discredit a whistleblower by shopping her personal information to reporters.

In addition, it is highly concerning that ICE decided to proceed with removing Agent Johnson from federal service while OSC was continuing to investigate her allegations of whistleblower retaliation.²⁰ OSC staff informed my staff that DHS and ICE did not comply with requests for documents related to OSC’s investigation until February 10, 2016—four days *after* ICE terminated Agent Johnson’s employment.²¹ At the time of Agent Johnson’s removal from federal service, DHS and ICE had not yet produced all documents that OSC requested, including all emails sent or received by Agent Johnson’s chain of command that contain the following terms: “Mayorkas,” “EB-5,” “SLS,” “American Dream Fund,” “Congress,” and “USCIS.”²²

The Committee takes allegations of whistleblower retaliation seriously. The decision by ICE to remove an alleged whistleblower from federal service during the pendency of ongoing OSC and DHS OIG investigations heightens my concern about the treatment of Agent Johnson and about ICE’s cooperation in these ongoing investigations. Accordingly, I respectfully request that you direct ICE to fully comply with all document production requests from OSC and the DHS OIG. I further request you provide the following information:

1. A copy of the notice of removal provided by ICE to Agent Johnson;

¹⁶ Evan Gahr, *Exclusive: ICE flack tries to slime whistleblower*, Daily Caller, Dec. 29, 2015.

¹⁷ *Id.*

¹⁸ Telephone call with U.S. Immigration and Customs Enforcement Representatives (Feb. 19, 2016).

¹⁹ Email from Committee Majority staff to Dep’t of Homeland Sec. Off. of Inspector General representative (Feb. 10, 2016, 08:51 EST).

²⁰ Email from Off. of Special Counsel att’y to U.S. Immigration and Customs Enforcement att’y (Oct. 6, 2015, 17:04 EDT).

²¹ Off. of Special Counsel Briefing with Committee Majority staff (Feb. 25, 2016).

²² Telephone call with Off. of Special Counsel representative (Feb. 10, 2016).

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2. All documents that ICE required Agent Johnson to sign upon termination and all documents ICE asked Agent Johnson to sign but that were not required for the purposes of processing her removal from federal service;
3. All documents or communications referring or relating to ICE's decision to remove Agent Johnson from federal service, including communications between ICE and OSC;
4. All documents or communications referring or relating to an offer made by any ICE Office of Public Affairs employee to provide confidential information about Agent Johnson to members of the press;
5. All communications between or among ICE employees referring or relating to media inquiries about Agent Johnson;
6. All information provided by DHS and its component entities to comply with requests from OSC and from DHS OIG relating to Agent Johnson;
7. A list of all requests from OSC and from DHS OIG for which DHS or its component entities have not yet fully complied or produced documents relating to Agent Johnson;

Please provide this information as soon as possible but no later than 5:00 p.m. on March 18, 2016. In addition, I reserve the right to request additional information in the future, pursuant to this request.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency, economy, and effectiveness of all agencies and departments of the Government."²³ Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine "the efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption or unethical practices. . . ."²⁴ For purposes of this request, please refer to the definitions and instructions in the enclosure.

If you have any questions regarding this letter, please contact Courtney Allen of the Committee staff at (202) 224-4751 or courtney_allen@hsgac.senate.gov. Thank you for your prompt attention to this request.

²³ S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

²⁴ S. Res. 73 § 12, 114th Cong. (2015).

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Sincerely,


Ron Johnson
Chairman

cc: The Honorable Thomas R. Carper
Ranking Member

The Honorable Sarah Saldaña
Director
U.S. Immigration and Customs Enforcement

The Honorable John Roth
Inspector General
Department of Homeland Security

The Honorable Carolyn Lerner
Special Counsel
U.S. Office of Special Counsel

Enclosure