

# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

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March 16, 2016

The Honorable John Roth  
Inspector General  
Department of Homeland Security  
245 Murray Lane SW  
Washington, DC 20528-0305

Dear Inspector General Roth:

Thank you for your testimony at the Committee's March 15, 2016 hearing entitled *The Security of U.S. Visa Programs*.<sup>1</sup> The Department of Homeland Security Office of Inspector General (DHS OIG) plays an important role in providing oversight and identifying areas for improvement within the Department. At the hearing, I discussed an incident on December 3, 2015 that revealed troubling lack of coordination between two DHS components in the wake of the San Bernardino terrorist attack. My staff has since learned that Immigration and Customs Enforcement (ICE) supervisors are actively seeking what employee(s) spoke with the Committee and may be looking to retaliate against those individuals. Accordingly, I write to request that your office take two courses of action. First, I ask that the DHS OIG investigate the December 3, 2015 incident I highlighted at the hearing. Second, I request that your office make all appropriate efforts to ensure that the individuals that provided the information to the Committee do not face retaliation for exercising their right to speak with their elected representatives.

On December 2, 2015, Sayed Farook and his wife, Tashfeen Malik, carried out an ISIS-inspired terrorist attack at the Inland Regional Center in San Bernardino, California that left 14 civilians dead and 22 injured. Shortly after the attack, law-enforcement personnel identified Farook's friend, Enrique Marquez, as the individual who purchased the two rifles used in the attack. Mr. Marquez has subsequently been charged with conspiring to provide material support to terrorists, straw purchasing of a firearm, and marriage fraud.<sup>2</sup>

As I explained at yesterday's hearing, Mr. Marquez and his wife, Mariya Chernykh, were scheduled to meet with U.S. Citizenship and Immigration Services (USCIS) in San Bernardino at 12:00 pm on December 3, 2015.<sup>3</sup> The FBI notified Homeland Security Investigations (HSI) of this scheduled meeting and requested that HSI dispatch a team of armed agents to the USCIS San

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<sup>1</sup> *The Security of U.S. Visa Programs: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs* 114th Cong., (2016).

<sup>2</sup> Complaint, *United States v. Enrique Marquez*, No. 5:15MJ498 (C.D. Cal. Dec. 17, 2015), <https://www.justice.gov/opa/file/800606/download>

<sup>3</sup> *The Security of U.S. Visa Programs: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs* 114th Cong., (2016) (statement Sen. Ron Johnson, Chairman, S. Comm. on Homeland Security and Gov't Affairs).

Bernardino office to apprehend Mr. Marquez.<sup>4</sup> When HSI agents arrived at the USCIS offices, the Officer in Charge of USCIS would not let the HSI agents into the building.<sup>5</sup> In addition, USCIS officials denied the HSI agents' request for Ms. Chernykh's A-file and instead allowed HSI agents to take a picture of Ms. Chernykh's picture in the A-file.<sup>6</sup> Mr. Marquez and Ms. Chernykh failed to appear for their scheduled meeting with USCIS.<sup>7</sup> According to information obtained by the Committee, HSI did not receive Ms. Chernykh's full A-file until December 10, 2015—one week after this incident.

If accurate, these accounts reveal an alarming lack of coordination between DHS components in the wake of the deadliest terrorist attack on American soil since 9/11. A complete and thorough investigation of this incident is warranted to identify failures in coordination and to implement procedures that allow for the free flow of information in the wake of potential future terrorist attacks.

Following the hearing, I am also concerned by reports to my office that ICE supervisors are seeking to identify what individual(s) furnished information to the Committee. I worry that management is seeking this information to eventually retaliate against those employees. Federal law expressly states that “the right . . . to furnish information to either House of Congress, or to a committee of Member thereof, may not be interfered with or denied.”<sup>8</sup> In addition, under federal law, any officials who interfere with an employee's right to furnish information to Congress may not have their salaries paid by taxpayer dollars.<sup>9</sup>

As a founding member of the Senate Whistleblower Caucus, I take the prospect of whistleblower retaliation very seriously. As a whistleblower advocate told the Committee last year, retaliation against federal whistleblowers is most severe when they communicate with Congress.<sup>10</sup> Moving forward, I hope we can work together to ensure that all DHS whistleblowers are properly protected, especially when they are exercising their right to speak with Congress.

In light of these concerns, I request that you take the following course of action:

1. Please investigate the incident of December 3, 2015, in which USCIS officials allegedly refused to allow HSI agents into the USCIS building or provide any information on Mr. Marquez or Ms. Chernykh in the wake of the San Bernardino terrorist attack. In particular, please answer the following questions:
  - a. Why did USCIS personnel not allow HSI agents to initially enter the building on December 3, 2015?

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 5 U.S.C. § 7211.

<sup>9</sup> Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 713 (2015).

<sup>10</sup> *Blowing the Whistle on Retaliation: Accounts of Current and Former Federal Agency Whistleblowers: Hearing before the S. Comm. on Homeland Security and Governmental Affairs 114th Cong.*, (2015) (statement of Thomas Devine, Legal Director, Government Accountability Project).

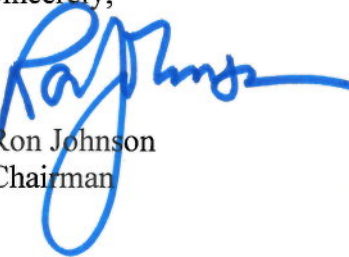
- b. Why did USCIS personnel initially deny HSI agents access to Ms. Chernykh's A-file?
- c. Please confirm when HSI received all relevant immigration materials from USCIS referring or relating to Mr. Marquez and Ms. Chernykh.
- d. When did USCIS and HSI agents become aware that Mr. Marquez was not going to appear for his 12:00 pm appointment with USCIS?
- e. Were any DHS coordination protocols violated in this incident?
- f. What implications did this incident have on the apprehension or subsequent criminal proceedings of Mr. Marquez and the advancement of the investigation into the San Bernardino attack?

In addition, I ask that you please provide appropriate recommendations on how DHS, ICE, and USCIS can improve their operations to prevent a reoccurrence of this incident.

2. Please ensure that all individuals involved in the December 3, 2016, incident, or who have provided information to the Committee about it, are not retaliated against by agency management. If necessary, I ask that you work with the Office of Special Counsel to take appropriate remedial actions.

If you have any questions about this request, please contact Kyle Brosnan or Brian Downey of the Committee staff at (202) 224-4751. Thank you for your attention to this important matter.

Sincerely,



Ron Johnson  
Chairman

cc: The Honorable Thomas R. Carper  
Ranking Member

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