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December 1, 2014

The Honorable Jeh Johnson
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, N.W.
Washington, D.C. 20528

The Honorable Thomas S. Winkowski
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, DC 20536

Dear Secretary Johnson and Acting Director Winkowski,

On November 6, 2014, Patricia Vroom, a supervisory attorney with an outstanding 26-year career at U.S. Immigration and Customs Enforcement (ICE), filed a lawsuit in federal court against Secretary Jeh Johnson. I have thoroughly reviewed the allegations in the complaint, and am extremely disturbed by what I read.

The complaint lays out in explicit detail an alleged pattern and practice where senior management of the ICE Office of the Principal Legal Advisor (OPLA) bullied career lawyers and destroyed careers to force compliance with the Obama Administration's anti-immigration law enforcement policies, and put in their place favored individuals. Management's conduct as described in the complaint was reprehensible. The extremely disturbing allegations raise serious questions about the fitness of OPLA management, and about the apparent lack of oversight of OPLA management by your office.

Furthermore, if the allegations in the complaint are true, I am deeply concerned that several of the people named in the complaint are tasked with enforcing our immigration laws and implementing the President's November 20, 2014, announcement which further curtails immigration enforcement.

The complaint alleges countless instances of abuse by OPLA management, including managers at Field Legal Operations (FLO) within OPLA. For example, the complaint states:

[S]enior Chief Counsel after senior Chief Counsel began being targeted for harassment, reassignment of duties to much less desirable ones, public humiliation, and brutal scape-goating. The pattern became very clear – individuals who were at or close to retirement eligibility were subjected to increasingly frequent harsh treatment by OPLA senior leadership, gradually chipping away at their self-esteem and the fine reputations they had earned over the years, and then, as they started to succumb to the pressure, the FLO managers would step up the momentum and severity of the pressure to finish the job.

Indeed, the complaint alleges a three-step plan created by these managers to rid the agency of employees they deemed undesirable for invalid and non-performance related reasons: “1) threaten to move their position; 2) find out what they liked to do and take it all away, and find out what they did not like to do and load them up with it; and 3) stay on them constantly, never giving them a moment’s peace.”

In addition to alleging a hostile work environment - including, but not limited to, instances of sexual harassment, routine threats, insults, and otherwise embarrassing and completely unprofessional behavior by top OPLA management - the complaint alleges that personnel were instructed to ignore the law they were sworn to uphold and routinely release and dismiss cases for entire classes of criminal aliens, including certain convicted felons, drunk drivers, DACA applicants, unlawful juveniles apprehended during the border surge, aliens convicted of identity theft, and aliens who made false claims to citizenship in order to vote. According to the complaint, as it pertains to aliens with DUI convictions, Jim Stolley of FLO said, “We don’t give a s*%! about that, let it go.” This statement, if true, is an insult to all of those killed and maimed by drunk drivers. Further, it is inconsistent with testimony provided to this Committee by former ICE Director John Morton and former Secretary Napolitano. During such testimony they stated that drunk driving offenses would be treated as an enforcement priority.

While I understand that the complaint is a matter subject to pending litigation, it leads to numerous questions about OPLA and the need for oversight not just by this Committee, but also by DHS. Therefore, please provide responses to the following questions:

- Have any disciplinary actions been taken against any members of OPLA management named in the complaint?
- How many Equal Employment Opportunity complaints have been filed thus far against each actor in the lawsuit? How many against each actor have been settled, and how many remain pending?

- What policies does ICE have in place to protect whistleblowers such as Ms. Vroom? I would like to ensure adequate protections are in place when Chief Counsels raise legitimate concerns regarding policies and their implementation by OPLA management.

To compound matters, the complaint raises serious questions regarding policies issued by the Administration, and specifically the manner in which OPLA is implementing the Administration's so called enforcement "priorities." Indeed, my Committee staff has had numerous briefings with Jim Stolley, the former head of FLO. In many of these briefings he was unable, when asked, to provide hard data regarding OPLA's practices. Hence, I reiterate previous requests to OPLA that have not been satisfactorily answered and ask for additional information:

- According to a February 13, 2014 study published by Transactional Records Access Clearinghouse at Syracuse University, ICE attorneys in OPLA are losing nearly half of their cases before immigration judges. This is ICE's lowest success rate in more than 20 years, according to the study. The U.S. government has been losing more deportation cases each year since 2009. Since the start of the 2014 fiscal year in October, immigration judges ruled in favor of the alien in about half of the 42,816 cases heard, TRAC reported.

Note that the downturn in ICE's success rate occurred in 2009. Have management directives - either verbal or written - played a role in the downturn of the rate at which ICE attorneys prevail in their cases?

- According to information provided by ICE, from October 1, 2011 to September 30, 2012, OPLA attorneys reviewed for prosecutorial discretion a total of 407,329 cases which were pending before the Immigration Court and the Board of Immigration Appeals. As of October 1, 2012, OPLA had filed motions to administratively close or dismiss 10,082 cases, and declined to file 568 Notices to Appear. Jim Stolley indicated to the Committee that OPLA stopped tracking prosecutorial discretion statistics on October 1, 2012. However, he also indicated that OPLA attorneys continue to exercise prosecutorial discretion with each and every case. Despite the Committee request, OPLA has failed to provide any data on prosecutorial discretion following October 1, 2012. Please provide the Committee with the number of exercises of prosecutorial discretion by OPLA since October 1, 2012, including terminations, administrative closures, cases where OPLA declined to file the Notice to Appear, etc.
- There have been many changes to how ICE attorneys handle cases under this Administration. For example, I understand that it was decided by FLO that any appeal handled by trial attorneys must now be vetted and approved by FLO - the office formerly headed by Jim Stolley, Matt Downer, and Sarah Hartnett. Historically, such appeals were never reviewed by ICE headquarters. Review by the Chief Counsels or Deputy Chief Counsels in the field was sufficient. As part of the new policy, appeals are reviewed by this office while cases that trial attorneys choose not to appeal are not vetted.

- a. What is the reason for the application of this policy to appeals only?

- b. Please provide the Committee with the number of requests for appeals that have been reviewed by FLO.
 - c. Please provide the number of requests for appeals that were granted and the number denied by FLO.
 - d. What are the criteria for denying an appeal?
 - e. Have appeals been denied by FLO for aliens who were granted bond but were subject to mandatory detention pursuant to section 236(c) of the Immigration and Nationality Act?
 - f. Have appeals been denied by FLO for any national security cases?
 - g. Has prosecutorial discretion been exercised in any national security cases? Please provide precise numbers and the national security concerns raised in each case.
- The Committee has received reports that ICE attorneys have been advised by FLO that cases involving fraud are not a priority for removal. Has FLO given guidance, written or unwritten, in electronic form or non-electronic form, which indicates fraud is not a priority for removal? If so, please provide the Committee with any such guidance.
 - Are identity theft cases a priority for removal? What is the “Arizona identity theft initiative?” Please provide me with all documents that outline this initiative. Indeed, I am highly concerned about this category of cases since during a briefing requested by Committee staff, Jim Stolley of FLO indicated that Arizona identity theft cases “are not a priority”. And, when asked if he would mind if it was his social security number that was stolen and being used by someone else, he said: “No, I wouldn’t care.”
 - Have ICE trial attorneys been advised by FLO that they should not conduct cross-examination in cases before immigration judges? Has FLO advised trial attorneys not to show up for removal proceedings in certain cases, and simply submit a memo asking an immigration judge to decide the merits of the case?
 - Jim Stolley confirmed to the Committee that trial attorneys must get approval from Field Legal Operations to call ICE witnesses in their own cases. How many requests to call ICE witnesses have been made? How many ICE witness requests have been granted and how many have been denied?
 - What is the “full service legal model?” Please provide all documents that explain this initiative. Jim Stolley indicated to Committee staff that ICE is a “full service law firm.” Isn’t it the case that OPLA is a Federal entity tasked with defending the government in immigration courts across the country in removal proceedings and is not a law firm?

Secretary Johnson and Acting Director Winkowski
December 1, 2014
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Please respond to these questions by December 22, 2014. Should you have additional questions or concerns please contact Dimple R. Shah, Oversight Counsel, Subcommittee on Immigration and Border Security, at 202-225-3926. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Bob Goodlatte". The signature is stylized with a large initial "B" and a long, sweeping underline.

Bob Goodlatte
Chairman

Cc. John Conyers, Jr.
Ranking Member