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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

March 31, 2015

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

Dear Secretary Johnson:

We write regarding potential retaliation against Department of Homeland Security (DHS) personnel for upholding their oaths of office and faithfully discharging the duties of the offices in which they serve.

On February 25, 2015, during a MSNBC/Telemundo town hall discussion at Florida International University in Miami, President Obama said:

"There may be individual [U.S. Immigration and Customs Enforcement (ICE)] officials or Border Patrol who aren't paying attention to our new directives. But they're going to be answerable to the head of the Department of Homeland Security, because he's been very clear about what our priorities should be... If somebody is working for ICE and there is a policy and they don't follow the policy, there are going to be consequences to it."

Not only do the President's statements ignore the plain language of several immigration statutes that command DHS personnel to take certain actions relating to illegal aliens, the comments seem to comport with a pattern and practice of threats toward DHS personnel who seek to fulfill their duties under the law. Such statements also illustrate why morale levels among DHS personnel continue to remain near the bottom of all federal entities.

Indeed, we are aware of multiple allegations of targeting and retaliation against DHS personnel who refuse to comply with this Administration's willful disregard of our immigration laws—such as allegations made in lawsuits filed in federal court by an award-winning ICE attorney and by a group of 10 ICE officers and agents. President of the National ICE Council Chris Crane has said that agency leadership is "punishing law enforcement officers who are just trying to uphold U.S. law," and is "willing to take

away their retirement, their job, their ability to support their families in favor of someone who is here illegally and violating our laws . . . either taking a disciplinary action [or] threat[ening] disciplinary action.” Earlier this month, Vice President of the National Border Patrol Council (Local 3307) Chris Cabrera testified before the Senate Homeland Security and Governmental Affairs Committee that:

“[Border Patrol] agents who repeatedly report groups [of aliens] larger than 20 face retribution. Management will either take them out of the field and assign them to processing detainees at the station or assign them to a fixed position in low volume areas as punishment. Needless to say agents got the message and now stay below this 20 person threshold no matter the actual size of the group.”

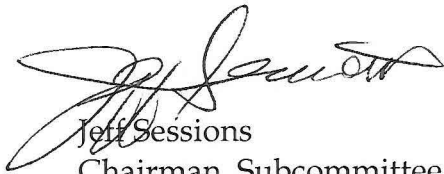
Due to our concerns regarding the potential mistreatment of DHS personnel, we request the following information:

1. Please provide the number of employees the Department disciplined over the last six years, including through the issuance of an adverse annual review, relating in any way to the alleged refusal of those employees to comply with the Department’s administratively-created enforcement priorities—to include, but not limited to, the refusal to exercise prosecutorial discretion in any manner, or the reporting of large groups of aliens apprehended after crossing the border.
 - a. Please break down the data by Department component, by the employee’s employing office within each component, and provide a description of the nature and severity of the discipline imposed on each employee.
 - b. Please provide the current employment status of each employee who was disciplined, including whether the Department terminated that employee subsequent to the discipline; whether the employee is currently employed, but reassigned to a different position subsequent to the discipline; whether the employee is currently employed in the same position as the employee was in before the discipline; and a brief description of any employee who does not fall within one of the above-referenced categories.
2. Please provide statistics regarding the number of lawsuits or complaints filed by Department personnel, or former Department personnel, against the Department over the last six years relating in any way to the alleged refusal of those employees to follow the Department’s administratively-created enforcement priorities—to include, but not limited to, refusal to exercise prosecutorial discretion in any manner. Please describe the general nature of each lawsuit or complaint, the status of the lawsuit or complaint, and the ultimate outcome of any lawsuit or complaint that is not currently pending. Please break down the data by Department component and by the employee’s employing office within the component.

3. Please provide any written guidance, or a description of any oral guidance, issued to Department personnel pertaining to the potential discipline of employees who refuse to comply with the Department's administratively-created enforcement priorities—to include, but not limited to, the refusal to exercise prosecutorial discretion in any manner.
4. Please describe the authority upon which your Department will rely to penalize Department personnel for their failure to comply with an unlawful and unconstitutional order.

Please provide the foregoing information, including all documents and data in native format, to our offices by the close of business on April 13, 2015. Thank you for your attention to this matter.

Sincerely,



Jeff Sessions
Chairman, Subcommittee on
Immigration and the National Interest



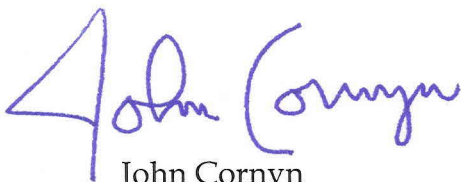
David Vitter
Deputy Chairman, Subcommittee on
Immigration and the National Interest



David Perdue
U.S. Senator



Charles E. Grassley
Chairman, Committee on the Judiciary



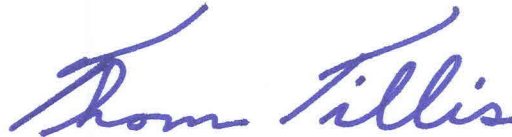
John Cornyn
U.S. Senator



Mike Lee
U.S. Senator



Ted Cruz
U.S. Senator



Thom Tillis
U.S. Senator