

PATRICK J. LEAHY, VERMONT, CHAIRMAN

DIANNE FEINSTEIN, CALIFORNIA
CHARLES E. SCHUMER, NEW YORK
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
AL FRANKEN, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII

CHARLES E. GRASSLEY, IOWA
ORRIN G. HATCH, UTAH
JEFF SESSIONS, ALABAMA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
JEFF FLAKE, ARIZONA

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

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

November 7, 2014

VIA ELECTRONIC TRANSMISSION

The Honorable Charles E. Samuels, Jr.
Director
Federal Bureau of Prisons
320 First Street, NW
Washington, DC 20534

Dear Director Samuels:

On Tuesday, November 4, I wrote to you regarding allegations of retaliation against a Bureau of Prisons (BOP) whistleblower, Privatization Field Administrator Linda Thomas. It appears that BOP may be responding to my letter inappropriately.

Although Ms. Thomas's move wasn't scheduled until Thursday, November 13, as of today her desktop e-mail access has been removed, causing her to lose work material and files. Further, her access to her government BlackBerry was suspended shortly thereafter, leaving her no way to respond to work e-mails, such as when there is a fight at one of the several prisons for which she is responsible.

This raises concerns that Ms. Thomas is being further retaliated against as a result of her communication with Congress. If so, that is unacceptable. In addition to general whistleblower laws such as the Whistleblower Protection Act of 1989 which prohibit reprisal for protected disclosures, including to an Inspector General,¹ BOP employees also have the specific right to talk to Congress and to provide Congress with information free and clear of agency interference. Further, they have the right to be free from fear of retaliation or reprisal for doing so.

As you may be aware, BOP personnel have the Constitutional right to express their concerns to Congress under the First Amendment. It is also against the law to

¹ 5 U.S.C. § 2302(b)(8).

deny or interfere with an employee's right to furnish information to Congress.² Federal officials who deny or interfere with employees' rights to furnish information to Congress are not entitled to have their salaries paid by taxpayers' dollars.³ Further, obstructing a Congressional investigation is a crime.⁴

My last letter noted the "widespread fear of retaliation" that the U.S. Equal Employment Opportunity Commission found among BOP employees in November 2010.⁵ Whistleblowers are some of the most patriotic people I know—men and women

² 5 U.S.C. § 7211 states:

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

³ Division E, § 713 of the Consolidated Appropriations Act of 2014 (P.L. 113-76) states:

No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who—

- (1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee; or
- (2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, stats, pay, or performance of efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any other officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions with respect to such other officer or employee, by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress as described in paragraph (1).

⁴ 18 U.S.C. § 1505 states, in pertinent part:

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

⁵ U.S. Equal Employment Opportunity Commission, *Final Program Evaluation Report: Federal Bureau of Prisons*, Washington D.C., November 24, 2010.

who labor, often anonymously, to let Congress and the American people know when the government isn't working so we can fix it. As such, it would be prudent for you to remind BOP management about the value of protected disclosures to Congress and Inspectors General in accordance with the whistleblower protection laws. Please respond to this letter no later than November 14, 2014, to explain what you have done so far and what you intend to do to ensure that all BOP employees are aware of these laws and whistleblower rights and that BOP managers are accountable for respecting any protected disclosures.

Absent such a clear communication from you, BOP management might be able to intimidate whistleblowers to prevent them from providing information to Congress. I trust you will not allow that to happen.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Patrick J. Leahy, Chairman
Senate Committee on the Judiciary

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

The Honorable Michael E. Horowitz, Inspector General
U.S. Department of Justice