

United States Senate

WASHINGTON, DC 20510

January 9, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable Sally Quillian Yates
Deputy Attorney General
U.S. Department of Justice

Dear Deputy Attorney General Yates:

I write to urge the Department of Justice to reconsider the whistleblower reprisal case of Darin Jones¹ in light of the recent enactment of the Federal Whistleblower Protection Enhancement Act of 2016 (FBI WPEA) on December 16, 2016.² I previously wrote to you on June 26, 2015, and September 29, 2015, regarding Mr. Jones' case.

Mr. Jones reported to this Committee that the FBI terminated him in August 2012 in retaliation for reporting what he reasonably believed to be numerous violations of procurement law, regulation, and policy.³ Mr. Jones made his disclosures to individuals within his chain of command—to both his direct supervisor (the Chief Acquisition Officer) and the highest ranking official in his division (the Assistant Director of the Finance Division).⁴ However, when Mr. Jones challenged his termination with the Office of Attorney Recruitment and Management (OARM), OARM found that it lacked jurisdiction because Mr. Jones failed to make his disclosures to one of the nine high-level entities designated under regulations to receive protected disclosures.⁵ You affirmed OARM's decision on November 21, 2016.⁶

As I have emphasized repeatedly, whistleblowers are vital to government accountability, and must receive the protections they deserve when they disclose waste, fraud, abuse, and mismanagement within the government. It only makes sense for whistleblowers to raise a concern within their chain of command. By failing to protect employees who make disclosures within their chain of command, the FBI's whistleblower protection regulation runs contrary to Congress' intent to encourage disclosures of wrongdoing by providing a safe and logical way to raise issues.⁷ To ensure that FBI whistleblowers receive the same protections as other federal

¹ OARM-WB No. 13-4.

² Federal Bureau of Investigation Whistleblower Protection Enhancement Act of 2016, Pub. L. No. 114-203 (Dec. 16, 2016).

³ Letter from Hon. Charles E. Grassley, Chairman, S. Judiciary Comm., to Hon. Sally Quillian Yates, Deputy Atty. General, U.S. Dep't of Justice (June 26, 2015); Letter from Hon. Charles E. Grassley, Chairman, S. Judiciary Comm., to Hon. Sally Quillian Yates, Deputy Atty. General, U.S. Dep't of Justice (Sept. 29, 2015).

⁴ OARM-WB No. 13-4 (Dec. 8, 2014).

⁵ 28 C.F.R. § 27.1(a); OARM-WB No. 13-4, Order (Aug. 19, 2014).

⁶ Letter from John Geise, Chief, Professional Misconduct Review Unit, U.S. Dep't of Justice, to Darin Jones (Nov. 21, 2016).

⁷ See 162 Cong. Rec. S7,128–29 (daily ed. Dec. 9, 2016) (statement of Sen. Charles E. Grassley).

employees, I drafted the FBI WPEA “to clarify, once and for all, that FBI whistleblowers are protected for disclosing waste, fraud, and abuse in their chain of command.”⁸ Specifically, section 2 of the FBI WPEA protects FBI employees from reprisal when FBI employees make disclosures “to a supervisor in the direct chain of command of the employee, up to and including the head of the employing agency.”⁹

During this Committee’s consideration of your nomination to be the Deputy Attorney General, you committed to working with the FBI “to improve the process for adjudicating claims of retaliation. . . . includ[ing] expanding the list of persons to whom a protected disclosure may be made.”¹⁰ Not honoring Congress’ intent and your commitment to me regarding whistleblower protection would be a stain on your tenure at the Department. I urge you to reconsider Mr. Jones’ case.

Thank you for your consideration of my request. Should you have any questions, please contact Samantha Brennan or DeLisa Lay of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

cc: The Honorable Dianne Feinstein
Ranking Member

⁸ 162 Cong. Rec. S7,129 (daily ed. Dec. 9, 2016) (statement of Sen. Charles E. Grassley) (emphasis added).

⁹ Federal Bureau of Investigation Whistleblower Protection Enhancement Act of 2016 § 2(a)(1)(A), Pub. L. No. 114-203 (Dec. 16, 2016).

¹⁰ Nomination of Sally Yates to be Deputy Attorney General of the United States, Questions for the Record, Responses Submitted April 13, 2015, at 2.