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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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August 27, 2014

Via Electronic Transmission

The Honorable Michele Leonhart
Administrator
Drug Enforcement Administration
700 Army Navy Drive, Room 12060
Arlington, VA 22202

Dear Administrator Leonhart,

I write today regarding the Drug Enforcement Administration's (DEA's) mistreatment of Daniel Chong, a University of California-San Diego college student, in April 2012.

In a letter to the DEA dated May 4, 2012, I asked specific questions related to the treatment of Mr. Chong and DEA's detention policies and procedures. I received a response from the DEA dated May 13, 2012. In that response, the DEA noted that the Department of Justice's Office of Inspector General (OIG) had undertaken an investigation of the incident, and that it would be better able to respond to my questions after the investigation was completed.

At a hearing on May 16, 2012 before the Senate Caucus on International Narcotics Control, DEA Deputy Administrator Thomas Harrigan also stated that the DEA had conducted its own investigation into the incident.

After that hearing, I submitted a series of questions for the record to the DEA about this incident. More than a year later, on June 28, 2013, the Department of Justice, on behalf of the DEA, provided responses to my questions that were incomplete and inadequate. The Department again invoked the ongoing OIG investigation as a basis not to answer many of them. It nevertheless promised that

it would “take appropriate personnel action, if warranted, upon consideration of the results of the OIG investigation.”

In the meantime, according to the responses provided, the DEA also issued an “interim policy to the Special Agents in Charge (SAC) for each of the DEA’s 21 field divisions” that “directed the SACs to establish protocols at the local level with regard to the inspection and monitoring of holding cell and interview areas, and the accounting of detainees.”

Shortly thereafter, the DEA also reportedly agreed to pay Mr. Chong \$4.1 million to settle his claims against the DEA.

Last month, after more than two years, the OIG completed its investigation of the incident. However, the American people still do not know the full details about Mr. Chong’s mistreatment and abuse. Instead, the OIG report raises even more questions about the DEA’s misconduct and creates even more areas of concern. And despite this inexcusable behavior and long-overdue findings, the American people still have no idea whether these agents and administrators are still working for the DEA.

For instance, the report concluded that three agents and a supervisor were responsible for making sure that Mr. Chong was released from custody. All four of these individuals therefore failed in their duties and permitted an innocent college student to suffer in a windowless holding cell without food or water for parts of five days. The report also suggested that at least four other DEA employees “had seen or heard Chong during the period of his detention” but that, according to those employees, there was “nothing unusual about their encounters with Chong.” Instead, those employees “assumed” that someone else would take care of Mr. Chong. In addition, the report suggested that it would have been all but impossible for DEA employees who were assigned workspaces adjacent to Chong’s holding cell not to have heard his banging and yelling. Nevertheless, none of the DEA employees who worked in that space acknowledged hearing anything unusual for the five days when Mr. Chong was kept in captivity.

Perhaps most alarming of all, the report found that DEA supervisors and management may have tried to cover up the incident. According to the report, the DEA assigned the agents who were responsible for Mr. Chong’s brutal captivity to “investigate” their own gross misconduct. The DEA also initiated its own internal “management review” of the incident instead of notifying the OIG, whose job it is to ferret out government misconduct. Incredibly, the report found that this

“decision was made based on an apparent assumption, without any independent factual gathering or assessment, that the conduct which resulted in Chong’s detention did not amount to misconduct and was not criminal.”

In addition, the report found “several systematic deficiencies in the operation of the detention areas that caused Chong’s improper detention.” Among other things, the report noted the following: a wholesale absence of “official DEA policy or training” regarding the operation of holding cells, “no methods or procedures in place to keep track of detainees,” no “recordkeeping to track detainee movements,” no video surveillance of individual cells and no systematic monitoring of the video surveillance generally, and “no reliable electronic entry records or logs” to determine which agents and employees had accessed the holding areas.

In summary, not only were there specific failures by specific agents and employees that led to Mr. Chong’s brutal captivity, as well as a possible attempted cover up by senior DEA officials, but the entire system itself was set up to fail and forestall any future review. This is wholly unacceptable.

As I previously wrote, as Ranking Member of the Senate Committee on the Judiciary, I have the responsibility of conducting oversight of the DEA. So that the circumstances surrounding this incident can be completely understood, please answer the outstanding questions that I posed to the DEA about this incident over two years ago, as well as the following additional questions:

1. Which agent or agents placed Mr. Chong back into a holding cell after he was interviewed by the agents who arrested him, and told him that he was going to be released? According to the OIG report, Mr. Chong clearly identified these agents. However, also according to the OIG report, the agents apparently denied that they did so and instead claimed that they “handed off Chong” to someone else. Who did they claim to hand him off to? Did that agent recall the events as the other agents had?
2. According to the OIG report, Mr. Chong signed a “property receipt” after he was interviewed and before he was placed back into a holding cell. What personal property did Mr. Chong have with him when he was taken into custody? Who took that property from him? What happened to that property after Mr. Chong was returned to his holding cell? Did any particular agent have custody of the property? If so,

why did that agent not recognize that Mr. Chong was still detained? What happened to Mr. Chong's property after he was released?

3. According to the OIG report, the investigating agents "loudly announced to those in the holding/processing area ... that they had decided that Mr. Chong should not be charged and that he should be released." Why did the agents make this announcement? Was it an attempt to influence the decision of other detainees about whether to speak with the agents? Or was it an attempt by the agents to solicit additional information from other detainees about Chong before he was released? Is it common practice of DEA agents to alert others, including potential co-conspirators and co-defendants, about the custodial or prosecutorial status of others in the holding cell area?
4. According to the OIG report, before returning Mr. Chong to the holding cell, the investigating agents were distracted "from Chong by a potential investigative development relating to another detainee." What was this development that led the agents to ignore their responsibilities to Chong? What did the agents do as a result of this "potential investigative development"? What was the ultimate result of the "potential investigative development"?
5. How was it that Mr. Chong was able to find methamphetamine in his holding cell? According to the OIG report, Mr. Chong found the illegal drugs in a plastic bag in a blanket in his cell. How did the drugs get into the blanket? Where did the blanket come from? How long had it been in the cell? Is there any indication that the bag or blanket belonged to a prior occupant of Chong's cell? Who was the occupant of the cell immediately before Mr. Chong?
6. According to the OIG report, the OIG interviewed 57 people, including Mr. Chong: 55 DEA agents and task force officers, and one unidentified person. But there were other individuals who were detained with Mr. Chong that day by the task force, including the three individuals who were arrested with him in an apartment. Has the DEA interviewed these individuals or any other detainees who were present in DEA's holding cells beginning on April 21 and continuing through April 25 to determine what they know about Mr. Chong's detention? Does it plan to do so?

7. According to the OIG report, it was not possible to determine from electronic entry records which agents entered the holding cell area during Mr. Chong's detention because "the door locking mechanism at the entrance to the detention area was not functioning properly." For how long was the door locking mechanism not functioning properly? Why was it not functioning properly? Had any effort been made to repair it prior to this incident?
8. According to the OIG report, there was one "nonrecording camera" without "audio features" that covered the general holding cell area and that was monitored from the Radio Room during normal business hours. Were agents present in the Radio Room during the arrests and interviews? If so, did those agents see who placed Mr. Chong back in the holding cell? The OIG report also made no recommendation about the monitoring of the holding cell area by videocameras and the use of motion-activated video surveillance for all the holding cells. It also did not make any recommendation regarding the potential use of an emergency switch in the holding cells or any other system to help ensure officer and detainee safety. Other agencies regularly monitor and record individual holding cells to ensure the safety of both law enforcement officers and detainees as well as for evidentiary purposes, and other agencies have other systems in place to make sure their officers and detainees are secure in their holding cell areas. Does DEA intend to implement any changes related to these procedures?
9. According to the OIG report, there was a computer terminal and scanner used for fingerprinting those arrested or detained in the processing area immediately next to the holding cells. According to the OIG report, two agents entered the holding cell area to use the computer and scanner on April 25 and interacted with Chong. Were there other agents who used the computer and scanner during that time? Has DEA attempted to use the computer logs to identify any other agents?
10. According to the OIG report, OIG determined that "four persons had seen or heard" Mr. Chong after he was abandoned in the holding cell. According to the report, on April 23, 2014, one of those four persons was with another person who told the agent that "there might be someone in one of the holding cells." The agent then looked into Mr.

Chong's cell and saw that there was a person there and "assumed that whoever placed the person in the cell would return soon." Who was this other person who believed that there was someone in Mr. Chong's cell? How did this other person know that there was someone in Mr. Chong's cell? Why did this other person not do anything to address the situation? And were there other people who may not have "seen or heard" Mr. Chong but nevertheless believed someone was in a holding cell and still failed to assist him?

11. According to the OIG report, there was a DEA workspace on the second floor that backed up to Mr. Chong's holding cell. An OIG investigator in the workspace could clearly hear banging and yelling coming from the cell. According to the report, OIG "interviewed all DEA personnel whose workstations were in the adjoining workspace." Nevertheless, "none of the 25 employees interviewed recalled hearing any unusual noises, such as banging or yelling, coming from the holding area."
 - a. How many of the employees that were interviewed by the OIG were actually present in the workspace during Mr. Chong's confinement? And were there other employees who were present in the workspace during Mr. Chong's confinement but who were not interviewed? If so, does the DEA plan to interview them?
 - b. Are there other areas in the DEA's offices from which it is possible to hear "banging and yelling" from the holding cells? Were there DEA personnel present in those areas while Mr. Chong was confined? If so, does the DEA plan to interview them?
 - c. Most importantly, how is it possible that no one from the DEA heard Mr. Chong banging and yelling while he was held in custody for 5 days? Does the DEA dispute Mr. Chong's claims that he was banging or yelling from the holding cell? Or does the DEA believe that its personnel were not forthcoming about their reactions to Mr. Chong's detention?

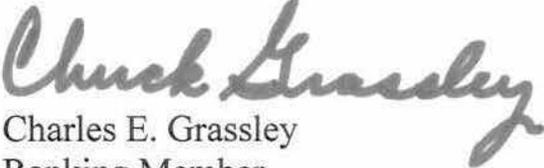
12. According to the OIG report, the three case agents and the on-scene supervisor were responsible for Mr. Chong's detention. The report also found that a supervisor violated DEA policy and showed poor judgment by asking the case agents to process Mr. Chong's holding cell. What specific disciplinary action has the DEA taken against these individuals? If no decision has been made concerning such discipline, how long is such a decision expected to take?
13. According to the OIG report, at least four other agents (and possibly a fifth agent) encountered Mr. Chong during his prolonged confinement but simply assumed that he was someone else's problem. What specific disciplinary action has the DEA taken against these individuals? If no decision has been made concerning such discipline, how long is such a decision expected to take?
14. According to the OIG report, DEA management improperly decided to conduct an internal management review of the incident. Please identify all individuals at the DEA who were involved in this decision, and their roles in that decision. What specific disciplinary action the DEA has taken against these individuals? If no decision has been made concerning such discipline, how long is such a decision expected to take?
15. According to the OIG report, the DEA's "final review memorandum" related to the incident "reached no conclusions and made no recommendations." What facts, then, did the "final review memorandum" memorialize? Were those facts consistent with those documented by the OIG? Please provide a copy of this document.
16. The OIG report appears to have significant unresolved factual questions that raise concerns about the candor of witnesses interviewed by the OIG. Is the DEA considering any specific disciplinary actions against any of its employees for lack of candor with the OIG? If no decision has been made concerning such discipline, how long is such a decision expected to take?
17. Please provide copies of all DEA policies and procedures that have been implemented or amended since this incident, including the date

the policy was implemented or amended, and whether the policy was interim or final at that time.

18. What were the specific terms of the DEA's settlement with Mr. Chong?
19. Where did the DEA get the \$4.1 million it agreed to pay Mr. Chong? What program or project will no longer be funded because of this incident?

I respectfully request a response to these questions by September 27, 2014.

Sincerely,


Charles E. Grassley
Ranking Member