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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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February 15, 2006

The Honorable Glenn Fine
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Inspector General Fine:

We are writing to express our concern that the Federal Bureau of Investigation ("FBI") may have violated its whistleblower protection regulations with regard to Bassem Youssef. Because this matter deals directly with an FBI agent's statutory right to communicate concerns regarding deficiencies in the war on terror directly to the Director of the FBI, we are calling it to your attention and requesting an investigation. Department of Justice regulation 28 C.F.R. Part 27 specifically authorizes FBI employees to raise concerns to the Director of the FBI, and explicitly prohibits retaliation against any employee who engages in such protected activity.¹

Bassem Youssef is currently employed as a Unit Chief supervisor within the FBI's Communications Analysis Section, Counterterrorism Division. As such, we understand that he is the highest ranking Arab-American currently employed within the FBI, and the highest ranking Arabic-speaking FBI agent. After the 9/11 terrorist attacks, Youssef raised a concern within the FBI regarding the failure of the FBI to assign him to cases regarding the attacks. Youssef was particularly concerned that the FBI was under-utilizing his years of operational counterterrorism experience, his fluency in Arabic and his experience working in the Middle East.

Specifically, Youssef was concerned about the FBI's failure to assign him to work within the Bureau's International Terrorism Operations Section ("ITOS"). Youssef has alleged that the failure of the FBI to value his expertise after the 9/11 attacks constituted mismanagement and hampered the effectiveness of its counterterrorism efforts. A former high level manager within the FBI testified under oath that the FBI's failure use subject matter experts such as Youssef in the war on terror directly contributed to the prior failures of the FBI.²

¹ See 28 C.F.R. § 27.1(a). Section 27.1(a) categorizes an FBI employee's disclosure of information to the Director of the FBI as a "protected disclosure" when the agent making the disclosure reasonably believes the disclosure evidences mismanagement, an abuse of authority or a substantial and specific danger to public health or safety. Section 27.2 prohibits any employee of the FBI to take or fail to take a personnel action as a reprisal for a protected disclosure.

² Testimony of former FBI official Ed Curran (Attachment 1).

After Youssef strenuously raised these complaints within the FBI, the following three events occurred within short order:

April 30 to June 26, 2002: A document approving an initial decision to transfer Youssef to ITOS was circulated among the FBI's top-management team, including the Executive Assistant Director and the Assistant Directors for both counterterrorism and counterintelligence. The memo stated that based on Youssef's "knowledge relative to overseas operations (previous assignment to a legal attaché) coupled with his Arabic speaking ability" he should be "immediately" transferred into ITOS. This memo appears to have been approved by several officials, including one approval on June 26, 2002. However, according to Youssef, this decision was neither communicated to him nor was it implemented.³

June 28, 2002: Due to the delay in transferring him to ITOS, Youssef developed a fear that discrimination based on his ethnic origin was handicapping the FBI's ability to protect the safety of the American people. He was so concerned that he contacted his local Congressman, Frank Wolf of Virginia. Congressman Wolf arranged to have the Director of the FBI meet directly with Youssef to disclose his concerns. This meeting occurred on June 28, 2002.

June 29, 2002-Present: At the time of the meeting, Youssef was unaware of the transfer memorandum or that it had been approved by the latest in a series of officials just two days earlier. However, after the meeting, the FBI apparently decided to halt or revoke the transfer. The timing of that decision creates the appearance of a direct retaliation for the meeting between Director Mueller and Youssef in Congressman Wolf's office. Instead of implementing the transfer, the FBI forced Youssef to work in areas for which his Arabic language skills, knowledge of the Middle East and experience in operational counterterrorism were neither needed nor utilized.

This appearance of retaliation is even greater in light of the sworn testimony of Counterterrorism Division Deputy Assistant Director, John Lewis. In a May 17, 2005, deposition, Lewis exhibited clear hostility toward Youssef's protected disclosures to Director Mueller and Congressman Wolf. Regarding Youssef's comments to Director Mueller in the presence of a Member of Congress, Lewis admitted to "frankly being just amazed that [Youssef] would do something like that."⁴ Lewis characterized Youssef's meeting with the Congressman and Director Mueller as "absolutely outrageous," an "ambush," and indicated that he was "still shocked" at the time of his deposition.⁵ Moreover, when asked directly whether he still harbored a negative feeling about the matter, he vehemently responded by saying, "Holy mackerel. I mean absolutely."⁶ Apparently, Lewis "couldn't imagine being more disloyal and discourteous putting the

³ April 30, 2002 transfer memorandum (Attachment 2).

⁴ Tr. 129, lines 6-7. Excerpts from the Deposition of John Lewis (Attachment 3).

⁵ *Id.* at 129, lines 15-16; 130, lines 7-9.

⁶ *Id.* at 131, line 13.

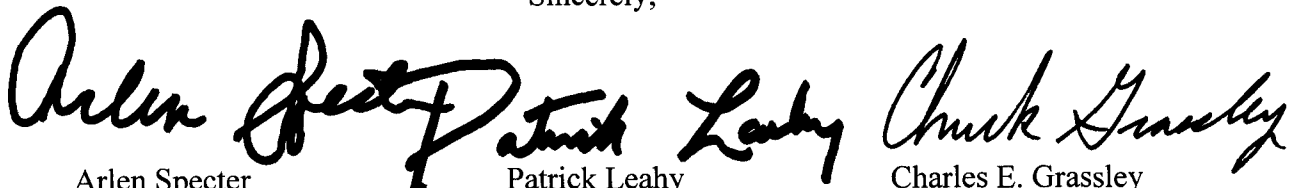
Director in that position” because, according to Lewis, Youssef’s actions, “On a scale of one to 100, the judgment factor there would be way down into the negatives[.]”⁷

Moreover, as Senators responsible for FBI oversight, we are particularly concerned about the treatment of Youssef given that he spoke with the Director of the FBI in the presence of a Member of Congress. These circumstances should have heightened the Bureau’s sensitivity toward the protected nature of his communications. FBI agents are protected under federal law when they communicate with members of Congress.⁸ If tolerated, retaliation for such disclosures sends a chilling message to all employees and thus prevents both the Director and Congress from receiving valuable information necessary to run and oversee the Bureau effectively.

In another case, your office recently found that FBI employee, Jorge Martinez, retaliated against FBI whistleblower Michael German. In the Michael German matter, you recommended that the FBI sanction one employee and provide specific guidance to supervisors about the prohibition on retaliating against employees who make protected disclosures. Given the appearance of another instance of retaliation by senior FBI officials in the Youssef case, it appears that detailed guidance of the sort you recommended as well as the establishment swift and certain punishment for retaliators is necessary to prevent future abuses.

We believe it is critical to determine whether there is another instance in a pattern of retaliatory actions against whistleblowers. Therefore, we ask that you investigate this matter and that you monitor whether the FBI observes the required procedural protections for Youssef and report to us if they are not. We would like a confidential briefing from your staff concerning the status of this investigation within 30 days.

Sincerely,


Arlen Specter Patrick Leahy Charles E. Grassley
Chairman Ranking Member Member

cc: Congressman Frank Wolf

⁷ *Id.* at 131, lines 14-15; 181, lines 15-16.

⁸ 5 U.S.C. 7211.