Congress of the United States

Washington, DC 20510

February 27, 2013

Ms. Melinda Haag
United States Attorney
Northern District of California
U.S. Courthouse
450 Golden Gate Avenue, 11th Floor
San Francisco, CA 94102

Dear Ms. Haag:

We read your comments published in the *Washington Times* regarding the enclosed letters sent by Chairman Smith and Chairman Wolf to the Justice Department Inspector General and the Federal Bureau of Investigation (FBI) Director earlier this month. This longstanding case reportedly involved years of FBI, Department of Homeland Security and National Aeronautics and Space Administration (NASA) Inspector General resources. Yet, the government has, so far, failed to charge anyone for transferring sensitive national security technology to foreign nationals. It is our understanding that a witness was scheduled to appear before a grand jury in this case in February of 2011, but this witness's appearance was cancelled abruptly and not rescheduled. The reason is unclear. We have received allegations from whistleblowers that the decision not to prosecute was influenced by political considerations rather than strictly by the merits of the case.

According to the article, you stated, "'I am aware of allegations our office sought authority from [the Justice Department] in Washington, D.C., to bring charges in a particular matter and that our request was denied,' Ms. Haag said. 'Those allegations are untrue. No such request was made, and no such denial was received.'"[1]

Your statement conflicts factually with information we received from federal law enforcement. Therefore, to evaluate the allegations that politics played a role in the prosecutorial decisions made in this case, we need additional information about your office's decisions and communications with the Justice Department, White House, NASA and other outside entities.

1. It is our understanding that Assistant United States Attorney (AUSA) Gary Fry was initially assigned to this case, but was replaced by AUSA Elise Becker. Is this correct? If so, please explain why AUSA Fry was removed and replaced by AUSA Becker.

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[1] Rowan Scarborough, NASA accused of technology transfers, THE WASHINGTON TIMES, Feb. 12, 2013. Available at http://www.washingtontimes.com/news/2013/feb/12/nasa-accused-of-technology-transfers/

2. Did you or any member of your staff have any communications related to this case with any current or former official at Justice Department headquarters? If so, who did you or your staff speak to at Main Justice and please describe the communication?

3. Did you or any member of your staff have any communications related to this case with any current or former White House and/or Executive Office of the President official? If so, who did you or your staff speak to and please describe the communication?

4. Did you or any member of your staff have any communications related to this case with any current or former NASA official? If so, who did you or your staff speak to and please describe the communication?

5. Did you or any member of your staff have any communications related to this case with any employee, representative, attorney, or lobbyist of an organization or firm that has a contract or Space Act Agreement with NASA headquarters or any NASA center? If so, who did you or your staff speak to and please describe the communication?

Additionally, please provide copies of all documents related to any communications described above.

We understand that prosecutorial decision-making is a topic on which the Justice Department often resists outside inquiry. However, oversight is sometimes necessary to ensure that the integrity of those decisions has not been undermined by improper influence. We hope that some additional transparency in this instance will enhance confidence in the integrity of the Department's decision. We look forward to your prompt response.

Sincerely,

Charles E. Grassley
Ranking Member
Committee on the Judiciary
U.S. Senate

Lamar Smith
Chairman
Committee on Science,
Space, and Technology
U.S. House of Representatives

Frank R. Wolf
Chairman
Subcommittee on Commerce,
Justice, Science, and
Related Agencies
U.S. House of Representatives

Attachments

Congress of the United States
Washington, DC 20515

February 8, 2013

Mr. Michael Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Ave NW
Washington, DC 20530

Dear Mr. Horowitz:

We have been informed of an investigation that the Federal Bureau of Investigation (FBI), the NASA Office of the Inspector General and other law enforcement agencies have been working on since 2009 relating to the alleged illegal transfer of ITAR-controlled technology by individuals at the NASA Ames Research Center. It is our understanding that this illegal technology transfer may have involved classified Defense Department weapons system technology to foreign countries, including China, potentially with the tacit or direct approval of the center's leadership.

We were also concerned to learn that large numbers of foreign nationals were invited to work at NASA Ames over the last six years and that federal information and physical security safeguards may not have been used or may have explicitly been ignored on multiple occasions. Additionally, we have been informed that Ames officials may have traveled to foreign conferences and disseminated information about ITAR-controlled technologies in public forums, with Chinese and other foreign officials present.

We have been told by sources close to this investigation that the FBI's case is substantially complete and was referred to the U.S. Attorney for the Northern District of California for prosecution, but it has been stalled for more than a year and that an assistant U.S. attorney was reassigned from the case. It is our understanding that the charges in this case are rapidly running up against the statute of limitations, and that the first charge expired on December 15, 2012.

We were very concerned to learn earlier this week that despite the U.S. Attorney's request for permission from the Justice Department to proceed with indictments, this request was recently denied without explanation, despite the backing of both the FBI and the U.S. Attorney's office. We are deeply concerned that political pressure may be a factor and are formally requesting an investigation into the circumstances of the Justice Department's actions with regard to this case.

Specifically, we request that you review the period of time since the U.S. Attorney's office received the case from the FBI and review the series of questionable delays and reassignment of the assistant U.S. attorneys managing this case. It is our understanding that after the reassignment, certain defendants and certain charges were dropped from the case without explanation.

In addition to the Justice Department's decision, we have also been informed by sources familiar with the case that key evidence from the hard drive of one suspect's computer was corrupted, as were all the back-up copies in the government's possession. We ask that you review the management of this evidence and whether multiple electronic copies were simultaneously damaged.

We believe all of these allegations merit a thorough review by your office. Thank you for your attention to this serious matter. It is imperative that the Justice Department fully enforce U.S. export control laws protecting critical and sensitive U.S. technologies and any federal officials responsible for the transfer of such technology be investigated and prosecuted.

Sincerely,

Frank R. Wolf

Lamar Smith

Congress of the United States
Washington, DC 20515

February 8, 2013

The Honorable Robert S. Mueller
Director
Federal Bureau of Investigation
935 Pennsylvania Ave NW
Washington, DC 20535

Dear Director Mueller:

We have been informed of an investigation that the Federal Bureau of Investigation (FBI), the NASA Office of the Inspector General and other law enforcement agencies have been working on since 2009 relating to the alleged illegal transfer of ITAR-controlled technology by individuals at the NASA Ames Research Center. It is our understanding that this illegal technology transfer may have involved classified Defense Department weapons system technology to foreign countries, including China, potentially with the tacit or direct approval of the center's leadership.

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We wanted to make you aware that we have asked the Justice Department's Inspector General to review the period of time since the U.S. Attorney's office received the case from the FBI and review the series of questionable delays and reassignment of the assistant U.S. attorneys managing this case. It is our understanding that after the reassignment, certain defendants and certain charges were dropped from the case without explanation.

In addition to the Justice Department's decision, we have also been informed by sources familiar with the case that key evidence from the hard drive of one suspect's computer was corrupted, as were all the back-up copies in the government's possession. We ask that you review the management of this evidence and whether multiple electronic copies were simultaneously damaged.

We appreciate that your staff quickly responded in December when Rep. Wolf first contacted the bureau about this matter and it is our understanding that appropriate offices within the bureau have subsequently reviewed this case. However, we also wanted to make you aware that the allegations raised in this case remain very troubling and hope the FBI will continue to investigate any new information pertaining to illegal technology transfers or inappropriate foreign activity at Ames.

Thank you for your attention to this serious matter. It is imperative that the Justice Department fully enforce U.S. export control laws protecting critical and sensitive U.S. technologies and any federal officials responsible for the transfer of such technology be investigated and prosecuted.

Sincerely,

Frank R. Wolf

Lamar Smith