

# United States Senate

WASHINGTON, DC 20510

October 16, 2017

## VIA ELECTRONIC TRANSMISSION

The Honorable David Shulkin  
Secretary  
U.S. Department of Veteran Affairs  
Washington, D.C. 20420

Dear Secretary Shulkin:

We write to request information relating to the reported retaliation of whistleblower Kuauhtemoc Rodriguez, Chief of Specialty Care Clinics at the Phoenix VA. Mr. Rodriguez alleges he has faced retaliation since reporting patient waitlists to the VA OIG and Congress. If true, these reported instances of whistleblower retaliation are unacceptable and must stop.

As founding members of the Senate Whistleblower Protection Caucus, we are committed to ensuring that federal agencies treat whistleblowers fairly and do not tolerate whistleblower retaliation. Federal employees have a legally protected right to report suspected cases of waste, fraud, and abuse to Congress, OSC, or OIGs. Federal agencies, for their part, are required to prevent prohibited personnel practices, including reprisal for whistleblowing, and are prohibited from retaliating against employees who file whistleblower complaints or cooperate with related investigations.

In July 2014, Mr. Rodriguez disclosed to the VA OIG the misuse of appropriated funds to pay for non-appropriated projects. In March 2015, Mr. Rodriguez disclosed to Congress serious patient waitlist improprieties at the Phoenix VA Health Care System (PVAHCS), including 160 deceased veterans with active unscheduled appointments.<sup>1</sup> In September 2015, he disclosed additional evidence to Congress of hundreds of patients waiting hundreds of days without care.<sup>2</sup> Mr. Rodriguez also reported to the VA OIG and Congress that PVAHCS staff inappropriately discontinued and canceled consults, that management provided staff with inappropriate direction, and that thousands of patients were waiting for consults.<sup>3</sup> In October 2015, he disclosed to Congress that 3,800 veterans had their care delayed for as many as 12 months.<sup>4</sup> The VA OIG released a report in October 2016 substantiating some of Mr. Rodriguez's allegations,<sup>5</sup> which OSC then adopted and transmitted to the White House and the Congress.<sup>6</sup> As a result of these

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<sup>1</sup>Tori Richards, *Whistleblowers Claim Retaliation For Revealing VA Horrors*, NBC NEWS, Jan. 29, 2017,

<sup>2</sup>Memorandum provided by Kuauhtemoc Rodriguez and his attorneys to Judiciary Committee staff (July 12, 2017).

<sup>3</sup>*Id.*

<sup>4</sup>*Id.*

<sup>5</sup>VA Office of Inspector General, *Veterans Health Administration – Review of Alleged Consult Mismanagement at the Phoenix VA Health Care System*, (Oct. 4, 2016).

<sup>6</sup>Press Release, Office of Special Counsel, *Phoenix VA Whistleblower Exposes Significant Patient Wait Times*, (Jan. 10, 2017).

disclosures, Mr. Rodriguez alleges that he has been harassed by his coworkers and been subjected to a hostile work environment.

In August 2014, PVAHCS leadership allegedly relocated Mr. Rodriguez's office to a closet without proper air conditioning.<sup>7</sup> Almost two years later, only after making two Occupational Safety and Health Administration complaints, he returned to a proper office.<sup>8</sup> In October 2015, after his disclosure to Congress, PVAHCS leadership allegedly unlawfully accessed Mr. Rodriguez's medical records.<sup>9</sup> Further, Mr. Rodriguez alleges that multiple department heads openly discussed Mr. Rodriguez's medical history, and soon his health issues became public knowledge among PVAHCS employees.<sup>10</sup> That same month, PVAHCS leadership removed his authority to select his own subordinates.<sup>11</sup>

In April 2016, the retaliation and harassment continued, including alleged verbal and physical threats of violence and bullying.<sup>12</sup> That same month, Mr. Rodriguez was selected for a promotion to Assistant Chief of the Health Administration Service, only to have his promotion rescinded and filled by a subordinate.<sup>13</sup> In May 2016 Mr. Rodriguez's automobile was vandalized in the PVAHCS parking lot, and a Human Resources supervisor allegedly encouraged VA employees to file EEO complaints against him.<sup>14</sup>

For the past two years, Mr. Rodriguez has made highly effective whistleblower disclosures of systemic, lethal patient neglect, and mistreatment. It appears that as Mr. Rodriguez made effective and accurate disclosures to proper oversight channels, he was retaliated against with increasing severity. In January 2017, VA personnel ordered Mr. Rodriguez to appear before an Administrative Investigation Board (AIB)—the most common vehicle used to justify terminating VA whistleblowers. The VA charged Mr. Rodriguez with allegedly creating a hostile work environment and discriminatory practices. If Mr. Rodriguez's allegations are true, the AIB appears to be a retaliatory investigation.

Mr. Rodriguez seeks a simple, fair, and equitable remedy, to include a transfer to a new facility where he will be free from retaliation. Accordingly, we ask that the VA staff provide the Committees with a briefing regarding Mr. Rodriguez's treatment, why the VA has subjected him to an AIB, and what steps the VA plans to take to remedy the alleged retaliation he has faced. In advance of the briefing, please provide the following material:

1. All documents and communications relating to the Administrative Investigation Board inquiry into Mr. Rodriguez's alleged role in creating a hostile work environment and discriminatory practices.

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<sup>7</sup> Memorandum provided by Kuauhtemoc Rodriguez and his attorneys to Judiciary Committee staff (July 12, 2017).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

2. Mr. Rodriguez reported retaliatory harassment by as many as 20 PVAHCS employees and supervisors. Please describe what action will be taken to discipline these employees for their retaliatory behavior.
3. Please describe how the Office of Accountability and Whistleblower Protection has been working to interface with current VA whistleblowers and improve whistleblower services.

Thank you for your attention to this matter. Please respond by October 30, 2017. If you have any questions, please contact Josh Flynn-Brown of Chairman Grassley's staff at (202) 224-5225 and Kyle Brosnan or Brian Downey of Chairman Johnson's staff at (202) 224-4751.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary



Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs