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**United States Senate**

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

July 17, 2014

**VIA ELECTRONIC TRANSMISSION**

Admiral Paul F. Zukunft  
Commandant  
United States Coast Guard  
2703 Martin Luther King Jr. Avenue, S.E.  
Washington, D.C. 20593

Dear Commandant Zukunft:

On March 27, 2014, I wrote your predecessor Commandant Papp about a search warrant executed on a Coast Guard employee. The Coast Guard replied on April 9, 2014. I appreciated the Coast Guard's prompt response.

Unfortunately, the reply, while detailed, left some of my most important questions unanswered. In response to one question, the Coast Guard's response stated:

During the search warrant execution, [Coast Guard Investigative Service] S/A Miguel Bosch observed several files with United States government markings. S/A Bosch took the documents in order to determine if they were properly obtained and lawfully held outside of governmental control.<sup>1</sup>

This response essentially reiterated the points made by the Coast Guard in a press statement, which I quoted in my prior letter.

Because numerous other file folders and documents were allegedly *not* seized, I asked as a follow-up why these particular file folders were seized. The Coast Guard's response stated:

The files contained documents with United States government markings. These documents were seized only to ensure that they were properly obtained and lawfully held given their obvious origination within the Department of Homeland Security. Other documents were not seized as they neither appeared to be federal government property on their face nor related to the documentation authorized for seizure pursuant to the search warrant.<sup>2</sup>

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<sup>1</sup> Letter from Assistant Commandant C.J. Tomney to Senator Charles E. Grassley (Apr. 9, 2014).

<sup>2</sup> *Id.*

To be clear, the copy of the search warrant attached to the Coast Guard's reply authorized the seizure of "documentation in the form of receipts and purchase orders for those firearms, ammunition, magazines, firearm cases, holsters, and cleaning kits; and telephone records regarding the acquisition of firearms or accessories." The warrant does not reference the seizure of documents merely because they have government markings, thus leaving the most important question from my prior letter unanswered:

Given that FOUO [For Official Use Only] and LES [Law Enforcement Sensitive] are undefined and unrecognized by any statute, and are neither national security classifications nor categories of legal privileges, does the Coast Guard assert that it has the legal authority to investigate dissemination of documents with these markings? If so, on what legal basis?

The Coast Guard's response failed to answer that question. Further, none of the Coast Guard's responses addressed the factual issue raised in Ms. Hudson's lawsuit and quoted in my letter. According to the lawsuit:

[T]he vast majority of the materials contained in the file folders were clearly *not government documents at all*. The file folders are full of handwritten or typewritten notes and memoranda Hudson had produced in her work for *The Washington Times*.<sup>3</sup>

If Mr. Bosch removed handwritten or typewritten notes with no government markings, then the Coast Guard cannot justify his action by stating that he "took the documents in order to determine if they were properly obtained and lawfully held outside of governmental control."

As noted in my prior letter, Ms. Hudson wrote in one summary of the raid: "[T]he files included notes that were used to expose how the Federal Air Marshal Service had lied to Congress about the number of airline flights there were actually protecting against another terrorist attack."<sup>4</sup> Further, these notes contained names of Ms. Hudson's anonymous sources.<sup>5</sup> Thus, Mr. Bosch's employment history with the Air Marshal Service raises concerns that he may have seized Ms. Hudson's notes in order to examine her work and discover the identity of her sources.

Therefore, please respond to the following:

1. Is it the Coast Guard's position that Coast Guard Investigative Service was operating within the scope of the Maryland State Police search warrant when Mr.

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<sup>3</sup> *Hudson et al. v. United States Department of Homeland Security*, No. 1:13cv3543m (D. Md. filed Nov. 21, 2013), at 15 (emphasis added).

<sup>4</sup> Alex Pappas, *Feds confiscate investigative reporter's confidential files during raid*, THE DAILY CALLER (Oct. 25, 2013), available at <http://dailycaller.com/2013/10/25/exclusive-feds-confiscate-investigative-reporters-confidential-files-during-raid>.

<sup>5</sup> *Id.*

Bosch took the documents marked “FOUO/LES” in order to determine whether they were properly obtained and lawfully outside of government control? If so, please explain what connection the search warrant had to the documents marked “FOUO/LES.”

2. Does the Coast Guard assert that it has authority to seize FOUO or LES documents anytime they are encountered outside of the agency they originated with? If so, what is the statutory basis for that authority?
3. Please provide a list of all other instances in the last five years when Coast Guard Investigative Service has seized FOUO or LES documents, and describe the circumstances of each.
4. The Maryland State Police inventory form the Coast Guard provided describes item number 27 as “miscellaneous paperwork located in upstairs office.” Did this paperwork include any handwritten notes or other handwritten documents? If so:
  - a. How many pages?
  - b. Did those handwritten documents contain United States Government markings? If not, what was the legal justification for taking the handwritten notes, and why was this not addressed in the Coast Guard’s response to my previous letter?
  - c. Were Ms. Hudson’s typed or handwritten notes shared with any entity other than the Maryland State Police or the Coast Guard Investigative Service after they were seized, such as with the Federal Air Marshals? If so, please list all individuals the notes were shared with, the entity they belong to, and the date they were shared with each individual.
5. Did any entity make copies of the documents seized, take notes on the contents of the documents, or otherwise reproduce the contents of the documents? If so:
  - a. Please explain the legal justification for doing so.
  - b. Please provide a list of all individuals with copies, notes, or other reproductions on the contents of the documents. For each individual, please list the date they accessed the documents and any government entity they are associated with.
6. Your response states that after Mr. Bosch ascertained there was no basis to continue to hold Ms. Hudson’s files, the files were transferred to Mr. Bosch so that he could return them to Ms. Hudson.

- a. Were all the seized documents returned to Ms. Hudson in their entirety? Please provide any logs, records, or other document supporting this claim.
- b. How were these documents marked and/or tracked to ensure every piece of paper was returned to Ms. Hudson? Please provide any supporting logs or records.

I would appreciate a written response to these questions by July 31, 2014. In addition, please arrange for to have your staff brief my staff on this issue by August 7, 2014.

Should you have any questions, please contact Tristan Leavitt of my Committee staff at (202) 224-5225. Thank you for your cooperation in this important matter, and I look forward to your prompt response.

Sincerely,



Charles E. Grassley  
Ranking Member