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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

March 27, 2014

VIA ELECTRONIC TRANSMISSION

Admiral Robert J. Papp, Jr.
Commandant
United States Coast Guard
2703 Martin Luther King Jr. Avenue, S.E.
Washington, D.C. 20593

Dear Commandant Papp:

According to news reports, on August 6, 2013, the Coast Guard participated in the execution of a search warrant on the home of Coast Guard employee Paul Flanagan and his wife, investigative journalist Audrey Hudson. The purpose of the search was ostensibly to find and seize all weapons and ammunition in the home, since Flanagan is prohibited by law from possessing firearms.

However, rather than limiting the search to firearms and ammunition as specified in the warrant, a Coast Guard official seized documents related to Ms. Hudson's investigative journalism for *The Washington Times*, where she wrote stories concerning the Federal Air Marshal Service. According to news reports, the Coast Guard investigator who seized the documents, Miguel Bosch, asked Ms. Hudson during the execution of the search warrant whether she was the same Audrey Hudson who had written "the Air Marshal stories."¹ Mr. Bosch had reportedly formerly worked at the Air Marshal Service from 2002 to 2007, including the time period in which Ms. Hudson wrote her stories.²

These circumstances raise serious questions about whether the authorities obtained the warrant in good faith, solely for the purposes described during the process for obtaining it. According to a statement sent by the Coast Guard to the press:

In the course of a joint Federal & Maryland State Police investigation, a lawful search warrant was served on August 6, 2013 in Shadyside, MD. The Coast Guard Investigative Service (CGIS) was asked to participate since the search involved a Coast Guard employee. During the course of the search, the CGIS agent discovered government documents labeled

¹ Guy Taylor, *Armed agents seize records of reporter, Washington Times prepares legal action*, WASH. TIMES (Oct. 25, 2013), available at <http://www.washingtontimes.com/news/2013/oct/25/armed-agents-seize-records-reporter-washington-tim>.

² *Id.*

FOUO - For Official Use Only (FOUO) and LES - Law Enforcement Sensitive. The files that contained these documents were cataloged on the search warrant inventory and taken from the premises. The documents were reviewed with the source agency and determined to be obtained properly through the Freedom of Information Act. The CG employee was notified that the documents were cleared and the CG employee picked them up after signing for the documents.³

Neither Ms. Hudson nor Mr. Flanagan learned until nearly a month after the execution of the search warrant that any documents had been seized.⁴

According to a lawsuit subsequently filed by Ms. Hudson and *The Washington Times*, the aforementioned files were seized from a room containing numerous file folders stored in filing cabinets and boxes, most of which were apparently not seized.⁵ According to Ms. Hudson, Mr. Bosch said that the files had been taken to make sure they contained only “FOIA-able” information and that he had needed to run the files by TSA to make sure that “it was legitimate” for her to have them.⁶ However, neither FOUO nor LES are national security classification categories. These markings have no legal effect and are not defined or recognized in any statute. This is not a legitimate reason for a government agency to seize documents from an individual’s home.

Furthermore, 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*.⁷

In an earlier summary of the raid, Ms. Hudson wrote, “[T]he files included notes that were used to expose how the Federal Air Marshal Service had lied to Congress about the

³ Elspeth Reeve, *Conservative reporter says feds took her files while searching her home for guns*, THE ATLANTIC WIRE (Oct. 25, 2013), available at <http://www.theatlanticwire.com/politics/2013/10/conservative-reporter-says-feds-took-her-files-while-searching-home-guns/70941>.

⁴ Guy Taylor, *Armed agents seize records of reporter, Washington Times prepares legal action*, WASH. TIMES (Oct. 25, 2013), available at <http://www.washingtontimes.com/news/2013/oct/25/armed-agents-seize-records-reporter-washington-tim>.

⁵ *Hudson et al. v. United States Department of Homeland Security*, No. 1:13cv3543m (D. Md. filed Nov. 21, 2013), at 8-9.

⁶ Guy Taylor, *Armed agents seize records of reporter, Washington Times prepares legal action*, WASH. TIMES (Oct. 25, 2013), available at <http://www.washingtontimes.com/news/2013/oct/25/armed-agents-seize-records-reporter-washington-tim>.

⁷ *Hudson et al. v. United States Department of Homeland Security*, No. 1:13cv3543m (D. Md. filed Nov. 21, 2013), at 15.

number of airline flights there were actually protecting against another terrorist attack.”⁸

Even more troubling, these notes contained names of Ms. Hudson’s anonymous sources, which investigators turned over to the very same agency these sources were blowing the whistle on.⁹ This encroachment on privacy by the Coast Guard causes great concern for retaliation given that some of these whistleblowers worked at the agency.

In addition to jeopardizing whistleblowers, the Coast Guard’s actions appear to raise serious Constitutional questions under the First and Fourth Amendments. Therefore, please respond to the following:

1. Please provide a copy of the search warrant and the search warrant inventory for the raid of August 6, 2013 on the home of Coast Guard employee Paul Flanagan and his wife, Audrey Hudson.
2. Were Ms. Hudson’s notes seized during the raid occurring on August 6, 2103? If so, why? What was the legal justification for this action?
3. Why was the U.S. Coast Guard Investigative Service present at the raid?
4. Was Miguel Bosch chosen to represent the Coast Guard Investigative Service at the August 6, 2013 raid? If so, please explain why and describe how he was selected. If not, please explain why Miguel Bosch was present at the raid.
5. What was the justification for seizing these particular file folders from Ms. Hudson’s home, when numerous other file folders and documents were not seized?
6. Given that FOUO and LES 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?
7. Does the CGIS normally get involved in raids when a Coast Guard employee is involved? If yes, please explain the rationale for this practice. If not, please explain why CGIS became involved in this particular raid.
8. The warrant in question was issued to and executed by Maryland State Police, and the files seized were in custody of the Maryland State Police. Why were Ms. Hudson’s files released to Miguel Bosch?

⁸ 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>.

⁹ *Id.*

Thank you for your cooperation in this important matter. I would appreciate a response by April 28, 2014. Should you have any questions, please contact Tristan Leavitt of my Committee staff at (202) 224-5225. I look forward to your prompt response.

Sincerely,



Charles E. Grassley
Ranking Member