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Grassley Expresses Concern Over Possible Retaliation at INS

\_\_\_\_ WASHINGTON – Sen. Chuck Grassley today sent a letter to the Immigration and Naturalization Service expressing concern over possible retaliation against two supervisors who provided information to investigators about an earlier whistleblower retaliation case.

In March, Grassley sent a strongly worded complaint to the INS commissioner for taking action against two border patrol agents who disclosed concerns about security weaknesses at the U.S.-Canadian border. In April, the INS informed him it was reversing its plans to retaliate against those two agents.

The text of today's letter follows.

June 25, 2002

The Honorable James Ziglar  
Commissioner  
Immigration and Naturalization Service  
Washington, D.C.

Dear Commissioner Ziglar:

As a longtime advocate for whistleblowers, I am alarmed at what appears to be continued retaliation against Border Patrol agents at the Immigration and Naturalization Service's (INS) U.S. - Canada border in Port Huron and Detroit, Michigan.

As you know, in March of 2002, I alerted you to the Border Patrol's retaliation against Border Patrol agents Mark Hall and Robert Lindemann for their roles in spotlighting security problems at the U.S.- Canada border. This retaliation – including de facto demotions and arbitrary, punitive reassignments – was confirmed by an Office of Special Counsel (OSC) report, and from a Department of Justice Office of Inspector General (IG) report. On April 4, 2002, the INS announced that it was withdrawing the discipline taken against these agents.

I appreciated that the INS eventually did the right thing, despite the fact that it required congressional intervention and public pressure. Recently, however, it seems that retaliation problems are recurring. It has been brought to my attention that the supervisor for Messrs. Hall and

Lindemann, Edmund Rutkowski, and a supervisor at Port Huron, Richard Nemitz, are suffering retaliation for their roles in cooperating with the OSC and IG in their Border Patrol investigations. It is my understanding that throughout the Border Patrol, other Supervisory Border Patrol Agents in Charge (PAIC) are being upgraded from GS-12s to GS-13s. I am told that this upgrade is simply a reclassification or regrading the PAIC position due to an increase in responsibilities.

However, in the Port Huron and Detroit stations, the INS has announced that it is hiring new PAICs, rather than upgrading the current PAICs. The net effect is that, while elsewhere in the Border Patrol the PAICs are being upgraded, in Port Huron and Detroit, the PAICs are being forced to compete for the GS-13 PAIC positions. If they fail to compete, or fail to win the position, they will become first-line supervisors at the GS-12 level, which is essentially a demotion. If this is true, I am concerned that these actions by the Border Patrol are retaliatory.

It is my understanding PAICs Rutkowski and Nemitz have filed complaints with the OSC, the entity that investigates whistleblower complaints, alleging that the Border Patrol is engaging in a prohibited personnel practice. They are also considering administrative or legal courses of relief.

I ask that you immediately suspend or withdraw the position announcements pending resolution of the OSC investigation and any administrative or legal challenges. It is undisputed that these two PAICs are receiving disparate treatment that will negatively affect their careers. The onus is on you either to demonstrate somehow that Border Patrol and INS are not retaliating against them, or to immediately order the retaliation to cease.

In addition, I ask for your response within ten (10) days to five issues:

- 1) Please inform me that you will not be taking any disciplinary action against PAICs Rutkowski and Nemitz.
- 2) Please inform me whether you will suspend the position announcements for PAICs in the Detroit and Port Huron stations. If you do not, please provide an explanation for your decision.
- 3) Please inform me whether PAICs Rutkowski and Nemitz will be upgraded to GS-13s like other PAICs along the Northern Border. If you decide that they will not be upgraded, please provide an explanation for your decision.
- 4) Please provide me with an explanation of whether and how the PAIC positions are being upgraded or re-competed at each Border Patrol station in the United States. Include in your response copies of documents memorializing any reclassification decisions, desk audits, or position vacancy announcements.
- 5) What Border Patrol official or INS official made the decision to hold the job announcements for the Port Huron and Detroit stations? Did any official(s) in a position higher than the Detroit sector approve this decision? If so, please identify the person(s). Please provide to me copies of all documents relating to the decisions to compete the PAIC GS-13 positions in Detroit and Port Huron. Include in your response copies of e-mails, internal memoranda, meeting minutes, and any other documents.

As a member of the Judiciary Committee's Immigration Subcommittee, I must exercise my responsibility to conduct oversight of the INS and Border Patrol. I am confident that once you are

made aware of the circumstances of this situation, you will ensure that the INS and Border Patrol cease retaliation against these two men.

I appreciate your time and assistance on this matter. If you have any questions please contact Mr. Matt Reed at 224-5564 or Kathy Nuebel at 224-5744.

Cordially yours,

Charles E. Grassley  
Ranking Member  
Subcommittee on Crime and Drugs

cc: Attorney General John Ashcroft  
Department of Justice

Special Counsel Elaine Kaplan  
Office of Special Counsel

Glenn Fine  
Inspector General  
Department of Justice