

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

June 7, 2016

The Honorable Loretta Lynch
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Attorney General Lynch:

Last year, on March 16, 2015, as the Chairman and Ranking Member of the House Ways and Means Subcommittee on Oversight, we wrote to your predecessor, Attorney General Holder, asking that he review the conduct of two Assistant U.S. Attorneys (AUSA) who handled cases in which claimants petitioned for return of their assets seized by the Internal Revenue Service exercising its civil asset forfeiture authority. *See* Attachment A. We are writing today to ask for an update on those reviews and to call your attention a third AUSA's questionable conduct in another case.

As we noted last year, it seems apparent that the AUSA handling the Sowers case punished the Sowers for exercising their First Amendment rights. After the IRS seized the Sowers' assets based on allegations of structuring and the Sowers petitioned for the return of their funds, a reporter called Mr. Sowers and asked him to tell his story. At the same time, the Sowers' attorney was engaging in negotiations to reach a settlement agreement. When the story was published, the AUSA handling their petition for return of their assets increased the amount of money the Sowers would have to forfeit and added a term to the agreement stating that the Sowers acknowledged that the government had reasonable cause for the seizure. The Sowers' attorney asked why the AUSA had changed the terms, noting that when another Maryland farm went through this same process, they did not have the new term in their agreement. The AUSA responded via email that the other farmers "**did not give an interview to the press.**" *See* Attachment B. Under the U.S. Constitution, public officials may not punish citizens who speak to the press in order to "deter public comment on a specific issue of public concern." *See Crawford-El v. Britton*, 523 U.S. 574, 592 (1998). That email could not be more explicit that the AUSA increased the Sowers' penalty to punish the Sowers for speaking to the press and to deter future speech on an issue of great public importance: the IRS's abuse of its civil asset forfeiture authority.

We also called the case of Andrew Clyde to then-Attorney General Holder's attention last year. When Mr. Clyde challenged the seizure of his funds in court, the AUSA in charge of his case threatened that if Mr. Clyde failed to settle the case, the proceedings would change to a criminal case against him based on evidence the government might uncover during civil discovery.

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Assistant Attorney General Peter J. Kadzik responded to our letter stating that the Department's Office of Professional Responsibility had initiated inquiries regarding each of these cases. In a recent meeting between Chairman Roskam and representatives from the IRS and DOJ, the IRS and DOJ representatives acknowledged that the AUSAs in the Sowers and Clyde cases conducted themselves inappropriately. Now we would like to know what the Department of Justice is doing to reprimand those attorneys and ensure that these situations never happen again.


Furthermore, we would like to bring a third case to your attention. During a hearing this Subcommittee held on IRS civil asset forfeiture, one member asked IRS Commissioner Koskinen to explain the facts surrounding a case involving the seizure of assets from the McLellan family, who ran a convenience store in North Carolina. Shortly after the hearing, the AUSA handling the McLellans' petition for return of their money emailed the McLellans' attorney stating that he had given the McLellans the application for the seizure warrant so that they would "be able to actually know the facts so [the attorney] could review them and have an intelligent discussion with me." **He continued: "Whoever made it public may serve their own interest but will not help this particular case. Your client needs to resolve this or litigate it. But publicity doesn't help. It just ratchets up feelings in the agency."** See Attachment C. The IRS ultimately returned the McLellans' money and the court ordered the IRS to pay the McLellans \$20,000 for legal costs. While we are pleased with that outcome, we believe that the AUSA in that case inappropriately threatened the McLellans solely because Congress raised the facts of their case publicly. We request that you closely review the AUSA's conduct in the McLellans' case and others and censure him as appropriate.

We are concerned that the conduct of the AUSAs in all three of these cases will discourage people who believe the government has violated their rights from seeking all remedies possible and calling misconduct to the attention of people who can hold the prosecutorial functions of the government accountable, including the press, Congress, and the courts. By June 21, 2016, please let us know in writing the outcome of the DOJ's investigation into the AUSAs' conduct in the Sowers and Clyde cases and whether the DOJ intends to investigate the actions of the AUSA in the McLellan case, and if not, why not.

Thank you for your attention to this important matter. If you have any questions, please call Oversight Subcommittee staff member Amanda Neely at 202-225-9263.

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Sincerely,



Peter J. Roskam
Chairman



John Lewis
Ranking Member

Attachments:

Letter from Ways and Means Oversight Subcommittee Chairman Roskam and
Ranking Member Lewis to Attorney General Holder, March 16, 2015

Email from AUSA Stefan D. Cassella to David Watt, May 29, 2012

Email from AUSA Steve West to Michael Petty, March 12, 2015