

B I R A N | K E L L Y
A T T O R N E Y S A T L A W

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May 16, 2014

BY EMAIL AND U.S. MAIL

The Honorable Darrell Issa
Chairman
Committee on Oversight and
Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and
Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Re: Steven Williams

Dear Chairman Issa and Ranking Member Cummings:

I represent EPA Senior Intelligence Advisor Steven Williams in connection with the investigation being conducted by the Committee on Oversight and Government Reform. I write in response to statements made about Mr. Williams at the May 7, 2014 hearing concerning the relationship between EPA's Office of Homeland Security (OHS) and EPA's Office of Inspector General (OIG).

Mr. Williams was originally invited to testify at the May 7 hearing, but EPA suggested and the Committee agreed that EPA Deputy Administrator Robert Perciasepe would appear. The Committee then rescinded the invitation to Mr. Williams. Had Mr. Williams testified before the Committee, he would have categorically denied that he assaulted OIG Special Agent (SA) Elisabeth Drake in any way on the evening of October 24, 2013.

As the Committee heard at the May 7 hearing, a bureaucratic turf battle has been going on between OHS and OIG for several years. In an attempt to punish Mr. Williams and others within OHS who have had the temerity to stand up to OIG in this conflict, and to try to deter them from continuing to follow appropriate legal authorities, OIG personnel have committed multiple unlawful acts against Mr. Williams and others working with him. Although EPA leaders have been made fully aware of OIG's improper actions, they have failed to protect Mr. Williams and others from OIG's abusive practices.

By the summer of 2013, the conflict between OHS and OIG was at a critical stage. The conflict escalated even further in July 2013, when OIG agents attempted to interfere with the

Federal Bureau of Investigation (FBI) in an ongoing and highly sensitive federal investigation as to which OHS is assisting. The FBI was forced to address its concerns to EPA leadership on several occasions, and warned EPA OIG not to interfere with Mr. Williams and his team. OIG's response was to initiate a retaliatory investigation of OHS. In furtherance of this *ultra vires* "investigation," OIG agents, among other things, seized all of Mr. Williams' and several other OHS-affiliated individuals' emails. It is difficult to fathom what a legitimate investigative purpose might be for such a blanket seizure of these emails. Given EPA Assistant Inspector General for Investigations Patrick Sullivan's claim at the hearing that the OIG investigation concerned Special Agent John Martin's status as an "1811" federal investigator while working within OHS, there can be no legitimate purpose for the seizure of all emails of the then-Associate Administrator for Homeland Security (Juan Reyes), the Senior Intelligence Advisor (Mr. Williams) and his deputy (SA Martin), and the National Security attorney within the Office of General Counsel (Nancy Dunham). The only purpose that would seem to be served by this action would be an attempt to gain visibility into the FBI field offices and contacts that OHS supports.

OIG agents subsequently made false and threatening claims to SA Martin to induce him to submit to an interview on October 24, 2013. Among other things, the agents told SA Martin that the interview was compelled, when in fact, OIG did not have the authority to compel SA Martin to appear for the interview and SA Martin had received no directive from his management to submit to such an interview. However, SA Martin decided to retain private counsel at his own expense and voluntarily agreed to be interviewed by the OIG agents. That interview went forward on October 24, 2013, and lasted approximately four hours, as the OIG agents peppered SA Martin with questions about national security matters, despite the fact that the FBI had previously told OIG they could not be involved. After the interview concluded and SA Martin's private counsel left EPA space, SA Drake, accompanied by another OIG agent, SA Gary Don Dorman, followed SA Martin across the EPA complex back to OHS' office.

SA Drake stated at the hearing that she realized after SA Martin and his attorney had parted ways that she and her colleague, OIG Special Ryan Smith, had forgotten to give SA Martin the "standard" warning not to discuss the substance of the interview with third parties, and had also neglected to ask SA Martin to sign a "routine" nondisclosure agreement. If such warnings and nondisclosure agreements indeed are matters that are routinely covered at the conclusion of OIG interviews, we have serious doubts about whether SA Drake and SA Smith both truly forgot to raise those matters with SA Martin when his attorney was still present. Similarly, we have doubts as to whether SA Drake actually attempted to reach SA Martin's attorney on her cellphone before following SA Martin back to OHS' office. In any event, it was improper for SA Drake and SA Dorman to approach SA Martin, whom they knew to be represented by counsel, outside the presence of his attorney later on the evening of October 24. To the extent that SA Drake was unable to reach SA Martin's attorney, the proper response would have been to keep trying to reach her in order to ask her permission to approach her client without counsel present.

But SA Drake decided to try to engage with SA Martin in OHS' space without his attorney present. That brings us to the confrontation with Mr. Williams. It is noteworthy that

SA Drake asked SA Dorman to accompany her to OHS' space to see SA Martin. SA Drake appears to be quite tall, perhaps only a few inches under six feet. As such, she is significantly taller than the five foot three Mr. Williams. But SA Dorman is well over six feet tall and well over 200 pounds. It also is important to note that SA Drake (and presumably SA Dorman) were armed at the time that they entered OHS' space that evening. When Agents Drake and Dorman entered OHS' office at approximately 6:30 pm, SA Martin was standing in the doorway of Mr. Williams' office, meeting with Mr. Williams and OGC attorney Nancy Dunham. Because SA Martin was communicating his concerns to Ms. Dunham in her capacity as the EPA National Security attorney, and to Mr. Williams in his capacity as Senior Intelligence Official for EPA and SA Martin's *de facto* direct "supervisor," regarding the attempted compromise of national security information by OIG agents after OIG had received an admonition by the FBI not to attempt it, this was clearly a protected communication.

After entering OHS' space, SA Drake called out SA Martin's name from down the hallway. SA Martin approached the OIG agents, and SA Drake told him that he was not permitted to discuss the details of his OIG interview with anybody. This was a willful attempt by SA Drake to obstruct SA Martin's rights and obligations under important whistleblower statutes. Moreover, SA Drake lacked the authority to prohibit SA Martin from disclosing the substance of his interview to Mr. Williams or anyone else.¹ SA Drake certainly could *request* that SA Martin voluntarily keep the substance of the interview confidential, but it was incorrect and improper for her to tell SA Martin that he was not permitted to share details of the interview with others, especially because SA Drake had reason to expect that SA Martin would communicate OIG's attempted breach of national security information to Mr. Williams and to other EPA officials who have the authority to address such concerns. We believe that SA Drake's improper pressure tactic was designed to prevent word from getting back to the FBI that OIG was continuing its interference with the FBI's national security mission.

When the OIG agents sought to speak with SA Martin in OHS space, after hours, without an invitation to enter, without ever showing their credentials, and without SA Martin's attorney present, Mr. Williams, acting in his capacity as Mr. Martin's team leader, intervened to protect SA Martin. Mr. Williams told SA Drake and SA Dorman that SA Martin did not wish to speak with them any further without his private counsel present. In addition, Mr. Williams informed SA Drake that she was wrong when she told SA Martin that he was not allowed to disclose details of his OIG interview with others, and Mr. Williams told SA Drake to put her directive to SA Martin regarding nondisclosure in writing. Mr. Williams told the agents several times to leave OHS' space, and they eventually complied.

At no time during this incident did Mr. Williams touch or threaten to harm SA Drake. Nor did he use any profane language. Nor did he force SA Drake to move backwards, as she

¹ The fact that OIG asks witnesses such as SA Martin to enter into written non-disclosure agreements demonstrates that OIG agents have no power to prohibit those same witnesses from disclosing details of OIG interviews to others. If OIG could impose such a blanket prohibition on a witness, there would be no need to ask the witness to sign a non-disclosure *agreement*.

claims. As a Captain in the Navy Reserve with nearly 30 years of military experience, Mr. Williams is accustomed to speaking in an authoritative but non-threatening manner when circumstances dictate such an approach. That is how he conducted himself in this incident. No objective observer could have concluded that the 50 year-old Mr. Williams intended to frighten the taller, armed SA Drake, who was accompanied by the much taller and much larger SA Dorman. Nor is it plausible that SA Drake – accompanied by the intimidating presence of SA Dorman, who stood silently next to SA Drake the entire time she was in OHS space – subjectively felt frightened of Mr. Williams. Indeed, SA Drake acknowledged under the Chairman’s questioning that she is a “woman with a gun” who is not easy to shock. We believe that SA Drake understood perfectly well that, while Mr. Williams wanted her and SA Dorman to leave, he was not threatening the armed law enforcement agents with any harm if they declined to do so. If SA Dorman had perceived that Mr. Williams was threatening SA Drake and/or himself with any harm, it stands to reason that he would have said something or done something at some point in the encounter. He did not. Instead, the agents left OHS space voluntarily pursuant to Mr. Williams’ request. Rather than feeling threatened by Mr. Williams, it is far more plausible that SA Drake was simply embarrassed to return to her superiors at OIG, where she would have to acknowledge, first, that she failed to cover non-disclosure issues with SA Martin at the conclusion of the interview and, second, that she failed to get SA Martin to sign a non-disclosure agreement during her uninvited entry into OHS’ space. Viewed against this backdrop, SA Drake’s claim that Mr. Williams assaulted her can be seen for what it really was: an attempt to distract her superiors from her own “mistakes.”

SA Drake’s assault allegation then provided OIG leadership with what they must have thought would be a convenient way to get rid of Mr. Williams, who they perceived to be the greatest obstacle within EPA to their goal of taking over responsibility for national security matters within the Agency. Thus, on October 25, 2013, OIG referred an assault allegation against Mr. Williams to the Federal Protective Service (FPS). While FPS spoke with both SA Drake and SA Dorman about the allegations, they did not attempt to interview Mr. Williams or two other witnesses to the events in question, SA Martin and Ms. Dunham. FPS did interview another witness to the incident, OHS employee Damon Juarez. According to the FPS report of its interview with Mr. Juarez, he told the investigators that Mr. Williams’ demeanor during the interaction with SA Drake and SA Dorman *did not appear threatening*, although it was unwelcoming. Of course, there is an important distinction for purposes of the law of assault between “threatening” and “unwelcoming” conduct.

On October 29, 2013, without having spoken with Mr. Williams, Ms. Dunham, and SA Martin (who all would have contradicted SA Drake’s account in material respects), and despite Mr. Juarez’s statement that Mr. Williams’ demeanor had not been threatening, FPS presented the U.S. Attorney for the District of Columbia with a proposed Affidavit in Support of an Arrest Warrant, under which FPS sought to obtain a Criminal Complaint charging Mr. Williams with having assaulted SA Drake by acting with the intent to frighten her. Fortunately, the Assistant U.S. Attorney who did the intake on that paperwork declined to authorize prosecution of Mr. Williams for assault without even requesting any additional investigation by FPS. This decision by the U.S. Attorney’s Office was fully appropriate. However, this has not prevented OIG from taking the unusual and highly inappropriate action of publicly smearing the reputation of Mr.

Williams several times since the U.S. Attorney declined prosecution in late October. Knowing that Mr. Williams cannot and will not publicly discuss his work, OIG moved its campaign of harassment to Capitol Hill and the media.

Mr. Williams is a highly decorated combat veteran of the Navy who has consistently received outstanding ratings for his work at EPA. He has been diligent and thorough in his duties, and as a senior advisor to the Administrator, he has consistently provided relevant and accurate advice to EPA leadership. It is thoroughly disturbing that Mr. Williams was maligned at the hearing with no opportunity to respond in real time.²

It is reprehensible that EPA OIG used the Committee's prominent public forum to mislead the Committee about Mr. Williams' conduct and OHS generally. SA Drake's claim that Mr. Williams assaulted her is false. Mr. Williams welcomes the Chairman's suggestion at the hearing that the Council of the Inspectors General on Integrity and Efficiency (CIGIE) should be involved in investigating these matters. AIGI Sullivan stated at the hearing that the Department of Defense OIG's pending administrative investigation will cover SA Drake's assault allegations, as well as Mr. Williams' "counter-allegations." We believe that CIGIE's Integrity Committee should specifically task DOD OIG to investigate EPA OIG's multi-year record of improper actions with respect to national security matters, as well as its pattern of harassment and intimidation of Mr. Williams and others who have disagreed with OIG's positions.

² At the hearing, Deputy Administrator Perciasepe volunteered that employees within OHS have made claims against Mr. Williams alleging that he has contributed to a hostile work environment for them. It is most distressing that Mr. Perciasepe would publicly raise those allegations, which have not been aired out within EPA. Mr. Williams has not been called upon to defend himself against any such allegations. But since Mr. Perciasepe inappropriately mentioned those allegations at the hearing, it is important to state here that Mr. Williams has not acted improperly toward any other OHS employees or anyone else within EPA.

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Thank you for your consideration of this letter.

Very truly yours,

BIRAN KELLY LLC

/s/

Jonathan Biran

cc: Hon. Regina McCarthy, Administrator
U.S. Environmental Protection Agency

Hon. James B. Comey, Director
Federal Bureau of Investigation

Hon. Phyllis K. Fong, Chair
Council of the Inspectors General on Integrity and Efficiency