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# United States Senate

COMMITTEES  
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SMALL BUSINESS  
AND ENTREPRENEURSHIP

May 23, 2023

The Honorable Michael E. Horowitz  
Inspector General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

Dear Inspector General Horowitz,

On May 2, 2023, the U.S. Office of Special Counsel (OSC) alerted President Biden and the Congress of substantial waste, mismanagement, and unlawful employment practices at the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).<sup>1</sup> This alert substantiated the claims of two whistleblowers from ATF's human resources office.<sup>2</sup> Specifically, the whistleblowers claimed the ATF was systemically and wrongfully classifying non-law enforcement jobs as law enforcement.<sup>3</sup> This resulted in ATF bureaucrats being provided pay and benefits reserved for those law enforcement personnel including enhanced retirement benefits and premium pay rates in accordance with Law Enforcement Availability Pay.<sup>4</sup> I am pleased the Office of Personnel Management (OPM) has acted and is consulting with DOJ and ATF as to additional appropriate actions.

However, I remain concerned about the limited scope of the remediating actions. According to the whistleblowers, OSC's report "did not adequately capture the extent of ATF's illegal practices or the full impact of the harm."<sup>5</sup> In fact, the whistleblowers believe "there were many more misclassified positions than were captured in [OPM's] audit and that the agency significantly underreported the waste directly and tangentially associated with the widespread practice of misclassifying positions," including failing to account for the impact of the wrongdoing on ATF's non-law enforcement personnel.<sup>6</sup>

Special Counsel Henry J. Kerner shares the whistleblowers' concerns, noting "the agency's regarding the full impact and import of the wrongdoing on the functioning of the agency appears

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<sup>1</sup> Press Release, U.S. Office of Special Counsel, ATF Unlawfully Paid Agents Millions of Dollars in Wrongful Benefits (May 2, 2023) (on file on the public website of the United States Office of Special Counsel).

<sup>2</sup> Letter from Henry J. Kerner, Special Counsel, to Joseph R. Biden, President of the United States (May 2, 2023) (on file on the public website of the United States Office of Special Counsel).

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

incomplete and progress toward full resolution of the problems has been slow” in part potentially due to “entrenched culture reinforcing the problematic choices” permeating the ATF.<sup>7</sup> Notwithstanding his existing concerns, Special Counsel Kerner has closed this matter.<sup>8</sup>

Despite OSC’s role ending, more work remains to be done on this important issue to ensure the ATF’s culture of gross mismanagement of taxpayer funds is fully examined and remediated to stamp out any willingness to abuse the public trust which may exist amongst ATF bureaucrats.

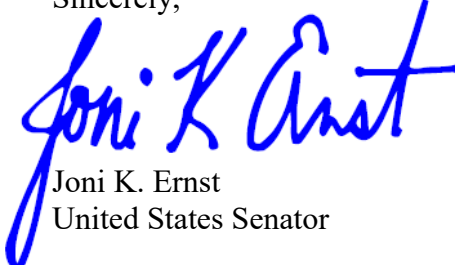
To that end, I request your office conduct a full assessment of these allegations. It is necessary to determine the true extent of the improper and illegal activity. To the extent warranted, I urge you to work with the Department of Justice, OPM, and ATF to ensure American taxpayers are fully compensated for any losses they have borne resulting from the wrongdoing the whistleblowers have unearthed, as well as to hold those responsible to account. This should include:

1. Working with the whistleblowers to ensure the scope of your investigation fully encompasses the alleged wrongdoing;
2. Ensuring, to the extent legally permitted, excess pay and benefits found to have been improperly provided are recovered from ATF personnel; and
3. Recommendations for disciplinary action up to and including termination, as well as criminal referrals where appropriate, for those ATF personnel implicated in improper or illegal activity.

The American people deserve to know the full extent of the ATF bureaucrats’ dishonest dealings. It is incumbent upon all public servants to act with the utmost levels of professionalism but when bureaucrats abuse the public trust it is the responsibility of watchdogs to hold the bad actors accountable for their malfeasance.

Thank you for your prompt attention to this matter. Please provide an update on the status of this request as soon as is practicable but no later than June 6, 2023. Please do not hesitate to contact me or Aaron Gottesman of my staff at (202) 224-3254 or [Aaron\\_Gottesman@Ernst.Senate.Gov](mailto:Aaron_Gottesman@Ernst.Senate.Gov) with any questions or concerns you may have.

Sincerely,



Joni K. Ernst  
United States Senator

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

