



May 23, 2018

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The Honorable Peggy E. Gustafson
U.S. Department of Commerce
Office of Inspector General
1401 Constitution Avenue N.W.
Washington, DC 20230

Dear Inspector General Gustafson:

As Members of the Congressional Asian Pacific American Caucus (CAPAC) who represent Asian American and Pacific Islander communities across the nation,¹ we write to request a full and independent investigation into the actions taken by the Department of Commerce in the case of Xiafen "Sherry" Chen, a former employee of the National Weather Service (NWS) within the National Oceanic and Atmospheric Administration (NOAA).

In October 2014, Ms. Chen was targeted by federal investigators for alleged espionage and arrested based not on any reasonable evidence, but on what appears to be her race. The Federal Bureau of Investigation later dropped all charges against Ms. Chen, but NOAA still chose to issue a Proposed Disciplinary Action against her which resulted in her termination. Ms. Chen then appealed her case to the U.S. Merit Systems Protection Board (MSPB), an independent, bipartisan board charged with safeguarding the rights of civil servants, and an MSPB judge recently ruled that Ms. Chen was the "victim of a gross injustice."

It does not appear that anyone at the Department has been held accountable for the pattern of misconduct in Ms. Chen's case. We remain concerned that her case reflects systemic problems at the Department and warrants further review. We specifically call your attention to an April 23, 2018 decision (Docket Number CH-0752-17-0028-I-1) issued by Chief Administrative Judge Michele Szary Schroeder in which Judge Schroeder ruled in favor of Ms. Chen, an award-winning former GS-12 hydrologist at the NWS, and rejected many of the allegations against her. The decision determined the Department did not have cause to terminate Ms. Chen's employment and therefore should reinstate her employment at the NWS, give her back pay, and cover her legal fees – all of which has yet to happen.

Historically, it is uncommon for MSPB to rule in favor of an appellant - the success rate is less than 2 percent. In this case, not only did Ms. Chen receive a favorable ruling, but Judge Schroeder issued a 135-page point-by-point decision detailing the mishandling and failings at multiple levels at the Department, including by the Office of Security, Office of the General Counsel, Workforce Management Office, and top leadership of NWS and NOAA.

Specifically, Judge Schroeder determined that Ms. Laura Furgione, the proposing official for the Department, and Vice Admiral Michael Devany, the deciding official for the Department, were “digging in” and “more concerned about being right than doing the right thing.” The judge found it “troubling” that Department officials failed to include a dozen sworn declarations from Ms. Chen’s co-workers that were “clearly relevant” to the termination decision, thereby suppressing critical evidence. Judge Schroeder also concluded that “based on the unyielding nature of their testimony, I would not have been surprised if they rejected that $2 + 2 = 4$.”

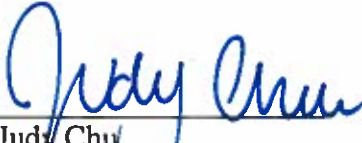
Judge Schroeder’s decision suggests that the Department may have engaged in gross misconduct against a Chinese American employee on the basis of her race. If left unchecked, such systemic misconduct risks jeopardizing the Department’s integrity and creating a hostile work environment for Asian Americans and other minorities across our government, undermining its ability to recruit top talent.

Therefore, we call for a full and independent investigation of Ms. Chen’s case to examine the actions taken against her and to determine if corrective actions need to be taken across the Department. Specifically, we ask that you look into the following areas:


- **Fraudulent actions:** Has the Department reviewed and taken corrective actions on the omission, manipulation, and mishandling of files and material evidence? Are there other materials that may have been altered or concealed?
- **Abuse of Authority:** Did senior Department officials use their position to undermine the investigation into whether or not Ms. Chen committed any crimes by hiding important details that would otherwise prove Ms. Chen’s innocence?
- **Misconduct/Mismanagement:** Were the actions described in Judge Schroeder’s decision, such as the “digging in” and failure to “do the right thing,” symptomatic of a broader culture of misconduct and mismanagement?

No federal employee - or any American - should be viewed by our government as more suspicious because of their race or ethnicity. We thank you for your attention to this important matter and look forward to working with you to protect the liberties of all Americans.

Sincerely,



Judy Chu
Member of Congress
CAPAC Chair



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Member of Congress
CAPAC Whip

Madeleine Bordallo
Member of Congress
CAPAC Vice Chair

Grace Meng
Member of Congress

Jimmy Gomez
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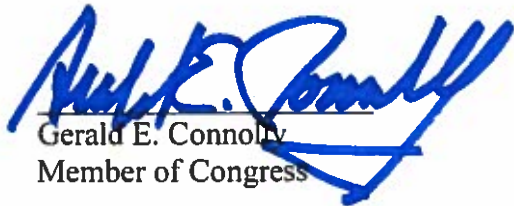
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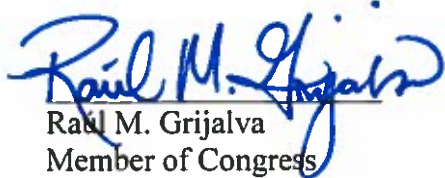
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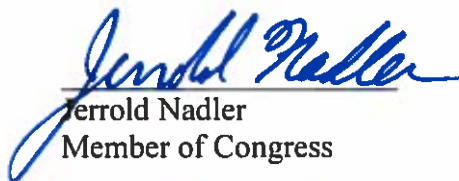

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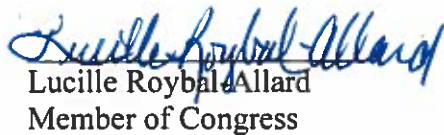

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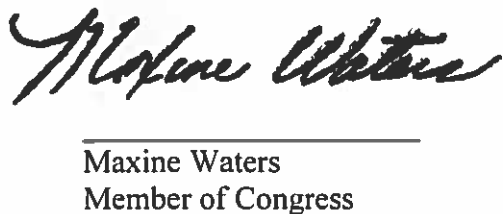

Grace F. Napolitano
Member of Congress

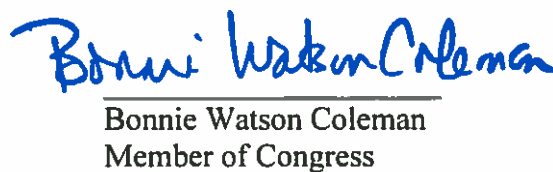

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