

May 9, 2018

The Honorable Wilbur Ross  
Secretary of Commerce  
U.S. Department of Commerce  
1401 Constitution Ave NW  
Washington, DC 20230

Dear Secretary Ross,

On behalf of the Sherry Chen Legal Defense Fund, I write to request your objective review and follow-up actions to correct the problems at multiple levels of the Department of Commerce (DOC) that were identified by a recent Merit Systems Protection Board (MSPB) decision (Docket Number CH-0752-17-0028-I-1)<sup>1</sup>. MSPB ruled in favor of the appellant, Sherry Chen, against DOC.

The injustice suffered by Ms. Chen since 2012 occurred before your arrival as Secretary of Commerce. You are now in position to review the MSPB findings and take appropriate corrective actions to address the identified and unidentified problems at both individual and systemic levels. DOC is accountable for its actions and to the public. Whether it was caused by embarrassment, incompetence, or prejudice of the previous administration, it is time for you to do the right thing and be on the right side of history to minimize further damage to the credibility and public trust in DOC.

Sherry Chen was an award-winning GS-12 Hydrologist whose work at the National Weather Service (NWS) included developing river forecast models relating to the Ohio River and its tributaries. She received top performance evaluations for her entire NWS tenure since joining NWS in March 2007. Ms. Chen was repeatedly recognized by awards for her achievements, including the prestigious Larry Johnson Award for her work of national significance during the historic flooding on the lower Ohio and mid-Mississippi Rivers in 2011.

However, Ms. Chen was wrongly arrested and alleged to be collecting confidential data for China in October 2014. Her criminal case was dismissed by the Department of Justice in March 2015<sup>2</sup>. Using some of the same justifications, DOC terminated Ms. Chen from employment in March 2016. Ms. Chen made an appeal of the termination decision to MSPB. A hearing was held by MSPB in March 2017. Judge Michele Szary Schroeder issued her decision on April 23, 2018. She ruled overwhelmingly in favor of Ms. Chen.

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<sup>1</sup> Sherry Chen Legal Defense Fund. Xiafen Chen v. Department of Commerce, MSPB Initial Decision, CH-0752-17-0028-I-1, April 23, 2018.

[https://www.sherrychendefensefund.org/uploads/9/9/2/8/99280080/chen\\_v\\_dept\\_of\\_commerce-ch-0752-17-0028-i-1-initial\\_decision.pdf](https://www.sherrychendefensefund.org/uploads/9/9/2/8/99280080/chen_v_dept_of_commerce-ch-0752-17-0028-i-1-initial_decision.pdf).

<sup>2</sup> Nicole Perlroth, Accused of Spying for China, Until She Wasn't, New York Times, May 9, 2015.

<http://www.nytimes.com/2015/05/10/business/accused-of-spying-for-china-until-she-wasnt.html>.

The MSPB hearing exposed some of the egregious conducts and actions taken by DOC that the dismissed criminal case did not previously reveal. Historically, the chance of an appellant winning a MSPB appeal is less than 2%. In this case, Judge Schroeder not only ruled in favor of Ms. Chen, but also concluded from her well-reasoned, 135-page decision that Ms. Chen was the “victim of a gross injustice.” Moreover, the cause of this injustice was the mishandling of Ms. Chen’s case at multiple levels in DOC.

In particular, Judge Schroeder opined that Ms. Laura Furgione, the proposing official for DOC, and Vice Admiral Michael Devany, the deciding official for DOC, “seemed more concerned about being right than doing the right thing.” Furthermore, “based on the unyielding nature of their testimony, I would not have been surprised if they rejected that  $2 + 2 = 4$ ,” the judge said in her decision.

"It is not my place nor is it necessary for me to ... decide whether Ms. Furgione or Admiral Devany had a blinding desire to save face for the agency in light of the press coverage and the length of time that had passed since Ms. [Deborah] Lee first submitted her concerns to the security office, whether they felt Ms. Chen returning to the agency would embarrass or not reflect well on the agency's initial actions, whether their thought process was tainted by the dismissed criminal charges, or whether they simply did not have the competence or experience to impartially perform their respective roles as proposing and deciding officials in this matter."

-- Page 103 of MSPB Decision

According to the MSPB decision, the scandalous failures were not limited to the top officials at DOC but department-wide, including but are not limited to:

- Special Agents including Andrew Lieberman of the Office of Security, which conducted the investigation of Ms. Chen, “unilaterally decided which interviews they would reduce to writing.” They concealed relevant, material evidence and provided selectively biased or false information in both the criminal and administrative cases.
- The Office of General Counsel excluded exculpatory evidence from the DOC files in the MSPB hearing. Examples include sworn statements from a dozen or so employees who testified about existing office policies and practices that were in direct contradiction to the DOC formal specifications against Ms. Chen. DOC turned the documents over to Ms. Chen only after her counsel discovered their existence by chance, while the top officials stayed silent.
- Ms. Deborah Lee was the informant who started the criminal investigation of Ms. Chen in 2012 with a reference to Ms. Chen as “a Chinese national.” Ms. Chen is a naturalized American citizen, which is required for her federal employment. Upon presentation of facts in the MSPB hearing, Ms. Lee admitted that she provided additional incorrect statements in the subsequent administrative proceedings. Ms. Lee was under the employ of the Army

Corps of Engineers and promoted into the Senior Executive Service less than two months after Ms. Chen's arrest. Ms. Lee currently serves as Director of Great Lakes Environmental Research Laboratory under the National Oceanic and Atmospheric Administration in DOC.

Ms. Chen was an exemplary public servant who worked to protect American lives and properties. There is bitter irony that she was wrongly accused of betraying her country with so much zeal and vengeance. The unjust and unfair conduct and actions by DOC officials has caused irreparable damage to the life and family of a loyal American. Public trust is placed on DOC to operate with the highest level of integrity and fairness, and yet multiple levels at DOC betrayed this trust miserably in Ms. Chen's case.

I write to respectfully request your prompt actions in the following areas:

- Comply with the MSPB order to reinstate Ms. Chen and provide her with back pay and benefits without further delay. Justice delayed is justice denied.
- Commute the maximum 15-day suspension on Ms. Chen's "single lapse of judgement" in one email that is totally unrelated to the sensational charges against Ms. Chen. It is the only adverse finding by the MSPB ruling. Ms. Chen deserves the commutation after her many years of humiliation and endurance.
- Initiate a thorough and independent investigation into the conduct, economy, and efficiency of the adverse actions taken against Ms. Chen, including but not limited to, possible waste of taxpayers' dollars, fraudulent investigative and legal practices, abuse and misuse of authorities, misconduct and incompetence in DOC representation, inappropriate promotion and other forms of awards, concealed employee statements and other exculpatory evidence, whistleblower reports, and related concerns.

I also request a timely reply from your office to this letter by email to [dfundschen2016@gmail.com](mailto:dfundschen2016@gmail.com).

Very Respectfully,



Jeremy S. Wu, Ph. D.  
Trustee  
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