



NEWS RELEASE

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NTEU, AFGE Protest DHS Action Expanding Management Ability to Suppress Information

Washington, D.C.—The leaders of two major unions representing thousands of front-line border security officers today called upon the Department of Homeland Security (DHS) to withdraw a directive and non-disclosure agreement that impose “unprecedented restrictions and conditions on the free speech rights” of DHS employees. The non-disclosure agreement also apparently allows the government unprecedented leeway to search employee homes and personal belongings in violation of the Fourth Amendment.

Presidents Colleen M. Kelley of the National Treasury Employees Union (NTEU) and John Gage of the American Federation of Government Employees (AFGE) outlined their serious concerns about the matter in a letter to DHS Secretary Tom Ridge.

They included a copy of a lengthy letter from the general counsels of both NTEU and AFGE to DHS General Counsel Joe Whitley outlining what the union lawyers described as the “significant constitutional violations” arising out of DHS implementation of its Management Directive 11042 (“Safeguarding Sensitive But Unclassified [For Official Use Only] Information”) and DHS Form 110000-6 (“Non-Disclosure Agreement.”)

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Kelley-Gage Urge Withdrawal of DHS Rule —Add One

In calling the directive and non-disclosure agreement “clearly illegal,” the union lawyers described as “particularly troubling” the establishment of a prior restraint on speech—noting that courts “have routinely struck down as unconstitutional” such prior restraints on the speech of government employees.

Moreover, the lawyers said, requiring public employees to agree to the broad and undefined waiver of their privacy purported to be given the government by the inspection provisions of the non-disclosure agreement “clearly violates the Fourth Amendment” guarantee against unreasonable search and seizure.

Even at the workplace, they said, “federal employees may have a reasonable expectation of privacy in their own purses and briefcases, or other private areas of their offices.”

While noting that NTEU and AFGE members “fully appreciate” the need to safeguard classified and other highly-sensitive information, Kelley and Gage wrote that the DHS directive covers “a virtually unlimited universe of information that is relevant to important matters of public concern” and whose disclosure would have no adverse impact on national security.

On the contrary, the union presidents wrote, “we strongly believe” the directive and the accompanying non-disclosure agreement employees are being made to sign “actually undermine our national security and the public interest.”

The documents do so, Kelley and Gage said, by providing “a convenient device” for DHS officials to suppress and cover up evidence of their own misconduct and malfeasance. Under the directive and agreement, they said, “any DHS official or employee can simply stamp a document ‘for official use only,’ thus subjecting any employee who might disclose the information for a legitimate public purpose to severe sanction.”

In urging that Secretary Ridge turn his “prompt personal attention” to the matter, they reminded him that “history teaches us that an institutional culture that suppresses whistleblowers and discourages dissent does not serve the national interest.”

Together, NTEU and AFGE represent more than 60,000 DHS employees.