

United States Senate

WASHINGTON, DC 20510

August 31, 2023

The Honorable Merrick Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Attorney General Garland,

I was surprised to learn that the U.S. Department of Justice (“DOJ”) is suing SpaceX for favoring American citizens in hiring. The DOJ’s complaint states that a lawsuit was brought because “SpaceX . . . rejected [job] applicants who identified as asylees or refugees because it believed that they were ineligible to be hired” under federal regulations, specifically the International Traffic in Arms Regulations (“ITAR”).¹ The complaint further alleges that, after learning that the DOJ does not share SpaceX’s interpretation of the ITAR, SpaceX changed its hiring practices and hired at least one asylee.²

Thus, putting aside the legal merits of the DOJ’s case—which are themselves questionable³—there does not appear to be a moral or political case for choosing to proceed with a lawsuit under these circumstances. The DOJ admits that any preference SpaceX gave to U.S. citizens and lawful permanent residents was intended only to satisfy what SpaceX perceived to be its legal obligations. If that belief was informed by advice of counsel, as it likely was, what value does the DOJ perceive in further extracting a pound of flesh from a company that was seeking in good faith to balance competing legal duties?

The case for restraint is further supported by the fact that the DOJ will be understood to impose upon SpaceX a standard that the DOJ and other government agencies do not adhere to themselves. For example, an active DOJ job posting for a “recreation specialist” in the Bureau of Prisons requires proof of U.S. citizenship, even though the job’s duties are a far cry from any

¹ *United States v. Space Exploration Techs. Corp.*, No. _____, Exec. Office for Immigration Review, Complaint (Aug. 23, 2023), ¶ 45, available at <https://www.justice.gov/media/1311656/dl?inline>.

² *Id.* ¶ 53.

³ For example, the DOJ’s lawsuit hinges on 8 U.S.C. § 1324b(a), which contains a general prohibition on discriminating against asylees and refugees “because of [their] citizenship status.” *Id.* But 8 U.S.C. § 1324b(a)(4) provides that, “[n]otwithstanding any other provision of this section, it is not an unfair immigration-related employment practice . . . to prefer to hire, recruit, or refer an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.” *Id.* The DOJ argues that 8 U.S.C. § 1324b(a)(4) is inapplicable in SpaceX’s case, because SpaceX rejected asylees and refugees out of hand, without evaluating their qualifications. But that argument has not yet been tested, legally or factually, and DOJ fails to cite any federal court precedent in support of its position.

national security function and instead include “planning, developing, and implementing special recreation programs [for federal prisoners], i.e., yoga, varsity softball, [and] aerobics.”⁴ A simple internet search reveals a host of other federal government and contractor jobs that require applicants to prove American citizenship, as they should. It makes sense that the men and women tasked with maintaining federal databases or managing our satellites should be citizens or permanent residents with some stake in the future of our nation. It also makes sense that companies responsible for developing and maintaining new technologies with clear military applications should be citizens or permanent residents invested in the fortunes of the United States. The DOJ should not discourage hiring practices that can shield sensitive intellectual property from theft by foreign actors.

It is difficult to separate this new DOJ investigation of SpaceX from the Biden administration’s other interactions with Mr. Musk. In one instance, when asked about Mr. Musk’s acquisition of Twitter, President Biden suggested that Mr. Musk’s relationships with other countries should be investigated. In another instance, President Biden described Twitter under Mr. Musk as “an outfit that spews lies all across the world.” DOJ’s lawsuit alleges that SpaceX specifically declined to hire refugees and asylees from at least September 2018 to May 2022. As you know, Mr. Musk began his acquisition of Twitter in April 2022, stating that he wanted to turn the website into a “digital public square.” He has since reinstated many previously banned conservative political commentators and President Donald Trump.

Justice must be dispensed in an impartial manner, without political animus, if Americans are to have faith in our system. Unfortunately, the timing of DOJ’s investigation into SpaceX could be interpreted as being connected to the Twitter acquisition. There were many intermediate steps that DOJ could have taken to inform SpaceX about current federal hiring rules and answer Mr. Musk’s ITAR concerns before initiating a lawsuit. This, coupled with the fact that many federal aerospace jobs include explicit citizenship requirements, suggests that SpaceX could have been investigated by DOJ because of Mr. Musk’s management of Twitter, not because SpaceX’s hiring practices are uniquely odious.

In the interest of addressing these concerns, I ask that the DOJ provide responses to the following questions by Friday, September 29:

- Has the DOJ investigated other private aerospace companies or government contractors for hiring practices similar to those of SpaceX?
- Does the DOJ believe that favoring American citizens for jobs constitutes discrimination against noncitizens?
- Did the DOJ ever have a meeting with SpaceX to inform the company that it may be out of compliance with federal hiring laws and to encourage SpaceX to change its practices?
- Was the DOJ investigation that precipitated this new discrimination lawsuit initiated in response to Mr. Musk’s acquisition of Twitter?

⁴ https://www.usajobs.gov/job/744062600?utm_campaign=google_jobs_apply&utm_source=google_jobs_apply&utm_medium=organic

Sincerely,

A handwritten signature in black ink, appearing to read 'JD Vance', with a stylized flourish at the end.

JD Vance
US Senator