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United States Senate

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WASHINGTON, DC 20510-6250

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September 27, 2019

The Honorable Henry J. Kerner
Special Counsel
1730 M Street, N.W.
Washington, D.C., 20036-4505

Dear Mr. Kerner:

Thank you for your diligent leadership at the helm of the Office of Special Counsel (OSC). I am writing to urge you to continue your efforts to protect the rights of federal employees across the government, particularly those who have taken the courageous step to blow the whistle on wrongdoing.

As you know, OSC is charged with protecting whistleblowers in federal service – brave men and women who come forward to report waste, fraud, and abuse, often at great professional risk. Under your leadership, OSC has been an effective investigator of retaliation claims and a strong advocate for whistleblower rights. I am concerned that recent events pertaining to an Intelligence Community whistleblower complaint could have a chilling effect on whistleblowers across federal government.

Earlier this month, reports emerged that a member of the Intelligence Community came forward to report an “urgent concern” to the Intelligence Community Inspector General (IG). The IG evaluated the report, determined it was credible, and submitted it to the Director of National Intelligence (DNI) for transmission to Congress, as outlined in law. Despite a clear statutory mandate, the DNI refused to transmit the report to the appropriate congressional committees for several weeks, instead arguing – based on guidance from the Department of Justice – that the whistleblower’s report does not meet the definition of an “urgent concern.” The IG has raised concerns that this could undermine statutory protections against retaliation.¹

I am deeply concerned that the Administration’s approach to this whistleblower’s report could discourage whistleblowers across the federal government from coming forward. Even though this particular whistleblower disclosure has now been released to the appropriate congressional committees and publicly, federal employees have now seen that, even if they follow the established legal process, their concerns may not be heard. They have seen the President of the

¹ Letter from Michael K. Atkinson, Inspector General of the Intelligence Community, to Chairman Adam Schiff and Ranking Member Devin Nunes, House Permanent Select Committee on Intelligence (Sept. 17, 2019).

United States accuse a whistleblower of being “highly partisan” and even questioned the whistleblower’s loyalty to the nation.²

Whistleblowers hold the federal government accountable to our laws and to the American people. They have helped ensure that tax dollars are properly spent, that veterans receive timely health care, and that civil liberties are protected.

Your office sets the standard for how federal agencies manage whistleblower complaints. While OSC’s role in whistleblower complaints from the Intelligence Community is limited, I believe you have an opportunity and a duty to ensure that agencies across the federal government are meeting their responsibilities in responding to and protecting whistleblowers. To that end, I am requesting your responses to the following:

1. As mentioned above, President Trump has repeatedly attempted to discredit the intelligence community whistleblower, calling the whistleblower “highly partisan” and asking, “Is he on our Country’s side. Where does he come from.”³ Yet, according to the Administration’s own Office of the Director of National Intelligence, the whistleblower “acted in good faith.”⁴ President Trump has also attacked the individuals who spoke to the whistleblower, stating, “You know what we used to do in the old days when we were smart with spies and treason, right? We used to handle it a little differently than we do now.”⁵

What impact do you anticipate these comments will have on whistleblowers in federal government, particularly those with sensitive information?

2. In your view, what additional statutory, regulatory, or other protections are needed to ensure whistleblowers who make good faith disclosures are protected from retaliation?

Finally, I urge you to issue guidance to all federal agencies on actions they can take to protect whistleblowers and ensure that whistleblower disclosures are appropriately and promptly investigated.

Thank you for your dedicated service.

² President Donald J. Trump, Twitter post (Sept. 20, 2019, 5:27 a.m.) (<https://twitter.com/realdonaldtrump/status/1175023772375683074>); President Donald J. Trump, Twitter post (Sept. 23, 2019, 8:29 a.m.) (<https://twitter.com/realDonaldTrump/status/1176156564274712576>).

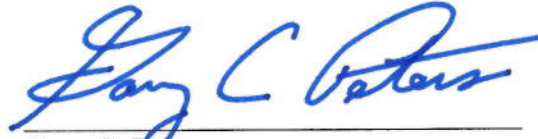
³ *Id.*

⁴ Letter from Jason Klitenic, General Counsel, Office of the Director of National Intelligence, to Andrew P. Bakaj (Sept. 24, 2019) (https://compassrosepllc.com/wp-content/uploads/2019/09/02-2019_0924_DNI-OGC-to-Counsel.pdf).

⁵ Trump Attacks Whistle-Blower’s Sources and Alludes to Punishment for Spies, New York Times (Sept. 26, 2019) (<https://www.nytimes.com/2019/09/26/us/politics/trump-whistle-blower-spy.html>).

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Sincerely,



Gary C. Peters
Ranking Member
Senate Committee on Homeland Security
and Governmental Affairs