

OPENING STATEMENT OF HENRY J. KERNER, NOMINEE FOR BOARD MEMBER, MERIT SYSTEMS PROTECTION BOARD, BEFORE THE SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE

Chairman Peters, Ranking Member Paul, and distinguished members of the Committee: Thank you for the honor to appear before you today, and for the privilege of your consideration of my confirmation. I am honored that Minority Leader McConnell recommended me and President Biden nominated me for the position of member of the Merit Systems Protection Board, which protects the employment rights of federal employees and safeguards the Merit System that is foundational to our non-partisan career civil service.

I would like to start by extending my gratitude to my family in California who are watching online. They have been incredibly supportive, and I appreciate their continued encouragement. I am also grateful to the late Senator John McCain, who gave me the opportunity to serve as his staff director on this Committee's Permanent Subcommittee on Investigations during the 113th Congress.

Finally, I want to thank the staff of OSC with whom I have worked over the past six years. My former colleagues at OSC are incredibly hardworking, knowledgeable, and dedicated to the agency's mission. Together, we had to overcome many obstacles, from the COVID pandemic to addressing the agency's backlog to an extended government shutdown to two Supreme Court cases that challenged OSC's independence. I am so proud of how everyone not only persevered but excelled in the face of these myriad external challenges over my term as Special Counsel.

Six years ago, I sat before this Committee to lay out my vision for OSC as the nominee for Special Counsel. I would like to briefly recap some of those goals and what we were able to accomplish during my tenure. First, I wanted to build on the excellent work of my predecessor, Carolyn Lerner. We achieved record numbers of what we call "favorable actions," which include corrective action for complainants and disciplinary action against agency officials found to have engaged in misconduct. For example, In FY 2022, OSC achieved a record 417 favorable actions, nearly 20 percent above the average over the previous five fiscal years.

In 2021, OSC was recognized as the second highest-ranked "Best Places to Work" out of 29 small federal agencies by the Partnership for Public Service and Boston Consulting Group. We finished in the top 3 again in 2022 and 2023.

Second, I said I wanted to implement information technology system upgrades to prioritize caseload efficiency. In 2018, OSC successfully launched our new internal case management system, "eCMS", which is considerably more user-friendly than its predecessor.

Six years ago, I also highlighted my goal of addressing how to optimize the intake of cases to provide appropriate response times to whistleblowers. When I first arrived at OSC, I assembled an Efficiency and Effectiveness Working Group, which studied OSC's processes and found that OSC could perform more efficiently by improving intra-agency collaboration and

communication. Under the resulting reorganization, OSC streamlined its procedures for PPP complaints by combining units with overlapping responsibilities and creating one unit to handle all PPP complaints that meet threshold jurisdictional requirements.

Fourth, I wanted to increase education and outreach with agency and congressional staff, especially with regard to the Hatch Act and whistleblower rights. It is critical that OSC work with agencies to ensure they receive robust training to prevent violations before they can occur. During my tenure, we dramatically increased training of the federal community, conducting approximately 200 outreach events per year.

With regard to the Hatch Act, I am very proud of OSC's record of even-handed enforcement. A special counsel's term is 5-years and intended to overlap presidential administrations. This statutory scheme relies on the Special Counsel's independence, un beholden to political influence, and free from partisan bias. I relied heavily on the recommendations from OSC's experienced, career Hatch Act Unit staff, and we enforced it evenly against members from both administrations.

In summary, I am proud of our achievements over the past 6 years and am confident that OSC will continue to be a model federal agency in the future.

I now look forward to a new challenge as a board member at the MSPB, in the event I am fortunate to be confirmed. The mission of the MSPB is to protect the federal merit system principles, which uphold the values of fairness, equal opportunity, and non-discrimination within our civil service.

If confirmed, I look forward to the opportunity to work closely with the two other Board members, Acting Chair Cathy Harris and Raymond Limon, to protect the employment rights of federal employees and to work down the inherited inventory of cases from the years without a quorum.

Thank you, and I would be happy to answer any questions the Committee may have.