ELIJAH E. CUMMINGS, MARYLAND
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ONE HUNDRED SIXTEENTH CONGRESS

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RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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April 1, 2019

Mr. Pat Cipollone
Counsel to the President
The White House
1600 Pennsylvania Ave, N.W.
Washington, D.C. 20002

Dear Mr. Cipollone:

On March 1, 2019, I wrote to you in order to request—for a "final time"—that the White House cooperate voluntarily with the Committee's investigation of security clearance processes at the White House in response to grave breaches of national security at the highest levels of the Trump Administration.

My letter followed multiple previous requests for documents and witnesses, which included detailed explanations of the congressional precedents, investigative bases, and legislative purposes of the Committee's review.

In response, the White House has refused to produce a single piece of paper or a single requested witness. Instead, you claim to have "accommodated" the Committee's interests by providing a 90-minute briefing on general policy matters and an *in camera* review of a handful of guidance documents. You have refused to provide any information about the specific individuals the Committee is investigating, the specific instances of abuse, wrongdoing, or mistakes we have identified, or the problematic practices of the White House Security Office over the past two years.

The Committee has given the White House every possible opportunity to cooperate with this investigation, but you have declined. Your actions are now preventing the Committee from obtaining the information it needs to fulfill its Constitutional responsibilities.

Despite White House efforts to obstruct the Committee's investigation, we have not been idle. Although much of our work over the past several months has been out of public view, the Committee has been active in collecting information from multiple additional sources.

We have now conducted a detailed, on-the-record interview with a whistleblower who currently works at the White House. Her name is Tricia Newbold, and she has come forward at great personal risk to warn Congress—and the nation—about the grave security risks she has been witnessing first-hand over the past two years. As she told us:

> I would not be doing a service to myself, my country, or my children if I sat back knowing that the issues that we have could impact national security.

This whistleblower, who currently serves as the Adjudications Manager in the Personnel Security Office, has worked in the White House under Republican and Democratic Administrations for the past 18 years. She handles security clearance determinations for some of the most senior officials in the White House and throughout the Executive Office of the President.

She has informed the Committee that during the Trump Administration, she and other career officials adjudicated denials of dozens of applications for security clearances that were later overturned. As a result, she warned that security clearance applications for White House officials "were not always adjudicated in the best interest of national security."

She also reported to the Committee that she has been targeted for retaliation after declining to grant security clearances based on longstanding national security protocols. She stated: "I'm terrified of going back. I know that this will not be perceived in favor of my intentions, which is to bring back the integrity of the office."

Yet, despite these risks, she has agreed to identify herself publicly at this time because she strongly believes that Congress must intervene immediately to safeguard our national security. She implored the Committee to act now, warning that "this is my last hope to really bring the integrity back into our office."

In light of the grave reports from this whistleblower—and the ongoing refusal of the White House to provide the information we need to conduct our investigation—the Committee now plans to proceed with compulsory process and begin authorizing subpoenas, starting at tomorrow's business meeting.

Our first subpoena will be for a deposition of Carl Kline, who served as the Personnel Security Director at the White House during the first two years of the Trump Administration and who now works at the Department of Defense. Mr. Kline did not respond to letters from the Committee on February 11, 2019, and March 18, 2019, asking him to participate in a voluntary interview. The Department of Defense informed the Committee that it is deferring to your office regarding Mr. Kline's testimony, but you have repeatedly refused to schedule his interview.

The Committee will depose Mr. Kline about the security clearance practices in place when he was at the White House, the treatment of specific security clearance adjudications during his tenure, and his interactions with the whistleblower.

There is clear precedent for Mr. Kline to testify before the Committee. In 2007, the George W. Bush White House made available James Knodell, the Director of the White House Security Office, for public testimony before our Committee. He testified that, after the leak of covert CIA agent Valerie Plame's identity, his office failed to conduct the required security

investigation and allowed Deputy Chief of Staff Karl Rove and Chief of Staff to the Vice President Scooter Libby to maintain their security clearances despite their roles in the leak.[1]

Following Mr. Kline's deposition, the Committee will proceed to interview other current and former White House employees, including the current Chief Security Officer, former Chief Security Officer Cory Louie, Chief Operating Officer Samuel Price, former Deputy Chief of Staff Joseph Hagin, and Deputy Director of Administration William Hughes. The Committee will proceed with additional witnesses thereafter.

I hope the White House will begin cooperating voluntarily with these requests and that additional subpoenas will not be necessary. The Committee remains open to the possibility of foregoing interviews with certain White House officials if you produce documents the Committee is seeking.

To facilitate this process, the Committee is prioritizing the production of the following subset of documents from our previous requests:

- A document created by Ms. Newbold listing approximately 25 individuals who were granted security clearances or eligibility to access national security information despite recommendations to deny their applications;

- All White House security clearance policy documents pre-dating June 21, 2018;

- Data from the Executive Office of the President People Information Center (EPIC) database for John Bolton, Michael Flynn, Sebastian Gorka, Jared Kushner, John McEntee, K.T. McFarland, Robert Porter, Robin Townley, and Ivanka Trump, including audit log data;

- Adjudication summaries for John Bolton, Michael Flynn, Sebastian Gorka, Jared Kushner, John McEntee, K.T. McFarland, Robert Porter, Robin Townley, and Ivanka Trump; and

- Post-decisional documents memorializing the circumstances under which security clearances were granted or denied to, or suspended or revoked from, John Bolton, Michael Flynn, Sebastian Gorka, Jared Kushner, John McEntee, K.T. McFarland, Robert Porter, Robin Townley and Ivanka Trump, including any documents, correspondence, or memoranda drafted by or for former White House Personnel Security Director Carl Kline, White House Chief of Staff John Kelly, Deputy Chief of Staff Joe Hagin, White House Chief of Staff Reince Priebus, or White House Counsel Don McGahn.

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[1] Committee on Oversight and Government Reform, *Hearing on White House Procedures for Safeguarding Classified Information*, 110th Cong. (Mar. 16, 2007) (online at www.govinfo.gov/content/pkg/CHRG-110hhrg38579/pdf/CHRG-110hhrg38579.pdf).

Please advise the Committee by April 5, 2019, whether the White House will produce these additional witnesses and documents voluntarily.

The Committee respects the President's authority to grant security clearances. However, the White House must respect Congress' co-equal and independent authority to investigate who has been given access to our nation's secrets, how they obtained that access, the extent to which national security has been compromised, and whether Congress should amend current laws to improve national security and enhance transparency over these decisions.

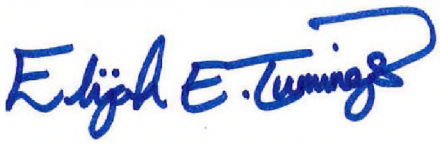
Finally, the Committee requests that your office personally ensure that all White House employees are fully apprised of their responsibilities under the laws and regulations regarding the protection of whistleblowers who report waste, fraud, or abuse, as well as the rights of these whistleblowers not to have adverse personnel actions taken against them.

Any additional retaliatory actions taken by White House employees against this particular whistleblower—or any other whistleblowers with whom the Committee may be in contact—may constitute violations of law that carry significant penalties.[2]

Enclosed with this letter is a memorandum sent to Committee Members describing the specific concerns raised by this whistleblower, as well as additional information about Congress' authority to conduct investigations and legislate on these matters.

Thank you for your prompt attention to this request.

Sincerely,



Elijah E. Cummings
Chairman

cc: The Honorable Jim Jordan, Ranking Member

[2] *See, e.g.,* Whistleblower Protection Act, 5 U.S.C. § 2302; 5 U.S.C. §7211; P.L. 115-31, §713.

ATTACHMENT

Congressional Authority to Investigate and Legislate in the Oversight and Reform Committee Security Clearance Investigation

The White House has sent multiple letters to the Committee on Oversight and Reform claiming that the Committee lacks the authority to investigate matters relating to White House security clearances because "the Constitution vests the President with plenary authority over national security information."[1] This contention is not supported by the law.

As the Supreme Court has made clear, Congress has broad authority to inquire about a wide array of topics that could be the subject of legislation and appropriations:

> The power of inquiry has been employed by Congress throughout our history, over the whole range of the national interests concerning which Congress might legislate or decide upon due investigation not to legislate; it has similarly been utilized in determining what to appropriate from the national purse, or whether to appropriate. The scope of the power of inquiry, in short, is as penetrating and farreaching [sic] as the potential power to enact and appropriate under the Constitution.[2]

This broad investigative authority includes multiple areas relating to this investigation in which Congress has legislated, and may legislate in the future, including: (1) national security; (2) corruption, misconduct, and abuse; and (3) whistleblower protections.

National Security

Contrary to White House characterizations, the Supreme Court has held that "National-security policy is the prerogative of the Congress and President."[3] The White House claim that the Executive Branch has exclusive domain over national security matters "rests on a theory of separation of powers that is not and has never been the law."[4]

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[1] Letter from Pat Cipollone, White House Counsel, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Feb. 25, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-02-25%20Cipollone%20to%20EEC%20re%20Security%20Clearances.pdf); Letter from Pat Cipollone, White House Counsel, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Jan. 31, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-01-31%20Cipollone%20to%20EEC%20re%20Security%20Clearances.pdf); Letter from Pat Cipollone, White House Counsel, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 4, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-03-04_2%20Cipollone%20to%20EEC%20re%20Security%20Clearances.pdf).

[2] *Barenblatt v. U.S*, 360 U.S. 109, 111 (1959).

[3] *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1861 (2017). *See also Zadvydas v. Davis*, 533 U.S. 678, 696 (2001) (recognizing that the judicial branch may owe "heightened deference to the judgments of the political branches with respect to matters of national security").

[4] *Stillman v. Dep't of Defense*, 209 F. Supp. 2d 185, 212-13 (D.D.C. 2002) (rejecting the Government's argument that "any and all conflicts between national security interests and individual constitutional rights can not be resolved by the Article III courts because the Constitution commits the protection of national security to the

The legal position advanced by the White House relies on a misreading of the Supreme Court's decision in *Dep't of Navy v. Egan*.[5] At issue in *Egan* was whether a statute that Congress established to govern the removal of federal employees—including for national security reasons—permitted the Merit Systems Protection Board to review the merits of a security clearance denial.[6] An important premise of the Court's decision in *Egan* was that Congress had not authorized the Board to review national security clearances.[7] The Court recognized that courts "traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs," but it cabined that recognition by noting that this is true "*unless* Congress specifically has provided otherwise."[8]

In *Egan,* the Supreme Court acknowledged that Congress has the power to modify the Executive's military and national security affairs authority through legislative action. Congress has done just that through several major statutes—including the Freedom of Information Act, the Classified Information Procedures Act, the Foreign Intelligence Surveillance Act, the International Emergency Economic Powers Act, and the Antiterrorism and Effective Death Penalty Act—specifically enabling judicial review of Executive Branch claims and decisions relating to protected information.

Similarly, Congress has passed legislation requiring the Executive Branch to make disclosures to the public, or to Congress, about its national security processes—thereby altering the authority of the Executive Branch to keep secret information about national security affairs. For example, Congress recently passed a law requiring the Executive Branch—including the White House—to provide substantive reports on the security clearance process.[9] This law was passed by both houses of Congress and signed by President Trump.[10]

In addition, on March 26, 2019, the Committee passed the Transition Team Ethics Improvement Act, which would require Presidents-elect to disclose to Congress the names of

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Executive Branch"), *rev'd on other grounds*, *Stillman v. C.I.A.*, 319 F.3d 546 (D.C. Cir. 2003).

[5] 484 U.S. 518 (1988).

[6] *Id.* at 520.

[7] *Id.* at 530.

[8] *Id.* (emphasis added).

[9] SECRET Act, Pub. L. No. 115-173 (2018). The White House is currently in breach of this statute.

[10] The White House's February 25, 2019, letter asserts that "the White House has provided to Congress the information requested under section 4 of the SECRET Act." The White House claimed that the requirement to submit to Congress a report about the "process for conducting and adjudicating security clearance investigations for personnel of the Executive Office of the President, including personnel of the White House Office," was satisfied by the five-page memorandum issued by former Chief of Staff John Kelly on February 16, 2018. However, the SECRET Act became law on May 22, 2018—three months after General Kelly circulated his memorandum. It is not a legitimate argument to assert that a document made publicly available prior to the enactment of the SECRET Act satisfies the reporting requirement in that statute. Moreover, the substance of the memorandum does not satisfy the requirements of the SECRET Act, as it proposes broad reforms to be "carefully considered and implemented as appropriate"—but does not set forth an affirmative description of the process.

individuals for whom a Transition Team is seeking security clearances, as well as the names of individuals granted security clearances.[11]

With regard to security clearances, Congress has passed numerous statutes governing the adjudication and investigation of security clearance applications, as well as the handling of classified information.[12]

The White House's implication that there is no "potential legislation that Congress could legitimately enact to alter the standards or the process that the Executive Branch follows for granting clearances to the President's closest advisors in the Executive Office of the President" is incorrect. Below are some of the many legislative acts that the Committee could consider to address flaws in the White House security clearance system:

- Legislation establishing new protocols and procedures for adjudicating security clearances, including legislation requiring audit reports to Congress about the sufficiency of adjudicative summaries created by agencies and offices, including the White House Security Office;

- Legislation creating or amending criminal penalties for the improper disclosure or possession of national security information, including the disclosure of such information over social messaging services;

- Legislation requiring risk analyses relating to classified information accessed by officials who were granted interim security clearances but denied permanent security clearances;

- Legislation generally prohibiting the grant of security clearances to individuals with certain disqualifications;

- Legislation requiring written notification to Congress if security clearances or access to national security information is granted against the advice of career officials in the White House Security Office, the intelligence community, or senior White House advisors, stating why the clearance was necessary despite countervailing advice, and documenting the process through which the clearance application was adjudicated and how underlying recommendations were overruled;

- Legislation enhancing interagency coordination and information-sharing regarding security clearance holders accused of wrongdoing;

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[11] Committee on Oversight and Reform, *Committee Passes Legislation to 'Ban the Box,' Support Transparency, and Protect Inspectors General* (Mar. 26, 2019) (online at https://oversight.house.gov/news/press-releases/committee-passes-legislation-to-ban-the-box-support-transparency-and-protect).

[12] *See, e.g.*, 50 U.S.C. § 3341; 18 U.S.C. § 798; and 5 U.S.C. § 9101.

- Legislation enhancing criminal penalties for individuals who submit inaccurate information in security clearance applications or other federal forms; and

- Legislation altering the appropriation of funding to processes underpinning the security clearance system, including background investigation services.

The Committee's legislative efforts require detailed information about the White House's actual practices and specific problems relating to security clearances to enable the effective consideration of legislative reforms aimed at addressing those shortcomings.

Corruption, Misconduct, and Abuse

Congress enjoys "broad authority to investigate, to inform the public, and, ultimately, to legislate against suspected corruption and abuse of power in the Executive Branch."[13] This authority encompasses Congress' inquiries into the administration of Executive Branch departments—including discretionary Executive actions.[14]

For example, Congress has investigated the misuse of the White House Office of Political Affairs;[15] the White House's disclosure of covert CIA Agent Valerie Plame Wilson's identity;[16] allegations that senior Reagan administration officials secretly facilitated arms sales to Iran in contravention of an arms embargo and used the proceeds to fund Contra rebels in Nicaragua;[17] and the events surrounding the June 1972 break-in at the Democratic National Campaign headquarters at the Watergate Hotel.[18]

Similarly, Congress possesses the power to inquire whether the White House's security clearance decisions were motivated by improper or corrupt motives. Indeed, Congress "possesses that power, as it possesses every other power essential to preserve the departments

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[13] *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 498 (1977) (Brennan, J., concurring) (internal quotations and citations omitted).

[14] *McGrain v. Daugherty*, 273 U.S. 135, 177 (1927). The White House's letter cites *McGrain* for dicta but ignores the substantive holding that Congress's investigation into discretionary functions of the Executive Branch is a legitimate legislative function. *See also Comm. on the Judiciary v. Miers*, 558 F. Supp. 2d 53, 78 (D.C. Cir. 2008) (it "defies both reason and precedent" to assert that Congress, charged with oversight of the Executive generally, cannot investigate specific exercises of the Executive's discretion).

[15] Committee on Oversight and Government Reform, Draft Report: *The Activities of the White House Office of Political Affairs*, 110th Cong. (Oct. 2008) (online at https://wayback.archive-it.org/4949/20141031185123/http://oversight-archive.waxman.house.gov/documents/20081015105434.pdf).

[16] Committee on Oversight and Government Reform, *Hearing on White House Procedures for Safeguarding Classified Information*, 110th Cong. (Mar. 16, 2007) (online at www.govinfo.gov/content/pkg/CHRG-110hhrg38579/pdf/CHRG-110hhrg38579.pdf).

[17] *The Iran-Contra Report: The Overview*, New York Times (Jan. 19, 1994) (online at www.nytimes.com/1994/01/19/world/iran-contra-report-overview-walsh-criticizes-reagan-bush-over-iran-contra.html).

[18] *What to Remember About Watergate*, New York Times (May 20, 2017) (online at www.nytimes.com/2017/05/20/opinion/sunday/trump-nixon-watergate-congress.html).

and institutions of the general government from impairment or destruction, whether threatened by force or by corruption."[19]

Whistleblower Protections

For more than a century, Congress has protected the rights of federal employees to make disclosures about waste, fraud, and abuse in the Executive Branch. The protection of the rights of federal whistleblowers, and the investigation of their claims, has been at the core of this Committee's legislative and investigative powers—which has operated on a bipartisan basis for decades.

This Committee has the constitutional authority to assess whether legislative protections for whistleblowers are sufficient and to investigate whether and how White House officials have taken impermissible personnel actions against whistleblowers, including those who make protected disclosures about the national security flaws in the White House security clearance system. These authorities remain undisputed and are one of several justifications for various interview and document requests made by the Committee.

Ample Congressional Precedent

As the Committee noted in its February 11, 2019, letter, over the past several decades, the Committee has obtained security clearance information regarding the President's closest advisors, sworn hearing and deposition testimony from top White House security officials, and a wide range of other documents and witnesses relating to the security clearance process at the White House.

Although there is no legal requirement for the Committee to set forth precedents for obtaining the same or similar material previously, in the interests of further accommodation, additional congressional precedents are set forth below.

- In 1996, the Clinton White House produced to the Committee the entire FBI background investigation file of former White House Travel Office Director Billy Dale and other documents and information about the White House's background investigation process—including testimony by senior political personnel—in connection with this Committee's investigation of unauthorized possession of FBI background files by the White House. In this investigation, the Committee conducted depositions of White House Counsel Bernard Nussbaum; Assistant White House Counsel Bill Kennedy; Special Counsel to the President Jane Sherburne; White House Security Office Director Craig Livingstone; and FBI Special Inquiry Unit Chief James Bourke. The Committee posed specific questions, on the record, about the White House's protocols for requesting and maintaining personnel security files and conducting personnel security

[19] *Burroughs v. U.S.*, 290 U.S. 534, 545 (1933).

investigations, as well as the White House's treatment of Mr. Dale's background investigation information.[20]

- In 2007, the Committee held a public hearing with White House Security Office Director James Knodell, during which he testified regarding whether specific White House officials' security clearances were revoked following the leak of covert CIA agent Valerie Plame's identity. Contrary to the characterization of that testimony in the White House's February 25, 2019, letter, Mr. Knodell testified about steps taken and not taken by his office in connection with the Plame identity leak, including confirming that Deputy Chief of Staff Karl Rove and Chief of Staff to the Vice President Scooter Libby continued to maintain their security clearances after the breach of Ms. Plame's identity, and that no White House Security Office investigation had occurred regarding the involvement of Mr. Rove or Mr. Libby in the leak of Ms. Plame's identity.[21]

- In connection with the Plame investigation, the Committee also reviewed FBI interview summaries with senior White House officials, including Chief of Staff to the Vice President Scooter Libby; White House Chief of Staff Andrew Card; White House Deputy Chief of Staff for Policy Karl Rove; National Security Advisor Condoleezza Rice; Deputy National Security Advisor Stephen Hadley; Counselor to the President Dan Bartlett; and White House Press Secretary Scott McClellan.[22]

- In 2017, in response to a bipartisan request from then-Chairman Jason Chaffetz and then-Ranking Member Cummings, the Committee obtained portions of former National Security Advisor Michael Flynn's SF-86 application relating to his foreign contacts. The Committee also obtained FBI summaries of interviews conducted as part of General Flynn's background investigation, including interviews bearing on his foreign contacts and foreign business interests, as well as communications and other documents related to General Flynn's reporting of his contacts with foreign nationals outside of the background check process.

- In 2018, the Oversight and Judiciary Committees obtained information as part of their joint investigation of Hillary Clinton's emails and actions taken or not taken by the FBI during the 2016 election, including a spreadsheet with the dates White House officials entered the security clearance process and were granted or denied

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[20] Committee on Government Reform and Oversight, *Interim Report: Investigation into the White House and Department of Justice on Security of FBI Background Investigation Files*, 104th Cong., H. Rpt. 104-862 (Sep. 28, 1996) (online at www.congress.gov/104/crpt/hrpt862/CRPT-104hrpt862.pdf).

[21] Committee on Oversight and Government Reform, *Hearing on White House Procedures for Safeguarding Classified Information*, 110th Cong. (Mar. 16, 2007) (online at www.govinfo.gov/content/pkg/CHRG-110hhrg38579/pdf/CHRG-110hhrg38579.pdf).

[22] Committee on Oversight and Government Reform, Draft Report Regarding President Bush's Assertion of Executive Privilege in Response to the Committee Subpoena to Attorney General Michael B. Mukasey (Dec. 5, 2008) (online at https://wayback.archive-it.org/4949/20141031184627/http://oversight-archive.waxman.house.gov/documents/20081205114333.pdf).

clearances, a background investigation interview summary for Jared Kushner, and an internal readout of the background investigation of former Deputy Assistant to the President Sebastian Gorka.

- In 2018, in response to a request from then-Chairman Trey Gowdy, the Committee obtained information about four dates on which the FBI provided derogatory information to the White House as part of former Staff Secretary Robert Porter's background investigation, including specific offices at the White House to which the FBI communicated this information.

Failure of White House "Accommodations"

The White House has refused to produce any documents or witnesses requested by the Committee, any information about specific White House officials, or any information about policies or practices used during the first eighteen months of the Trump Administration.

Instead, the White House has provided two purported "accommodations": (1) an *in camera* review of approximately 50 pages of policy documents drafted in June and November of 2018; and (2) a 90-minute briefing by the Chief Security Officer about White House processes in place since June 2018 for adjudicating security clearances. These accommodations are inadequate.

The Committee accepted the *in camera* document review and briefing despite the significant limitations in their scope. However, even the extremely narrow document review and briefing raised additional questions that the White House refused to answer.

For example, it was immediately apparent from the review of the documents that none of the White House policies had been developed before June of 2018. Committee staff asked to review the policies in place at the beginning of the Administration, but those requests were denied. For example, Committee staff repeatedly asked to review prior versions of the "Reciprocity" policy (No. 4208-03), which had a "last revised" date of January 5, 2018, and an effective date of June 21, 2018. Those requests were denied.

The information the White House provided about how current security processes *should* work fails to address the serious and significant problems that *actually occurred* over the past two years. The White House continues to withhold information about the ways in which the security clearance practices put national security at risk.

The concerns raised by the whistleblower highlight why the limited information provided by the White House is insufficient to accommodate the Committee's legitimate investigative and legislative interests.

The White House's most recent letter to the Committee claims that "the Committee has shown no willingness to accommodate legitimate Executive Branch prerogatives." That claim is also inaccurate.

In the spirit of accommodation, the Committee engaged in extensive letter and phone communications to identify priorities, answer questions, and urge compliance in an effective and efficient manner. The Committee explained the allegations it is investigating in detail, cited legal and institutional precedent, and provided specific evidence that further explains the need for the investigation and for obtaining these documents and interviews.

As an additional accommodation, the Committee postponed consideration of potential compulsory measures while it accepted the extremely limited *in camera* document review and briefing. The Committee explained at length why the limited information provided by the White House is insufficient.

The Committee has requested specific documents and witness interviews about significant allegations of dysfunction in the White House's security clearance process. This information is necessary for the Committee's factual assessment of how the security clearance system failed and what legislative reforms may be necessary to address these failures.

ELIJAH E. CUMMINGS, MARYLAND
CHAIRMAN

ONE HUNDRED SIXTEENTH CONGRESS

JIM JORDAN, OHIO
RANKING MINORITY MEMBER

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COMMITTEE ON OVERSIGHT AND REFORM

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MEMORANDUM

April 1, 2019

To: Members of the Committee on Oversight and Reform

Fr: Committee Staff

Re: Summary of Interview with White House Whistleblower on Security Clearances

On March 23, 2019, Democratic and Republican Committee staff conducted a transcribed interview with current White House employee Tricia Newbold. Ms. Newbold came forward as a whistleblower at great personal risk to expose grave and continuing failures of the White House security clearance system, including the security clearance adjudications of senior White House officials. Ms. Newbold is an 18-year, non-partisan career employee of the Executive Office of the President under both Republican and Democratic Administrations. She currently serves as the Adjudications Manager in the Personnel Security Office.

Congress is "Last Hope" for Safeguarding National Security

During her interview with Committee staff, Ms. Newbold explained that she is coming forward now because she strongly believes Congress must intervene immediately to investigate and reform the White House security clearance process in order to address the national security risks she has been witnessing over the past two years. She stated:

> I would not be doing a service to myself, my country, or my children if I sat back knowing that the issues that we have could impact national security.

She explained during her interview that she attempted to exhaust all opportunities to resolve these concerns at the White House before turning to the Committee:

> I raised my concerns initially with [Director of Personnel Security] Carl Kline directly. There was no resolution. I raised it with his immediate supervisor, [Chief Operations Officer] Samuel Price. I raised my concerns to White House Counsel on numerous occasions. I raised my concerns to Marcia Kelly, who was the Assistant to the President at the time. I raised my time—or concerns to individuals within Employee Relations, and I raised my concerns to people within the EEO office. I have recently raised my concerns within the last 6 months to [Chief Security Officer] Mr. Crede Bailey directly. **And I feel that right now this is my last hope to really bring the integrity back into our office.**

The Committee had requested interviews with Ms. Newbold and other officials in the White House Security Office, but the White House sought to block these witnesses from cooperating with the Committee. In order to protect Ms. Newbold's rights as a whistleblower, the Committee was forced to schedule her interview on a weekend, without much notice to Committee Members. Ms. Newbold sat for a full day of questioning and was available until both Democratic and Republican staff exhausted all of their questions.

Committee staff have spoken with other whistleblowers who corroborated Ms. Newbold's account, but they were too afraid about the risk to their careers to come forward publicly.

Overturning Dozens of Security Clearance Denials

During her interview with Committee staff, Ms. Newbold stated that White House security clearance applications "were not always adjudicated in the best interest of national security." She explained that she and other career officials adjudicated denials of applications for multiple security clearances that were later overturned by senior officials in order to grant the employees access to classified information.

Ms. Newbold explained that, starting in 2018, she began to keep a list of White House employees whose denials were overturned. Her list eventually grew to 25 officials, including two current senior White House officials, as well as contractors and individuals throughout different components of the Executive Office of the President. According to Ms. Newbold, these individuals had a wide range of serious disqualifying issues involving foreign influence, conflicts of interest, concerning personal conduct, financial problems, drug use, and criminal conduct.

Ms. Newbold explained that she fully understood that denials could be overruled, but she was concerned that these decisions were occurring without proper analysis, documentation, or a full understanding and acceptance of the risks. She stated:

> [T]he President can overrule us, but we have an obligation to do our due diligence, to adjudicate that file the way we are supposed to. Once we adjudicate it, the President absolutely has the right to override and still grant the clearance, but we owe it to the President and the American people to do what is expected of us, and our job is to adjudicate national security adjudications regardless of influence.

She also stated: "[I]f the President wants to override us, he can, but that doesn't mean at any time that we should alter the way we do business based on what someone may have come out with in the end."

According to Ms. Newbold, her concern was that many security clearance denials were routinely overruled without following the proper protocols to document why senior officials disagreed with assessments and without memorializing the risks they were accepting.

For example, she contrasted the actions of her direct manager, Carl Kline, the Director of the Personnel Security Office, to the proper process that should have been followed:

> [I]f we have five disqualifiers listed, it is his responsibility and even my responsibility, as the second level reviewer, if I'm going to overturn my staff, to mitigate all five of them and to properly highlight those, so if the case does make it anywhere else, they're able to see written out in front of them the thought process and the work that went into the adjudicative recommendation.

She explained that "regardless of what their position is or their title or their affiliation, our job is to render the adjudicative decision in the best interests of national security."

Senior White House Official 1—Denial Overruled

During her interview with Committee staff, Ms. Newbold described several specific cases in which she and other adjudicators issued denials of security clearances for very senior White House officials, but were later overruled.

For example, in the case of one senior White House official ("Senior White House Official 1"), Ms. Newbold explained that both she and the first-line adjudicator issued denials after the background investigation revealed significant disqualifying factors, including foreign influence, outside activities ("employment outside or businesses external to what your position at the EOP entails"), and personal conduct.

However, in the case of Senior White House Official 1, the Director of the Personnel Security Office, Mr. Kline, overruled the determination by Ms. Newbold and the first-line adjudicator. Ms. Newbold informed Committee staff that if Mr. Kline wanted to favorably adjudicate the application, he should have noted in the file how he had considered and mitigated concerns with each of the disqualifying factors, but he merely noted in the file that "the activities occurred prior to Federal service." According to Ms. Newbold, Mr. Kline failed to address all of the disqualifying concerns listed by Ms. Newbold and the first-line adjudicator.

Ms. Newbold stated that another agency later contacted her after Senior White House Official 1 applied for an even higher level of clearance. She explained that the other agency wanted to understand "how we rendered a favorable adjudication." Ms. Newbold informed Committee staff that this was an indication of the agency's "serious concerns" regarding the White House's adjudicative outcome. It is unclear whether Senior White House Official 1 received the higher level of clearance from the other agency.

Senior White House Official 2—Security Clearance Application Removed

During her interview with Committee staff, Ms. Newbold explained that on the same day she spoke with Mr. Kline about Senior White House Official 1, she mentioned to him that she was also working on the adjudication of a second very senior White House official ("Senior White House Official 2").

According to Ms. Newbold, she indicated to Mr. Kline that the first line adjudicator had also recommended against Senior White House Official 2's application for a security clearance. Ms. Newbold told Committee staff that the first-level reviewer wrote an "extremely thorough"

14-page adjudication summary that described multiple disqualifiers, including foreign influence and outside activities.

Ms. Newbold informed Committee staff that she told Mr. Kline that, based on this information, she agreed with the first line adjudicator and was planning to write up her own denial of the application. After learning this information, however, Mr. Kline instructed Ms. Newbold, "do not touch" the case. Soon thereafter, Mr. Kline adjudicated Senior White House Official 2 favorably for a security clearance, according to Ms. Newbold.

Senior White House Official 3—Attempt to Change Adjudication Summary

During her interview with Committee staff, Ms. Newbold explained that she prepared an adjudication denial of a security clearance for a high-profile official at the National Security Council ("Senior White House Official 3").

According to Ms. Newbold, Mr. Kline "called me in his office and asked me to change the recommendation. I said I absolutely would not." Ms. Newbold explained further:

> I then went on to tell him that the adjudication, how it works is that he has the right to override me, and he can summarize why he does not concur with my recommendation. I then followed up this conversation with an email to him, letting him know that my reasoning for not changing my recommendation was not me being insubordinate; it was me highlighting that I stand behind my national security recommendation and that he in his position has the opportunity to override me, using the appropriate mitigators.

After Ms. Newbold refused to change her adjudication recommendation, her security clearance denial for Senior White House Official 3 ultimately was sustained, and the individual is no longer at the White House.

Ms. Newbold also stated that she had concerns that Mr. Kline had been having calls "on a daily basis" with Senior White House Official 3 prior to this determination. Ms. Newbold stated: "I let him know early on that I had concerns with him having those conversations and it could potentially lead him to being biased toward the adjudication." She added: "I advised him I did not feel he should be in verbal dialogue with the individual. It was unprofessional and it was opening up the door to hinder him from making a fair, unbiased recommendation."

Reciprocity Without Review

During her interview with Committee staff, Ms. Newbold expressed serious concerns about a reciprocity policy put in place on or around January 2018. According to Ms. Newbold, "the way it was written was making the EOP less safe and presenting us more of a risk."

Ms. Newbold explained that in previous administrations, when incoming White House employees held preexisting clearances, the White House would still review their SF-86 forms and require them to complete authorizations for credit checks, tax checks, and FBI name checks. She informed Committee staff that, although their security clearances would not be re-

adjudicated, background investigations would still be reviewed to "see if there's any information in there that we would deem concerning or that might embarrass the administration."

Ms. Newbold explained that because of White House employees' proximity to the President, the White House Security Office's adjudication process assesses not just national security eligibility, but "we also look to identify anything that could embarrass the President, and we highlight those and bring those to White House Counsel's attention."

However, she explained that under the new January 2018 reciprocity policy, "if a favorable adjudication had ever been rendered on the individual" within the last six years, then "no further checks would be needed, and we were not allowed to order the investigation or review the investigation."

Ms. Newbold explained that she "let Mr. Kline know that this was a serious concern, because some of the adjudications could have happened 4 years ago, and those are 4 years that we have unaccounted for" in the adjudication process. She added that "the risks, especially them coming to the EOP, could be significant."

Ms. Newbold stated that she raised with Mr. Kline an instance in which, under a prior Administration, an FBI name check revealed that a reciprocal candidate with an active TS-SCI clearance was under investigation for criminal activity. That individual was denied eligibility to work on the White House complex. Ms. Newbold told Committee staff that Mr. Kline responded, "that was one in I don't know how many" and that "he was willing to accept the risk."

While the January reciprocity policy was changed in June of 2018, Ms. Newbold said that the new policy still does not address her concerns sufficiently.

Cessation of Credit Checks

During her interview with Committee staff, Ms. Newbold stated that the White House Security Office stopped conducting credit checks on applicants to work in the White House during their initial suitability review. She explained that this prevents the White House from being able to assess whether applicants "could be susceptible to blackmail, depending on their debts." As a result of this change, these issues cannot be examined until after individuals are already working in the White House complex.

She explained to Committee staff that she raised her concerns with Mr. Kline, but he responded that "FBI does the credit checks." According to Ms. Newbold, Mr. Kline failed to recognize that the FBI does not do credit checks on individuals entering the White House from other agencies who already have clearances, even if they are several years old:

> [A]t one point he said the FBI does the credit checks, and which led me to believe he wasn't fully understanding the process where we are. FBI will do credit checks on cases that they run background investigations on. So if you're coming over reciprocity, there's absolutely no reason for the FBI to even know you're there. They would never know, and so we would not gather a credit check on that individual.

Need to Assess Damage After Officials with Interim Clearances Are Denied Permanent Clearances

During her interview with Committee staff, Ms. Newbold noted the unusually high number of interim clearances under the Trump Administration, which allows individuals to access highly sensitive information before their background investigations are complete and they receive final adjudications. She also expressed concern about the amount and sensitivity of classified information that was provided to officials who operated for extended periods of time with interim clearances, but who were later deemed unsuitable for access to classified information.

Ms. Newbold informed Committee staff that "we were getting out of control with the interim clearances." This included White House officials who were temporarily given the highest level of clearance through access to Sensitive Compartmented Information (SCI). Ms. Newbold stated that in May 2017, another agency expressed concerns to the White House about the number of individuals at the White House operating with interim SCI security clearances, as well as the length of time they were working under these interim security clearances.

She explained: "They did mention to our office that they wanted to reduce the amount of interim SCIs that were coming in, and I believe that conversation took place in the beginning of May 2017." She added:

> [I]t's always a concern when you grant someone access to not only national security information, but also SCI access and they don't have a proper—or a completed background investigation that was adjudicated final.

Ms. Newbold explained that multiple White House officials who had held high-level interim security clearances were subsequently denied permanent security clearances. In the case of two high-level White House officials, she explained that they had been denied permanent clearances based on concerns relating to their personal conduct, foreign influence, and, for one candidate, foreign preference concerns.

However, Ms. Newbold was not aware of whether, or the extent to which, the White House had conducted an analysis of the volume or sensitivity of highly classified information accessed by these individuals. For example, Ms. Newbold had the following exchange with Committee staff relating to Senior White House Official 3 and another senior White House official who were ultimately denied permanent security clearances after working with interim clearances:

> Q: So for both of these individuals who were working in the national security field inside of the White House on interim clearances for some period of time, which was many months, do you have concerns that they were able to do that? Do you have concerns about what kind of information or that they had access to classified information, based on now the information that you learned from their background checks?
>
> A: Absolutely. We did raise or I raised my concerns.

Insufficient Security of Personnel Files

During her interview with Committee staff, Ms. Newbold explained that under previous administrations, personnel security files would "never leave our sight," but "[w]ithin the last 2 years, they were moved out of our supervision into the subbasement" where unescorted individuals "had direct access to the files that did not work for the EOP." She recounted an instance in 2018 when two unauthorized GSA employees were in the file room, and she had to report them to the Chief Security Officer. After this incident, the Chief Security Officer had the files moved into the security office's space, which is secured and locked, but which has regular outside visitors. She expressed concern that "the files are currently out in the open in empty cubes in bins" and that "someone's file might just be sitting in a bin easily able to be seen."

Inadequate Experience and Staffing in Adjudications

During her interview with Committee staff, Ms. Newbold stated that she has "never seen our office so ill-staffed and with such lack of experience." She explained that the office is currently operating with a vacancy in the Personnel Security Director position, as well as vacancies in multiple first-line adjudicator positions because many of the experienced adjudicators left the office after unsuccessfully raising their national security concerns:

> Some of my staff have left. They shared the same concerns as well. And they raised those concerns, but they didn't go anywhere.

She stated that the current staff experience ranges from never having adjudication training to having fewer than three years' experience adjudicating security clearances. Ms. Newbold emphasized the need for additional, experienced staff in the White House Security Office:

> We do need skilled staffers. We need people who have handled these type of cases before. I can't do it alone. And especially since I'm being removed from supervision, I won't be able to have the oversight I know that we need to bring the office back to the place it needs to be.

Reports of Retaliation by White House Officials

During her interview with Committee staff, Ms. Newbold described a series of retaliatory and harassing actions she was subjected to as retaliation for her efforts to repeatedly raise national security concerns with the security clearance process.

On January 30, 2019, the current Chief Security Officer, Crede Bailey, suspended Ms. Newbold without pay for 14 days. The Notice of Decision on Proposed Suspension conceded that Ms. Newbold had "no prior formal disciplinary action" in her 18-year career and received a rating of "Exceeds Expectations" on her performance appraisal in 2017, the first year of the Trump Administration.

Nevertheless, the Notice stated that she was suspended for refusing to "support new procedures your supervisor implemented." The specific basis for her suspension was an

allegation that she failed to follow a new policy created by Mr. Kline in November 2018 to scan documents in separate .pdf files instead of a single .pdf file when sending them to other agencies. Nothing in the Notice alleged that Mr. Kline's new policy had anything to do with making records more secure. Yet, the Notice criticized her for "constant defiance of authority" and a "pattern of this type of defiant behavior." The Notice stated:

> In fact, you stated you would continue to do what is best for the Executive Office of the President (EOP) and the Division. You are not in charge of the Personnel Security Division (PSD) or EOP security. You may not see a complete picture or be aware of the requirements of the entire EOP. If a change is made that you do not think is best for the EOP or the Division, you are still expected to comply. If you believe an instruction violates a regulation or rule, you may raise your objection to your second line supervisor or the Office of General Counsel; however, you are still obliged to follow the instruction first. If you believe an action violates the law, you should raise this to your second line supervisor or the Office of General Counsel. If they inform you that the instruction is valid, you must comply with the instruction.

Contrary to the Notice's claims, however, Ms. Newbold stated that Deputy Assistant to the President Bill Hughes previously told her "that I should no longer communicate with White House Counsel and bring our concerns to them." She added that Mr. Hughes "said if I wanted to speak to White House Counsel, I'd have to go through the proper chain." However, she explained further: "But the reason we went—or I went to White House Counsel is we weren't getting relief from [Chief Operating Officer] Sam Price or anywhere else."

Ms. Newbold filed a complaint with the Office of Special Counsel on February 12, 2019, requesting a stay of this suspension. Because her suspension expired on February 14, 2019, the Office of Special Counsel did not act on her complaint.

Ms. Newbold explained to Committee staff that following her suspension, she was informed that Mr. Hughes had removed her from her duties as the second-level adjudicator on security clearance applications. According to Ms. Newbold, security clearance applications now go directly from the initial personnel security specialist to the current Chief Security Officer, bypassing Ms. Newbold and eliminating any opportunity for her to raise objections to the granting of security clearances. In the first week Ms. Newbold returned from her suspension, the Chief Security Officer also announced a plan to restructure the security office to remove Ms. Newbold from any direct supervision of employees.

Ms. Newbold noted that she fears additional reprisals and losing her job. She stated: "I'm terrified of going back. I know that this will not be perceived in favor of my intentions, which is to bring back the integrity of the office."

According to Ms. Newbold, the retaliation against her for raising her national security concerns began in January of 2018, when Mr. Kline began taking actions that were designed to humiliate her as a result of her rare form of dwarfism. According to Ms. Newbold, Mr. Kline repeatedly altered her office environment to cause impediments to her work, such as physically elevating personnel security files out of her reach.

Ms. Newbold informed Committee staff: "These are files that we work with every day. That's an essential part of our job." She explained that when she let Mr. Kline know this was a problem, he replied, "I have people, they can get the files for me." Ms. Newbold responded, "no, sir, that's not acceptable accommodation." She raised her concerns repeatedly to Employee Relations personnel and other White House officials, but it took approximately two months to make an accommodation so she could reach the files.

According to Ms. Newbold, the files were moved out of her reach again in the spring of 2018 and yet again in October 2018. She explained the impact these actions had on her and the staff she supervised:

> As little as I am, I'm willing to fight and stand up for what I know is right, and they've always respected that about me. And it was hard for them to see me in a situation in which I kind of had to submit to my subordinates and ask them, would you mind going to get me that file? It's humiliating to not be able to independently work and do the job that you need.

Ms. Newbold contrasted these actions with an instance in which security files had been removed from her reach in 2014 during the Obama Administration. She informed Committee staff that on the same day she raised the issue, the Chief Administrative Officer for the White House "personally walked herself down immediately and went to the file room and said these files are going to be moved to where Ms. Newbold can reach them and they're going to be moved now, and that was it."

Conclusion

During her interview with Committee staff, Ms. Newbold repeatedly made clear that her concerns are based on national security—not on personal animus towards anyone in the White House. In fact, she complimented several Trump Administration officials, including former Chief of Staff John Kelly, who she said was "very receptive and understanding of the importance of national security and the information which I was telling him." She also complimented former Deputy Chief of Staff Joe Hagin, who she said "does take national security very seriously and was very attentive in understanding the briefing I did provide."

Ms. Newbold also described an instance when then-Senior Counsel to the President Jim Carroll defended her integrity to another White House official based on Mr. Carroll's work with Ms. Newbold during the Bush Administration:

> And so the White House counsel, who I had worked with in the past, who knows me very well, spoke up and said: I have worked with Tricia and she would only protect individuals because of the trust factor, and this is what we've always respected about her.

During her interview with Committee staff, Ms. Newbold explained that she is coming forward to Congress now because she believes it is her duty, and because the widespread problems with the White House security clearance system cannot be addressed without independent, outside oversight. She stated:

I came forward today because I just—I do not see a way forward positively in our office without coming to an external entity, and that's because I have raised my concerns throughout the EOP to career staffers as well as political staffers. And I want it known that this is a systematic, it's an office issue, and we're not a political office, but these decisions were being continuously overrode.