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Whistleblowers & Research



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April 26, 2023

The Honorable Michael Horowitz, Inspector General
Office of Inspector General, U.S. Department of Justice
441 G Street, NW, 6th Floor
Washington, DC 20530

Dear Inspector General Horowitz:

I write on behalf of Mr. Marcus Allen, an employee of the Federal Bureau of Investigation (FBI or Bureau). Pursuant to Presidential Policy Directive 19 (PPD-19) and 50 U.S.C. § 3341(j), we request that you investigate whether Mr. Allen's security clearance was impermissibly suspended for retaliatory or other improper reasons. We believe the facts below present a strong prima facie case of whistleblower reprisal through clearance suspension.

Background

Mr. Allen served honorably in the United States Marine Corps from 2000 to 2005 as an intelligence analyst and rifleman. He received a Top Secret security clearance in 2001. Mr. Allen was deployed to Kuwait and served two tours in Iraq, contributing to Operation Iraqi Freedom. During those deployments Mr. Allen was exposed to live enemy fire on multiple occasions despite being there to serve in intelligence and analytical roles. The Marine Corps recognized his outstanding military service by awarding him the Navy and Marine Corps Commendation Medal and the Navy and Marine Corps Achievement Medal. In 2004 he was the Marine Corps Intelligence Activity Runner-Up for Intelligence Non-Commissioned Officer of the year.

After being honorably discharged from the Marine Corps in 2005, Mr. Allen worked as an intelligence analyst for several civilian contractors. One of them, SM Consulting/SAIC, provided a support role for the FBI. Through this work, Mr. Allen was hired by the FBI in 2015 as a Staff Operations Specialist in the Bureau's Charlotte Field Office. He also accepted collateral duties as a Critical Incident Operation Specialist. Among other responsibilities, he was assigned to provide ad hoc all-source analytic support to Charlotte FBI's Joint Terrorism Task Force (JTTF), helping provide it with strategic awareness on any issues that might impact its work.

Mr. Allen has consistently received an “Exceeds Fully Successful” rating on his performance evaluations since he was hired by the FBI. In 2019 the Charlotte Field Office recognized him with its Employee of the Year Award. He also received a time-off award that year. From 2015 to 2021, Mr. Allen was never disciplined or counseled in any form by the FBI.

Protected Disclosure

As the FBI’s investigations surrounding January 6 progressed throughout 2021, Mr. Allen periodically shared with his colleagues on the JTTF open source news articles regarding the topic. For example, on July 16, 2021 Mr. Allen sent a lengthy list of FBI employees an email with the subject “FBI Director, Agents Sued In Aftermath Of Jan. 6, Reports Freedom Watch.” The email body stated, “Situational awareness,” included a link to a Yahoo News story and the following excerpt from the story:

The complaint, which is filed as a class action for all persons who were in the nation's capital to peacefully protest, but who in the aftermath of January 6, 2021, have been rounded up, had their homes and businesses violated and broken into, their property such as cell phones and computers seized without probable cause, arrested, prosecuted, denied bail, or some even thrown into solitary confinement while awaiting trial, alleges the violation of First, Fifth, and Fourteenth constitutional rights by the defendants.

Shortly after sending the email, Mr. Allen forwarded it to Chief Division Counsel (CDC) John Ireland. Mr. Allen received no response from CDC Ireland.

Mr. Allen’s leadership changed their posture towards him dramatically on September 29, 2021. At 7:51 AM that morning, Mr. Allen sent an email with the subject “6 Jan awareness vid link” to nine of his colleagues: JTTF Supervisory Special Agent Dean Harp, JTTF Principal Relief Special Agent Crecentia Curran, and Supervisory Intelligence Analyst (SIA) Michael Costanzo, with a CC to CDC Ireland, Associate Division Counsel Kathryn Swinkey, JTTF Intelligence Analyst Amanda Shuford, JTTF Intelligence Analyst Alexis Court, JTTF Special Agent Felix Del Toro Silva, and Raleigh Resident Agency Intelligence Analyst Colleen Hickman. In the video, a reporter named Darren Beattie from Revolver News discussed a September 25, 2021 *New York Times* article alleging that a member of Proud Boys was an FBI informant who texted real-time updates on the Capitol march to his FBI handler.¹ The *New York Times* report quoted only a portion of FBI Director Christopher Wray’s testimony to the Senate Judiciary Committee on March 2, 2021. Mr. Beattie added to the *Times*’ account by noting the full context of the exchange between Director Wray and Senator Amy Klobuchar:

¹ Alan Feuer and Adam Goldman, *Among Those Who Marched Into the Capitol on Jan. 6: An F.B.I. Informant*, N.Y. TIMES, Sept. 25, 2021.

KLOBUCHAR: Our witnesses now all agree that there is clear evidence that supports the conclusion that this insurrection was planned and a coordinated attack on the Capitol, that white supremacists and extremist groups were involved, and that what happened would have been much more dangerous if not for the brave actions of law enforcement. Would you agree with that?

WRAY: Certainly there were aspects of it that were planned and coordinated, but—yes.

KLOBUCHAR: . . . [O]n Monday, a complaint was filed against a member of the Proud Boys in Washington State, where federal prosecutors alleged that, in fact, there were plans made for many different entries into the Capitol. Is that correct?

WRAY: Yes. There have been a growing number of charges as we continue to build out the investigation. Either individuals who are now starting to get arrested involving charges that involved more things like planning and coordination, or in some instances, individuals were charged with more simple offenses but now we're superseding as we build out more of an understanding of what people were involved. And there were clearly some individuals involved, which I would consider the most dangerous, most serious cases among the group, who did have plans and intentions and some level of coordination.

* * *

KLOBUCHAR: [T]hey show up, we now know in this complaint, with encrypted two-way Chinese radios in military gear. There must be moments where you think, "If we would have known, ***if we could have infiltrated this group or found out what they were doing*** . . ." Do you have those moments?

WRAY: Absolutely. I will tell you Senator, and this is something I feel passionately about, that any time there is an attack, our standard at the FBI is we aim to bat a thousand, right? And we aim to thwart every attack that's out there. So any time there's an attack, especially one that's this horrific, that strikes right at the heart of our system of government, right at the time the transfer of power is being discussed, you can be darn tooting that we are focused very, very hard on how can we get better sources, better information, better analysis so that we can make sure something like what happened on January 6 never happens again. (emphasis added)

Given Mr. Allen's duties to help provide strategic awareness to the JTTF, he emailed the same recipients approximately one hour later, at 8:47 AM, with the subject "6 Jan awareness." This email read: "There is a significant counter-story to the events of 6 January 2021 at the US Capitol. ***There is a good possibility the DC elements of our organization are not being forthright about the events of the day or the influence of government assets***" (emphasis added). Mr. Allen recommended in his email that his office "[e]xercise extreme caution and discretion in pursuit of any investigative inquiries or leads pertaining to the events of the day."

The FBI never took action in response to any of Mr. Allen's January 6-related emails before September 29, 2021. However, following Mr. Allen's second September 29 email, SIA Costanzo asked Mr. Allen to come to his office. When he entered, Assistant Special Agent in Charge (ASAC) Jason Kaplan was also in the office. In that meeting, ASAC Kaplan told Mr. Allen that CDC Ireland was very upset about Mr. Allen's emails that day. Mr. Allen explained his concerns that Director Wray had been untruthful in his testimony. Mr. Allen said he was merely trying to ensure the Charlotte JTTF had strategic awareness of potential problems within the Bureau.

At the end of the meeting, ASAC Kaplan and SIA Costanzo communicated to Mr. Allen that they appreciated his point of view and they considered the matter resolved. After the meeting, SIA Costanzo further divulged to Mr. Allen one-on-one that CDC Ireland had been so upset he contacted ASAC Kaplan directly without involving SIA Costanzo, Mr. Allen's supervisor. SIA Costanzo gave Mr. Allen a friendly warning that the situation could lead to further issues for Mr. Allen in the future.

Clearance Suspension

Despite being told the matter had been resolved, on January 10, 2022, the FBI proposed to suspend Mr. Allen's Top Secret clearance on the basis of security concerns related to Adjudicative Guideline A – "Allegiance to the United States." The letter stated: "The Security Division has learned you have espoused conspiratorial views both orally and in writing and promoted unreliable information which indicates support for the events of January 6th. These allegations raise sufficient concerns about your allegiance to the United States and your judgment to warrant a suspension of your clearance pending further investigation."

Throughout 2021, Mr. Allen regularly shared with FBI colleagues information about the events of January 6 and the FBI's subsequent investigation. Those emails demonstrated Mr. Allen proactively performing his duties as Staff Operations Specialist and Critical Incident Operation Specialist. This initiative is precisely why Mr. Allen has been recognized and commended on multiple occasions, both within the Marine Corps and as a civilian.

Yet Mr. Allen’s leadership only claimed to question his allegiance to the United States after he disclosed concerns about Director Wray’s testimony. These circumstances strongly suggest Mr. Allen’s leadership retaliated against him for disclosing his concerns about the veracity of Director Wray’s congressional testimony and suspended Mr. Allen’s security clearance as reprisal for that protected whistleblower disclosure to his supervisors.

Section (F)(5)(a) of PPD-19 defines a protected disclosure thus:

[A] disclosure of information by the employee to a supervisor in the employee’s direct chain of command up to and including the head of the employing agency . . . that the employee reasonably believes evidences (i) a violation of any law, rule, or regulation; or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety[.]

It is a violation of 18 U.S.C. § 1001 to, “in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully . . . falsif[y], conceal[], or cover[] up by any trick, scheme, or device a material fact; [or] make[] any materially false, fictitious, or fraudulent statement or representation.” Mr. Allen held a reasonable belief that Director Wray provided false or inaccurate information to Congress—a potential violation of law that could impact the operation of the Bureau’s activities generally and the Charlotte JTTF’s activities specifically, which Mr. Allen’s position required him to consider. Disclosing this concern to his supervisors constituted a protected disclosure under PPD-19.

It was therefore impermissible for FBI supervisors to suspend Mr. Allen’s security clearance in response to his protected disclosure. Section (B) of PPD-19 reads:

Any officer or employee of an executive branch agency who has authority to take, direct others to take, recommend, or approve any action affecting an employee’s Eligibility for Access to Classified Information shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, any action affecting an employee’s Eligibility for Access to Classified Information as a reprisal for a Protected Disclosure.

The FBI’s suspension of Mr. Allen’s security clearance, which directly cited his protected disclosure, is a clear violation of this prohibition.

Similarly, 50 U.S.C. § 3341(j)(1) reads:

Agency personnel with authority to take, direct others to take, recommend, or approve personnel security clearance or access determinations shall not take or fail to take, or threaten to take or fail to take, any action with respect to any employee's security clearance or access determination in retaliation for—

any lawful disclosure of information to . . . a supervisor in the employee's direct chain of command, or a supervisor of the employing agency with responsibility for the subject matter of the disclosure, up to and including the head of the employing agency (or employee designated by the head of that agency for such purpose) by an employee that the employee reasonably believes evidences—

- (i) a violation of any Federal law, rule, or regulation; or
- (ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety[.]

For the reasons outlined above, the FBI's suspension of Mr. Allen's security clearance also violated 50 U.S.C. § 3341(j). Furthermore, 50 U.S.C. § 3341(j)(3) clarifies that "[a] disclosure shall not be excluded from paragraph (1) because . . . the disclosure revealed information that had been previously disclosed; the disclosure was not made in writing; . . . or the disclosure was made during the normal course of duties of an employee." Mr. Allen's disclosure to his supervisors was thus protected despite the fact that it was derived from public source information and was presented to his supervisors in the normal course of his duties as Staff Operations Specialist and Critical Incident Operation Specialist.

Conclusion

Mr. Allen is willing to speak with your office immediately as part of any investigation. Please let us know any other information we may provide that would assist in an investigation. Mr. Allen remains devoted to the United States, which he has served so faithfully. He deserves to have both his security clearance and his job reinstated.

Regards,



Tristan Leavitt
Empower Oversight
President