

**DEPARTMENT OF STATE
OFFICE OF INSPECTOR GENERAL
&
U.S. OFFICE OF SPECIAL COUNSEL**

In the Matter of

SHAWN POWERS
CHIEF STRATEGY OFFICER

MARIE LENNON
DIRECTOR OF MANAGEMENT SERVICES

GRANT TURNER
CHIEF FINANCIAL OFFICER

MATTHEW WALSH
DEPUTY DIRECTOR FOR OPERATIONS

DAVID KLIGERMAN
GENERAL COUNSEL

HOANG-OANH TRAN
EXECUTIVE DIRECTOR

Complainants.

Whistleblower Reprisal Complaints

September 29, 2020

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Introduction

This complaint concerns retaliatory actions taken against six members of the Senior Executive Service at the U.S. Agency for Global Media (“USAGM”): Shawn Powers, Marie Lennon, Grant Turner, Matthew Walsh, David Kligerman and Hoang-Oanh Tran (hereinafter referred to collectively as the “Complainants”). Although submitted as one consolidated filing given the similar nucleus of facts and identical retaliatory actions at issue, and in order to avoid unnecessary duplication of paperwork, we understand that the Department of State’s (“State”) Office of Inspector General (“OIG”) and the Office of Special Counsel (“OSC”) will conduct independent and separate investigations into each of the respective allegations of retaliation alleged by the individual Complainants, to the extent those allegations fall within each office’s jurisdiction.

The facts that will be outlined in this submission with respect to each of the individual Complainants are largely similar. Each of the Complainants made protected disclosures – whether in the form of OIG complaints, communications with USAGM leadership, and/or communications with appropriate Congressional committees – regarding their concerns about official actions primarily taken by Michael Pack, who has been serving as the Chief Executive Officer for USAGM since June 4, 2020. The Complainants’ concerns involve allegations that Mr. Pack has engaged in conduct that violates federal law and/or USAGM regulations, and that constitutes an abuse of authority and gross mismanagement. Moreover, each of the Complainants was targeted for retaliatory action by Mr. Pack because of his belief that they held political views opposed to his, which is a violation of the Hatch Act. To the extent other officials engaged in similar retaliatory activities unilaterally or in concert with Mr. Pack they will be duly identified.

The retaliatory actions by Mr. Pack (or his authorized designee) that will be outlined in this submission are virtually (if not actually) identical. Each of the Complainants was informed by letter, dated August 12, 2020, that their respective accesses to classified information had been suspended pending further investigation. Moreover, they were all concurrently placed on administrative leave. In each of the letters to the Complainants, USAGM claimed that the Complainants had been improperly granted security clearances, and that the Complainants failed to take remedial actions to address personnel and security concerns prior to permitting other USAGM employees to receive security clearances. In addition, many or all of the Complainants were earlier subject to retaliatory adverse personnel actions in the form of substantial limitations on their ability to carry out their work responsibilities (i.e. a significant change in duties and responsibilities), which limitations were imposed without following appropriate personnel procedures.

Investigation will establish that the actions taken against the Complainants were in reprisal for their respective protected disclosures and/or for their political beliefs, whether actual or perceived. Therefore, we respectfully request that State OIG and OSC promptly institute the required investigation. The relief requested is set forth below.

Inspector General Jurisdiction

Each of the Complainants is a USAGM employee: Mr. Powers is the Chief Strategy Officer, Ms. Lennon is the Director of Management Services, Mr. Turner is the Chief Financial Officer, Mr. Walsh is the Deputy Director for Operations, Mr. Kligerman is the General Counsel and Ms. Tran is the Executive Director. Each of the Complainants is protected by the implementing regulations of PPD-19, as codified at 5 U.S.C. § 2302. State OIG possesses clear jurisdiction over USAGM matters, as delineated in 1 FAM § 51.2.

U.S. Office of Special Counsel Jurisdiction

Each of the Complainants is a Title 5 employee. OSC has jurisdiction over whistleblower reprisal complaints and complaints of prohibited personnel practices including political retaliation brought by Executive Branch employees, former employees, and applicants for employment. 5 U.S.C. § 1214.

Elements and Standard of Proof

Security Clearance Actions

In 2012, President Obama signed PPD-19,¹ formally protecting whistleblowers with access to classified information. PPD-19 applies government-wide and explicitly establishes that employees who are eligible for access to classified information may report fraud, waste, and abuse and are protected from being retaliated against for doing so.

Pursuant to PPD-19, Part B, investigations into allegations of retaliation affecting Eligibility for Access to Classified Information are to be investigated by the agency Inspector General. PPD-19, Part B, Para. 3 (“ . . . the agency Inspector General shall conduct a review to determine whether an action affecting Eligibility for Access to Classified Information violated this directive and may recommend that the agency reconsider the employee’s Eligibility for Access to Classified Information consistent with the national security and with Executive Order 12968 and recommend that the agency take other corrective action to return the employee, as nearly as practicable and reasonable, to the position such employee would have held had the reprisal not occurred.”).

Subsequently in 2014, Congress passed legislation, and the President signed into law, those same protections.²

¹ PPD-19, *Protecting Whistleblowers with Access to Classified Information*.

² See Public Law No: 113-126, Title VI of the *Intelligence Community Authorization Act of 2014*.

PPD-19 further states:

The review process shall provide for the protection of classified national security information and intelligence sources and methods. As part of the review process, the agency Inspector General shall conduct a review to determine whether an action affecting Eligibility for Access to Classified Information violated this directive and may recommend that the agency reconsider the employee's Eligibility for Access to Classified Information consistent with the national security and with Executive Order 12968 and recommend that the agency take other corrective action to return the employee, as nearly as practicable and reasonable, to the position such employee would have held had the reprisal not occurred. An agency head shall carefully consider the findings of and actions recommended by the agency Inspector General.³

ICD-120, implementing PPD-19, states:

“Eligibility for Access to Classified Information” is defined in PPD-19, Section F.(2) as the result of the determination whether an employee (a) is eligible for access to classified information in accordance with Executive Order 12968, Access to Classified Information, or any successor thereto, and Executive Order 10865, as amended, Safeguarding Classified Information Within Industry, or any successor thereto, and (b) possesses a need to know under such orders.⁴

³ PPD-19, *Protecting Whistleblowers with Access to Classified Information*, § B (emphasis supplied).

⁴ ICD-120, *Intelligence Community Whistleblower Protection*, § F(1)(b)(emphasis supplied).

The elements of reprisal are the following: (1) the information at issue is that which the individual reasonably believes is evidence of a violation of law, rule or regulation, or of an abuse of authority; (2) the individual made a protected disclosure regarding this information; (3) an action affecting eligibility for access to classified information is taken, threatened or withheld in reprisal for the protected disclosure; and (4) a causal connection exists between the protected communication and the action affecting eligibility for access to classified information. The elements must be established by a preponderance of the evidence for a complaint to be deemed substantiated. The individual Complainants can each satisfy all four elements.

The burden then falls on USAGM officials to prove that the same actions affecting eligibility for access to classified information (whether taken or threatened to be taken) would have occurred even if there had been no protected communications. *See, e.g., Whitmore v. Dep't of Labor*, 680 F.3d 1353, 1367 (Fed. Cir. 2012); *Figueroa v. Nielsen*, 423 F. Supp. 3d 21 (S.D.N.Y. 2019); *Miller v. Dep't of Justice*, 842 F.3d 1252 (Fed. Cir. 2016)(once complainant establishes *prima facie* case, burden of proof shifts to U.S. Government to establish personnel actions taken, threatened, or withheld would have occurred absent protected communication).

Personnel Actions

5 U.S.C. § 2302 (a)(2)(A)(i) through (xii) lists personnel actions which, if taken, withheld, or threatened in reprisal for a protected disclosure, constitute “prohibited personnel practices.” These personnel actions include disciplinary or corrective action, a detail, transfer or reassignment; a performance evaluation, a decision to order psychiatric testing or examination, a decision concerning pay, benefits, or award, or any other significant change in duties, responsibilities, or working conditions.

The seminal question in a reprisal investigation is the following: was the protected communication a contributing factor in responsible management officials taking the action?

Reprisal investigations require a two-stage process. The first stage focuses on the protected communications, the personnel actions, and the acting official's knowledge of the disclosure(s). The second stage focuses on whether or not the Agency would have taken, withheld, or threatened the actions absent the protected disclosure. The first stage of whistleblower reprisal analysis is held to a preponderance of the evidence. 5 C.F.R. § 1209.7. "Preponderance" of the evidence is that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely than not true than untrue. 5 C.F.R. § 1201.56(c)(2). Thus, in order to progress to the second stage of the investigative process, there must be sufficient evidence based on proof by a preponderance of the evidence to make three findings:

1. The complainant made a protected disclosure;
2. The complainant was the subject of a personnel or security clearance action; and
3. The protected disclosure was a contributing factor in the personnel/security clearance action.⁵

⁵ This third finding may be established where the acting official had knowledge, actual or imputed, of the complainant's disclosure and the personnel action took place within a period of time subsequent to the disclosure, such that a reasonable person could conclude that the disclosure was a contributing factor in the decision to take the action. *Redschlag v. Department of the Army*, 89 M.S.P.R. 589, 635 (2001), *review dismissed*, 32 Fed. App'x 543 (Fed. Cir. 2002). In deciding whether a personnel action occurred within a period of time sufficient to conclude the disclosure was a contributing factor, the probative value of the evidence may be affected by the passage of time. Weak but substantiating evidence may be sufficient to prove reprisal after a short time frame while stronger evidence may be required to prove reprisal over relatively longer time frames.

By law, the contributing factor is established through the knowledge/timing test, where the individual taking the action had knowledge of the complainant's protected disclosure prior to taking the action, and where the action took place subsequent to the disclosure within a period of time that reasonable finder of fact would conclude that the proximity of the events would establish that the protected disclosure was a contributing factor. *Shriver v. Dep't of Veterans Affairs*, 89 M.S.P.R. 239, 245-46 (2001)(appellant made non-frivolous allegation that non-selection for promotion was retaliatory where selecting official knew of disclosure and denied promotion within eight months).

If a preponderance of the evidence supports the three findings above, the investigation will proceed to the second stage of the analysis. At that point, the Agency is afforded the opportunity to provide evidence regarding the allegations and, specifically, evidence that would establish that the Agency would have taken, withheld, or threatened the personnel actions against the complainant absent the protected disclosure.

For personnel actions under Title 5, the Agency must establish that it would have taken the action anyway by clear and convincing evidence. "Clear and convincing" evidence is that measure or degree of proof that produces in the mind of the trier of fact a firm belief as to the allegations sought to be established. It is a higher standard than preponderance of the evidence but a lower standard than beyond a reasonable doubt. 5 C.F.R. § 1209.4(d).

Notwithstanding the standard applied, to address the fourth element the following three factors must be present for the Agency to prevail. *Carr v. Social Security Admin.*, 185 F.3d 1318, 1323 (Fed. Cir. 1999)(appropriate to consider strength of Agency's evidence in support of personnel action when determining whether Agency has shown by clear and convincing evidence it would have taken action in absence of employee's protected disclosure). Note: This is a

factoral analysis to assist the trier of fact in determining whether the Agency or responsible management officials can establish that absent the protected communication the actions would have occurred:

1. The strength of the Agency’s evidence in support of its personnel action;
2. The existence and strength of any motive to retaliate on the part of the Agency officials who were involved in the decision; and
3. Any evidence that the Agency takes similar actions against employees who are not whistleblowers or did not make a protected communication but who are otherwise similarly situated.

The Complainants

Each of the Complainants is a dedicated public servant who has had a notable career (some spanning multiple decades across the U.S. Government) prior to the recent retaliatory actions taken against them by Mr. Pack and/or his designees.

Shawn Powers

Mr. Powers has worked at USAGM since July 23, 2018, and currently serves as the Chief Strategy Officer (“CSO”). He has held that position since October 22, 2018, first in an acting capacity and then, effective November 11, 2019, on a permanent basis. The CSO position meets the definition for “Career Reserved,” which includes “highly technical or professional positions in which the duties and responsibilities of the specific position are such that it must be filled by a career appointee to ensure impartiality or the public’s confidence in impartiality as determined by the Director in light of the mission of Broadcasting.”

In his position as the CSO, Mr. Powers oversees USAGM’s engagement in the interagency, strategic planning, strategic initiatives, and positioning within the broader U.S. government and

with key stakeholders. Mr. Powers is responsible for formalizing—and serving as the chief representative of—the inter-network coordination of USAGM’s strategic-planning processes, including strategic development, consensus-building across the five networks and the USAGM offices, instituting change toward new synergies across the USAGM, and establishing greater transparency and accountability for those people carrying out USAGM’s mission.

Mr. Powers was placed on administrative leave on August 12, 2020, the same day he was notified of the suspension of his access to classified information.

Marie Lennon

Ms. Lennon has worked for the U.S. Government for nearly 50 years and has worked for USAGM and its predecessors since 1982. Her current position is Director of Management Services, in which she has served since late 2015.

In her role at USAGM, Ms. Lennon has direct oversight of several offices within USAGM, namely Human Resources, Contracts, Security, Civil Rights, Administration, and Workforce Support and Development.

Ms. Lennon was placed on administrative leave on August 12, 2020, the same day she was notified of the suspension of her access to classified information.

Grant Turner

Mr. Turner is the Chief Financial Officer (“CFO”) for USAGM and has nearly two decade’s worth of federal public service. In his role as CFO, Mr. Turner oversees the agency’s budgeting, finance, and grants management functions. He served as Acting Chief Executive Officer from September 26, 2019 to June 4, 2020.

Mr. Turner was placed on administrative leave on August 12, 2020, the same day he was notified of the suspension of his access to classified information.

Matthew Walsh

Mr. Walsh is the Deputy Director for Operations at USAGM and has worked for the U.S. Government for almost twelve years. In September 2017, he joined USAGM as the Chief of Staff to then CEO John Lansing, who left the agency in October 2019. In February 2019, Mr. Walsh became the Deputy Director of Operations, a position that had been created as a way to improve USAGM's internal operations. The Deputy Director for Operations position is a Career Reserved SES position.

In the Deputy Director for Operations role, Mr. Walsh has five direct reports, most of whom also are career SES members, and about 250 government employees under him, as well as hundreds of other contractors and locally employed staff at USAGM facilities outside of the United States. In this role, Mr. Walsh oversees most of the Agency's operations, including teams in charge of information technology, broadcast transmissions and operations, facilities, business development/marketing, human resources, contracting, training, security, and risk management. He also leads various cross-cutting initiatives, including chairing the agency's Emergency Action Committee, which was the body that coordinated USAGM's COVID-19 (coronavirus) response. Mr. Walsh has received multiple distinguished service awards during his government career, including from USAGM and the Department of State, where he worked prior to joining USAGM. Mr. Walsh's most recent SES performance review gave him the highest possible score.

Mr. Walsh was placed on administrative leave on August 12, 2020, the same day he was notified of the suspension of his access to classified information.

David Kligerman

Mr. Kligerman is the General Counsel for USAGM and has over a decades' worth of federal public service under his belt. In his role as General Counsel, Mr. Kligerman's job is to oversee

and manage the Office of General Counsel, which provides end-to-end legal advice for the agency. Mr. Kligerman also provides legal counsel directly to senior leadership and participated in all significant policy decisions. In his last formal review, Mr. Kligerman received the highest possible rating. He held the position first in an acting capacity, and then, effective in or about June 2017, on a permanent basis. He served as Acting Deputy Director (Deputy Chief Executive Officer), named by the Board, from approximately November 2019 and continuing through Mr. Pack's appointment in the summer of 2020.

Mr. Kligerman was placed on administrative leave on August 12, 2020, the same day he was notified of the suspension of his access to classified information.

Hoang-Oanh Tran

Ms. Tran is the Executive Director of USAGM and has worked for the U.S. Government for more than two decades. She has been at USAGM since 1992, serving in a number of key roles. As a core member of the CEO's senior management team, Ms. Tran supports the CEO in managing the decision-making processes or policy directives, communications, and personnel-related work, which entails resource planning and performance management of the senior staff that supports the CEO and facilitating the transition or appointment of USAGM's leadership. Ms. Tran is also responsible for coordinating the workflow of the agency internally, serving as the liaison between the Agency's offices and networks and the CEO Office, as well as handling the Agency's relations with the White House, National Security Council, and other national security agencies through their respective Executive Secretaries and/or related officials. She also supervises the USAGM Executive Secretariat staff.

Ms. Tran was placed on administrative leave on August 12, 2020, the same day she was notified of the suspension of her access to classified information.

Facts of the Individual Cases

Shawn Powers

Mr. Powers' protected disclosures concerned violations of federal law, violations of USAGM regulations, and abuses of authority. The disclosures pertained to the unlawful actions of Mr. Pack, the primary Responsible Management Official ("RMO") subject to this retaliation complaint. Mr. Powers' disclosures resulted in a clear and explicit retaliatory action, namely the suspension of Mr. Powers' access to classified information.

A. Protected Disclosure About the Impact of Mr. Pack's Spending Freeze

In a meeting on June 19, 2020 with Deputy Chief of Staff Diane Cullo, along with others present, Mr. Powers made a protected disclosure within his USAGM leadership chain. Mr. Powers raised urgent concerns regarding the impact that Mr. Pack's spending freeze was having on USAGM's ability to support internet freedom tools in Hong Kong amidst the ongoing Chinese crackdown and takeover of local governing authorities. Mr. Powers specifically pointed out that the spending freeze was placing USAGM's journalists at grave risk, and that the funds needed to be released to ensure that both USAGM's journalists and its audience were safe from surveillance and persecution. Mr. Pack's failure to support the internet freedom tools created a specific physical danger to USAGM journalists.

Mr. Powers further noted that Mr. Pack's actions had forced the suspension of all hiring actions, and that this was undermining a commitment USAGM had made to relevant Congressional oversight committees that the Office of Cuba Broadcasting ("OCB") would urgently hire a new, external editorial standards to help ensure that OCB's content meet the highest professional standards of journalism, as is required by statute (22 U.S.C. § 6202). This was of particular relevance given that an individual had already been selected for, and offered the

position of, standards editor at OCB and that the individual had accepted the offer. However, due to Mr. Pack's spending and hiring freeze, this individual could not join USAGM due to lack of funding.

Additional details will be provided during the intake and/or investigation phases.

B. Protected Disclosure Regarding Mr. Pack's Reorganization Actions

On or about June 24, 2020, Mr. Powers submitted an OIG hotline complaint to State. The substance of the OIG complaint concerned Mr. Pack's decision to reorganize USAGM's core functions and reporting chains, including moving the Office of Policy and the Office of Internet Freedom out from under the CSO without legally mandated notifications to Congress or the Office of Management and Budget. In his OIG complaint, Mr. Powers specifically noted that he feared retaliation from Mr. Pack given Mr. Pack's stated intention in a press release issued on June 18, 2020, to "eradicate" what he claimed were decades of "mismanagement".

Additional details will be provided during the intake and/or investigation phases.

C. Protected Disclosures Regarding Ban on External Communications

In late June 2020, Mr. Powers had several discussions with a Senior USAGM employee – both via e-mail and telephone – in which Mr. Powers raised concerns that Mr. Pack's agency-wide ban on external communications was making it impossible to perform his work.

Additional details will be provided during the intake and/or investigation phases.

D. Protected Disclosures Regarding Mr. Pack's Mismanagement

On June 30, 2020, Mr. Powers made a protected disclosure to a staffer for Senator Menendez working on the Senate Foreign Relations Committee, regarding Mr. Pack's mismanagement of USAGM. Specifically, Mr. Powers noted that Mr. Pack's reorganization of USAGM had imposed a substantial reduction in Mr. Powers' duties without first providing the mandatory

Congressional notification. Mr. Powers further noted his concerns that Mr. Pack would need to circumvent a Congressional hold on \$7 million in appropriations in order to cover OCB expenses. Mr. Powers noted his fear of reprisal for making this protected disclosure.

That same day, Mr. Powers made a similar protected disclosure regarding Mr. Pack's mismanagement to a staffer for Congressman McCaul, Ranking Member of the House Foreign Affairs Committee. In addition to the concerns Mr. Powers had separately raised with Senator Menendez's staffer, he also noted that Mr. Pack's spending freeze was jeopardizing USAGM's Internet Freedom Portfolio, as well as the viability of USAGM's capacity to monitor and evaluate the effectiveness of its broadcast operations (which is mandated by federal law). Mr. Powers noted his concern about reprisal for making this protected disclosure.

Additional details will be provided during the intake and/or investigation phases.

E. Protected Disclosure Regarding Appropriations

On August 5, 2020, Mr. Powers e-mailed Andre Mendes, the Chief Operations Officer, and a member of his senior management, regarding substantial reductions in the budget for USAGM's Office of Policy and Research ("OPR") regarding which Mr. Pack had not notified Congress, despite being mandated by law to do so. Mr. Powers noted that the reduction in budget (approximately \$1.4 million) jeopardized USAGM's ability to meaningfully conduct research, the results of which were a top priority for OMB and Congressional stakeholders. Specifically, without that research OPR's ability to assess the performance of USAGM's networks would be undermined.

Additional details will be provided during the intake and/or investigation phases.

Marie Lennon

Ms. Lennon made protected disclosures to USAGM leadership on numerous occasions beginning in late June 2020. Ms. Lennon's disclosures specifically concerned the issue of J1 visas needed for USAGM staff who were foreign nationals. Ms. Lennon provided responses to multiple requests for information from Diane Cullo and Emily Newman, USAGM's Chief of Staff, about the J1 visa program and hiring practices. She conveyed her view that requesting extensions of those J1 visas was in the best interests of USAGM given the individual and collective contributions of the relevant staffers, and noted the risk and potential harm that could befall these employees if their visa extensions were not granted and they were forced to return to their countries of origin. The issuance of visas had been put at risk, however, due to Ms. Cullo's and Ms. Newman's apparent advice to Mr. Pack to ignore the requests and do nothing, resulting in expired visas and the requirement that employees return to their home countries. Ms. Lennon also raised the J1 visa issues to Andre Mendes (Mr. Pack's COO) on more than one occasion during this period, pleading with him to intervene and "do the right thing" for USAGM programming and to honor the previous commitments made to these individuals.

In late July or early August, Ms. Cullo and Ms. Newman asked Ms. Lennon to take care of bringing on-board four new staff members to serve in Temporary Schedule C positions. On August 6, 2020, Ms. Lennon notified both officials that while processing these individuals through OPM, OPM noted that USAGM had exceeded its authority for this type of appointment. The OPM staffer noted that a waiver had been requested but he was unable to complete the processing in their system until he checked with his management. Ms. Newman said she had asked for an increase and had received approval on July 22, 2020, but did not share any further details with Ms. Lennon. Other paperwork needed to complete processing of at least two other

Schedule C employees was brought to Ms. Cullo's and Ms. Newman's attention repeatedly during this period with no response. Based on her many years of experience with USAGAM, it appeared to Ms. Lennon that Mr. Pack was improperly hiring individuals in order to politicize USAGM. These individuals were ultimately hired and joined USAGM.

On August 4, 2020, in the daily reminder sent to Ms. Cullo and Ms. Newman detailing the actions they needed to take to approve critical contract and hiring priorities, Ms. Lennon also noted her serious concerns over Mr. Pack's public release on that same date of OPM's follow-up report regarding review of USAGM's suitability program. Ms. Lennon indicated that details of the agency's program should have been protected and released only to those with a "need to know." She also noted that to "provide details about deficiencies in our program to the public increases the likelihood that sensitive information may fall into the hands of "bad actors," or those that may have an interest in using our vulnerabilities for their own interests."

Ms. Lennon's disclosures resulted in a clear and explicit retaliatory action, namely the suspension of her access to classified information.

Additional details will be provided during the intake and/or investigation phases.

Grant Turner

A. Protected Disclosures to State OIG

On June 17, 2020, Mr. Turner started making protected disclosures to State OIG regarding his concerns that Mr. Pack and Morvared Namdarkhan, a/k/a Mora Namdar, USAGM's Acting Vice President for Legal, were engaging in conduct that constituted an abuse of authority, gross mismanagement and violations of law.

Mr. Turner informed State OIG that Ms. Namdar was pressuring his office to withhold already appropriated funding from USAGM's Office of Cuba Broadcasting in violation of the Anti-Deficiency Act.

In a follow-up meeting on June 21, 2020, Mr. Turner made additional protected disclosures to State OIG. In addition to repeating the concern previously raised regarding Ms. Namdar's actions, Mr. Turner also outlined the following issues that constituted an abuse of authority, violations of law and regulations, and gross mismanagement by Mr. Pack.

- Mr. Turner expressed concern that Mr. Pack was abusing his authority and violating the firewall with his intervention into certain USAGM matters. For example, Mr. Pack "crossed the firewall" established to protect the journalistic independence of USAGM's news networks from interference or influence by political officials. One example is what Mr. Turner understands to be the removal of an Urdu journalist working for USAGM, based upon Mr. Pack's disagreement with the political viewpoint of a piece on former Vice President Biden. Mr. Pack also removed Steve Springer, the standards editor for Voice of America, and Bay Fang, the Executive Editor of Radio Free Asia. Mr. Turner viewed Mr. Pack's actions as a firewall violation and demonstrated his abuse of authority. Mr. Pack had also refused to sign J-1 visa extensions for USAGM foreign national journalists, which Mr. Turner viewed as a politically motivated attack by Mr. Pack based not on performance but rather viewpoint discrimination and as beyond Mr. Pack's authority.
- Mr. Turner explained that Mr. Pack's spending freeze was undermining the ability of USAGM to accomplish its statutory mission. Specifically, the freeze was impacting staffing, contracting, and technical/IT migrations. The spending freeze was especially harmful and significantly reduced the number of tools supported by the Open Technology Fund ("OTF"), which allow reporters to operate in high-risk areas, like Russia and China, and particularly intended for audiences in key countries to access agency content, such as in Iran. Taking such steps to remove electronic protections is perceived as endangering journalists as it can further expose them to hostile government officials.
- Mr. Turner also outlined for State OIG his view that Mr. Pack's spending freeze and related reorganizational efforts at USAGM constituted gross mismanagement, in that Mr. Pack was engaging in punitive action against particular components of USAGM with which he disagreed by depriving them of Congressionally appropriated funding. Mr. Turner also expressed his concern that Mr. Pack was selecting unqualified individuals, such as Emily Newman, USAGM's Chief of Staff, and other political appointees who had no background in journalism) to serve as board members for USAGM's grantee organizations.

Mr. Turner addressed these same concerns in separate protected communication on July 21, 2020, he had with the Senate Appropriations Subcommittee for State, Foreign Operations and Related Programs. The information was similarly disclosed that day to the Government Accountability Office.

Additional details will be provided during the intake and/or investigation phases.

B. Protected Disclosures to USAGM Leadership

Mr. Turner repeated the concerns he had outlined for State OIG in separate protected disclosures he made within USAGM to senior leadership officials.

- On July 13, 2020, Mr. Turner e-mailed Mr. Mendes and identified several concerns he had regarding Mr. Pack's actions, including mass firing of network heads, the impact Mr. Pack's spending freeze on USAGM's ability to continue functioning properly, and violations of the firewall, including the targeting of J-1 visa holders.
- On July 16, 2020, Mr. Turner e-mailed Ms. Cullo and raised the same concerns he had raised to Mr. Mendes, and additionally raised concerns about impoundment of funding, and health and safety issues related to COVID-19
- On July 16, 2020, Mr. Turner e-mailed Ms. Namdar and raised the same concerns he had raised to Mr. Mendes, and additionally raised concerns about impoundment of funding, and health and safety issues related to COVID-19.
- On July 17, 2020, Mr. Turner e-mailed Mr. Mendes, Ms. Namdar, Ms. Cullo and Ms. Newman, stating that continued withholding of funding would negatively impact the ability of USAGM to perform its statutory mission.
- On July 21, 2020, Mr. Turner e-mailed Ms. Namdar and expressed his concern that she lacked sufficient training to serve as the sole interlocutor with OTF, as Mr. Pack had designated her, and that this action would jeopardize important financial controls for the agency
- Mr. Turner expressed concern to Mr. Mendes, Ms. Namdar, and Ms. Newman that continued delay in the transfer of funding to the Office of Cuba Broadcasting would constitute a violation of the Anti-Deficiency Act.
- Mr. Turner notified Mr. Mendes and Ms. Namdar that they could not lawfully transfer approximately \$3.5 million in funding from federal grantees to an alternate purpose without first notifying Congress and OMB.

- In a meeting on August 12, 2020, with several members of USAGM leadership and shortly before being placed on administrative leave, Mr. Turner conveyed his concerns regarding the spending freeze's impact on USAGM operations, as well as Mr. Turner's view that USAGM had misled a federal court regarding the USAGM's intention to promptly fund the OTF grantee.

Additional details will be provided during the intake and/or investigation phases.

Matthew Walsh

A. Protected Disclosures

Mr. Walsh made several protected disclosures between June 17, 2020, and August 12, 2020. On different occasions within that timeframe, Mr. Walsh made verbal disclosures to State OIG and to a Minority staffer at the Senate Foreign Relations Committee. Mr. Walsh's protected disclosures concerned Mr. Pack's mismanagement of USAGM, particularly his failure to approve the hiring of or visa requests for foreign national USAGM staffers. Moreover, Mr. Walsh stated that Mr. Pack's conduct placed some of those individuals at risk of physical harm.

Additional details will be provided during the intake and/or investigation phases.

B. Hatch Act Violations

Mr. Walsh is also prepared to provide to investigators information regarding Mr. Pack's violations of the Hatch Act, 5 U.S.C. § 7321. Mr. Walsh was informed by two separate senior USAGM officials who were part of the CEO's Office that Mr. Pack's attention on him – as well as the other individual Complainants – and Mr. Pack's apparent desire to force out Mr. Walsh was due to Mr. Pack's belief he and the other Complainants were part of the "Deep State" and that they had played a role in the delay in Mr. Pack's confirmation to his position at USAGM. Another senior USAGM official told Mr. Walsh that Mr. Pack or one of Mr. Pack's close aides had ordered him to conduct research on the voting history of USAGM employees, including Mr.

Walsh, and that the research was to be utilized in evaluating career civil servants' abilities to carry out the duties of their positions.

Additional details will be provided during the intake and/or investigation phases.

David Kligerman

A. Protected Disclosures to State OIG

Mr. Kligerman made a telephonic protected disclosure to State OIG on July 28, 2020. In that discussion, Mr. Kligerman outlined concerns about gross mismanagement, abuse of authority, and violation of law (including breach of the "firewall") by Mr. Pack and/or his authorized designees. This included:

- Breaches of the firewall by Mr. Pack, including with respect to the conduct of internal investigations into VOA journalists.
- Abuse of authority and violation of law related to denial of J-1 visas to journalists.
- Abuse of authority and violation of law related to plans to invent pretextual charges against Mr. Kligerman for the purpose of terminating him. (related items: Retaliation by Mr. Pack against Mr. Kligerman for protected disclosures that he had made to the Congress and threats by Mr. Pack prior to his confirmation with respect to Mr. Kligerman and other senior staff).
- On Mr. Pack's first day at USAGM, June 17, 2020, Mr. Kligerman was notified via e-mail that all delegated authorities previously assigned to him were rescinded. This rescission – which included Mr. Kligerman's authority as the Designated Agency Ethics Official – effectively eliminated Mr. Kligerman's ability to perform most (if not all) of his duties as the General Counsel, which relied extensively upon delegated authorities. Mr. Kligerman's role as the General Counsel at that point was largely supplanted by Ms. Namdar, who began providing taskers and instructions to USAGM lawyers without consulting with Mr. Kligerman.
- Mr. Kligerman disclosed that Ms. Namdar had abused her authority by imposing a ban on any external communications by Mr. Kligerman (without approval from Ms. Namdar) after he had raised concerns with DOJ about alleged *ex parte* communications by Ms. Namdar and filming of a party opponent in litigation. Mr. Kligerman made a further disclosure to State (including State's Legal Advisor) regarding Ms. Namdar's politicization of the J1 visa sponsorship process.

Additional details will be provided during the intake and/or investigation phases.

B. Protected Disclosures Within USAGM

Mr. Kligerman made separate protected disclosures within USAGM leadership regarding abuses of authority by Mr. Pack. These include, but are not necessarily limited to, the following:

In June 2020, Mr. Kligerman provided Mr. Pack with an ethics briefing, and informed him that he needed to resign from his outside positions as part of his Ethics Agreement with USAGM. Mr. Pack indicated he had not yet resigned from his for-profit company, Manifold Productions, LLC, and that his “team” would handle the relevant paperwork. Mr. Kligerman flagged this issue on more than one occasion for USAGM leadership as an unresolved ethics issue but never received a response.

On or about July 10, 2020, Mr. Kligerman also made a protected disclosure with respect to his concerns about the denials of J1 visas. Mr. Kligerman was told by a former front office official, who has left the agency, that Ms. Newman was angered upon seeing Mr. Kligerman’s disclosures about the J1 visas and his recommendations that all visas be issued to mitigate the issues.

On or about July 23, 2020, Mr. Kligerman reported an abuse of authority by Ms. Namdar to Ms. Namdar and Ms. Newman. That abuse of authority related to actions that occurred while Ms. Namdar entered OTF headquarters, and concerns that these actions violated legal ethics rules.

On July 29, 2020, Mr. Kligerman made a protected disclosure to a senior USAGM official regarding Mr. Pack’s office intervening in an inquiry into an Urdu journalist working for USAGM. Mr. Kligerman reported this as a breach of the firewall by Mr. Pack’s office, and he separately informed the Office of Contracts that it would be inappropriate to simply terminate the Urdu contract without due process.

Additional details will be provided during the intake and/or investigation phases.

C. Protected Disclosures to Congress

Mr. Kligerman addressed many of these same concerns in separate protected communications in June, July, and August 2020, with the staff of Republican and Democratic members of the relevant committees of jurisdiction. His outreach included the Senate Appropriations Subcommittee for State, Foreign Operations, and Related Programs; the House Appropriations Committee; the House Foreign Affairs Committee; and the Senate Foreign Relations Committee. He also raised issues of potential Anti-Deficiency Act violations. His outreach also included concerns that Mr. Pack and his team were politicizing and misrepresenting a July 2020 report from OPM to pretextually justify crackdowns on employees, including to justify denials of visas to journalists which Mr. Kligerman believed (based on information from a former Pack CEO-office official with direct knowledge) was instead based on a desire to remove non-citizen staff for political reasons relating to immigration policy and alienage.

Additional details will be provided during the intake and/or investigation phases.

D. Hatch Act Violations

Mr. Kligerman is prepared to outline for investigators Hatch Act issues regarding Mr. Pack that he has observed and regarding which he has knowledge or information.

To be clear, Mr. Pack's improper actions began before he was confirmed as the CEO of USAGM. In February and March 2019, when Mr. Pack was the nominee for the position, he engaged in more than one lengthy discussion with Mr. Kligerman in which Mr. Pack indicated he did not view USAGM leadership as sufficiently loyal to the White House, as they were instead "holdovers" from the previous administration. After Mr. Pack was confirmed and took his position at USAGM, Mr. Kligerman was informed by a senior USAGM official that that official

had been asked by Mr. Pack's office to create a pretextual dossier on Mr. Kligerman with the intention of forcing him to depart (if not outright firing him).

Additional details will be provided during the intake and/or investigation phases.

Hoang-Oanh Tran

Since Mr. Pack's arrival, Ms. Tran's responsibilities were limited to front office processing tasks, such as day-to-day functions like Agency reporting requirements and document clearance process, tracking, records management, and other secretariat services. She was no longer permitted to support the CEO in other, more substantive tasks she had previously performed, including, but not limited to, supporting the CEO in managing the decision-making processes or policy directives, communications, and personnel-related work, which entails resource planning and performance management of the senior staff that supports the CEO and facilitating the transition or appointment of USAGM's leadership

Mr. Pack's team largely ignored Ms. Tran's efforts to provide information on the Agency's policies and procedures with respect to Time and Attendance, the need to approve critical Interagency Acquisition Agreements, the importance of processing routine requests by the Voice of America regarding employment without time limitation for its foreign journalists, J-1 visas and Permanent Resident sponsorship for current employees/contractors, and the essential communications regarding the Agency's response and protective measures to the Coronavirus.

Mr. Pack's team also perceived Ms. Tran's effort to remind staff about the importance of the document clearance process as a way to prevent staff from having direct contact with Mr. Pack's team, in other words, creating a perception that Mr. Pack's team is inaccessible.

Additional details will be provided during the intake and/or investigation phases.

Reprisal Analysis

A. Each of the Individual Complainant's Protected Disclosures Suffice as a Matter of Law

ICD-120 and PPD-19 define a protected disclosure, in pertinent part, as:

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 . . . or to an employee designated by any of the above officials for the purpose of receiving such disclosures, that the employee reasonably 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.⁶

A belief is reasonable if a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee could reasonably conclude that the disclosed information implicates one of the statutory categories of wrongdoing. It is critical to understand that as long as his or her belief is reasonable, the employee need not be right about the underlying allegation. Here, the allegations and concerns raised by each of the individual Complainants were reasonable and more than likely correct.

Each of the disclosures outlined above were protected for purposes of § 2302(b)(8).

- **Shawn Powers:** The submission of an OIG complaint on June 22, 2020, as well as the communications within USAGM leadership and to Congressional committees, clearly qualify as protected disclosures as a matter of law made within covered disclosure channels. The disclosures themselves concerned Mr. Powers' reasonable belief that Mr. Pack had engaged in abuses of authority, gross mismanagement and violations of law.
- **Marie Lennon:** The communications made by Ms. Lennon within USAGM leadership qualify as protected disclosures as a matter of law made within covered disclosure channels. The communications concerned what Ms. Lennon reasonably perceived as abuses of authority and gross mismanagement by Mr. Pack and others.
- **Grant Turner:** The communications Mr. Turner had with USAGM leadership – including RMOs such as Mr. Pack – and with State OIG all qualify as protected

⁶ PPD-19 § F(5)(a); ICD-120 § D(2)(a).

disclosures as a matter of law that were made within covered disclosure channels. The communications themselves concerned Mr. Turner's reasonable belief that Mr. Pack and Ms. Namdar were engaging in a pattern of abuse of authority, gross mismanagement and violations of law.

- **Matthew Walsh:** The communications Mr. Walsh had with State OIG and Congressional committee staff qualify as protected disclosures as a matter of law that were made within covered disclosure channels. The communications involved Mr. Walsh's reasonable belief that Mr. Pack's actions constituted an abuse of authority and violations of law.
- **David Kligerman:** The communications Mr. Kligerman had with State OIG, Congress, and USAGM leadership all qualify as protected disclosures as a matter of law that were made within covered disclosure channels. The communications themselves concerned Mr. Kligerman's reasonable belief that Mr. Pack and others around him were engaging in a pattern of abuse of authority, violation of law, and gross mismanagement.
- **Oanh Tran:** The communications made by Ms. Tran within USAGM leadership qualify as protected disclosures as a matter of law made within covered disclosure channels.

The individual Complainants have more than sufficiently demonstrated that their disclosures satisfy the first two criteria of the legal analysis.

B. Each of the Individual Complainants Has Been Subjected to an action impacting their Eligibility for Access to Classified Information and an Unfavorable Personnel Actions by Mr. Pack, Who Knew or Was Reasonably Likely to Know about the Protected Disclosures by the Complainants

ICD-120 and PPD-19 state that an action affecting access to classified information is reviewable for evidence of whistleblower reprisal. Specifically, both regulations define Eligibility for Access to Classified Information as:

. . . the result of the determination whether an employee (a) is eligible for access to classified information in accordance with Executive Order 12968 (relating to access to classified information), or any successor thereto, and Executive Order 10865 of February 20, 1960 as amended (relating to safeguarding classified

information with industry), or any successor thereto; and (b) possess a need to know under such orders.⁷

PPD-19 prohibits taking or threatening to take an adverse, or failing to take a, personnel action in reprisal for a protected disclosure. Finally, 5 U.S.C. § 2302 (b)(9)(D) prohibits taking or failing to take, or threatening to take or fail to take, any personnel action against an employee or applicant for employment for refusing to obey an order that would require the individual to violate a law.

The factual record makes clear that as a result of their protected disclosures retaliatory personnel actions were taken against each of the individual Complainants by Mr. Pack, who either knew or was reasonably likely to know of their respective protected disclosures. Specifically, Mr. Pack issued letters on August 12, 2020, suspending each of the individual Complainants' access to classified information, and concurrently placing them all on administrative leave. Each of the letters from Mr. Pack contained (among other things) a set of identical, and often false or irrelevant, allegations stating the Complainants had been granted access to classified information despite USAGM allegedly lacking the proper authority to investigate and perform background checks⁸, as well as that the Complainants had authorized other USAGM employees to receive security clearances notwithstanding the alleged lack of authority held by USAGM. Although the allegation that the Complainants were improperly granted security clearances due to USAGM lacking authority would, if applied uniformly across

⁷ PPD-19 § F(2); ICD-120 § F(1)(b).

⁸ The investigations and security clearance adjudications referenced in the access suspension letters pre-date that action, as well as the temporary cessation of USAGM background investigations on November 1, 2018. Furthermore, OPM has stated that USAGM actually lacked proper authority to conduct investigations and adjudications dating back to 2012, raising questions about an even wider pool of USAGM officials other than the Complainants who theoretically should have been impacted.

the agency, require the suspension and possible revocation of a significant portion of USAGM's cleared workforce, the Complainants are six of only seven employees – as far as they know – who have had their access suspended pending further investigation.

These actions by Mr. Pack qualify as reviewable personnel actions within the meaning of 5 U.S.C. § 2302.

C. The Actions Affecting their Eligibility for Access to Classified Information and Unfavorable Personnel Actions Would Not Have Been Taken Absent the Protected Disclosures by the Complainants and their Perceived Political Views

To determine the answer to the “causation” question, the investigation must analyze what bearing, if any, the protected communications had on the decisions to take, threaten, or withhold the personnel actions. For each personnel action, the investigation must analyze the following factors and then weigh them together to determine whether the personnel action would have been taken absent the protected communication:

- Reason stated by responsible management officials for taking, withholding, or threatening the personnel action;
- Timing between the protected communications and personnel actions;
- Motive on the part of the responsible management officials to reprise; and,
- Disparate treatment of the complainant as compared to other similarly situated individuals who did not make protected communications.

The burden of proof, during this phase of the investigation, shifts to the U.S. Government.

See e.g., Whitmore v. Dep't of Labor, 680 F.3d 1353, 1367 (Fed. Cir. 2012); *Figueroa v. Nielsen*, 423 F. Supp. 3d 21 (S.D.N.Y. 2019); *Miller v. Dep't of Justice*, 842 F.3d 1252 (Fed. Cir. 2016) (once the complainant establishes a *prima facie* case, the burden of proof shifts to the U.S. Government to establish that the personnel actions taken, threatened, or withheld would have occurred absent the protected communication).

There is no reasonable basis for the actions taken against Complainants other than their respective protected activities. The arbitrary action taken against the Complainants in a manner

distinct than virtually the entirety of the rest of USAGM's cleared workforce – notwithstanding the fact that USAGM's purported lack of authority would have applied to all cleared USAGM employees – exemplifies the very concept of retaliation. Had the Complainants not made repeated protected disclosures within USAGM leadership (including to Mr. Pack himself), to the State OIG, and to relevant Congressional committees, it is more than likely that no adverse action would have been taken against the Complainants. Moreover, in some instances the facts allegedly relied upon by the Agency are simply false – e.g. Mr. Walsh's security clearance was not based on an investigation by USAGM at all.

The burden is on USAGM and Mr. Pack in particular to come forward with evidence demonstrating that the suspension of Complainants' access to classified information would have occurred regardless of their respective protected disclosures. If Mr. Pack has any such evidence, the Complainants intend to refute it. If Mr. Pack fails or refuses to cooperate in the investigation, an adverse inference should be drawn.

Relief Requested

For the foregoing reasons, the OIG and OSC should recommend the following relief:

- (a) Each of the individual Complainants should be immediately reinstated to their respective positions;
- (b) The suspension of the individual Complainants' respective access to classified information should be rescinded;
- (c) Each existing officer or employee of the government who retaliated or threatened to retaliate against the Complainants for their protected activities should be reprimanded in writing, such writing to be made a part of his or her permanent official personnel record, or otherwise subjected to appropriate corrective or disciplinary action;

- (d) Payment of reasonable attorney's fees; and,
- (e) Such other and further relief as may in the circumstances be just and proper.

Respectfully submitted,

/s/ Mark S. Zaid

/s/ Andrew P. Bakaj

/s/ Bradley P. Moss

Mark S. Zaid

Andrew P. Bakaj

Bradley P. Moss

Mark S. Zaid, P.C.

1250 Connecticut Ave., N.W.

Suite 700

Washington, D.C. 20036

(202) 498-0011

Mark@MarkZaid.com

Andrew@MarkZaid.com

Brad@MarkZaid.com

/s/ Robert S. Litt

Robert S. Litt

Alex Iftimie

Janie Schulman

Robin A. Smith

Ani Ogenesian

Katherina Aurelian

Morrison & Foerster LLP

2000 Pennsylvania Ave NW, Suite 6000

Washington, D.C. 20006

rlitt@mofocom

aiftimie@mofocom

jschulman@mofocom

rsmith@mofocom

aogesian@mofocom

kaurelian@mofocom

Attorneys for Complainants

Verifications

I declare under penalty of perjury that the facts stated in the foregoing Whistleblower Reprisal Complaint are true and correct.



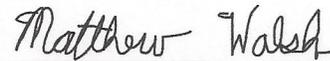
Shawn Powers



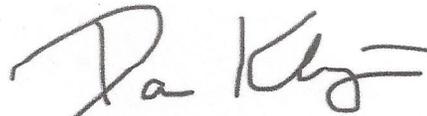
Marie Lennon



Grant Turner



Matthew Walsh



David Kligerman



Hoang-Oanh Tran