



Office of the Inspector General
United States Department of Justice

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before the

Committee on the Judiciary
U.S. House of Representatives

Concerning

Oversight of the Department of Justice's
Handling of Security Clearances for Whistleblowers

September 25, 2024

Chairman Jordan, Ranking Member Plaskett, and Members of the Committee:

Thank you for inviting me to testify at today's hearing about the Department of Justice (Department or DOJ) Office of the Inspector General's (OIG) efforts to protect whistleblowers and our oversight of the Department's security clearance processes. Whistleblowers perform an important service when they report evidence of wrongdoing and they make the Department, and the entire U.S. government, better and more accountable to the American public. All DOJ employees, contractors, and grantees are protected from retaliation for making a protected disclosure and no employee should suffer reprisal for bringing forward information that they reasonably believe is evidence of waste, fraud, abuse, or other violations of law.

Employees with a security clearance are particularly vulnerable to retaliation because an employee's due process protections and right to appeal a security clearance suspension or revocation are more limited than the processes that exist for employment actions unrelated to an employee's security clearance. This is by design, as deference is given to an agency to ensure that access to classified information can be promptly restricted when a legitimate security concern arises.

However, given the more limited due process that is available to an employee whose security clearance has been suspended, and the significant amount of time an employee may remain suspended without pay before having any process whatsoever to contest a security clearance action, it is critical that agencies exercise their authority to take security clearance-related actions consistently and based on firm evidence in each instance.

Regrettably, concerns about retaliatory security clearance actions are not new. Congress passed the landmark Whistleblower Protection Act (WPA) in 1989, strengthened it in 1994, and further strengthened that law in 2012, with the Whistleblower Protection Enhancement Act (WPEA) of 2012. In each instance, Congress considered the lack of independent due process rights for employees to challenge retaliatory security clearance actions, but ultimately did not take legislative action. However, in 2012, shortly after the WPEA's passage, Presidential Policy Directive 19 (PPD-19) was issued, which provided for Inspector General reviews and investigations of alleged security clearance reprisals. Prior to PPD-19, employees with a whistleblower retaliation claim were permitted only to appeal security clearance determinations within their component – in effect, asking the agency that took the clearance to change their mind – with no independent review or investigation by an OIG.

In 2014, Congress, for the first time, provided statutory whistleblower protections for employees with a security clearance by amending 50 U.S.C. § 3341. The statute includes a provision requiring the Executive Branch to establish procedures allowing employees to appeal a security clearance revocation or a suspension that lasts longer than one year. The Director of National Intelligence subsequently issued Security Executive Agent Directive (SEAD) 9, which requires agencies to have a security clearance appeal process that enables employees alleging reprisal due to a security clearance revocation or suspension lasting more than one year to seek Inspector General review of the reprisal allegation. Section 3341 also requires government agencies to establish a security clearance review process that, to the extent practicable, "permit[s] ... individuals ... [with a retaliation claim] to retain their government employment status while [the security clearance review] is pending." This is significant because many DOJ law enforcement agencies, including the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), generally suspend employees without pay for the duration of a security clearance investigation, which can last years.

As we noted in a May 2024 [Management Advisory Memorandum](#) (MAM), the Department's then existing policy did not include a process allowing employees with a reprisal claim to appeal to the OIG if their clearance had been suspended for longer than one year, as required by section 3341. The Department's policy did include the required OIG appeal provision in the case of a revocation. As we further noted in the MAM, placing an employee who claims retaliation on indefinite unpaid suspension while a lengthy security clearance investigation is conducted can make it financially unrealistic for the employee to retain their government employment status, as provided for in Section 3341. Moreover, it creates the risk that the security process can be misused as part of an inappropriate effort to encourage an employee to resign.

I have been encouraged by the Department's prompt response to address our MAM's recommendations. The Department recently revised its security clearance appeals directive to require: 1) that all employees with a suspended clearance are notified of their right to file a retaliation complaint with the OIG if that suspension lasts longer than 1 year; 2) that all components, including the law enforcement components, identify positions that do not require a clearance in which an employee with a suspended clearance may be placed, if practicable, so that they can remain on paid status during a security investigation; and 3) that all components inform DOJ's Justice Management Division of all security clearance investigations that have lasted longer than 6 months, and provide a justification for the continued suspension and investigation. It is our view that this requirement for components to provide an update and justification for clearance suspensions lasting longer than 6 months is a best practice in the federal government and, with effective oversight from the Department and the OIG, will encourage components to more efficiently resolve security investigations and limit the ability to misuse the security process in an effort to encourage an employee to resign.

As detailed in our MAM, the OIG identified these significant due process concerns in connection with our work assessing retaliation complaints from DOJ employees whose security clearances had been suspended and who had been placed on leave without pay. However, the concerns highlighted in the MAM should not be viewed as a determination on the merit or lack of merit of any individual reprisal claim submitted to the OIG.

Our concerns about the security clearance suspension and adjudication process go beyond the serious procedural issues detailed in the MAM. For example, we have received and are reviewing complaints and/or allegations from FBI employees alleging inconsistent compliance with standard operating procedures on the opening of security investigations; highly inappropriate questions being asked of witnesses during security clearance investigations; inconsistent outcomes on clearance suspension determinations, with potentially serious security issues not prompting a security clearance suspension while seemingly lesser concerns resulting in an immediate suspension; an investigation, suspension, and revocation of an employee's eligibility to hold a clearance based on race; and retaliation against employees for raising concerns to management about security clearance suspensions, investigations, and adjudications.

These allegations raise serious issues and do not apply to only a subset of employees with certain political views or ideologies. As we complete our work on these allegations, the OIG will make further recommendations to the Department and its components to address any additional issues that we identify.

With one exception, I am unable to speak to these matters today, both for investigative and privacy reasons. The one exception is the matter involving now former FBI Staff Operations Specialist Marcus Allen. The details of Mr. Allen's case illustrate many of the concerns and systemic issues that we have seen with the security clearance process. Earlier this year, the FBI reinstated Mr. Allen's security clearance and Mr. Allen entered into

a settlement agreement with the FBI to resolve employment claims he asserted against the FBI following the suspension of his security clearance in 2022. Pursuant to the terms of the settlement agreement between Mr. Allen and the FBI, Mr. Allen withdrew a retaliation complaint that he filed with the OIG in 2023. In response to that agreement and Mr. Allen's withdrawal of his retaliation complaint, the OIG closed its investigation into his retaliation allegation. Mr. Allen's counsel has advised the OIG that his client waived any Privacy Act rights or restrictions that might otherwise prohibit the OIG from discussing our now closed investigation of his claims, and that his client supported our publicly discussing the factual circumstances of his case. Based on this correspondence from Mr. Allen's counsel, and the fact that our investigation is now closed, I am able to provide the Committee with factual details we learned during our reprisal investigation. However, because Mr. Allen withdrew his complaint and entered into a settlement agreement with the FBI, we did not complete our investigation and therefore did not make a finding regarding his retaliation claim.

We fully support Mr. Allen's right to settle his claims against the FBI and to withdraw his retaliation complaint as part of that settlement. Based on my office's extensive experience working with whistleblowers, settlement can be the best and most expedient route to resolve retaliation claims in a manner that allows the employee to secure appropriate corrective action or other relief they may seek and to move forward with their careers without the delays arising from an investigation, adjudication, and potential litigation. For example, pursuant to DOJ policy, even where the OIG finds that the suspension or revocation of an employee's security clearance is the result of reprisal for whistleblowing and recommends reinstatement of the employee's security clearance, if the Department Security Officer or Security Program Manager determines "that it is not practicable and reasonable to approve or reinstate the individual's eligibility for access to classified information or to hold a sensitive position because the individual is a threat to the national security interests of the United States," then the final determination is made by the Attorney General or their designee after reviewing all relevant information.

Before Mr. Allen withdrew his retaliation complaint, the OIG had conducted extensive investigative work and was nearing completion of its investigation. We identified many systemic issues as part of this investigation that we believe are relevant to a discussion of the security clearance process and Congress's decades-long deliberations on the appropriate level of protections for employees with a security clearance.

Overview: The FBI's Security Clearance Suspension and Revocation Process

In general, if a security concern is raised about a Department employee, the allegation is referred to the relevant component's security division, which has the authority to immediately suspend the employee's clearance and initiate a security investigation to determine whether the employee's clearance should be revoked or reinstated. It is important to note that security concerns are different from misconduct allegations and that they are handled differently and separately. For example, an employee can have a security concern arise without having been alleged to have engaged in misconduct. Similarly, an employee alleged to have engaged in misconduct does not necessarily present a security concern.

For FBI employees, the FBI's Security Division (SecD) handles the investigation and adjudication of an employee's ability to hold and maintain a national security clearance, while the FBI's Inspection Division handles allegations of misconduct. When SecD receives a security allegation against an FBI employee, it initially determines whether to suspend the employee's security clearance pending the outcome of SecD's security investigation. Upon completion of the security investigation, if SecD revokes or denies an employee's

clearance, the employee may request the documents and information supporting that decision. The employee may then submit a written request for reconsideration to SecD, asking SecD to reverse its revocation decision. In practice, the process from suspension to subsequent security investigation, to a decision to revoke or deny, to a request for reconsideration, and to a final decision on the request for reconsideration can take several years to complete. In Mr. Allen's case, this started with his clearance suspension notice in January 2022, and did not end until the reinstatement of his clearance and settlement with the FBI in June 2024.

The significant amount of time this process takes to complete can be especially problematic at DOJ components that, at least until the recent revised DOJ policy was issued in response to the OIG's MAM, regularly suspend employees without pay for the duration of the security review process. For example, FBI employees are routinely informed at the time their clearances are suspended that, "It has been a longstanding, essential condition of employment that employees of the FBI be able to obtain and maintain a Top Secret security clearance." Accordingly, pursuant to the practice at most DOJ law enforcement components, a suspended clearance results in the employee being notified that they will also be subject to an indefinite employment suspension without pay and the loss of access to Department facilities until the security review process adjudicates the suspension decision.

Under the prior Department policy, DOJ employees had no process for challenging a clearance suspension.¹ In Mr. Allen's case, this unpaid suspension lasted over two years, and during that time he remained subject to the Department and FBI's rules on outside employment and the acceptance of gifts, which limited his ability to engage in outside employment and to accept monetary donations contributed through an online platform. As our MAM indicated, most employees in Mr. Allen's situation—on unpaid suspension for over 2 years and limited in their ability to obtain outside employment—would find it financially unrealistic to retain their government employment status, which is in tension with Section 3341's requirement that agencies "permit...individuals...[with a retaliation claim] to retain their government employment status while [the security clearance review] is pending."

Mr. Allen's FBI Employment

The FBI hired Mr. Allen as a Staff Operations Specialist in the Charlotte Field Office (Charlotte FO) in 2015. Mr. Allen consistently received strong performance appraisals and was named the Charlotte FO's 2019 "Employee of the Year." Mr. Allen is a Marine Corps veteran who served two tours in Iraq. He held a Top Secret security clearance from 2001 to 2021 without incident prior to the issues we present below.

Mr. Allen worked with the Charlotte FO's Joint Terrorism Task Force (JTTF), where he gathered news articles, police reports, social media, and other open-source information to assist in ongoing investigations and intelligence requests. He successfully supported numerous JTTF investigations, including investigations of individuals who engaged in criminal conduct on January 6, 2021, at the U.S. Capitol, and was specifically credited in his 2021 performance appraisal for producing intelligence products to assist investigations of a Boogaloo ideologue and weapons concerns related to a U.S. Capitol riot subject. As part of this work, Mr. Allen

¹ As discussed, under the revised policy, and consistent with 50 U.S.C. § 3341, an employee with a suspended clearance may file a complaint with the OIG after one year, if the employee alleges the clearance was taken in retaliation for whistleblowing. Employees not alleging retaliation still have no avenue for contesting a suspended clearance during the suspension phase but, as noted, the Department has taken steps to require agencies to provide greater justification when any clearance suspension exceeds six months.

frequently sent emails to co-workers and supervisors with links to what Mr. Allen referred to as “mainstream news sources” as well as material that he referred to as “independent sources.”

Mr. Allen's September 29, 2021 Emails

On September 29, 2021, Mr. Allen sent an email to his JTTF colleagues, including his direct supervisors that stated in part: “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 (e.g. Russia collusion investigation, Larry Nassar debacle, COINTELPRO).” (underline in original). The email provided a link to a video and referenced an article from four days earlier in *The New York Times*, which alleged that FBI Confidential Human Sources (CHSs) were at the U.S. Capitol on January 6, 2021, including CHSs within groups such as the Proud Boys. The email also referenced stories by revolver.news, thegatewaypundit.com, Real Clear Investigations, and American Gulag. Allen also added the following statement: “Recommendation: Exercise extreme caution and discretion in pursuit of any investigative inquires or leads pertaining to the events of the day.”

Several minutes later, Mr. Allen forwarded the same recipients an email with a link to a video segment from a podcast, where a guest discussed the September 25, 2021 *New York Times* article. The video then critiqued the March 2021 congressional testimony by FBI Director Christopher Wray for not acknowledging, in response to questioning by Senator Amy Klobuchar, that the FBI had sources within groups such as the Proud Boys and that some of these sources were at the Capitol on January 6. According to Mr. Allen, he sent the emails because he did not believe that the FBI Director answered Sen. Klobuchar’s questions as truthfully as he could have. It is important to note that, in order for a disclosure to be protected under whistleblower laws, an employee need not be correct in their assertions; they need only demonstrate a reasonable belief the information they disclosed was evidence of misconduct or a violation of law, rule, or regulation.

Charlotte FO management officials discussed Allen’s September 29 emails and were concerned that Mr. Allen called into question the truthfulness of the FBI Director’s testimony. Shortly thereafter, Mr. Allen was called into a counseling session with his direct supervisor and a senior Charlotte FO management official. During the session, Mr. Allen further explained his concerns about the FBI Director’s testimony, which the senior management official described as “reasonable.” Nevertheless, Mr. Allen was cautioned not to send any further emails like his September 29 emails. Mr. Allen complied with this direction.

SecD Management Directs the Opening of a Security Investigation of Mr. Allen

Mr. Allen did not hear anything more about the matter until January 2022, when he was informed that his Top Secret security clearance had been suspended. Unknown to Mr. Allen, on September 29, 2021, a Charlotte FO official forwarded Mr. Allen’s two September 29 emails to an FBI Office of General Counsel (OGC) attorney. The following day, the FBI OGC attorney forwarded these emails to SecD management. A SecD management official reviewed the emails, advised FBI OGC that SecD would be opening a security investigation of Mr. Allen, and then directed SecD subordinates to open a security investigation.

The basis for the January 2022 opening of the SecD security investigation of Mr. Allen, according to SecD’s Opening Electronic Communication (Opening EC), was Mr. Allen’s September 29 emails. The Opening EC noted that Mr. Allen’s Top Secret security clearance had been favorably re-adjudicated by the FBI on October 1, 2021, the day after Mr. Allen sent the emails to his JTTF coworkers. This meant that Mr. Allen had recently

undergone an FBI background investigation (conducted by SecD) to determine his continued eligibility to hold a Top Secret security clearance, and that the investigation identified no derogatory information or any basis to question Mr. Allen's ability to hold a Top Secret clearance prior to his September 29, 2021 emails.

A SecD employee (referred to below as Adjudicator 2) told the OIG that it was their view that the opening of the Allen security investigation was a departure from SecD "best practices" because SecD management issued a directive to open the investigation, rather than allowing the allegation to follow the normal SecD referral and assessment standard operation procedures. A SecD management official told the OIG that management had the discretion to direct the opening of a security investigation, notwithstanding SecD's standard operating procedures that call for derogatory information to be referred and assessed by SecD's case intake unit.

Following the opening of the security investigation, SecD management reached out to the FBI's Insider Threat Office (InTO) to request an assessment of Mr. Allen's electronic communications. The SecD management official sought InTO's assessment after a discussion with a Charlotte FO management official, during which the officials discussed Mr. Allen's September 29 emails and concerns about the FBI Director's testimony, and the fact that Mr. Allen did not attest to his COVID vaccination status. The SecD management official told the OIG that the Charlotte FO management official also expressed concerns about Mr. Allen's ongoing access to Charlotte FO domestic terrorism case files.

The InTO draft assessment of Mr. Allen's communications and other information determined that Mr. Allen "may pose" an insider threat to the FBI. Among the messages cited in the InTO assessment were those in which Mr. Allen expressed hesitation about taking the COVID-19 vaccine. For example, in a Skype message InTO cited, a colleague of Mr. Allen asked him if he had taken the vaccine yet. Mr. Allen responded that he was "waiting until the opening rounds are finished and more data is available." After reviewing these and other messages cited in the draft InTO assessment, the SecD investigator (Investigator 1) assigned to handle the security investigation of Mr. Allen raised concerns about the lack of analytical rigor in the draft InTO assessment. In an effort to consider a more complete set of Mr. Allen's communications, Investigator 1 requested a review of Mr. Allen's electronic communications by the FBI's Electronic Security Operations Center (ESOC). The subsequently issued ESOC report analyzed Mr. Allen's messages and other communications and concluded there was "no information validating" the security predicate SecD used to open the investigation of Mr. Allen. The ESOC report further stated that Mr. Allen's communications relating to January 6 "did not appear to be hostile or inflammatory in nature."

Following receipt of the ESOC report, Investigator 1 interviewed four Charlotte FO management officials, including the Charlotte FO official who referred the September 29 emails to FBI OGC that resulted in SecD opening its investigation. An email summary of the interviews prepared by Investigator 1 stated:

None of the interviewees have witnessed any behavior which would cause them to believe:

- Allen is disloyal to the United States
- Allen advocates violence against the US, advocates overthrowing the current system of government, or sympathizes/supports those who do; Allen was involved with, or he sympathized/supported the criminal activity which occurred at the U.S. Capitol on 01/06/2021

- Allen lacked objectivity in information presented/conclusions in analytical products, discussions or other communications (aside from the 09/29 email)
- Allen was in any way resistant to performing his duties in support of [counter-terrorism] cases including [domestic terrorism] cases or leads related to 01/06.

Investigator 1's email also noted that the interviewees agreed that "It was not unusual for Allen to send emails with links to open source information, including links which offered alternative viewpoints." The interviewees also said that "Allen has been, and remains, a high performer in [Charlotte]." Finally, Investigator 1 noted that the interviewees suggested that "Allen does appear to be 'bothered' by the events of 01/06," and "[Charlotte management] believes Allen 'stepped over the line' with ill-founded accusations/conclusions drawn in the 09/29 email."

Investigator 1 concluded that Mr. Allen had arguably made a protected disclosure in his September 29 emails, and that no one in the Charlotte FO had any concerns about Mr. Allen's allegiance to the United States or his willingness to work January 6 investigations, or believed that he supported or advocated for individuals who engaged in violent acts against the United States. However, SecD management believed that the InTO assessment and the Charlotte management official's stated concern about Mr. Allen's ongoing access to domestic terrorism case files warranted the suspension of Mr. Allen's security clearance and called into question his Allegiance to the United States, which is referred to as Guideline A under the applicable security clearance guidance.

Investigator 1 followed SecD management's direction and drafted the suspension memorandum based on Mr. Allen's alleged lack of "Allegiance to the United States." Investigator 1 said he believed that edits made to the suspension memorandum "grossly mischaracterized" Mr. Allen's communications. One of Investigator 1's supervisors noted that he (the supervisor) signed the suspension memorandum with "some hesitancy" because of the reliance on Guideline A. Another SecD supervisor stated that SecD management's insistence on using Guideline A to suspend Mr. Allen was "a very hard stretch." SecD management told the OIG that no SecD officials, other than Investigator 1, raised concerns to them about the use of Guideline A.

SecD Suspends Mr. Allen's Clearance

In January 2022, Mr. Allen received a written notice that his Top Secret security clearance had been suspended pursuant to Guideline A. The notice included one substantive paragraph, which read: "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." On February 17, 2022, Mr. Allen was indefinitely suspended without pay.

SecD Assigns a New Investigator and the Security Investigation Continues

About two weeks after the Allen suspension notice was issued, Investigator 1 was reassigned from his position and removed from the Allen investigation and a new SecD investigator was assigned (Investigator 2). Investigator 2 conducted further investigative steps to determine whether the FBI should permanently revoke Mr. Allen's security clearance. These included:

- In May 2022, interviewing Mr. Allen for the first time about the allegations. During the interview, Mr. Allen described his role on the JTTF as providing any and all information which could impact cases or indicate criminal activity. Mr. Allen also discussed “his frustration with some [domestic terrorism] cases not being prosecuted or worked properly.” In particular, Mr. Allen mentioned a domestic terrorism case involving an individual who made threats to then Presidential Candidate Joe Biden. Mr. Allen believed the threats and evidence of violent conduct by the “far right individual” implicated federal crimes, but prosecutors did not pursue charges.
- In June 2022, asking ESOC to conduct an additional review of Mr. Allen’s user activity between November 4, 2020, and September 30, 2021. ESOC submitted a report to SecD stating that ESOC had searched and reviewed Mr. Allen’s data and the data “appeared to be of activity aligned with ALLEN’s job role.” In addition, “it did not appear Allen conducted any unauthorized searches in [FBI databases, including source databases] and no suspicious downloads or printing activities were noted.”
- In July 2022, interviewing the FBI employee with whom Mr. Allen had engaged in most of the messaging cited in the draft InTO assessment. The individual stated that some of Mr. Allen's thoughts and opinions can be "out there," but the individual did not think Mr. Allen supported the government’s overthrow or challenged the legitimacy of the 2020 Presidential election.
- In September 2022, interviewing Mr. Allen’s immediate Charlotte FO supervisor for a second time. The supervisor stated that at some point he instructed Mr. Allen to stop sending emails “from different sources regarding January 6th” and to focus on “actual news sites.” However, this statement was not consistent with the supervisor’s initial SecD interview or the statements of other Charlotte FO management officials, all of whom told Investigator 1 that Mr. Allen had never been counseled or told to stop sending links to “alternative” open source information prior to the September 29 emails.

In September 2022, Investigator 2 drafted a summary memorandum detailing the information gathered during the security investigation. The summary memorandum noted that the investigation was predicated on the September 29, 2021 emails that Mr. Allen sent to other Charlotte employees; restated the information that Investigator 1 received in his initial interviews of Mr. Allen’s supervisors; referenced the messages cited in the draft InTO assessment, as well as the findings from the ESOC report; and included a description of the most recent interviews. The summary memorandum did not make a recommendation to revoke or reinstate Mr. Allen’s clearance; it concluded that the case should be forwarded to the SecD security adjudication division for any action it deemed appropriate.

SecD’s Investigation Division Forwards Its Findings to the SecD Adjudication Division and the SecD Adjudicator Raises Concerns about the InTO Assessment

In October 2022, the SecD investigation division forwarded the Allen investigation to the SecD adjudication division for a determination by the adjudication division as to whether Mr. Allen’s clearance should be revoked or reinstated.

In January 2023, the assigned SecD adjudicator (Adjudicator 1) sent a memorandum to his supervisor raising concerns about the strength of the evidence gathered during the Allen investigation. For example, Adjudicator 1 questioned the relevance of the messages that InTO cited in its assessment of Mr. Allen and stated his view that the exchanges did not support InTO’s conclusions cited in SecD’s suspension memorandum. Adjudicator

1 further noted that InTO's assessment failed to acknowledge a message exchange where Mr. Allen told his co-worker that Charlotte FO had received a very large number of January 6 related leads and that all of these need to go "through the process."

Adjudicator 1 concluded his memorandum by identifying numerous mitigating factors SecD had identified during the Allen investigation, including:

- ESOC's second review found no suspicious activity and that Mr. Allen's communications were consistent with his job duties;
- None of the interviewees said that Mr. Allen ever expressed an unwillingness to work domestic terrorism matters, none questioned his allegiance to the United States or believed he supported violence, and none reported any indications that Mr. Allen supported the violence that occurred on January 6, 2021;
- Mr. Allen's personal security file contained no derogatory information relevant to SecD's investigation;
- Mr. Allen had access to Sensitive Compartmented Information from December 2015 to January 2022;
- Mr. Allen's last polygraph on October 9, 2019, found "No Deception Indicated";
- Mr. Allen's last Top Secret clearance adjudication was on October 1, 2021, and was "unremarkable";
- Mr. Allen had never been the subject of a disciplinary investigation; and
- The FBI's Inspections Division received the InTO report following Mr. Allen's September 29, 2021 email and declined to open an investigation.

Re-Interview of JTTF supervisor Leads to New Allegation that the Adjudication Division Relies on in Revoking Mr. Allen's Security Clearance

To help determine whether there was a sufficient justification to revoke Mr. Allen's clearance, Adjudicator 1 asked Investigator 2 to re-interview Mr. Allen's JTTF supervisor to determine whether the JTTF supervisor had ever counseled Mr. Allen to stop sending open source links to "alternative news" sources prior to Mr. Allen's September 29 email, as Mr. Allen's immediate supervisor stated he did in his second SecD interview.

In January 2023, Investigator 2 re-interviewed Mr. Allen's JTTF supervisor. The JTTF supervisor did not recall counseling or admonishing Mr. Allen about his email habits and described Mr. Allen as a good employee who performed his job responsibilities well. According to the JTTF supervisor, the Charlotte JTTF had over 600 Guardian leads related to January 6 and Mr. Allen assisted in research for many of them; the JTTF supervisor recalled only one that drew Mr. Allen's attention. On that occasion, Mr. Allen was concerned that the subject's constitutional rights were being violated and that a case should not have been initiated. According to the JTTF supervisor, Mr. Allen "pushed back" in an email to a Charlotte FO management official and the assigned case agent (Case Agent). The JTTF supervisor suggested that Investigator 2 contact the Case Agent.

Investigator 2 thereafter interviewed the Case Agent. The Case Agent recalled two instances in which the Case Agent believed Mr. Allen had not identified and provided open source information about January 6 subjects

that was later determined to be available. The Case Agent, however, did not allege that Mr. Allen had intentionally failed to find the information about the subjects.

SecD Revokes Mr. Allen's Security Clearance

Investigator 2 provided the information from the interviews to Adjudicator 1, who then drafted a memorandum to revoke Mr. Allen's security clearance. The memorandum relied heavily on the information provided by the Case Agent to Investigator 2. SecD management decided not to re-interview Mr. Allen to obtain his response to the Case Agent allegation. The OIG was told that SecD and FBI OGC believed it was sufficient to present the Case Agent allegation to Mr. Allen in the memorandum revoking his clearance because Mr. Allen would have an opportunity to request reconsideration of the revocation decision.

The revocation memorandum was finalized in May 2023. It stated that the basis for the investigation was Mr. Allen's September 29, 2021 emails, which included "a news article and other websites alleging the FBI was not being truthful about the events at the Capitol on 01/06/2021." The revocation memorandum did not include any reference to the InTO assessment or the messages cited in it, which was the stated basis for suspending Mr. Allen's clearance. Instead, the revocation memorandum added two new specifications—both of which were based on information identified by SecD after issuing the suspension memorandum and after interviewing Mr. Allen. First, the revocation memorandum relied on Mr. Allen's immediate supervisor's statement that Mr. Allen had been previously admonished to not send certain emails. The revocation memorandum did not address the initial interviews of Charlotte FO management which indicated that Mr. Allen had not been previously admonished for sending such emails. Second, the revocation memorandum concluded that Mr. Allen deliberately failed to provide relevant information to the Case Agent after the Case Agent requested that Mr. Allen conduct social media/public records searches on a January 6 subject. Although the Case Agent did not allege that Mr. Allen had intentionally failed to find the information, the SecD revocation memorandum concluded that his failure was intentional because, in part, SecD was able to find the information after conducting internet searches for the information approximately 18 months after Mr. Allen had been asked to do so. The revocation memorandum stated that Mr. Allen's security clearance was being revoked under Guideline A: Allegiance to the United States and Guideline E: Personal Conduct.

Mr. Allen Requests Reconsideration of the Revocation Decision

In May 2023, Mr. Allen received a letter stating that his security clearance had been revoked. The letter did not include with it a copy of the revocation memorandum or provide him with specific information about the two new allegations that had been made against him.

Under the applicable DOJ security clearance directive, after receiving the revocation letter, Mr. Allen had the right to "file a request for any documents, records, and reports, including the entire investigative file, upon which the denial or revocation is based." Mr. Allen requested the information in May 2023. According to the DOJ directive, the FBI was required to provide that information within 30 days of the request. The FBI did not provide the requested information until September 20, 2023. This was the first time Mr. Allen was able to review the two new allegations against him.

Under the DOJ directive, Mr. Allen had 30 days after receiving the investigative information from the FBI to submit a reconsideration request to SecD. Mr. Allen did so on October 20, 2023.

SecD Adjudicator Recommends Reinstatement of Mr. Allen's Security Clearance

Mr. Allen's request for reconsideration was assigned to a new SecD Adjudicator (Adjudicator 2), who reviewed the request and the SecD investigative file, and concluded that Mr. Allen's Top Secret security clearance should be reinstated. In February 2024, Adjudicator 2 prepared a presentation for SecD leadership on Mr. Allen's reconsideration request and Adjudicator 2's findings, which concluded that Mr. Allen had "explained, mitigated and/or refuted the security concerns which were included as a basis for his revocation."

In March 2024, following the presentation to SecD management, Adjudicator 2 submitted a draft reinstatement memorandum to SecD management recommending that Mr. Allen's security clearance be reinstated. The following month, in April 2024, Adjudicator 2 was reassigned from her position in the adjudication division and taken off of the Allen case.

The FBI Reinstates Mr. Allen's Security Clearance and Settles his Retaliation Complaint

On May 31, 2024, following settlement negotiations between the FBI and counsel for Mr. Allen, the FBI reinstated Mr. Allen's security clearance, and informed him that the various security concerns alleged against him had been "sufficiently mitigated." On June 1, 2024, the FBI and Mr. Allen entered into a settlement to resolve his pending retaliation complaint.

As I noted previously, the 29 months that Mr. Allen remained on unpaid leave while seeking to challenge his security suspension and the FBI's subsequent revocation decision helped inform the findings in our May 2024 MAM to the Department and our recommendations that it revise its security clearance directive. While the circumstances surrounding the handling of Mr. Allen's security clearance investigation and adjudication are concerning, I am encouraged by the Department's prompt response to our MAM's recommendations by revising its security clearance directive and including what I believe is a best practice in the federal government by requiring components to justify security clearance suspensions lasting longer than 6 months. The OIG will continue to conduct oversight to ensure that the security clearance investigation and adjudication process is not used to retaliate against whistleblowers, and that the Department complies with all relevant whistleblower protections.

I am pleased to have the opportunity to present these issues to the Committee so that you can assess the policy issues that they raise and consider whether any legislative action is warranted.

Thank you again for the Committee's support for our mission and for the opportunity to testify on this important topic. I would be pleased to answer any questions that you may have.