

THE WHITE HOUSE

WASHINGTON

May 26, 2020

The Honorable Charles E. Grassley
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Chairman Grassley:

I write in response to your April 8, 2020 letter to the President regarding the removal of the Inspector General of the Intelligence Community and your May 18, 2020 letter to the President regarding the removal of the Inspector General of the Department of State.

President Trump appreciates and respects your longstanding support for the role that inspectors general play. The President is similarly committed to supporting inspectors general. In recent months, he has announced an outstanding group of ten nominees, whom he expects to be vigilant in performing their duties and in helping to ensure the efficiency and effectiveness of programs and operations within the Executive Branch.

At the same time, President Trump expects that inspectors general, like all other executive officers, will fulfill their proper role as defined by Congress and ultimately as constrained by the Constitution. When the President loses confidence in an inspector general, he will exercise his constitutional right and duty to remove that officer—as did President Reagan when he removed inspectors general upon taking office and as did President Obama when he was in office. Consistent with these principles, President Trump removed the two inspectors general addressed in your letters. As the Secretary of State has said publicly about his Department’s inspector general, the President exercised this authority at the Secretary’s recommendation. In both cases, the President did so in a manner that was consistent with the requirements of the Constitution and of federal law, as recognized by the U.S. Court of Appeals for the District of Columbia Circuit.

The Constitution vests the executive power in the President and charges him with the supervision of all executive officers, including inspectors general. As the Supreme Court has consistently recognized, “Article II confers on the President ‘the general administrative control of those executing the laws.’” *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 492 (2010) (quoting *Myers v. U.S.*, 272 U.S. 52, 164 (1926)). In connection with authority to appoint and supervise executive officers, the President retains broad authority to remove them. Indeed, the Framers explicitly recognized this power: the “executive power included a power to

oversee executive officers through removal; because that traditional executive power was not ‘expressly taken away, it remained with the President.’” *Id.* at 492 (quoting Letter from James Madison to Thomas Jefferson (June 30, 1789), 16 Documentary History of the First Federal Congress 1789–1791, at 893 (2004)). And the Supreme Court has repeatedly affirmed this principle. *See In re Hennen*, 38 U.S. 230, 259 (1839); *Myers*, 272 U.S. at 164; *Free Enter. Fund*, 561 U.S. at 492.

Consistent with these constitutional principles, the Inspector General Act of 1978 expressly acknowledges the President’s authority to remove these executive officers, making clear that an “Inspector General may be removed from office by the President.” 5 U.S.C. app. 3, § 3(b). The Congress that passed the Act understood that it “would specifically allow the President to remove any Inspector General at any time.” H.R. Rep. No. 95-584, at 9 (1977). President Trump therefore acted within his constitutional and statutory authority when he removed the Inspector General of the Intelligence Community and the Inspector General of the Department of State.

The President also complied with the Inspector General Act in the manner in which he notified Congress of these terminations. The statute provides that the President should “communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer” of an inspector general. 5 U.S.C. app. 3, § 3(b). The President complied with this provision by notifying Congress of his decisions to remove each inspector general and by placing each of them on administrative leave pending their removal 30 days later.

In so doing, President Trump’s actions were similar to President Obama’s actions in his removal of an inspector general. These actions were upheld by the D.C. federal courts as consistent with the statute. Indeed, President Trump’s notices to Congress used language similar to that used by President Obama when he removed Gerald Walpin as Inspector General of the Corporation for National and Community Service. The President explained that he “no longer” had “fullest confidence” in their abilities to serve as inspectors general. In *Walpin v. Corp. for Nat’l & Cmty. Servs.*, the D.C. Circuit held that that language “satisfies the minimal statutory mandate that the President communicate to the Congress his ‘reasons’ for removal,” and acknowledged that the statute “imposes no ‘clear duty’ to explain the reasons in any greater detail.” 630 F.3d 184, 187 (D.C. Cir. 2011).

In addition, placing these inspectors general on administrative leave—with pay—was entirely proper and consistent with the statute. In so doing, the President took the same action as President Obama did as to Mr. Walpin by placing each inspector general on leave prior to his formal termination. As President Obama’s Counsel explained regarding Mr. Walpin’s suspension with pay:

This suspension is fully consistent with the Inspector General Act. The section of the Act discussing the 30 days’ notice to Congress also provides that “[n]othing in this subsection

shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.” 5 U.S.C. App. 3, § 3(b).

Letter from Gregory B. Craig, Counsel to the President, to Senator Charles E. Grassley (June 11, 2009). The D.C. Circuit agreed and held that the congressional notification provision “provides no right to continued duty performance but only to deferral of ‘removal’ until thirty days after notice is given.” *Walpin*, 630 F.3d at 187 (applying 5 U.S.C. app. 3, § 3(b)). Placement on administrative leave does “not constitute removal from office.” *Id.*

The President complied fully with the statutory mandate to provide advance notification before removal as a matter of accommodation and presidential prerogative, notwithstanding the burden the Inspector General Act places on the President’s authority to remove an executive officer. Indeed, Executive Branch officials of both parties have long believed that the Act’s notification requirement raises serious constitutional concerns. During President Carter’s Administration, the Department of Justice’s Office of Legal Counsel concluded in 1977 that a similar congressional reporting requirement “constitute[d] an improper restriction on the President’s exclusive power to remove Presidentially appointed executive officers. . . . [T]he power to remove a subordinate appointed officer within one of the executive departments is a power reserved to the President acting in his discretion.” *Inspector General Legislation*, 1 Op. O.L.C. 16, 18 (1977) (internal citations omitted). President George H.W. Bush likewise explained in 1989 when signing a bill containing a similar reporting requirement, “[w]hile this requirement purports to preserve the President’s constitutional authority to remove an executive branch subordinate, its obvious effect is to burden its exercise. Accordingly, while I intend to communicate my reasons in the event I remove an Inspector General, I shall do so as a matter of comity rather than statutory obligation.” Statement by President George Bush Upon Signing H.R. 2748, 42 Weekly Comp. Pres. Doc. 1851, reprinted in 1989 U.S.C.C.A.N. 1222, 1224 (Nov. 30, 1989).

The President also properly designated acting officials under the Vacancies Reform Act. 5 U.S.C. § 3345(a).

There can be no serious question that President Trump made an appropriate and qualified pick in designating Thomas A. Monheim to be the Acting Inspector General of the Intelligence Community. Mr. Monheim has served in important legal and law enforcement positions across the government, including as General Counsel of the National Geospatial-Intelligence Agency, where he was also the Designated Agency Ethics Official, Deputy General Counsel at the Office of the Director of National Intelligence, Senior Legal Counsel at the National Counterterrorism Center, Associate Deputy Attorney General at the Department of Justice, and Associate Counsel to the President at the White House. Mr. Monheim is also a decorated veteran of our nation’s armed forces. He retired as a Colonel in the U.S. Air Force Reserves, and in his military career he served as a judge, prosecutor, defense counsel, Deputy General Counsel of the White House Military Office, and Senior Individual Mobilization Augmentee. For his distinguished service, Mr.

Monheim has been awarded the Presidential Meritorious Executive Award, the Director of National Intelligence Exceptional Service Award, the Legion of Merit, and the Bronze Star.

President Trump made an equally appropriate and qualified pick in designating Stephen J. Akard to serve as Acting Inspector General for the Department of State. Ambassador Akard has a long history of service in the State Department. He currently serves as the Director of the Office of Foreign Missions, having been confirmed by a nearly unanimous, bipartisan majority of the Senate in 2019. In this position, he is responsible for the implementation of decisions regarding the treatment of foreign missions and their members in the United States. Ambassador Akard also served as Senior Advisor and Acting Chief of Staff in the Office of the Under Secretary of State for Economic Growth, Energy, and the Environment and as a career Foreign Service Officer with service in the Department's Executive Secretariat and postings in Belgium and India.

Your May 18 letter also raised the President's designation of the Acting Inspector General for the Department of Transportation. The Senate-confirmed Inspector General for the Department of Transportation retired earlier this year. On May 15, 2020, President Trump announced his intention to nominate Eric Soskin to serve as Inspector General and designated Howard "Skip" Elliott to serve as Acting Inspector General. In Mr. Elliott, President Trump once again selected a highly qualified individual to serve as an acting inspector general. Mr. Elliot, who in 2017 was confirmed by voice vote as the Administrator of the Pipeline and Hazardous Materials Safety Administration, has a long career in law enforcement and public safety. In addition to serving seven years as a police officer, Mr. Elliot graduated from the Indiana Law Enforcement Academy and holds a Master of Science degree in Criminal Justice Administration and a Bachelor of Arts with a major in Forensic Studies. Previously, Mr. Elliott worked in the freight railroad industry, including as Vice President of Public Safety, Health, and Environment for CSX Transportation. He has also served on the FBI-DHS Domestic Security Alliance Council and as a Special Deputy U.S. Marshal for the U.S. Marshals Service.

Each of these three officials has the qualifications and experience to serve honorably and effectively in an acting capacity. And all of these officials will coordinate with relevant agency officials, including designated agency ethics officials, to ensure that they are properly discharging the duties of the inspector general.

Just like Mr. Monheim, Ambassador Akard, and Mr. Elliott, the President's eight pending and two recently announced nominees to be inspectors general are individuals of exceptional accomplishment and experience. Their outstanding credentials demonstrate that they would be vigilant and effective inspectors general. In choosing these individuals, the President has taken care to consider the qualities that Congress recommended in the Inspector General Act, selecting them "on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations." 5 U.S.C. app. 3, § 3(a).

We hope the U.S. Senate will swiftly confirm the President's nominees so that they can start their important work as inspectors general in service of the Executive Branch and the American people.

Respectfully,

A handwritten signature in black ink, reading "Pat A. Cipollone". The signature is written in a cursive style with a large, looping initial "P".

Pat A. Cipollone
Counsel to the President

cc: Hon. Ron Wyden, U.S. Senator
Hon. Susan M. Collins, U.S. Senator
Hon. Dianne Feinstein, U.S. Senator
Hon. Gary C. Peters, U.S. Senator
Hon. Mitt Romney, U.S. Senator
Hon. Jon Tester, U.S. Senator
Hon. Mark Warner, U.S. Senator