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**STATEMENT OF
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**BRIEFING ON
“RIGHTS, RESOURCES & RECOURSES FOR DOJ EMPLOYEES TARGETED BY THE
TRUMP ADMINISTRATION”**

**BEFORE THE
DEMOCRATIC MEMBERS OF THE HOUSE JUDICIARY COMMITTEE**

JANUARY 31, 2025

Ranking Member Raskin and members of the Committee:

Thank you for holding this important briefing on the rights, recourse and resources available to Department of Justice employees currently under assault from the new administration. My name is Dana Gold, and I serve as Senior Director of Advocacy & Strategy and Director of the Democracy Protection Initiative of the [Government Accountability Project](#),¹ a nonprofit, nonpartisan, public interest whistleblower protection and advocacy organization that for nearly 50 years has sought to promote government and corporate accountability by protecting whistleblowers and ensuring their disclosures make a difference. Government Accountability Project has led or been on the front lines of campaigns to enact or defend nearly all modern whistleblower laws passed by Congress, including the Whistleblower Protection Act of 1989,² as well as 1994 and 2012 amendments to this legislation, the primary law that empowers federal employees to report violations of laws, rules or regulations, gross mismanagement, gross waste of funds, abuses of authority, and substantial and specific dangers to the public health and safety free from retaliation.

The Whistleblower Protection Act (WPA) is embedded in the Civil Service Reform Act of 1978 (CSRA), which is the cornerstone legislation that protects the merit system that has been in place since 1883 to ensure that federal civil servants are loyal to the constitution and the rule of law rather than to a President, administration or party, and are protected from inappropriate political interference in their hiring, firing and in the execution of their work fulfilling the mission of their agencies that serve the public's interests. Federal employees have due process rights protected by the merit system—including but not limited to their rights to report

¹ Founded in 1977, Government Accountability Project promotes corporate and government accountability by protecting whistleblowers, advancing occupational free speech, and empowering citizen activists.

² Whistleblower Protection Act, 5 U.S.C. § 2302 (b)(8)-(9).

wrongdoing, to refuse to obey illegal orders, and to not be gagged from exercising their speech rights—and these rights not only encourage expertise, continuity, and commitment to government service rather than political patronage, but more importantly, recognize that employees committed to compliance with, and in the Department of Justice’s case, enforcement of, the Constitution and laws passed by Congress, are the best mechanism for accountability because they are in the best positions to discover, prevent or mitigate serious illegality, abuses of power and dangers to public health and safety. Not only do we just need nonpartisan civil servants to execute the functions of government that touch on every aspect of our lives, we need them to be able to warn against misconduct that undermines those very functions, such as protecting against unsafe meat, poultry or baby food, nuclear weapons explosions, health care fraud, and railroad and airplane disasters, like the tragic one that occurred earlier this week.

The relentless battery of attacks on the civil servants across the government, and particularly at the DOJ, is a blatant effort to literally remove or drive out the federal employees who are the guardrails of accountability. And indeed, these efforts, consistently executed without compliance with employees’ due process rights and in many cases amounting to prohibited personnel practices, have the additional effect of chilling employees from exercising their rights to blow the whistle or defy illegal orders for fear of suffering retaliation with impunity, further undermining enforcement and accountability mechanisms by suppressing reports of evidence of misconduct.

The fears of retaliation and futility—the two primary reasons employees stay silent in the face of wrongdoing—could not be more real in an age of political violence and profound challenges in the integrity, functionality, or sometimes both, of the three branches of government.

My colleagues here today have talked about challenges to many of the actions targeted at wide swaths of employees working on matters undesirable to the current administration, such as DEI initiatives; the “Fork in the Road” memo encouraging employees to consider deferred resignations; and the targeted removals of employees invoking Article II powers asserting Executive power over Congress’s power. But we are starting to see speech-based resistance to the policies’ implementation—both the consequences of these White House Executive Orders and memos and the manner of their execution.

Today, employees still have rights and avenues for recourse, even if weak and under threat. They also have resources.

DOJ Employees Have Rights

First, DOJ employees along with almost all federal employees have rights to report wrongdoing; to refuse to obey illegal orders like Nicholas Gottlieb of USAID [reportedly](#) did yesterday when he refused to fire employees in violation of their due process rights; and to not be gagged from exercising any of their speech rights by illegal nondisclosure orders or directives. 5 USC §§ 2302(b)(8) and (b)(9) are key elements of the Whistleblower Protection Act embedded in the CSRA. Under Section 2302(b)(8) of the WPA, employers may not take or fail to take, or threaten to take or fail to take, a personnel action with respect to an employee because they disclose information they **reasonably believe** evidences:

- A violation of law, rule or regulation
- Gross mismanagement
- Gross waste of funds
- Abuse of authority
- A substantial and specific danger to public health and safety

- Also, censorship related to research, analysis, or technical information that result, or would result, in any of the above forms of misconduct.

The standard is reasonable belief, measured by a subjective and objective standard rooted in verifiable evidence. The range of issues that are protected speech are not limited to illegality but a wider range of serious concerns, because a bipartisan Congress has recognized that employees are the best mechanisms for compliance, risk mismanagement, and protecting the public's interests. Employees need not go through a chain of command to report problems; their disclosures can be formal or informal; can be made to the Office of Special Counsel (OSC) which receives and investigates disclosures, but also to an Inspector General, Congress, agency officials, law enforcement entities, and the press. All are protected recipients of information. Their information catalyzes the mechanisms of accountability, including this body's role in conducting oversight.

Under Section 2302 (b)(9)(D), employees may not suffer adverse personnel actions or threats of personnel actions for **refusing to obey an order that would require the individual to violate a law, rule or regulation**. While the burden is on the employee to prove the illegality of the order—it is not a reasonable belief standard, so refusing to obey an illegal order is a riskier to an employee that merely raising the concern—this provision supports employees put in a compromised position of being asked to follow orders that conflict with their oath of loyalty to the Constitution and their office, not to a supervisor, political appointee or President.

Employers may not take or fail to take, or even threaten to take or fail to take, personnel actions that include (i) an appointment; (ii) a promotion; (iii) disciplinary or corrective action; (iv) a detail, transfer, or reassignment; (v) a reinstatement; (vi) a restoration; (vii) a reemployment; (viii) a performance evaluation; (ix) a decision concerning pay, benefits, or

awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph; (x) a decision to order psychiatric testing or examination; (xi) the implementation or enforcement of any nondisclosure policy, form, or agreement; and (xii) any other significant change in duties, responsibilities, or working conditions.

Finally, under 5 USC § 2302(b)(13), employees' whistleblower rights supersede any nondisclosure policy, form, or agreement, and makes it unlawful to implement or enforce any nondisclosure directives that do not have mandated language reminding employees of their rights to communicate with Congress, to report to an Inspector General or the Office of Special Counsel a violation of law, rule or regulation, gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or any other whistleblower protection. Prohibiting employees from exercising their speech rights, or chilling them with nondisclosure directives that fail to reinforce their rights to report wrongdoing, is a pernicious practice that undermines transparency and accountability.

DOJ Employees Have Recourse

5 U.S.C. § 1214(b)(1) authorizes the Office of the Special Counsel (OSC) to request that the Merit Systems Protection Board order a stay of a personnel action if there are reasonable grounds to believe the action is the result of a prohibited personnel practice. Employees may also make protected disclosures to the Office of Special Counsel, and file Prohibited Personnel Practice claims if they suffer retaliation, appealable to the MSPB. Employees may directly appeal a prohibited personnel action to the MSPB if they suffer serious personnel actions for their whistleblowing.

Union Collective Bargaining Agreements may be one remaining mechanism for enforcement of whistleblower rights, because whistleblower rights and adverse actions are recognized as unfair labor practices enforceable by union arbitration. Currently federal employees must choose between whether to pursue a remedy as a union grievance or to pursue a whistleblower retaliation claim before the OSC.

There are grave threats to the whistleblower rights of federal employees. The new rebranded Schedule F (Schedule “Policy/Career”) would reclassify large swaths of federal workers into a schedule that would deprive them of their civil service rights—including their whistleblower rights—removing enforcement of those rights by the independent entity (OSC/MSPB) and instead having them adjudicated in some undefined process by the very agency accused by the employee of engaging in both wrongdoing and retaliation. This would effectively strip those rights of any meaningful enforcement, with the proverbial fox guarding the henhouse. This EO is being challenged already with multiple lawsuits in different federal district courts.

If the OSC and MSPB are gutted and/or politicized, they could become dangerous rather than protected avenues for employees to make disclosures. Increasingly, those employees willing to speak up will need to go to friendly members of congress and the press for insulation and effectiveness, with the support of experienced attorneys.

DOJ Employees Have Resources

Professional associations, employment attorneys, unions and civil society organizations are collaborating to ensure that civil servants and those working to support them are empowered with information about their rights and options as well as how to access and secure legal support. Government Accountability Project offers several [free resources](#) for federal employees,

including [Truth-Telling in Government: A Guide to Whistleblowing for Federal Employees, Contractors, & Grantees](#) (updated version forthcoming) and [Caught Between Conscience and Career: Expose Abuse Without Exposing Your Identity](#), published in collaboration with our allies at Project on Government Oversight (POGO) and Public Employees for Environmental Responsibility (PEER). These and other resources are curated at www.civilservicestrong.org, a hub for the most current information to help federal employees navigate the confusion about their rights, risks and options. Additionally, the Partnership for Public Service is posting answers to Frequently Asked Questions they are receiving from hundreds of federal employees each day at <https://ourpublicservice.org/supporting-federal-employees-through-change/#latest>. Finally, attorneys at Protect Democracy's [Dear Civil Servant](#) letters, part of its If You Can Keep It series, offers advice and action steps for federal employees.

In addition, Government Accountability Project offers trainings for civil servants about their whistleblower rights and best practices in collaboration with the Partnership for Public Service as part of their [Federal Employee Explainer Series](#), as well as with federal employee unions, professional associations, and agency affiliate groups such as the DOJ Gender Equality Network. We also conduct trainings (as well as [offer free guides](#)) for how to work with employee sources for allies such as journalists, public interest organizations and faith leaders to ensure that workers are protected and not inadvertently harmed.

Finally, we offer pro and low bono support to federal employees seeking legal advice and representation for reporting concerns and protecting against or seeking justice for suffering retaliation. While we are unable to represent everyone, we have recruited a cadre of experienced attorneys to provide pro bono support in conducting rapid response intakes, drafting disclosures and filing retaliation claims to grow our capacity to protect federal employees who choose to

exercise their rights to disclose abuses. Employees seeking assistance from Government Accountability Project can contact us via our secure intake portal at <https://whistleblower.org/how-to-request-assistance/>.

If we are unable to provide support, we are working closely with private attorneys and other organizations, including the Metro Washington Employment Lawyers Association ([MWELA](#)) and the National Employment Lawyers Association ([NELA](#)) to ensure that employees are empowered with referrals. Further, [Justice Connection](#), a project of which Government Accountability Project is a fiscal sponsor, launched to provide a wide range of assistance to DOJ employees specifically by harnessing the talent of the robust network of DOJ alumni.

Employees are already vulnerable, but their fear is turning into righteous anger for the mistreatment they are experiencing simply for doing their jobs as nonpartisan career civil servants. The more employees can exercise their rights to speak up about wrongdoing or to refuse to obey illegal orders, the more they will inspire others to do the same. We have seen for decades the power of one individual to make a difference when they exercise their rights—and their duty having taken an oath to uphold the constitution—to speak truth about illegality and abuses of power. But they don't catalyze accountability alone. They need expert legal support, protection by Congress, protected independent oversight mechanisms, support from civil society bringing lawsuits on whistleblowers' underlying disclosures and other advocacy, reporting by a free press, and their rights not only protected but strengthened. Civil servants are the only major sector of America's labor force without court access to defend their free speech rights. Strengthening whistleblower protection laws is essential to protect the employees who protect all of us.

Whistleblowers have been vital to accountability no matter which administration or party holds power. Providing education and then support to federal employees to help them exercise and defend their rights to expose illegality, abuses of power, and dangers to the public—to use the power of truthful information to drive accountability—is vital to protecting the rule of law and our democracy. I am grateful to this Committee for its work to support the DOJ employees and other nonpartisan civil servants on whom we all depend.