

**United States Senate**  
WASHINGTON, DC 20510

March 8, 2021

**VIA ELECTRONIC TRANSMISSION**

The Honorable Sean O'Donnell  
Acting Inspector General  
Department of Defense

Dear Acting Inspector General O'Donnell:

We write to express our concern regarding the January 20, 2021 decision by the National Security Agency (NSA) to place its career General Counsel, Michael Ellis, on administrative leave. The Biden administration's decision to place Ellis on leave appears to be politically motivated and we request that you begin a review of the facts, circumstances and process that the administration used to justify their decision to place him on administrative leave.

Publicly available information indicates that Mr. Ellis was selected for his career position through a lengthy, rigorous, and fair process. The General Counsel position was advertised publicly in January 2020, a career panel of lawyers found Ellis to be qualified for the position before any political appointee was involved in the process, and he was interviewed by a panel that included a career intelligence lawyer.<sup>1</sup> Moreover, his service as a political appointee does not disqualify him from the NSA General Counsel position. The two prior General Counsels of NSA served as political appointees before their service at the Agency. Mr. Raj De, General Counsel from 2012 to 2015, had served as Staff Secretary under President Obama, and Mr. Glenn Gerstell, General Counsel from 2015 to 2020, was appointed by President Obama as a member of the National Infrastructure Advisory Commission. Unlike Ellis, neither had significant experience working with the Intelligence Community before their appointment at NSA.<sup>2</sup>

Public reports also suggest that NSA may have attempted to subvert the merit system principles by refusing to appoint Ellis after his selection. Ellis was selected for the position in November 2020, and reportedly successfully completed his NSA's polygraph examination, psychological screening, and background investigation in early December 2020, yet NSA did not

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<sup>1</sup> Mollie Hemingway, "Breaking Norms and Precedent, Biden Attempts to Purge Career Intelligence Official," The Federalist, Jan. 22, 2021.

<sup>2</sup> Id.; Ellen Nakashima, "NSA Is 'Moving Forward' To Install Michael Ellis, a Former GOP Operative, as its Top Lawyer, the Agency Said," Washington Post, Jan. 17, 2021.

move forward with his appointment.<sup>3</sup> Even after the Office of Personnel Management determined that it did not have the authority to review NSA appointments—a conclusion that should have been clear from prior NSA General Counsels who held politically appointed positions—NSA reportedly did not move forward with Ellis’s appointment.<sup>4</sup> According to public reports, unlike for prior Obama-era General Counsel appointments, NSA demanded additional written approvals before appointing Ellis.<sup>5</sup> Reports also indicate that NSA refused to abide by the selecting authority’s decision until ordered to do so by the then-Acting Secretary of Defense, a step that may have constituted “a violation of merit system principles and processes” by NSA leadership.<sup>6</sup>

NSA may also have unlawfully retaliated against Ellis by initiating a security inquiry of Ellis. According to public reports, Ellis has held a security clearance for more than a decade without incident, serving in senior intelligence roles in Congress and at the White House.<sup>7</sup> On January 19, 2021, as part of his new employee in-processing, NSA granted Ellis a Top Secret/Sensitive Compartmented Information (SCI) security clearance. At that time, NSA had in its possession all relevant facts regarding Ellis’s handling of classified information. Yet merely one day later, in the afternoon of January 20, 2021, NSA informed Ellis for the first time and without any explanation that there was a security inquiry with respect to his handling of classified information. This highly unusual sequence of events suggests that NSA initiated its security inquiry on the basis of political pressure from the newly installed Biden administration, not any legitimate security concern.

Placing qualified individuals on administrative leave and subjecting clearance holders to security inquiries is an extraordinarily serious matter that can create a life-long negative impact on a person’s career and therefore can only be done on the surest foundation. The publicly reported fact pattern raises serious questions about whether the Defense Department and NSA properly followed all laws, rules and regulations with respect to the administrative actions against Ellis.

We understand that the Inspector General (IG) of the Department of Defense may be reviewing the Department’s process of selecting and hiring Ellis. Accordingly, we request that the scope of the ongoing review be expanded to include the facts, circumstances and process by which NSA decided to place Ellis on administrative leave and open a security inquiry. We

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<sup>3</sup> Mollie Hemingway, “Breaking Norms and Precedent, Biden Attempts to Purge Career Intelligence Official,” *The Federalist*, Jan. 22, 2021.

<sup>4</sup> *Id.*; Kristina Wong, “Democrats Attempt to Purge Civil Servant from Job Over Prior Work for Nunes, Trump Administration,” *Breitbart News*, Jan. 23, 2021.

<sup>5</sup> Julian Barnes and Michael S. Schmidt, “N.S.A. Installs Trump Loyalist as Top Lawyer Days Before Biden Takes Office,” *New York Times*, Jan. 17, 2021.

<sup>6</sup> Patrick Turner, “Biden’s NSA May Face Legal Fight Over Trump-Installed Lawyer,” *DefenseOne*, Jan. 19, 2021.

<sup>7</sup> Mollie Hemingway, “Breaking Norms and Precedent, Biden Attempts to Purge Career Intelligence Official,” *The Federalist*, Jan. 22, 2021.

further request rolling updates from you on the status of such review or other inquiry into the selection and hiring of Ellis, including if any evaluation or other inquiry has concluded.

Thank you for your attention to this important matter.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Judiciary



Joni Ernst  
U.S. Senator



Tom Cotton  
U.S. Senator

Copies to:  
Lloyd Austin, Secretary of Defense  
Thomas Monheim, Acting Inspector General of the Intelligence Community