

January XX, 2023

President Joseph Biden  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

**Attention:** Stuart Delery, White House Counsel

**Subject:** Cathy Harris, Tristan Leavitt and Raymond Limon, the lawyer-leaders of US Merit Systems Protection Board (MSPB), violate their most important statutory duty to you and Congress, putting America at unnecessarily increased risk of nuclear 9/11 or other existential catastrophe

Dear Mr. President,

**Our Request:**

That you direct - regardless of the objections of Cathy Harris, Tristan Leavitt and Raymond Limon - the Attorney General, per 28 U.S.C. §511, issue an opinion of how they - as their predecessors since 1979 - have interpreted and applied the statutory duty found within 5 U.S.C. §1204(a)(3) to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.” This report has yet to be made.<sup>1</sup>

**Background to this request:**

We are federal agency whistleblowers, past and present, together with other advocates for merit-based federal employment practices, making a whistleblower disclosure about an unlawful threat to those practices and; therefore, to the health, safety, security and welfare of Americans.

In our opinion, Cathy Harris, Tristan Leavitt, and Raymond Limon, the three lawyer-leaders of the MSPB, just as their predecessors since 1979, are failing in their oaths as attorneys and federal agency employees, by refusing or failing to comply with their single most statutory duty to you

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<sup>1</sup> Was this public interest adequately protected the failure to prevent 9/11? In loss of two space shuttles? At the Gulf Oil Spill? In going to war in Iraq for false reasons? In the economic meltdown of 2008? In seemingly endless Veterans Affairs scandals? In the decades of sexual abuse suffered by female inmates in federal prisons?

We do not think so, which is why we “connect the dots” between the failure or refusal of the lawyer-leaders of MSPB to make this report and America now being at unnecessarily increased risk of a nuclear 9/11 or other existential catastrophe.

and the Congress regarding the protection of merit-based federal agency employment practices.<sup>2 3</sup>

According to the opinions of two independent legal experts, Tristan Leavitt, when he was the General Counsel and Acting Chief Executive Officer of MSPB even violated Constitutional Right to due process of Joseph Carson, PE, a nuclear safety engineer in the Department of Energy, to evade an objective review of this whistleblower disclosure. According to another independent expert legal opinion, the current lawyer-leaders of MSPB are engaged in professional misconduct in their refusal to seek an objective resolution on how they are interpreting and applying this duty.<sup>4 5</sup>

President Biden, your primary statutory duty to federal agency employees is to “take any action necessary” to ensure federal agency employment practices are merit-based, not corruption-based, so that “the public interest in a civil service free of prohibited personnel practices is being adequately protected.” This requires you to “take any action necessary” to ensure federal agency employees are adequately protected from reprisal (as other agency violations of the merit principles, which are termed “prohibited personnel practices”).<sup>6</sup>

How can you comply with your statutory duty when the lawyer-leaders of MSPB fail or refuse to determine and report whether agency heads and the Special Counsel of the US Office of Special Counsel (OSC) are performing their respective responsibilities for preventing violations of merit-based employment practices and/or protecting federal agency employees from them?<sup>7</sup>

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<sup>2</sup> This duty is found within 5 U.S.C. §1204(a)(3) and requires the lawyer-leaders of MSPB to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.”

<sup>3</sup> The failure or refusal of Cathy Harris, Tristan Leavitt and Raymond Limon, as their predecessors since 1979, to make this report precludes you, as your predecessors since 1979, from demonstrating compliance with your single most important statutory duty to federal agency employees - which is to take “any action necessary” to ensure federal agency employment practices are merit-based, not corruption-based, by 5 U.S.C. §2301(c).

<sup>4</sup> See [https://whsknox.blogs.com/mspb\\_watch/items 23 and 24](https://whsknox.blogs.com/mspb_watch/items_23_and_24).

<sup>5</sup> See [https://whsknox.blogs.com/mspb\\_watch/items 25 - 27](https://whsknox.blogs.com/mspb_watch/items_25_-_27).

<sup>6</sup> If the answer is “yes,” then why were numerous bills and resolutions considered during the 117<sup>th</sup> Congress to strengthen federal whistleblower protection? (See S.2896; S.Res. 324 and 723; H.R. 2968; H.R. 8510; H.R. 9122; and H.Res. 578 and 1301).

<sup>7</sup> Agency heads are responsible to “prevent prohibited personnel practices” by 5 U.S.C. §2302(c)(2)(A). The Special Counsel of the US Office of Special Counsel (OSC) is responsible to “protect agency employees from prohibited personnel practices” by 5 U.S.C. §1212(a)(1).

Our request is that you address the long-standing failure or refusal by the past and present lawyer-leaders of MSPB to make this report, per your duty to “take any action necessary,” to ensure federal agency employment practices are merit-based - and address the risk that corruption-based federal agency employment practices can pose to American health, safety, security and welfare.

Please heed our whistleblower disclosure, made in good faith as loyal Americans, and send a message to Executive Branch employees that you support whistleblowers and their disclosures.<sup>8</sup>

Respectfully,

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<sup>8</sup> We note that you recently re-nominated Cathy Harris to become the Chair of MSPB. We hope her confirmation process spurs the Senate to obtain a resolution of our whistleblower disclosure.