UNDER SECRETARY OF STATE

FOR MANAGEMENT

WASHINGTON

June 1, 2020

The Honorable
Eliot L. Engel, Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Engel:

We write in response to your letters of May 16, May 21, May 22, May 27, and May 28 regarding President Trump's decision to remove Steve A. Linick from the position of Inspector General of the U.S. Department of State.

Mr. Linick began serving as the State Department's Inspector General in September 2013 during President Obama's Administration and has served nearly seven years in this role, including more than three years during President Trump's Administration. The President made a decision to remove Mr. Linick from his position on May 15, 2020 and place him on administrative leave for 30 days.

As you acknowledge in your May 21 letter, the decision as to whether to remove a sitting Inspector General is committed exclusively to the President. The enclosed letter from the Office of White House Counsel describes in further detail how the President's decision in this case 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. *See* 5 U.S.C. app. 3, §3(b) (an "Inspector General may be removed from office by the President"); H.R. Rep. No. 95-584, at 9 (1977) (expressing Congress' understanding that the Inspector General Act of 1978 "would specifically allow the President to remove any Inspector General at any time."). President Trump's notices to Congress used language similar to that used by President Obama when he removed an Inspector General, noting that he "no longer" had "fullest confidence" in his ability to serve as inspector general. *Walpin v. Corp. for Nat'l & Cmty. Servs.*, 630 F.3d 184, 187 (D.C. Cir. 2011) (noting that this language "satisfies the minimal statutory mandate that the President communicate to the Congress his 'reasons' for removal.") As such, Mr. Linick's removal was entirely consistent with the Inspector General Act and within the authority of the President under Article II of the Constitution.

Because Mr. Linick's removal fell within the lawful prerogative of the Executive Branch, it is difficult to understand why the Foreign Affairs Committee believes that this action would warrant the time or resources contemplated by the Committee's several requests for transcribed interviews of Department personnel. The President has explained that he removed Mr. Linick based on information from Secretary Pompeo, and Department personnel have publicly addressed these events. At the same time, the Department is prepared to further address the Committee's interest in those Departmental concerns. The purpose of this letter is to

communicate to the Committee additional details about those concerns and to reiterate the Department's offer for further discussions with the Committee at the appropriate level and in the appropriate format to address any misconceptions about this matter.

Since receiving the Committee's initial communications, Secretary Pompeo has made a series of public statements explaining directly to the American people the concerns that led to his recommendation to remove Mr. Linick. Secretary Pompeo has made clear that the decision was not an act of retaliation. *See* Carol Morello, *Pompeo says he didn't know fired inspector general was investigating him*, Wash. Post, May 18, 2020. In addition, the Department further explained that concern over Mr. Linick had grown, among several other reasons, because of an unauthorized disclosure to the news media of information from a report about a highly-sensitive investigation that was in an early draft form, contrary to inspector general rules.

Specifically, it is my understanding that last fall, the former Deputy Secretary asked Mr. Linick to refer for review the unauthorized disclosure of a draft inspector general report, which the media attributed to "two government sources involved in carrying out the investigation" – that is, potential sources from within Mr. Linick's own office – to the Council of the Inspectors General on Integrity and Efficiency (CIGIE), an independent entity that addresses integrity issues within the Inspector General community. Further, it is my understanding that Mr. Linick agreed to that request, but the Department learned months later that, instead of referring the matter to CIGIE, Mr. Linick had asked another agency's inspector general to review the issue. In other words, Mr. Linick failed to inform the Department that he had hand-picked a different entity to investigate potential misconduct by his own office and that he had deviated from the clear course agreed upon with Department leadership. To the extent that this hand-picked investigator completed its review, the Department has not received any documented findings on the matter. We hope that the Committee would agree that this episode raises serious concerns about Mr. Linick's judgment and does not meet the high standards of trustworthiness that the Secretary would expect from an inspector general within the Department.

As the Department communicated to you by letter on May 28, 2020, we are prepared to engage in further discussions at a senior level with you, Mr. Chairman, to find a reasonable accommodation for the Committee's various requests for information, including further discussion on the multiple other bases for the Secretary's recommendation. In particular, the Department is prepared to facilitate a discussion between Members of the Committee and State Department leadership with the aim of providing further understanding of these bases and addressing any misconceptions.

Finally, we would like to assure you that Mr. Linick's removal will not prevent the State Department's Office of Inspector General from continuing to perform its important responsibilities within the Department. As you know, the President has designated Ambassador Stephen J. Akard to serve as the Acting Inspector General, and Ambassador Akard has the qualifications and experience to serve honorably and effectively in this role. Ambassador Akard has a long history of service in the State Department. He serves as the Director of the Office of Foreign Missions, having been confirmed by a nearly unanimous, bipartisan majority of the United States Senate in 2019. In this position, he has been 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. Ambassador Akard's work as the Acting Inspector General will comport with all the requirements of independence and confidentiality expected from any inspector general and will be wholly separate from his work as Director of the Office of Foreign Missions. In the course of performing his duties as Acting Inspector General, Ambassador Akard will consult with the appropriate ethics officials in the Department to ensure that he performs those duties in a manner consistent with Federal ethics rules, including by recusing himself from any particular audits or investigations where such a step would be appropriate.

We look forward to engaging with you in further discussions to reasonably accommodate the Committee's requests.

Sincerely,

Brian Bulatao

Brian Bulatao
Under Secretary of State for Management
U.S. Department of State

Enclosure:
As stated.

cc:
The Honorable
Michael T. McCaul, Ranking Member
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

THE WHITE HOUSE

WASHINGTON

June 1, 2020

The Honorable Eliot L. Engel
Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Engel:

I write in response to your letter to White House Chief of Staff Mark Meadows, dated May 16, 2020, sent in your capacity as Chairman of the House Committee on Foreign Affairs, regarding former State Department Inspector General Steve Linick.

Your inquiry to the White House seeks an extraordinarily sensitive set of information—such as "any and all" records reflecting internal discussions and evaluations—related to the removal of a Senate-confirmed executive officer, an exclusive Presidential constitutional authority that is beyond the power of Congress to legislate. 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. United States*, 272 U.S. 52, 164 (1926)). In connection with his authority to appoint and supervise executive officers, the President retains broad authority over their removal. 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.* (quoting Letter from James Madison to Thomas Jefferson (June 30, 1789), 16 Documentary History of First Congress 1789-1791, 893 (2004)).

The President's constitutional authority to remove executive officers extends to inspectors general. The Department of Justice recognized this principle during the administration of President Carter, when it objected to the constitutionality of a pending bill that would have insulated inspectors general from removal. As the Office of Legal Counsel explained, Article II vests the President with control over "the entire executive branch." *Memorandum Opinion for the Attorney General re: Inspector General Legislation*, 1 Op. O.L.C. 16, 17 (1977). And as part of that plenary control, the President has the "exclusive power to remove Presidentially appointed executive officers," including inspectors general. *Id.* at 17–18 (citing *Myers*, 272 U.S. 52).

As the Supreme Court has recognized, Congress's oversight authority plainly does not extend to "matters which are within the exclusive province of one of the other branches of the Government." *Barenblatt v. United States*, 360 U.S. 109, 112 (1959). That is, Congress "cannot

inquire into matters that are exclusively the concern of the Judiciary" and "[n]either can it supplant the Executive in what exclusively belongs to the Executive." *Id.* For that reason, the Department of Justice has consistently objected to efforts by Congress to inquire into Presidential decisions that fall within the President's exclusive constitutional authority.

Attorney General Reno took this position when advising President Clinton on the assertion of executive privilege with respect to congressional efforts to probe the President's exercise of his pardon power. *See Assertion of Executive Privilege With Respect To Clemency Decision*, 23 Op. O.L.C. 1, 2–4 (1999). When a House committee subpoenaed the White House and the Department of Justice for documents and testimony relating to President Clinton's clemency decisions, Attorney General Reno advised that, because clemency decisions are "unquestionably an exclusive province of the executive branch," *id.* at 2, "Congress' oversight authority does not extend to the process employed in connection with a particular clemency decision, to the materials generated or the discussions that took place as part of that process, or to the advice or views the President received in connection with a clemency decision," *id.* at 3–4.

Under the Constitution, the power to select and remove inspectors general—like clemency decisions—is "unquestionably an exclusive province of the executive branch." *Id.* at 2. The matter "fall[s] within the Executive's exclusive domain." *Scope of Congressional Oversight and Investigative Power With Respect to the Executive Branch*, 9 Op. O.L.C. 60, 62 (1985). Consistent with the Constitution's separation of powers and Supreme Court precedent—recognized by administrations of both political parties—Congress therefore "cannot inquire into" the President's removal of any such officer. *Barenblatt*, 360 U.S. at 112.

Although the President's constitutional authority to remove inspectors general is plenary, the President complied as a matter of comity with the statutory requirement to provide Congress with advance notification before removing former Inspector General Linick. On May 15, 2020, the President notified Congress that he was removing the Inspector General because he "no longer" had "the fullest confidence" in Mr. Linick. Letter from Donald J. Trump, President of the United States, to Nancy Pelosi, Speaker of the U.S. House of Representatives, at 1 (May 15, 2020). The Executive Branch has long recognized that this statutory requirement impermissibly burdens the President's removal authority. In the 1977 opinion cited above, the Office of Legal Counsel recognized that such a 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. at 18 (internal citations omitted).

Nevertheless, even if the reporting requirement in the Inspector General Act were constitutionally permissible, President Trump fully complied with it. The President provided the same explanation to Congress that President Obama provided when he dismissed Inspector General Gerald Walpin, and the D.C. Circuit held that explanation to be sufficient as a matter of law. *See Walpin v. Corp. for Nat. & Cmty. Servs.*, 630 F.3d 184, 187 (D.C. Cir. 2011) (recognizing that that language "satisfies the minimal statutory mandate that the President communicate to the Congress his 'reasons' for removal," and acknowledging that the statute "imposes no 'clear duty'

to explain the reasons in any greater detail"). Counsel to the President Pat A. Cipollone discussed these concepts in a letter to Senator Charles Grassley on May 26, 2020, which we attach for your reference. We understand that the State Department also sent a letter to you on May 28, 2020, regarding this matter and will soon be providing an additional response.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Michael M. Purpura
Deputy Counsel to the President

Attachment

cc: The Honorable James Risch, Chairman
Senate Foreign Relations Committee

The Honorable Michael McCaul, Ranking Member
House Foreign Affairs Committee

The Honorable Robert Menendez, Ranking Member
Senate Foreign Relations Committee

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,

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