



By Email

United States House of Representatives  
Committee on Science, Space, and  
Technology  
Committee on Oversight and Reform  
Washington, DC 20515

United States Senate  
Committee on Commerce, Science and  
Transportation  
Committee on Homeland Security and  
Government Affairs  
Washington, DC 20510

U.S. Office of Special Counsel  
1730 M Street NW # 218  
Washington, DC 20036

March 10, 2022

Re: Protected Whistleblower Disclosures of Abuse of Authority and Gross  
Mismanagement at the White House Office of Science and Technology  
Policy

To Whom It May Concern:

We, Government Accountability Project, represent Rachel A. Wallace and other staff of the  
White House Office of Science and Technology Policy (OSTP) who wish to remain anonymous.  
All are whistleblowers.

This disclosure concerns violations of laws, rules and regulations, gross mismanagement and  
abuse of trust by Dr. Eric Lander, OSTP’s recently resigned Director, and other senior managers  
who assisted or who knew better and did little or nothing to stop the misconduct. We focus on  
three significant areas of misconduct: (1) repeated and knowing disregard of ethics rules; (2)  
toxic workplace; and (3) unlawful retaliation against our clients and other staff who raised  
legitimate concerns. We request that you promptly investigate.

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## Background

On January 15, 2021, President-elect Biden announced his intention to nominate Director Lander to serve as the Director of OSTP and as the Presidential Science Advisor and that, for the first time in the nation’s history, the Science Advisor would be part of the President’s Cabinet.<sup>1</sup> The

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<sup>1</sup> Press Release, *President-elect Biden Announces Key Members of his White House Science Team* (Jan. 15, 2021), available at <https://www.presidency.ucsb.edu/documents/press-release-president-elect-biden-announces-key-members-his-white-house-science-tedam>.

Senate confirmed the Director on May 28, 2021 and he was sworn into office on June 2.<sup>2</sup> The Director resigned on February 7, 2022.

Ms. Wallace is an attorney and member of the Senior Executive Service. Over her 21-year career in federal service, she has worked at six agencies.<sup>3</sup> She first came to OSTP in 2014-15 as a Senior Counsel and returned in August 2019 as Acting General Counsel. In August 2020, she was appointed General Counsel and Chief Operating Officer (COO) – her positions when Director Lander arrived.

As General Counsel, Ms. Wallace was charged with proactively managing OSTP's ethics program, including practicing law and managing staff to avoid ethics violations and conflicts of interest and to provide ethics advice and training. She also served as the Designated Agency Ethics Official and Chief Freedom of Information Act (FOIA) Officer. As COO, Ms. Wallace was responsible for all OSTP operations.

## **Timeline**

### Pre-Confirmation: January-May 2021

#### *The Key Problem*

Within days of the President's announcement, the Director, on unpaid leave from Harvard, MIT and the Broad Institute, began working full time at OSTP – but only as a paid consultant pending confirmation. Per federal regulation, an agency may appoint an individual awaiting final action on a Presidential appointment to a consultant position.<sup>4</sup> But the same regulation substantially limits the authority and allowable duties of consultants awaiting Senate confirmation.

Throughout 2021, Ms. Wallace repeatedly provided advice about that regulation and others to Director Lander and OSTP senior managers. That is especially relevant here because, as discussed further below, each of those communications – particularly warnings of violations of laws, rules and regulations -- were protected disclosures under the federal whistleblower statute (5 U.S.C. § 2302(b)). The statute prohibits agency management from taking adverse personnel actions against employees who make protected disclosures. That is precisely what Dr. Lander did here. As detailed below, Ms. Wallace was the victim of multiple acts of retaliation.

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<sup>2</sup> Prior to confirmation Dr. Lander's title was Consultant; for this letter he is referred to throughout as the Director.

<sup>3</sup> OSTP (2019-present and 2014-15); Department of Commerce (2015-19); OMB (2017); U.S. Patent and Trademark Office (2011-14 and 2000-02); U.S. Coast Guard (2009-11); and Department of State (2002-09).

<sup>4</sup> The pertinent regulation is codified at 5 CFR § 304.103.

*First Protected Disclosures*

On January 19, 2021, Ms. Wallace met with Director Lander and some of his new team for the first time. She introduced OSTP's attorneys and provided a briefing on ethics and legal issues. Ms. Wallace answered the Director's questions about the scope of his duties and authorities and advised him about what he could and could not do under the applicable regulations. For instance, a nominee could familiarize himself with the people, policies and operations of OSTP – to hit the ground running once confirmed by the Senate. But Director Lander was told then and at subsequent meetings that, per the regulation, he could not perform managerial or supervisory work or be part of the agency's chain of command concerning personnel or other actions.<sup>5</sup>

Director Lander did not like hearing this. No later than February 2, 2021, he made his views known to Ms. Wallace and other staffers. That morning Ms. Wallace briefed the Director on OSTP's hiring authorities. During the briefing, he became visibly agitated, cut Ms. Wallace off, raised his voice, and spoke disrespectfully.

Later that afternoon, Ms. Wallace, after hearing that Director Lander was recruiting staff (prohibited under the regulation), again advised him that as a consultant he should not recruit or promise jobs or be engaged in any decision-making. The Director asked whether he could participate in new hire interviews; Ms. Wallace advised against it as that would be equivalent to participating in a selection process. That, too, angered the Director. The conversation ended with Ms. Wallace saying she was there to support him and the agency and to ensure he avoided potential trouble. Director Lander said he got that but would follow up with the White House and the White House Counsel's Office (WHCO).

*First Report to White House Counsel*

The tenor of these early conversations was so concerning that, for the first time in her career, Ms. Wallace reached out for help – also to the WHCO. The next day, February 3, she reported to a WHCO attorney (WHCO Attorney 1) what had happened -- that Director Lander was very upset with the regulatory constraints placed on consultants, that she and other staff had had a very uncomfortable meeting, and that he had treated them disrespectfully. The attorney asked to be kept informed if there were any other issues like this. As discussed below, Ms. Wallace did.

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<sup>5</sup> 5 CFR § 304.103(b)(3) states that an agency may not appoint a consultant:

To perform managerial or supervisory work (although an expert may act as team leader or director of the specific project for which he/she is hired), to make final decisions on substantive policies, or to otherwise function in the agency chain of command (e.g., to approve financial transactions, personnel actions, etc.).

### *Second Protected Disclosures*

Later in February, Ms. Wallace learned that Director Lander wanted to hire an individual as an unpaid consultant to provide communication support during his confirmation process. Ms. Wallace advised against it because the Director – still a consultant and per the regulation – was not authorized to offer staff positions and because of the individual’s relationship with one of the Director’s institutional employers that had granted him unpaid leave. This violated conflict of interest laws, rules and regulations.<sup>6</sup> Days later, Ms. Wallace was informed by a senior manager (Senior Manager 1) that the Director and Senior Manager 1 intended to hire the individual. Again, Ms. Wallace advised against it (another protected disclosure). In response, Senior Manager 1 acknowledged the risk involved but said they were willing to take the risk. The individual was not hired but, as a private individual, improperly provided support and directed OSTP staff during the Director’s confirmation process.

### *Third Protected Disclosures*

In early April, Ms. Wallace again advised Director Lander that he was acting beyond the regulatory limit of his consultancy. Ms. Wallace learned that the Director had requested the installation of a new system for managing agency documents. In an April 6, 2021 email, she provided “a gentle reminder that, as a consultant, you are prohibited from making management or other decisions for OSTP.” Ms. Wallace advised that he defer to Senior Manager 1 (who was not a consultant) on those matters “to avoid any perception that you are engaging in management activity.” System implementation began before the Director’s confirmation.

In mid-April, Ms. Wallace learned that the agency planned to shortly hire five more unpaid consultants. Ms. Wallace contacted Senior Manager 1 and suggested limiting the number of consultants. By supplanting staff roles, the agency risked being accused of skirting Federal Advisory Committee Act rules, and the Government Accountability Office (GAO) had previously criticized agencies for having too many consultants.<sup>7</sup> Three of the five were hired.

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<sup>6</sup> 18 USC § 208(a) prohibits individuals from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

<sup>7</sup> GAO, *Federal Workforce: Inappropriate Use of Experts and Consultants at Selected Civilian Agencies*, Report No. GGD-91-99 (1991), available at <https://www.gao.gov/products/ggd-91-99Commerce>.

### *Bullying and Retaliation*

As OSTP's chief ethics officer, General Counsel and COO and a member of senior management, Ms. Wallace often fielded workplace complaints. In early May 2021, two staffers reported they had been treated poorly by Director Lander and by another senior manager he had recruited (Senior Manager 2).

On his first day in office, President Biden told his appointees:

If you're ever working with me, and I hear you treat another colleague with disrespect, talk down to someone, I promise you I will fire you on the spot. On the spot. No ifs, ands, or buts. Everybody, everybody is entitled to be treated with decency and dignity.<sup>8</sup>

On May 14, 2021, the White House formally issued its Safe and Respectful Workplace Policy. As relevant here, it states that bullying and retaliation "violate the respect owed to every employee in the White House, and such conduct will not be tolerated." Section III.d specifically addresses bullying and states in full:

Bullying is repeated behavior that a reasonable individual would find disrespectful, intimidating, hostile, degrading, humiliating, or offensive. Unlike harassment, discrimination, or retaliation, bullying can occur regardless of whether it is based on an individual's protected status or activities. It may occur in person or virtually, such as by email, phone, video conference or using social media. Bullying may include, but is not limited to:

- Hostile monitoring or micromanaging;
- Deliberately excluding or isolating an employee from work-related activities in which the employee would normally be included;
- Unfairly singling out an employee for unfavorable work assignments or demands;
- Regularly teasing or making an individual the brunt of pranks or practical jokes;
- Publicly reprimanding, embarrassing, or shouting at an individual; and
- Verbal or physical abuse, jokes, humiliation, threats, or offensive comments.

Before and after the Director's confirmation, Ms. Wallace and others repeatedly experienced the kinds of explicit and subtle bullying expressly prohibited by the policy.

### *Marginalization and Humiliation*

By early March 2021, Ms. Wallace discovered she was being omitted from emails covering operational matters ordinarily handled by the COO. In late May 2021, she learned that Senior

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<sup>8</sup> Yahoo News, *Biden Tells Appointees 'I Will Fire You on the Spot' for Showing Disrespect to Colleagues* (Jan. 20, 2021), available at <https://www.yahoo.com/video/biden-tells-appointees-fire-spot-000137278.html>.

Manager 1 wanted to hire another senior manager whose duties (according to its job description) were ones that already belonged to Ms. Wallace and other staff who reported to Ms. Wallace. Ms. Wallace and other staff shared their concerns with Senior Manager 1. Nothing was done; the senior manager (Senior Manager 3) was appointed.

Staff reported to Ms. Wallace about an early staff meeting involving Senior Manager 2 and another senior manager. The managers had obtained a copy of one of the attendees' resume and, in front of the staffer and others, looked at it, began to laugh, and questioned the staffer's involvement with a college student partisan political organization. The staffer was embarrassed and humiliated.

Post-Confirmation: June 2021 – February 2022

The situation did not change after Director Lander was sworn in on June 2.

*June 7 Call*

Ms. Wallace learned that on a call held on June 7, the Director, Senior Manager 1 and others met with career OSTP staff. During the call, the Director yelled at a staffer on the line, criticized the memos the staffer had prepared and asked what the staffer's "fetish" was with the memos. The incident was so embarrassing and upsetting that the staffer started looking for a job the next day. Soon after the call, the staffer also complained to Senior Manager 1 who, amazingly, said that the manager had not heard what the Director had said because the manager had "tuned Eric out."

*Hiring Two Campaign Workers as "Consultants"*

On June 15, 2021, Senior Manager 1 informed staff that the senior manager and the Director wanted to hire two Biden campaign workers to work in the Director's office as consultants. Senior Manager 1 said in an email: "I recognize that the WH may have concerns about the use of consultants, but I have full confidence they will be receptive to ensuring these two young professionals with recent presidential campaign experience have opportunities to serve." Ms. Wallace was not sent this email. Nonetheless, once learning of it, she disclosed to senior management her compliance concerns. She told Senior Manager 1 they would not qualify to be consultants because of their lack of experience. In addition, she pointed out that hiring them because of their political connections would be a violation of President Biden's Ethics Pledge.<sup>9</sup> After Ms. Wallace complained to WHCO about this, the two were hired as Schedule C employees, not consultants.

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<sup>9</sup> Section 1.8 of the Pledge States: "*Employment Qualification Commitment*. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience." *Executive Order on Ethics Commitments by Executive Branch Personnel* (Jan. 20, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-ethics-commitments-by-executive-branch-personnel>.

*Senior Manager and Others Mistreated*

Around the same time in June, another senior manager told Ms. Wallace that the manager was having some really uncomfortable interactions with the Director. He had yelled at and said the manager was a bad leader. The manager then reached out to Senior Manager 1 for help and, to put more distance between the manager and the Director, secured an internal transfer. The manager also told Ms. Wallace that others, particularly females, had been mistreated.

*Second Report to White House Counsel*

On June 16, 2021, Ms. Wallace spoke to WHCO Attorney 1. She disclosed new issues also contrary to laws, rules and regulations:

- About the Director's efforts to pressure staff, particularly women – most of whom were on telework due to the pandemic -- to return to work in person;
- About the Director's yelling at minority staff and demeaning and disrespecting female staffers; and
- About the ongoing efforts to sideline or displace existing career and non-career staff.

On June 21, 2021, Ms. Wallace had a follow up call with the WHCO attorney and another attorney (WHCO Attorney 2). She told them:

- At least four staffers had expressed fears about retaliation;
- That multiple staffers had observed the Director yelling at Asian American staff;
- That multiple female staffers had reported uncomfortable interactions with the Director;
- That the Director had called several women to ask them to report to work in person, making them feel uncomfortable and pressured; and
- That mostly female career and non-career staff had reported being sidelined.

On June 30, 2021, WHCO Attorney 1 emailed Ms. Wallace to ask that she re-circulate the May 14 Safe and Respectful Workplace Policy. Ms. Wallace replied she had done so, that she had learned of "a number of other women on staff who had have had similar experiences," and she questioned – since she had already shared her story -- why they needed more information in order to take appropriate next steps.

Ms. Wallace did not hear from the WHCO attorneys again for four months. And, as discussed further below, when they did call she was told the WHCO considered the case closed.

*The June Leadership Retreat: Ms. Wallace Not Invited and Staff Bullied*

During the last week of June 2021, OSTP held a retreat for senior management. Ms. Wallace was not invited. She was informed by Senior Manager 1 that the invitations had come from Director Lander -- another example of deliberate exclusion which violated the Safe and Respectful Workplace Policy.

At the retreat, staff reported further bullying by the Director and other senior managers. Ms. Wallace was told that in one meeting where a staffer was presenting to the assembled group, the Director had repeatedly interrupted, spoken down to and had laughed at the staffer – leading other senior managers present (including Senior Managers 1 and 2) to join in the laughter. Before the meeting ended, the staffer was dismissed so that the those who remained could decide what to do about the staffer’s work portfolio. The staffer was humiliated.

*Bullying and Staff Fears of Retaliation*

On June 30, 2021, Ms. Wallace spoke to another staffer who said that the Director had repeatedly cut the staffer off, belittled the staffer and made the staffer feel stupid. The staffer heard many women staffers talking about being treated this way, that they had their portfolios taken away without warning, that they were given meaningless assignments to complete -- leadership had already decided on specific courses of action but had not communicated that to staff. The staffer said everyone was afraid to speak out of fear of being retaliated against.

Two days later, Ms. Wallace spoke to yet another staffer who reported more of the same mistreatment. The staffer said the Director regularly speaks to the staffer in a demeaning way, that he interrupts, talks down to and tells the staffer she is wrong, and that the staffer had witnessed the Director treating others the same way.

*Director Lander Advises on Ethics*

Also in July, Ms. Wallace discovered that Director Lander was giving ethics advice to recruits which contradicted the advice provided by Ms. Wallace, still the chief ethics officer, and her team. In one instance, a recruit was advised by an OSTP attorney that the recruit should not accept any research funding from outside entities while working at OSTP. The recruit had complained to the Director who told the recruit that advice provided by the attorney was not correct and that the recruit *did not need to comply with it*.

Director Lander then went to WHCO attorneys and asked them to talk to Ms. Wallace about the advice, which they did. The advice provided by the OSTP attorney was not changed. Ms. Wallace emailed the Director and let him know that, instead of going to the WCHO when he disagreed with the ethics provided by OSTP attorneys, he should feel comfortable coming to her directly to discuss. Director Lander replied by attaching a long memo *he* had prepared explaining why the recruit would not need to follow the OSTP lawyers’ ethics advice. Ms. Wallace replied that – after she and her team had reviewed the memo – their advice would stand: the recruit should not accept funding from outside entities while at OSTP. Ms. Wallace heard nothing further from the Director about that recruit.

But the Director followed the same playbook with *another* recruit. Ms. Wallace learned that the Director had given that recruit ethics advice and had proffered a remedy for potential ethics conflicts. He never consulted the OSTP legal team.

*A “Misunderstanding”*

On August 24, 2021, Ms. Wallace met with Senior Manager 1 and asked for an update about the vacant senior OSTP attorney position Ms. Wallace was trying to fill. A finalist had been selected, had been interviewed by Senior Manager 1, and Senior Manager 1 had previously told Ms. Wallace that the finalist would be brought on board once the Director approved. Senior Manager 1 reversed course at the August 24 meeting, telling Ms. Wallace that the Director was not going to allow Ms. Wallace to bring on any more attorneys. No reasons were provided. Ms. Wallace asked Senior Manager 1 to tell the Director – who now seldom communicated with Ms. Wallace – that without that vacancy filled there was not enough legal staff to support the work of OSTP.

Ms. Wallace reiterated what she had said in an email sent to the Director later that day and wrote that she “would welcome a dialogue with you about this.” Two days later, Senior Manager 1 sent an email to Ms. Wallace stating that she had “misunderstood” their conversation and that the Director would review additional legal hires “in due course.” The finalist was ultimately hired by the new General Counsel hired to replace Ms. Wallace (discussed further below).

*More Protected Disclosures*

At or around the end of August, Ms. Wallace discovered that a recently hired OSTP consultant on leave from a private employer was arranging for the employer to fund OSTP staff. Ms. Wallace spoke to the consultant, provided written guidance on the ethics rules applicable to consultants, and said the consultant could not arrange for the consultant’s employer or any other organization to pay the salaries of OSTP staff. The consultant rejected the advice – telling Ms. Wallace that arranging for this private funding was one of the reasons the consultant had been hired.

*More Retaliation Against Ms. Wallace*

**Poor Annual Performance Evaluation.** In late-August 2021, Senior Manager 1 – Ms. Wallace’s annual performance Rating Official -- signed off on a poor annual evaluation. It repeatedly stated or implied that there was room for “improvement.” Under the federal employee performance evaluation system, such comments equate to an annual rating of “Level 2” out of five -- Minimally Satisfactory. When she found out about the rating in mid-September, Ms. Wallace was shocked. All of the annual evaluations she had received over her 21-year career had either been “4” (Exceeds Fully Successful”) or “5” (Outstanding); she had received many achievement awards.

Others were also surprised. Unbeknownst to Ms. Wallace, staff had flagged the derogatory language for Senior Manager 1 and said the evaluation would not pass muster from the next level reviewers because the Level 2 language contradicted the evaluation’s summary rating of “4.” Senior Manager 1 told staff to submit it anyway. As predicted, the next level reviewers rejected it, writing in August 31 emails that “the Rating Official Narratives are contrary and do not

support the rating of 4,” and that the version submitted did not show that Ms. Wallace had seen it and signed off on prior to its submission – she had not.

Once Ms. Wallace learned of this, she asked Senior Manager 1 for a copy. Senior Manager 1 sent a “revised copy” that omitted the derogatory language, continued to rate Ms. Wallace at “4,” and asked Ms. Wallace to sign off on that version. Ms. Wallace declined.

**Kicked Out of Office.** In early September 2021, Ms. Wallace learned that Director Lander had preliminarily approved a plan to take away her OSTP office and move her into communal space. Ms. Wallace protested, pointing out that she required a private office, or at minimum space shared only with legal staff, in order to ensure that confidential information she received in the ordinary course of her work was protected by the attorney-client privilege. The protests were ignored; Ms. Wallace was given a week to clear out her office.

**Cut Out of More Meetings.** Also in early September, Ms. Wallace learned that Senior Manager 3 – who had been handed many of Ms. Wallace’s operational duties -- had set up daily meetings with Ms. Wallace’s direct reports and had not notified or included her. Senior Manager 3 and other Senior Managers routinely left Ms. Wallace out of email and other communications regarding her duties and responsibilities.

**Despised by the Director.** Ms. Wallace also learned why she was being cut out: Director Lander hated her. A senior manager told her she was “despised” by the Director and was not being looped directly into email and other exchanges with him. According to the senior manager, the Director saw “no utility” with Ms. Wallace whatsoever, hated her more than he had come to hate another supervisor, Senior Manager 1, and that when he hates someone he cuts them off and hopes they either fade into the background or leave. The senior manager further said that because of the Director’s intense feelings, Ms. Wallace could not be included in discussions on legal issues and that Ms. Wallace needed to be contacted without his knowledge for legal advice.

**Demotion.** On September 10, 2021, Ms. Wallace participated in a call with Director Lander and Senior Manager 1. The Director said he was going to replace Ms. Wallace with a “political” General Counsel but this was “not a demotion” because she would become Deputy General Counsel and would remain COO. He said he appreciated the experience and knowledge she brought to the table and that she raised flags when she saw them. Ms. Wallace said that the risks or flags she identified “have not been well received by some,” and that the reason why OSTP had a career officer serve as General Counsel was because science was not political and a career officer provided continuity across Presidential administrations. The Director said he had considered those factors but decided OSTP “needed a political in that spot.”

Notwithstanding what Director Lander said, Ms. Wallace had in fact been demoted. *Six months later*, she learned that on September 9 – the day before the call – Senior Manager 1 had signed

off on a new position description for Ms. Wallace.<sup>10</sup> She had been demoted to Deputy Counsel, not Deputy General Counsel – a non-supervisory line attorney position – and reported to a political General Counsel. While she retained the COO title, she now reported to Senior Manager 3 -- who had taken many of her COO duties and cut her out of COO meetings. Ms. Wallace was given no opportunity to review let alone object to it, although staff who helped process the document were erroneously told that Ms. Wallace had been timely notified and to “make it happen.” They, too, believed Ms. Wallace had been improperly demoted.

*The New General Counsel and More Retaliation*

On September 22, 2022, Senior Manager 1 emailed staff that the new General Counsel would be starting the following week and that for legal matters, they “should turn to the new GC.” This was embarrassing and hurtful to Ms. Wallace because it implied that she was no longer handling legal matters. In another email sent to White House officials at about the same time, Senior Manager 3 wrote that “Eric has expressed a high urgency in bringing [the new General Counsel] on board ASAP.” The new General Counsel started the following week.

Within days, Ms. Wallace learned the new General Counsel was reaching out to other agencies for advice on how to handle the ethics process. According to one agency representative, the new General Counsel said OSTP was unhappy with the way the agency had been handling ethics advice for incoming staff. Ms. Wallace was not included in these conversations or in ethics conversations regarding incoming staff.

**“Revised” Attitudes on Ethics Advice.** In mid-October, the new General Counsel reversed ethics advice Ms. Wallace provided to incoming staff. In one case, Ms. Wallace advised that it would be a conflict of interest for an incoming unpaid staffer to work on a project outside of OSTP funded by a private foundation on the same topic as the staffer’s OSTP work.<sup>11</sup> The staffer complained to the new General Counsel, who informed Ms. Wallace that the new hire could proceed with the outside work. The new General Counsel had had multiple conversations with the Office of Government Ethics (OGE); Ms. Wallace was included in none of them. After hearing this, Ms. Wallace told the new General Counsel the changed position made no sense. The new hire worked on the outside project.

In another case in mid-November, Ms. Wallace learned that Director Lander told an incoming hire that a conflict of interest flagged by the incoming hire would not be a problem. Ms. Wallace concluded it *was* a problem and told the new General Counsel. The new General Counsel disagreed. Ms. Wallace turned to OGE staff for advice who concurred with Ms. Wallace. After hearing this, the new General Counsel continued to resist and Ms. Wallace declined to participate further on the matter.

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<sup>10</sup> Ms. Wallace learned of this on or about January 28, 2022 and complained to an OSTP senior manager that she should have been promptly informed.

<sup>11</sup> 5 CFR § 2635.802 states that a federal employee “shall not engage in outside employment or any other outside activity that conflicts with his official duties.”

**Further Curtailment of Duties.** On October 21, 2021, Ms. Wallace was informed that she had been stripped of her position as DAEO (Designated Agency Ethics Officer). The new General Counsel had assumed that role and informed Ms. Wallace that she had been designated Alternate DAEO by Director Lander. Ms. Wallace protested and declined to serve. Ms. Wallace told the new General Counsel in an email that the new General Counsel lacked the requisite qualifications to serve as DAEO. The new General Counsel disagreed. Ms. Wallace's email ended with: "I cannot, in good conscience, serve as an ethics official for an agency that has such disregard for ethics."

**FOIA.** On October 24, 2021, the new General Counsel notified Ms. Wallace that, henceforth, the new General Counsel would have to clear/approve any "politically sensitive" FOIA responses. Ms. Wallace protested – she was concerned about the propriety of political employees clearing FOIA productions prior to release – but again was ignored.

### *Other Managers*

Director Lander's management "style" influenced others, as suggested by the following examples.

**Senior Manager 1.** Due to the pandemic, many OSTP staffers remained on telework status (notwithstanding the pressure to return to the office) and communicated via email, phone, and virtual meetings. In a mid-August email chain involving, Ms. Wallace, Senior Manager 1 and six other OSTP staffers, Ms. Wallace provided comments on a draft publication. She wrote: "In general, we should cite to USG or USG-supported references. This is to avoid the perception that we are endorsing one private entity or person over others." In a reply-all, Senior Manager 1 disagreed, writing that "in my judgment, the draft ... is well within the bounds of practice in the science community and the [National Science and Technology Council] itself."

In ensuing email exchanges between only Senior Manager 1 and Ms. Wallace, she wrote that the views expressed by the senior manager:

[L]eaves me concerned that you may believe that my legal opinion does not matter or is unfounded or that I am purposely misstating agency practice. I hope I have entirely misread your communications about this, but I did want to share with you how they made me feel. These types of communications to and about me make me feel deminimized.

Senior Manager 1 then sent Ms. Wallace an email apologizing for being strident and admitting that the senior manager's frustration about other matters was unfairly coming through.

Later, in a related one-on-one conversation, Ms. Wallace told Senior Manager 1 said she sensed she was not trusted by Director Lander and the senior manager and "this was an obstacle in our ability to work together." Senior Manager 1 replied that the senior manager does not trust people not seen in person, that the Director feels the same, and that the Director's opinion about this had "rubbed off."

**Senior Manager 2.** Staff produced work product for an event involving the Director. Senior Manager 2 reviewed the work and said it was excellent. It was then forwarded to the Director. The Director then called staff and said the work product was garbage. The Director withdrew from the event. On a subsequent group call, Senior Manager 2 blamed staff for the “disaster.” Staff were dumfounded. They did everything asked yet, in violation of the Safe and Respectful Workplace Policy, were berated and humiliated in front of colleagues – thrown under the bus. Staff reported this to Senior Manager 1. Nothing was done. Thereafter, Senior Manager 2 authorized personnel actions adversely affecting this staff.

#### *White House Personnel Office Complaint*

On September 19, 2021, Ms. Wallace contacted the White House Office of Management and Administration (WHMA), known as the personnel office, and spoke to a senior official (the WHMAO Official) about her concerns and the concerns of her colleagues. Ms. Wallace had spoken to WHCO attorneys several times but had been given no assistance. The official said the complaint investigation process called for under the Safe and Respectful Workplace Policy would be initiated, that the WHCO would be consulted, that someone would be reaching out to gather more information and that the official would follow up with next steps.

Four weeks passed without any action. Then, on October 19, 2021, Ms. Wallace was contacted by an Office of Management and Budget (OMB) attorney responsible for personnel issues. The attorney had been tasked with handling the investigation because WHMA and WHCO “felt they could not be neutral in this process.” When Ms. Wallace raised concerns about the OMB attorney’s neutrality – given that the attorney reported to a political General Counsel and because of OMB’s historically close alignment with the White House – it was agreed (on October 26) that the attorney would report directly to the WHMA Official. Ms. Wallace then provided information to the OMB attorney about her situation and the other staff who been subjected to discrimination, retaliation, and hostile behavior.

#### *WHCO Closes Case*

Also on October 26, 2021, WHCO Attorneys 1 and 2 told Ms. Wallace they “considered the matter closed.” They said they had taken the steps they needed to take but they could not share those with Ms. Wallace. They refused to say if they had spoken with Director Lander or go into any detail regarding what they had done. Not surprisingly, Ms. Wallace found this very distressing and told them so. It appeared there was no recourse for victimized staff and that the Safe and Respectful Workplace Policy was meaningless.

On December 9, 2021, Ms. Wallace emailed the OMB attorney and asked for an update. She also reported that she continued to be marginalized, that OSTP front office staff spoke to her with hatred and disgust, that Senior Manager 3 and another Schedule C staffer had taken over her COO duties and tasked staff without notifying her, and that she felt shunned and humiliated. On December 15, the OMB attorney replied that the attorney would follow up at the end of investigation to discuss conclusions and recommendations, that they were working diligently and that they would keep Ms. Wallace posted.

Another month passed without action. On January 21, 2022, Ms. Wallace again emailed the OMB attorney and the WHMA Official for an update and to report she continued to be subjected to retaliation and others had been subjected to the types of behavior she had described so long ago.

### *White House Personnel Office Findings*

On January 28, 2022, Ms. Wallace participated in a call with the WHMA Official and another WHCO attorney. The WHMA Official said they had interviewed seven witnesses and had already reviewed the findings of their investigation and recommendation with the Director. The official then summarized the investigation's findings:

- They found no evidence of gender-based discrimination.
- But they did find that there had been violations of the Safe and Respectful Workplace Policy.
- Ms. Wallace had been subjected to bullying and exclusionary behavior, and there had been disrespectful treatment of staff by Director Lander.
- There was evidence of multiple women complaining about the Director speaking in a demeaning and abrasive way.

As for corrective action, their recommendations included that OSTP leadership: include Ms. Wallace in all conversations about her work; engage in activities allowing for more employee engagement; and provide training on the Safe and Respectful Workplace Policy.

Ms. Wallace told them that the recommendations said nothing about restoring her to her former position – given that the demotion was a clear act of retaliation (among others). They replied that the “reassignment” was “not procedurally improper” – to which Ms. Wallace said that even if they had followed the correct process, that did not mean it was not retaliatory.

The call ended with Ms. Wallace telling them the demotion had a profoundly negative impact on her work, reputation, and career prospects. It was critical that they address these issues. To date, they have not been addressed.

### **Discussion**

The foregoing shows Director Lander's flagrant disregard of ethics rules. It also shows the ways in which he created a toxic workplace. There was no one single problematic event. Rather, OSTP staff endured a mosaic of abuse – a mosaic that has become clearer over time. Here's what we know now:

- During his 12 months at OSTP, Director Lander was repeatedly advised of specific ethics violations.
- He and others who worked for him were told they were violating or were about to violate multiple laws, rules and regulations.
- The ethics advice provided was often ignored.

- Ms. Wallace and other providers of such advice were illegally retaliated against.
- Director Lander was most responsible for OSTP's toxic workplace.
- But others were involved, too. Some assisted. Some emulated. Some tuned out. Some who knew better did nothing. No one else has been held accountable.
- Our clients have identified at least 15 abuse victims – *over ten percent* of OSTP's workforce.
- The vast majority were women.
- The White House's investigation of the reports on the Director's misconduct needlessly moved at a snail's pace. One year passed from the first reports to the Director's resignation. That is too long.
- The harms inflicted on victims continues – adverse actions taken have not been ameliorated; reputations continue to suffer.
- OSTP's reputation has been stained.

Why was the retaliation illegal? The federal whistleblower statute prohibits adverse personnel actions against federal employees who make protected disclosures.<sup>12</sup> Once a prima facie case has been made out, the burden of proof shifts to the agency to show by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.<sup>13</sup>

Ms. Wallace's case is a textbook example of prohibited retaliation against a whistleblower. Through her many protected disclosures and disclosures from other staff, Director Lander, OSTP senior managers and others with authority knew of numerous, prohibited violations of ethics rules and regulations. She was then ignored, marginalized, poorly-rated, demoted and humiliated – each one an act of retaliation. It is now up to the agency to show by clear and convincing evidence that all of those things would have happened in the absence of the disclosures. It is a burden it cannot meet.

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<sup>12</sup> As relevant here, 5 U.S.C. § 2302(b)(8)(A) prohibits any federal employee with authority from taking or failing to take a personnel action with respect to any employee who makes a protected disclosure. A protected disclosure includes any disclosure of information that the employee reasonably believes evidences: (1) any violation of law rule or regulation; (2) gross mismanagement; (3) a gross waste of funds; (4) an abuse of authority; or (5) a substantial and specific danger to public health or safety. The statute, 5 U.S.C. § 2302(a)(2)(viii), broadly defines personnel actions to include any "significant change in duties, responsibilities, or working conditions."

<sup>13</sup> 5 U.S.C. § 1214(b)(4)(B)(ii). "Clear and convincing" means that the evidence is highly and substantially more likely to be true than untrue; the fact finder must be convinced that the contention is highly probable. Definition of Clear and Convincing Evidence, available at [https://www.law.cornell.edu/wex/clear\\_and\\_convincing\\_evidence](https://www.law.cornell.edu/wex/clear_and_convincing_evidence).

Re: Protected Whistleblower Disclosures

March 10, 2022

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Accordingly, Ms. Wallace and others are entitled to all remedies afforded under the law, including reinstatement, economic and non-economic damages and other costs.

\* \* \*

This case is very disturbing. Ethics violations were rampant; retaliation was ever-present. It proves toxic workplaces are nonpartisan. We urge you to promptly investigate.

Very truly yours,

/s/

David Z. Seide

Dana Gold

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