

September 15, 2015

President Barack Obama
1600 Pennsylvania Ave
Washington, DC 20500

Dear Mr. President,

The undersigned organizations have grave concerns with the “official White House response to pardon Edward Snowden” through the We the People platform. It grossly misleads the American public by implying that - 1) there were constructive channels in place for National Security Agency (NSA) whistleblower Edward Snowden to challenge widespread domestic surveillance, and 2) Mr. Snowden and other contractor whistleblowers within the intelligence community (IC) have protections against retaliation. In order to make those assertions a reality for future whistleblowers, we call on you to actively endorse S. 794, legislation introduced by Senator Claire McCaskill (D-MO) that would restore whistleblower protections for IC contractors. We also believe the American public deserve an updated, accurate response to the We the People petition.

Since June of 2013, nearly 168,000 individuals have called for “a full, free, and absolute pardon for any crimes [Mr. Snowden] has committed or may have committed related to blowing the whistle on secret NSA surveillance programs” through the White House’s We the People platform. In the petition response, Lisa Monaco, the President's Advisor on Homeland Security and Counterterrorism, places blame on Mr. Snowden for not “constructively” addressing his concerns. Moreover, Ms. Monaco asserts he should “come home to the United States, and be judged by a jury of his peers” – a legal option that does not currently exist for IC contractor whistleblowers. She closes by acknowledging, “The balance between our security and the civil liberties that our ideals and our Constitution require deserves robust debate.”

Mr. Snowden's bravery in coming forward at grave personal costs provided vital information in the discussion of the constitutionality of the government's domestic surveillance programs and authorities. Government contractors who blow the whistle on waste, fraud, abuse of authority, gross mismanagement or a violation of law should be honored and protected, not disgraced and left vulnerable. However, IC contractors were stripped of whistleblower protections in 2012 and now do not have independent due process rights outside the intelligence community to defend themselves in the face of retaliation, even when they work through designated channels.

In 2007, Congress enacted whistleblower rights for some IC contractors, including Department of Defense (DoD) contractors who work for the Defense Intelligence Agency and the NSA. These protections worked well from 2008 through 2012, and the Senate, with bipartisan support, approved expansion of the safeguards to all government contractors in the FY 2013 National Defense Authorization Act. However, the closed conference committee removed all preexisting and new IC whistleblower protections from the bill before passing it.

The protections for IC contractors were removed, despite a track record showing that the law was working as intended and did not produce any adverse impacts on national security during its

five-year lifespan. Based on this record, there is no substantive policy argument for continuing to deny IC contractors whistleblower protections. Contrary to critics' concerns that court access would cause national security leaks, none have even been alleged. Predictions were made that IC contractor whistleblowers would flood the courts. However just 25 cases were filed from 2008 through 2012 under the DoD contractor provision, including from the intelligence community.

Six months after IC contractor rights were rolled back Mr. Snowden disclosed the U.S. government's sweeping domestic surveillance programs. When Mr. Snowden talked about his experience blowing the whistle, he said, "The charges they brought against me ... explicitly denied my ability to make a public-interest defense. There were no whistleblower protections that would've protected me – and that's known to everybody in the intelligence community. There are no proper channels for making this information available when the system fails comprehensively." Snowden went on to cite the nightmares of previous whistleblowers who were harassed when they worked through institutional channels without protections.

Edward Loomis, a career NSA employee and then contractor from 1964 to 2007, was retaliated against by the NSA after reporting through internal channels an ineffective surveillance program that wasted taxpayer dollars and violated constitutional rights to privacy. Reflecting on his experience, Mr. Loomis warned -

For having filed a fraud and waste hotline complaint against NSA with the Department of Defense Inspector General in 2002, along with three others, our names were surrendered to the FBI under the guise we were considered suspects for the leak revealed in a New York Times warrantless surveillance article. The release of our names immediately focused the leak investigation on us, and we each were subjected to humiliating home searches and the seizure and removal of many personal records and recorded media. Also our security clearances were immediately "suspended," thus terminating all access to continuing work as private contractor consultants in the intelligence community.

Loomis astutely acknowledged, "Permitting such actions to persist, as was done with the exclusion of [IC] contractor whistleblower protections in the National Defense Authorization Act of 2013, will only encourage other whistleblowers to employ tactics used by Edward Snowden – to secretly duplicate and remove evidence and publicly expose wrongdoing since no legitimate and trusted option is otherwise available."

The system should empower employees like Mr. Loomis and Mr. Snowden with legal safeguards if they blow the whistle within the system of government checks and balances. For that reason, we ask you to demonstrate leadership by actively endorsing passage of S. 794.

If passed, S. 794 would give intelligence whistleblowers incentives to work within the system, thus protecting taxpayer money from waste, fraud, abuse and misuse. The proposed system would allow IC contractors to file a whistleblower complaint and restore access to District Court and a jury trial to challenge retaliation.

In addition to active support of S. 794, we call on your administration to provide an accurate response to the We the People petition. As detailed throughout this letter, Mr. Snowden did not

have viable rights to work constructively within the system, nor is there a system in place for him to have a fair trial. Leaving the response in its current state undermines the We the People platform, and it is a disservice to citizens across the nation who have participated in your administration's latest effort to engage the public.

Sincerely,

Access

American Civil Liberties Union

Bill of Rights Defense Committee

Center for Digital Democracy

Citizens for Health

Coalition for Change, Inc.

Constitutional Alliance

Consumer Action

Consumer Watchdog

Defending Dissent Foundation

Demand Progress

Drum Majors for Truth

Equal Justice Alliance

Essential Information

Expose Facts

Federal Ethics Center

Federally Employed Women Legal Education Fund

Freedom of the Press Foundation

Golden Badge

Government Accountability Project

Gun Owners of America

Human Rights Watch

International Association of Whistleblowers

Judicial Engineering Documented and Impeded

National Council for Occupational Safety and Health

National Employment Lawyers Association

National Forum On Judicial Accountability

National Judicial Conduct and Disability Law Project, Inc

OAK (Organizations Associating for the Kind of Change America Really Needs)

OpenTheGovernment.org

Patient Privacy Rights

Plea for Justice Program

Power Over Poverty Under Laws of America Restored (POPULAR)

Privacy Times

Project On Government Oversight
Public Citizen
Restore the Fourth
RootsAction.org
State Community Councils
Sunlight Foundation
The Rutherford Institute
United Support and Memorial for Workplace Fatalities
Whistleblower Alliance
Whistleblower Support Fund
X-Lab