

Congress of the United States

Washington, DC 20515

November 1, 2024

Ms. Karen Gorman
Acting Principal Deputy Special Counsel
U.S. Office of Special Counsel
1730 M Street NW, Suite 218
Washington, D.C. 20036

Dear Ms. Gorman:

The Committees on Oversight and Accountability, Judiciary, and Ways and Means (collectively, the Committees) are investigating whether the Internal Revenue Service (IRS) committed prohibited personnel practices against IRS Supervisory Special Agent (SSA) Gary Shapley and IRS Special Agent (SA) Joseph Ziegler (collectively, the Whistleblowers). On July 5, 2023, the Committees along with Senators Grassley and Johnson wrote to the U.S. Office of Special Counsel (OSC) requesting an investigation into the IRS's alleged retaliation against the Whistleblowers.¹ On June 17, 2024, the Committees joined Speaker Mike Johnson and Majority Leader Steve Scalise in expressing concerns about the U.S. Department of Justice's treatment of the Whistleblowers.² In a stunning development, SSA Shapley's attorney recently revealed that approximately one hour after an investigative journalist released an interview with the Whistleblowers in which they discussed damaging evidence of the IRS's disparate treatment of U.S. taxpayers, the IRS issued SSA Shapley a 15-day notice to either accept a demotion or resign.³ Because of this shocking potential additional prohibited personnel action taken against SSA Shapley and the urgency of the matter, the Committees request (1) a prompt update on OSC's investigation into the Whistleblowers' allegations, and (2) for OSC to use its lawful authority⁴ to seek an immediate stay at the U.S. Merit Systems Protection Board (the Board) pausing the IRS's latest threatening action.

SSA Shapley's and SA Ziegler's whistleblowing took courage and bravery. Because of their important disclosures, Americans learned how the IRS treats individuals differently based upon their last names. They made lawfully protected disclosures to Congress that resulted in unrelenting personal and professional attacks on them. But they have not wavered. As this case has rightfully garnered significant public attention, OSC must show the whistleblower community that OSC will take appropriate and immediate action to stand up for whistleblowers.

¹ Letter from Hon. James Comer et al, Chairman, H. Comm. on Oversight & Accountability, to Hon. Henry J. Kerner, Special Counsel, U.S. Office of Special Counsel (July 5, 2023).

² Letter from Hon. James Comer et al, Chairman, H. Comm. on Oversight & Accountability, to Karen Gorman, Acting Principal Deputy Special Counsel, U.S. Office of Special Counsel (June 17, 2024).

³ Post on X, Tristan Leavitt, @tristanleavitt (Oct. 30, 2024).

⁴ See 5 U.S.C. § 1212(a)(2)(A); See also 5 U.S.C. § 1214(b)(1)(A)(i).

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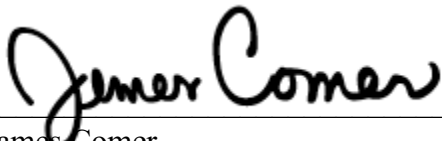
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On October 29, 2024, SSA Shapley and SA Ziegler sat down with an investigative journalist for an interview to discuss their disclosures to Congress and how their lives have been affected by making those disclosures.⁵ During the interview, SSA Shapley stated, “The IRS just has a smothering blanket on me. [They’re] hoping that I quit, that they find some way to terminate me. Or they probably hope that I commit suicide or something.”⁶ According to his attorney, less than an hour after the release of the interview, the IRS sent SSA Shapley a memorandum informing him he could no longer keep his position.⁷ This reassignment appears to give SSA Shapley effectively two options: accept a demotion or resign.⁸ The IRS is giving SSA Shapley 15 days to decide.⁹ This is egregious, and OSC must take immediate steps to pause this action while it examines the IRS’s decision.

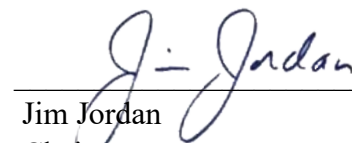
OSC has the express authority to seek a stay at the Board under 5 U.S.C. § 1214(b)(1)(A)(i), which states, “The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 45 days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.”¹⁰ Given the IRS’s actions and the timeline they provided SSA Shapley, his case must be considered for an immediate stay at the Board. Further, because SSA Shapley’s and SA Ziegler’s cases have continued for almost 17 months with no findings from OSC,¹¹ the Committees request a comprehensive briefing.

If you have any questions regarding this letter, please contact staff with the Committee on Oversight and Accountability at (202) 225-5074. Thank you for your prompt attention to this important matter.

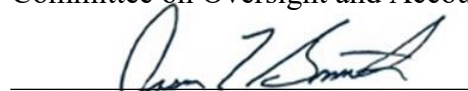


James Comer
Chairman
Committee on Oversight and Accountability

Sincerely,



Jim Jordan
Chairman
Committee on the Judiciary



Jason Smith
Chairman
Committee on Ways and Means

⁵ Post on X, Catherine Herridge, @C__Herridge (Oct. 29, 2024).

⁶ *Id.*

⁷ *Supra* note 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ See 5 U.S.C. § 1214(b)(1)(A)(i).

¹¹ *Supra* note 3.

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cc: The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability

The Honorable Jerrold L. Nadler, Ranking Member
Committee on the Judiciary

The Honorable Richard E. Neal, Ranking Member
Committee on Ways and Means