Twitter Thread by Mark S. Zaid



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1/THREAD: NEW DoD SECURITY CLEARANCE REFORM WILL HELP THOUSANDS

In little known move, on 1/14, then Acting USDIS @EzraACohen issued ground breaking memo to significantly reform @DeptofDefense #securityclearance program & enhance individual due process & increase transparency.

2/Many ppl have been working for decades to effect these changes & with one swoop of pen, it is FINALLY now official policy. I cannot speak highly enough of what was accomplished & it needs to be known.

3/Memo follows through on what President Eisenhower started 60 years ago w/Executive Order 10865, still in effect today, what President Clinton created w/EO 12968 in 1995, & what SECDEF Bob Gates ordered in 2011. DoD must now consolidate, centralize & unify all existing

4/admin processes at every component, incl DoD IC agencies (DIA, NSA, NRO, etc) for unfavorable #securityclearance eligibility determinations (denial/revocation) into single process handled by Defense Office of Hearings & Appeals (DOHA), which has been hearing cases for decades.

5/Memo extends due process protections & grants authority to DOHA to hear not only defense contractor cases but also all @DeptofDefense civilians and military members, and importantly all Sensitive Compartmented Information (SCI) appeals, which it previously could not do.

6/Thus, for example, previously those denied clearance at @DefenseIntel would have two levels of internal appeals. First appeal in writing & w/personal appearance. But only client & single attorney could appear. No support witnesses.

7/Often very difficult to gain access to evidence as well. Second level appeal would be handled in writing only & secretly. Not necessarily conducive for real due process.

8/Now, after this memo, DOHA will independently hear and adjudicate second level appeal instead. This will happen at all @DeptofDefense agencies now, many of which agreed w/DOHA Judge's recommended rulings up to 96% of time anyway. Centralization saves money, resources & time.

9/DOHA is gold standard of clearance due process. Their hearing process features experienced administrative judges, lawyers on both sides, witnesses, cross-examination, access to evidence, submission of exhibits, and opening and closing statements; all aimed at getting to truth.

10/I have appeared before its Administrative Judges dozens of times in last 20+ years in defending clients facing loss of eligibility. All of its decisions are publicly available online at https://t.co/djPLPXxBLq.

11/Frustratingly, there are some within @DeptofDefense who continue to fight against this memo. Opposition is primarily coming from IC components who do not want to lose jurisdiction & are scared of external (even within DoD) & independent oversight.

12/Honestly, and with all due respect, every argument I have heard either misunderstands existing system or is completely false, baseless or absurd.

13/This memo is not political in any way & nothing it creates will serve to facilitate granting of clearances to individuals or groups who should otherwise not receive access. It merely strengthens existing due process rights to maximize individual protections more broadly.

14/The DOHA system has worked for decades & ensures Executive Branch (Govt) decision makers - experts on eligibility to classified information - know all relevant facts before rendering informed decision. Who would not want that?

15/Agencies still control suspension decisions so any true problem can always be addressed. Importantly, agencies will have govt lawyer rep'ing their interests before DoD judge & can fully participate in hearing, whether through live testimony or documentary exhibit submissions.

16/Govt's interests are FULLY protected. After all, this is still Executive Branch issuing all the decisions. DOHA judges are security professionals who have been doing this for decades.

17/In fact, if DOHA judge renders favorable determination for individual, govt agency can appeal that decision to a DoD appeal board of three judges. Executive Branch interests are ALWAYS protected.

18/Importantly, NOTHING in this memo changes any adjudicative guidelines or standards. Those remain same as they have for years, through both DEM & GOP administrations.

Current eligibility determination guidelines can be found here: https://t.co/AaqPh8SJou

19/I have been handling these cases for 25+ years. I have taught DC Bar CLE class on topic since 2006 & I have testified as expert witness before Congress & court. Reform long overdue & supports rule of law & due process. Colleagues I have spoken to are ecstatic memo was issued.

20/And many who served at highest levels of govt as experts in this field agree. Here is but just one example from @FitzJohnP:

21/“This reform step is overdue. It will both unify and fortify the handling of these important security clearance appeal cases across all security offices in the department. This action should make outcomes in such cases more consistent and more transparent. Transparency and ...

22/national security issues may seem like strange bedfellows, but confidence in security is enhanced when processes and decisions are made in the light of day and understood to be fair. Defense agency security offices likely will feel they lose some control with this change, ...

23/but I would suggest that instead these offices are gaining a great partner. The Defense Office of Hearings and Appeals is as professional and experienced an office as you will find in government, ...

24/and anyone dealing with them on these matters should be confident of a fair outcome.”

John P. Fitzpatrick (@FitzJohnP)
Former NSC Senior Director, former Director of ISOO, former Assistant Deputy Director of National Intelligence for Security

25/You can read memo here on @DeptofDefense website:

https://t.co/hZSyn1jMj6

END/I encourage media to report on this incredible new policy change. Please contact me at Mark@MarkZaid.com if further info desired. And by all means, ask @DeptofDefense questions.

@WhiteHouse & @JoeBiden should be 100% in support of #RuleOfLaw & #DueProcess.

You can't get more experienced an attorney than @JohnBerryDC in handling #securityclearance cases.

https://t.co/xi4bYkJCeM

> Everyone that has a #DoD #securityclearance or #SCI should look at these pending changes now. They are significant and most welcome. DOHA is the gold standard for due process in security clearance cases. https://t.co/wKDUFZumrd
>
> — John Berry, Esq. (@JohnBerryDC) January 25, 2021