COUNCIL OF THE INSPECTORS GENERAL
ON INTEGRITY AND EFFICIENCY
INTEGRITY COMMITTEE

October 2, 2024

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Report of Findings for Integrity Committee Case 20-059

Dear Mr. President:

The Department of Homeland Security (DHS) has a vitally important mission, which it summarizes as: "[w]ith honor and integrity, we will safeguard the American people, our homeland, and our values."[1] Accomplishing the mission requires the hard work of more than 260,000 employees in areas that range from aviation and border security to emergency response, and jobs from cybersecurity analyst to chemical facility inspector. Independent, objective, and credible oversight of DHS is also critically important to help ensure our safety, and much of this responsibility falls to its Office of Inspector General (OIG). DHS OIG's mission statement is "to provide independent oversight and promote excellence, integrity, and accountability within DHS."[2]

This letter sets forth the findings, conclusions, and recommendations of the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) regarding eight multi-part allegations of misconduct, fully described in the attached detailed Report of Investigation (ROI), pertaining to one or more of the following subjects: the DHS Inspector General (IG) Joseph Cuffari, former Chief Operating Officer (COO)/Acting Inspector General Jennifer Costello, former Deputy Counsel (DC) Karen Ouzts, former Senior Counsel (SC) Andrew De Mello, and former Assistant Inspector General (AIG) Diana Shaw. Pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. § 424 (IG Act), the IC is referring this matter to you for appropriate action with respect to IG Cuffari.[3]

[1] Mission | Homeland Security (dhs.gov), available at https://www.dhs.gov/mission.
[2] About Us | Office of Inspector General (dhs.gov), available at https://www.oig.dhs.gov/about.
[3] Ms. Costello was removed from federal service on June 11, 2020. Ms. Ouzts resigned from DHS OIG in January 2021, and Ms. Shaw resigned from DHS OIG on May 8, 2020. None remain in the federal service. Both IG Cuffari and Mr. De Mello remain federal employees. Mr. De Mello currently works for the Department of Justice.

After thoroughly reviewing the evidence and carefully considering the subject responses, the IC finds by a preponderance of the evidence[4] that IG Cuffari engaged in conduct undermining the independence or integrity reasonably expected of his position by:

- providing wrongfully inaccurate and misleading answers to questions regarding possible misconduct in his federal employment history (as a sworn law enforcement officer), which Congress posed to him during his nomination process for the position of DHS IG, and failing to correct the record thereafter; and

- as an IG, misrepresenting his reasons for hiring a private law firm to investigate three former DHS OIG senior executives and his influence over that investigation.

The IC additionally finds by a preponderance of the evidence that IG Cuffari abused his authority[5] in the exercise of his official duties and engaged in substantial misconduct[6] in the form of a gross waste of funds[7] by:

- expending $1.393 million of taxpayer funds to hire a private law firm to investigate three former senior members of his staff, most likely for his "personal" interest and in order to retaliate against them (two of whom had formally complained about him — and one of them eventually received a $1.17 million settlement in additional taxpayer funds expended in this matter); and

- personally attempting to influence the independent investigation into said former senior members of his staff, including but not limited to: by [redacted] and by contacting two successive supervisors (both of whom were U.S. Ambassadors) of one of the subjects (who was represented by counsel) in an attempt to get them to "order" her to participate in an interview with his investigators.

Further, the IC finds by a preponderance of the evidence that Ms. Costello, who as Acting IG was leading DHS OIG before IG Cuffari's confirmation, abused her authority in the exercise of her official duties when she wrongfully resisted newly confirmed IG Cuffari's leadership through a series of divisive words and actions.

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[4] In accordance with Section 10(C)(i) of the Integrity Committee Policies & Procedures (ICP&P) (2018), the IC determines "whether (1) facts within the report of investigation are proven by a preponderance of the evidence and (2) those facts provide a reasonable basis to conclude that the Respondent engaged in particular wrongdoing." Moreover, 5 U.S.C. § 424(d) requires the IC to report its investigative findings, regardless of whether the allegations were substantiated or not substantiated.

[5] "Abuse of authority" means an arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to her/him or to preferred other persons. ICP&P, Appendix A.

[6] "Substantial misconduct" includes gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation. ICP&P (2018), Section 7(A).

[7] "Gross waste of funds" means an expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government; it is more than a debatable expenditure. ICP&P (2018), Section 7(A).

The IC's investigation did not substantiate the remaining allegations against Ms. Costello or any of the allegations against Ms. Ouzts, Ms. Shaw, or Mr. De Mello.

A brief synopsis of the substantiated allegations and the IC's findings are provided below.[8] The detailed ROI, which represents the results of the U.S. Department of Transportation (DOT) OIG's (the IC's Assisting OIG) investigation of this matter, and the subjects' responses, where provided, are also enclosed.

I. IC Jurisdiction

Congress designated the IC, which is composed of four IGs, a representative from the Federal Bureau of Investigation, and a representative from the Office of Government Ethics, to be the independent mechanism that ensures senior officials in the IG community "perform their duties with integrity and apply the same standards of conduct and accountability to themselves as they apply to the agencies that they audit and investigate."[9]

The IC "considers allegations of wrongdoing against any of the following individuals (Covered Persons):"[10]

1. An IG;
2. Any position that reports directly to the IG;
3. Any position with significant responsibilities that the IG determines carries a "heightened risk that an internal investigation of them would lack objectivity in fact or appearance;"[11]
4. The Special Counsel and the Deputy Special Counsel; and
5. Anyone serving in an acting or interim capacity in the above positions.

Additionally, "[a]t its discretion and consistent with the public interest (including the availability of an effective remedy), the IC may consider wrongdoing alleged to have occurred while an individual served as a Covered Person, even if that individual is no longer a Covered Person or in government service when the IC receives the allegation."[12]

The IC receives allegations of wrongdoing concerning Covered Persons referred to it from both within the IG community and from outside sources (*e.g.*, the public). If an allegation(s) meets the IC's threshold standard, one of the actions that the IC can take is to refer the allegation(s) for investigation by an Assisting OIG.

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[8] Throughout this Cover Letter, citations are provided to the ROI for certain key quotes. However, for the sake of brevity, we refer the reader to the attached ROI for more fulsome citations.
[9] U.S. House Committee on Oversight and Government Reform, *Improving Government Accountability Act*, 110th Cong. (Sept. 27, 2007) (H. Rept. 110-354). *See also* 5 U.S.C. § 424(d).
[10] ICP&P, Section 2.
[11] ICP&P, Section 4.
[12] ICP&P, Section 2.

The Assisting OIG conducts the investigation "subject to the control and direction of the IC Chairperson."[13] Further, "[t]he investigation [is] conducted in accordance with the most current *Quality Standards for Investigations* issued by CIGIE and utilize[s] the investigative procedures of the Assisting OIG."[14] Additionally, the IC requires in its Memorandum of Understanding with the Assisting OIG that, prior to a report of investigation being provided to the IC, the ROI be reviewed by the Assisting OIG's Deputy Inspector General, or other appropriate senior-level authority, as designated by the assisting OIG's IG. This additional requirement helps ensure that the investigation meets required standards.

At the outset of an IC investigation, the subject of the investigation is informed, in writing, of the allegations against them that are being investigated. During an investigation, the subject is afforded the opportunity to provide information to, and meet with, investigators. Subjects also may retain private counsel, at their own expense, to advise them during the investigation; however, a subject does not have the right to be represented by agency counsel during the investigation.[15]

II. Case History and Context

During IG Cuffari's tenure as DHS IG, the IC received a litany of complaints regarding IG Cuffari (24 in total) and other Covered Persons (such as Ms. Costello) at DHS OIG. Following the departure from DHS OIG of all the subjects of IC 20-059 besides IG Cuffari, that number continued to grow.[16]

In each instance, the IC followed its normal process pursuant to the Integrity Committee Policies and Procedures (ICP&P) for reviewing the allegations, and, as is often the case, this resulted in the closure of the majority of the matters for failure to meet the IC's threshold standards, either on their face or after the subject was given the opportunity to respond.[17]

On May 14, 2021, the Assisting OIG's investigators began work on behalf of the IC by looking into allegations against IG Cuffari, Ms. Costello, Ms. Shaw, and Mr. De Mello. The investigation

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[13] ICP&P, Section 8(B)(iv)(a).
[14] ICP&P, Section 9(B).
[15] This foundational legal distinction—that a government attorney's client is the agency they work for and not the head of that agency—was repeatedly questioned in this case by IG Cuffari, including in IG Cuffari's attached response to the ROI, and by the [redacted]. [redacted] made this argument in the civil lawsuit filed by IG Cuffari and [redacted], among others, against CIGIE while the investigation was ongoing. In its opinion granting CIGIE's motion to dismiss, the Court dispelled this argument stating, '[redacted] claim that [redacted] has been injured by 'not being able to advise [redacted] client and proceed according to [redacted] best professional judgment' fails because [redacted] client is DHS OIG – not Mr. Cuffari personally." *See, Fredricks v. Council of the Inspectors General of Integrity & Efficiency,* 2023 U.S. Dist. LEXIS 197432.
[16] From the time IG Cuffari took office, until the date of this cover letter, the IC has received 40 complaints against 60 named Covered Persons at DHS OIG (as there are only a limited number of Covered Persons at DHS OIG, this number accounts for certain individuals being named in multiple complaints) with 24 of those complaints against IG Cuffari (12 of which came after 20-059). Each complaint may contain one or multiple allegations.
[17] It is important to note that the IC's closure of a matter does not prevent its ability to investigate an allegation if further material information comes to light.

also subsumed the work that had started under a different IC complaint number on Mr. De Mello. As new and related allegations arose, the IC expanded the scope of its investigation to cover additional allegations against Ms. Shaw, Ms. Ouzts, and IG Cuffari.

Throughout the IC's review of IC 20-059, the IC offered all subjects, including IG Cuffari and Ms. Costello, multiple opportunities to respond to the allegations against them in writing and through interviews with investigators.

At the conclusion of their fieldwork, the Assisting OIG provided a draft ROI to the IC. After applying appropriate redactions to protect whistleblowers and adhere to Privacy Act requirements, the IC provided each subject the portion of the report dealing with allegations against them.[18] After receiving the subjects' responses, the IC met to review and assess the ROI, along with exhibits, and discuss the Assisting OIG's proposed findings and conclusions. The IC determined that no additional investigative steps were needed, so the Assisting OIG finalized the ROI.[19]

The IC then met and deliberated on their findings and recommendations and agreed with the findings made by the Assisting OIG. As mentioned above, the Assisting OIG's investigation did not substantiate the allegations against Ms. Ouzts, Ms. Shaw, and Mr. De Mello. Certain allegations against IG Cuffari and Ms. Costello were substantiated, in whole or in part, by the IC's investigation and are described below. The remaining allegations against Ms. Costello, while not substantiated under the IC's threshold standards for misconduct, provide relevant context and are therefore also addressed below.

Notably, the IC received significant allegations against IG Cuffari and other current members of his senior staff during the pendency of the IC 20-059 investigation. These allegations were combined and became IC 22-046.069. Due to their lack of direct nexus to IC 20-059, and largely to avoid further delay in providing the IC's findings and recommendations regarding IC 20-059, the IC voted to close and refer these matters, along with all associated responses from impacted persons, such as IG Cuffari, to you for your awareness and any additional action you deem appropriate.

III. Investigative Results and Analysis

A. IG Cuffari

After thoroughly reviewing the evidence and carefully considering the subject's comments, the IC finds the following by a preponderance of the evidence with respect to the allegations against IG Cuffari:

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[18] On June 6, 2024, in accordance with 5 U.S.C. § 424(d), the IC provided IG Cuffari, Mr. De Mello, Ms. Ouzts, Ms. Costello, and Ms. Shaw the opportunity to respond to the draft ROI before the IC made its findings. Ms. Shaw, Ms. Ouzts, IG Cuffari, and Ms. Costello's responses, which were received by the IC on June 17, 2024, June 19, 2024, August 16, 2024, and August 23, 2024, respectively, and the final ROI are enclosed. The IC did not receive a response from Mr. De Mello.

[19] *See* ICP&P, Section 9(E).

1. IG Cuffari Wrongfully Provided Inaccurate and Misleading Answers to Questions Posed by Congress Regarding His Employment During His Confirmation Process (Allegation 8)[20]

IG Cuffari engaged in conduct undermining the independence and integrity reasonably expected of his position because IG Cuffari's answers to certain questions posed to him during his nomination process for the position of DHS IG were wrongfully inaccurate and misleading. Specifically, then-IG nominee Cuffari was presented with a questionnaire by the U.S. Senate Homeland Security and Governmental Affairs Committee (HSGAC) to fill out and return entitled, "HSGAC Biographical Questions for Executive Nominees" (the Questionnaire). The Questionnaire and IG Cuffari's responses were included in the record at the "Hearing before the Committee on Homeland Security and Governmental Affairs, Nomination of Joseph V. Cuffari to be Inspector General, U.S. Department of Homeland Security, March 5, 2019" (the Hearing), where then-IG nominee Cuffari was under oath. Allegation 8 places IG Cuffari's answers to two of the questions in the Questionnaire (11a and 11b) at issue in this investigation. As noted later in this section, IG Cuffari responded "no" to both questions.

Also included in the record at the Hearing was the "U.S. Senate Committee on Homeland Security and Governmental Affairs Pre-hearing Questionnaire For the Nomination of Joseph V. Cuffari to be Inspector General, Department of Homeland Security" (the Pre-hearing Questionnaire). IG Cuffari's response to a question within the Pre-hearing Questionnaire, question 10, is also relevant for context. That question reads:

> *At any point during your career, has your conduct as a Federal employee ever been the subject of an OIG, Government Accountability Office (GAO), Office of Special Counsel (OSC), Office of Government Ethics (OGE), Equal Employment Opportunity Commission, or Federal law enforcement investigation? Please explain.*

Then-IG nominee Cuffari responded:

> *While I was working in the DOJ [Department of Justice] OIG, members of an IG staff interviewed me about concerns expressed by the U.S[.] Attorney's Office for the District of Arizona (D/AZ) stemming from my participation as a criminal investigator in a Federal civil rights case, wherein two Federal corrections officers were alleged to have physically assaulted a Federal inmate who was in their custody. I answered the IG staff's questions truthfully and completely.*
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> *The matter stemmed from an underlying Federal criminal investigation wherein I complied with my statutory obligation and U.S. Attorney General Guidelines to inform the crime victim (the Federal inmate) of [their] rights as provided for in the Crime Victims' Rights Act. The victim later retained legal counsel and filed a notice of claim for a civil tort case against the U.S. Government based on the corrections officers' alleged*

[20] The allegations described here follow the numbering system and chronology of the attached ROI.

> *physical abuse. After the notice of claim was filed, the D/AZ declined to proceed with prosecution in the underlying criminal investigation.*
>
> *I was subsequently subpoenaed to appear as a fact witness at a deposition and at a follow-up hearing before the U.S. Magistrate Judge, who was presiding over the civil tort case. I answered the judge's and the attorneys' questions truthfully and completely. The civil case was subsequently settled between the parties. No adverse action was proposed against me.*

IG Cuffari worked for the Department of Justice (DOJ) OIG from March 21, 1993, to May 31, 2013. His title at the time of his retirement was Assistant Special Agent in Charge (ASAC), and he was based in Tucson, Arizona. Then-IG nominee Cuffari's response to this question failed to include the fact that when he retired in May 2013, he was under investigation by DOJ OIG's Oversight and Review Division (O&R) and also the subject of a pending a DOJ OIG management inquiry regarding four ethics issues.

Specifically, in 2012, DOJ OIG O&R investigated allegations regarding then-ASAC Cuffari's conduct in connection with a civil matter against the United States being defended by the U.S. Attorney's Office (USAO). The civil matter was filed by a federal inmate who alleged that [redacted] was assaulted by two U.S. Bureau of Prisons corrections officers. Then-ASAC Cuffari was the case agent who conducted a criminal investigation of the inmate's allegations.

In their April 19, 2013, memorandum of findings, DOJ OIG O&R concluded that then-ASAC Cuffari testified as a witness for the plaintiff in support of their claims against the United States at a hearing in the United States District Court, District of Arizona on October 25, 2012, without first notifying DOJ OIG and obtaining approval to testify, in violation of the DOJ Inspector General Manual. After reviewing then-ASAC Cuffari's emails and other evidence, DOJ OIG O&R also found that his "personal relationship" with the inmate's attorneys raised questions about his impartiality and created a potential conflict of interest with respect to his involvement in the civil litigation. Further, under applicable ethics guidelines and the DOJ Inspector General Manual, DOJ OIG O&R determined that then-ASAC Cuffari should have informed his supervisor and the DOJ OIG's Office of General Counsel (OGC) of this relationship. DOJ OIG O&R concluded that then-ASAC Cuffari also "ran afoul of a separate ethics regulation when he provided [the plaintiff's] mother with the names of his friends' law firms."[21] Additionally, DOJ OIG O&R did not find then-ASAC Cuffari's explanation regarding his conduct to be credible, which raised questions about his candor.

Included in DOJ OIG O&R's memorandum of findings were additional allegations against then-ASAC Cuffari, which were referred to DOJ OIG's Office of Investigations for further inquiry. DOJ OIG's Office of Investigations subsequently initiated a management inquiry into four separate allegations of misconduct by then-ASAC Cuffari. The management inquiry was a separate matter from the DOJ OIG O&R investigation.

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[21] *See* ROI at 28.

By May 2013, then-ASAC Cuffari clearly knew he was under investigation by DOJ OIG O&R and that he faced additional allegations of misconduct.[22] On May 3, 2013, then-ASAC Cuffari was notified by DOJ OIG management of these additional matters (ethics and policy violation allegations), in an email which stated,

> *During the Oversight and Review investigation of the allegations made against you by the United States Attorney's Office, District of Arizona arising from the […] case; the following four additional matters of concern were found:*
>
> *1. It appears that you sought appointment to and served on an Arizona State Commission on Appellate Court Appointments without first seeking approval from the OIG's General Counsel or anyone in his supervisory chain, or reporting your appointment to the commission on your Confidential Financial Disclosure form (OGE 450) as would be required. In addition[,] you used your OIG email account to seek such appointment and to conduct the activities of the commission. It also appears that you previously served on a similar commission.*
> *2. It appears that you donated surplus OIG printers to a high school where your wife is the principal. Although you requested permission of INV* [Office of Investigations] *management to do so, it does not appear that you disclosed to INV management or to OGC your wife's position at the school.*
> *3. It appears that you used your OIG e-mail account, rather than a personal account, in correspondence seeking a position as the Inspector General for the Arizona National Guard.*
> *4. It appears that you wrote a recommendation letter in your official capacity and on OIG letterhead in support of an Assistant U.S. Attorney's candidacy to become a U.S. Magistrate Judge in Tucson, and did so without consulting INV management or OGC.*
>
> *…Please provide me with a written response for each of the identified concerns by May 20, 2013.*[23]

Knowing these potentially career-impacting matters were pending, then-ASAC Cuffari submitted his paperwork to retire. He did this on May 20, 2013, the same day his response was due, stating that his retirement would be effective May 31, 2013.

Then-ASAC Cuffari did not substantively respond to the allegations set forth in DOJ OIG management's request. The following day, however, his personal attorney communicated with DOJ OIG management, stating,

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[22] Further evidence that then-ASAC Cuffari understood he was under investigation by his OIG is reflected by the fact he was read the appropriate rights and signed a Warnings and Assurances to Employee Required to Provide Information form when he was interviewed by investigators. The warnings specifically stated, "[t]his investigation pertains to the OIG's investigation of certain actions of OIG Special Agent Joseph Cuffari relating to the matter…" In the interview, then-ASAC Cuffari also expressed his concerns about the severity of the allegations against him.
[23] *See* ROI at 28-29.

> *I recommend all clients to only respond when compelled by the government. I have given this advice to Joe who has chosen to accept it. That said, I understand you are aware Joe has decided to retire effective May 31st, and has submitted retirement papers accordingly. Under that circumstance, I write to inquire whether your office will still be proceeding to compel responses.*[24]

On May 24, 2013, DOJ management responded, stating,

> *If ASAC Cuffari proceeds with his retirement on May 31, 2013, the issue will be moot and I will not seek his response. However, if for any reason ASAC Cuffari decides not to retire on that date, I request ASAC Cuffari's compelled response by COB June 1, 2013.*[25]

DOJ OIG's communications to then-ASAC Cuffari were made with full knowledge of DOJ OIG's Office of Investigations management and their OGC. IC investigators interviewed current and former DOJ OIG officials who had knowledge of then-ASAC Cuffari's departure from DOJ OIG. DOJ OIG's former General Counsel, who had been in that role during the relevant period, relayed to IC investigators that the allegations and findings against then-ASAC Cuffari in their O&R investigation were "significant and serious." In fact, the allegations were deemed so significant and serious that DOJ OIG did not want to delay taking action against then-ASAC Cuffari based on the findings, and thus decided to treat the additional issues arising from the O&R investigation as a management matter. DOJ OIG's former General Counsel also believed that then-ASAC Cuffari's actions as a tenured agent in a supervisory role undermined the integrity and objectivity expected of a federal employee, but assessed that then-ASAC Cuffari's retirement essentially precluded the disciplinary process from moving forward.[26]

The former DOJ OIG General Counsel did not think then-IG nominee Cuffari's response to question 10 of his Pre-hearing Questionnaire for his confirmation hearing was truthful. Instead, this witness opined that rather than responding affirmatively that then-IG nominee Cuffari had been the subject of a DOJ OIG investigation and providing an accurate overview of the allegations against him, he instead knowingly provided an incomplete and inaccurate narrative.

The IC agrees with the former General Counsel's assessment. In response to a direct question from HSGAC regarding whether he had been subject to an investigation by an OIG, then IG-nominee Cuffari acknowledged being questioned by "IG staff," but materially omitted the fact that he was the subject of an investigation with substantiated findings, that he was then subject of

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[24] *See* ROI at 30.
[25] *Id.*
[26] The IC notes that such a process could have included internal discussions concerning whether then-ASAC Cuffari's conduct created an issue or impairment under *United States v. Giglio,* 405 U.S. 150 (1972). A *Giglio* impairment is related to the Government's obligation to disclose, in certain proceedings, relevant information relating to the credibility, bias, or impairment of an individual who has been untruthful, lacked candor, or has some other type of pervasive issue placing their credibility into question. As a result, Federal agents who are *Giglio* impaired may not be effective witnesses in criminal cases and are not frequently called by prosecutors in support of their cases given that their prior credibility issues will likely serve as a basis for impeachment. With respect to then-ASAC Cuffari's circumstances, DOJ OIG's former General Counsel told IC investigators, "...I'm sure we talked about it [*Giglio*]."

a separate OIG management inquiry, and that he had retired in the wake of both the investigation and the inquiry. The IC further agrees that the above evidence makes IG Cuffari's answers to questions 11a and 11b in his nomination Questionnaire, in context, wrongfully inaccurate and misleading. The questions and IG Cuffari's responses are as follows:

> *Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.*
>
> Cuffari: *No.*
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> *Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of a security policy?*
>
> Cuffari: *No.*

Taken together, then-IG nominee Cuffari's responses to Congress are inconsistent with what actually occurred. The evidence strongly suggests that then-ASAC Cuffari knew that by retiring in lieu of the DOJ OIG management inquiry proceeding, he would avoid any potential disciplinary action resulting from the findings of the DOJ OIG O&R investigation and pending management inquiry.

The nomination and confirmation vetting process to become a Presidentially appointed Senate confirmed IG includes multiple opportunities for a prospective IG to offer all material information about their experience and background in response to numerous questions from the White House and Congress. The IC believes that the integrity reasonably expected of a person in that situation requires them to be fully forthcoming and completely candid. That is particularly important regarding matters involving integrity because the IG Act provides that IGs be appointed "solely on the basis of integrity and demonstrated ability."[27]

The IG Act also states, in part, that the purpose of an IG is "to provide a means for keeping the head of the establishments and Congress fully and currently informed about problems and deficiencies relating to the administration of those programs and operations and the necessity for and progress of corrective action."[28] In other words, one of the foundational duties of an IG is to promote transparency. Such transparency must start with one's representations about themselves. During IG Cuffari's confirmation hearing he seemed to acknowledge that sentiment in his opening statement. He testified that "[i]n creating the OIGs, I believe Congress recognized the shortfall in permitting agencies to exclusively investigate themselves. If I am confirmed, I

[27] 5 U.S.C. § 403(a).
[28] *See* 5 U.S.C. § 404.

commit to being an honest broker of information and to seek the truth."[29] He was subsequently confirmed by the Senate.

In sum, IC investigators found that, IG Cuffari provided wrongfully inaccurate and misleading information during his nomination process when he failed to describe the true facts and circumstances surrounding his departure from federal employment as a special agent with law enforcement authority. Since then, IG Cuffari has had ample opportunities to explain his actions. The IC's investigators sought to interview him about this matter, but he declined. Likewise, when offered an opportunity to substantively respond to the IC investigators' draft ROI, he replied through counsel in a footnote stating he "provided complete and accurate information throughout his confirmation process to the best of his knowledge and understanding about his professional background, a DOJ OIG inquiry into a matter that IG Cuffari investigated, and his educational background." The IC finds that IG Cuffari engaged in conduct undermining the independence or integrity reasonably expected of his position and continues to do so today by failing to acknowledge his answers lacked transparency and candor.

2. IG Cuffari's Retaliatory Investigation Against Costello and Others; the Accompanying Gross Waste of Funds by Pursuing that Investigation; and IG Cuffari's Lack of Candor in Explaining His Involvement in that Investigation (Allegations 5 and 6)

a. Background

Allegations 5 and 6 are closely related to each other in subject matter and fact pattern, therefore the background for both allegations will be addressed together. Additional evidence will be discussed below, under each allegation, as applicable.

After IG Cuffari's nomination, DHS OIG senior executives Ms. Costello, Ms. Ouzts, and Ms. Shaw (the three senior executives) raised questions regarding his qualifications to become the IG with DHS OIG senior staff. Ms. Costello appears to have led this effort and she and Ms. Ouzts also discussed their concerns with those outside DHS OIG. In general, these concerns were that IG Cuffari's prior federal civil service management experience was limited to serving in a GS-14 position as an ASAC, and that he had acquired his Ph.D. from a school identified as an unaccredited "diploma mill" by the Government Accountability Office (GAO). Notwithstanding, IG Cuffari was confirmed by the U.S. Senate on July 25, 2019, and then appointed by the President and sworn in as DHS OIG's IG on July 29, 2019.

As described further below under Allegation 1, related to Ms. Costello, upon IG Cuffari's arrival to DHS OIG, Ms. Costello wrongfully resisted IG Cuffari's leadership. Tensions between IG Cuffari and the three senior executives, whom it appears IG Cuffari viewed as a group, grew. On November 19, 2019, Ms. Costello told IG Cuffari via email about allegations she had made against him to the IC. By this point, IG Cuffari had already begun submitting allegations for

[29] Hearing before the Committee of Homeland Security and Governmental Affairs, Nomination of Joseph V. Cuffari to be Inspector General of the U.S. Department of Homeland Security, March 5, 2019.

investigation to various entities about the three senior executives, including to the IC. He also asked the IG of the Social Security Administration (SSA) to review 22 such allegations, and made a referral to the USAO, District of Columbia. The aforementioned entities declined to investigate the respective allegations. For these and other reasons, there was a level of discord between IG Cuffari and the three senior executives throughout their professional relationship.

On May 4, 2020, DHS OIG contracted with the law firm WilmerHale to conduct an independent investigation into [redacted] allegations against the three senior executives, [redacted] more allegations than IG Cuffari originally referred to SSA OIG.[30] By the time WilmerHale commenced its investigation, Ms. Shaw had voluntarily transferred to another agency, and Ms. Ouzts was placed first on administrative leave (on May 8, 2020) and then investigative leave (by May 21, 2020). On February 28, 2020, over two months before DHS OIG contracted with WilmerHale, and weeks before proposals were due to be received from WilmerHale and other competing law firms, IG Cuffari and DHS OIG notified Ms. Costello of her proposed removal. On June 11, 2020, approximately six months before WilmerHale would complete its investigation of the three senior executives at issue, IG Cuffari and DHS OIG removed Ms. Costello from Federal service.

Ultimately, DHS OIG paid WilmerHale $1.393 million for their investigation.[31] DHS OIG also paid Ms. Costello $1.17 million to settle her Merit Systems Protection Board (MSPB) case regarding her removal. Central to her claim was that she made "protected disclosures" and that IG Cuffari retaliated against her for doing so. The settlement included providing her with a "clean record," citing her cause for departure as personal reasons rather than a termination.

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[30] Potentially key evidence regarding the initiation of the WilmerHale contract was not available to IC investigators. Mr. De Mello who was on detail from DOJ to DHS OIG as a Senior Special Counsel was involved in the contracting process but told IC investigators that he only saved materials to his laptop computer desktop and not to the DHS OIG network because [redacted]

IC investigators learned that upon Mr. De Mello's departure from DHS OIG, his laptop and his other electronic equipment were put on "investigative hold" and were slated for retention (rather than re-distribution to another user) by DHS OIG's Office of General Counsel. A chain of custody was created. The laptop was placed in a locked two-drawer file cabinet used to store items, including laptops, for employees that had been placed on administrative leave (though Mr. De Mello had not been placed on such leave). In early 2022, at the request of the IC investigative team, DHS OIG personnel did an inventory of the cabinet and found the laptops of other DHS OIG personnel, but not Mr. De Mello's. However, all other items recorded as having been returned by Mr. De Mello upon his departure (including two iPhones, a PIV card, a building access card, and three physical keys) were present.

DHS OIG was never able to locate Mr. De Mello's laptop nor the chain of custody document and ultimately conceded that they did not know what had become of the laptop. During the interview of IG Cuffari on August 30, 2022, by IC investigators, IG Cuffari stated that he did not know what happened to Mr. De Mello's laptop after Mr. De Mello's departure from DHS OIG. In his response to the IC's draft ROI for 20-059 on August 16, 2024, for the first time, IG Cuffari claimed, through counsel, that the laptop had been "refurbished and reissued."

[31] It is noteworthy that despite all three subjects of the internal investigation having departed, IG Cuffari nevertheless chose to publicly distribute the WilmerHale report to CIGIE and Congress, and release a redacted version of the report on the DHS OIG FOIA reading room. The report also received press coverage.

b. IG Cuffari's Retaliatory Investigation (Allegation 5)

IG Cuffari abused his authority by retaliating against Ms. Costello, Ms. Shaw, and Ms. Ouzts for Ms. Costello's protected disclosure to the IC by initiating and pursuing the WilmerHale investigation. The IC's investigators found that while their investigation did not yield direct evidence that IG Cuffari initiated investigations in retaliation for protected disclosures made by Ms. Costello, Ms. Shaw, or Ms. Ouzts, the investigation revealed clear circumstantial evidence supporting such a finding, both as the WilmerHale investigation was being initiated and as it progressed.

Specifically, the IC investigation found that IG Cuffari initiated the WilmerHale investigation into the three senior executives after becoming aware that Ms. Costello had made a protected disclosure about him. Although IG Cuffari stated otherwise, he was involved in DHS OIG requesting WilmerHale to investigate allegations solely about the three senior executives with whom he had had difficult relations. IC investigators interviewed various DHS OIG employees who witnessed this process. Some witnesses characterized the allegations against the three senior executives as "personal" in nature.

Additionally, two of the three senior executives were slated to leave DHS OIG before the WilmerHale contract had even been signed. Ms. Shaw announced her departure the month prior to DHS OIG signing the contract with WilmerHale and left just four days after it was signed.

Mr. De Mello told the IC investigative team that at some time after IG Cuffari threatened to pull or reconsider his recommendation for Mr. De Mello's nomination to be IG at the U.S. Department of Education.

[33] While the IC acknowledges that hiring outside counsel is within an IG's authority, the purported point of doing so in this instance was to have an "independent" review in light of the tension between IG Cuffari and the senior executives. Nevertheless, IG Cuffari remained involved and failed to recuse himself from the matter.

DHS OIG issued a notice of proposed removal to Ms. Costello more than two months prior to signing the contract with WilmerHale. She was removed from Federal service approximately a month after the WilmerHale contract was signed and approximately six months before WilmerHale completed their work. Even Ms. Ouzts was placed on administrative leave just days after WilmerHale was hired by DHS OIG.

In sum, the WilmerHale investigation appears to lack a sound justification[34] Given the apparent retaliatory intent, employment status of the subjects, and the fact that the report was not intended to address ongoing issues at the organization or achieve other goals, the endeavor appears to lack sound justification. As discussed further under Allegation 6, this concern compounded as IG Cuffari continued to fund the investigation.[35]

c. IG Cuffari's Gross Waste of Funds and Lack of Candor as to His Role in the WilmerHale Investigation (Allegation 6)

IG Cuffari engaged in substantial misconduct in the form of a gross waste of funds and abused his authority by spending $1.393 million for a contract between DHS OIG and WilmerHale to investigate the three senior executives who had formally complained about him, most likely for his "personal" interest, in support of his prior decision to remove Ms. Costello. IG Cuffari also lacked candor in his explanations for the decision to engage a private firm to investigate the allegations, including his relevant communications with Congress and IC. Further, IG Cuffari personally attempted to intervene in the WilmerHale investigation for his own benefit, when he asked two successive Acting IGs at the Department of State, who were AIG Shaw's new supervisors, to pressure AIG Shaw to agree to an interview with WilmerHale investigators without conditions.

As described above, the value of the WilmerHale investigation at inception, considering IG Cuffari's apparent retaliatory intent and the departures of two of the three senior executives, is highly questionable. That concern was amplified as the costs of the WilmerHale investigation continued to mount. The IC investigation found that the cost of the WilmerHale investigation substantially increased due to the number of allegations DHS OIG provided to WilmerHale. WilmerHale's initial estimate of $793,000 ultimately resulted in an investigation costing $1.393 million (an approximate 75% increase in cost), for the subset of the approximately [redacted] allegations DHS OIG presented to WilmerHale that the firm was able to address. All of these allegations

[34] In a letter from IG Cuffari to the IC Chairperson, dated November 3, 2020, IG Cuffari writes, "a federal employee should not be allowed to escape accountability for their misdeeds by leaving before the investigation is complete..." However, as described above, IG Cuffari did not hold himself to the same standard when he retired from DOJ OIG while a management review into his potential ethics violations was ongoing and subsequently failed to disclose relevant information during his nomination and confirmation process.

[35] IG Cuffari's argument that he essentially had no other choice but to contract with WilmerHale to investigate, because the IC and the other OIG he contacted would not help him, is inaccurate. The IC's staff was available to answer questions about the level of detail and subject matters typically found in a referral that leads to an investigation by the IC. Additionally, where the IC elects to close a matter due to lack of specificity or other failures to meet IC threshold standards, and the particular OIG is concerned about conducting their own investigation based on a possible appearance of conflict, the IC or CIGIE can assist them in finding a "disinterested" OIG to assist with an investigation and IC staff made such an offer to IG Cuffari in this case. This approach is preferred over the concerned OIG selecting another OIG themselves, which can, again, raise possible conflict questions.

related solely to the three former senior executives, as opposed to any other stated goal that could have impacted the office going forward and added value to the organization. Despite the increasing costs and lack of an apparent justified purpose for the investigation, IG Cuffari pressed on.[36] While an IG's decision to seek assistance from a private law firm, under other circumstances, could be reasonable, the expenditure here was significantly out of proportion to the benefit reasonably expected to accrue to the government.

Additionally and separately, throughout the engagement with WilmerHale, IG Cuffari and DHS OIG leadership remained involved in what IG Cuffari represented to Congress and the IC was an independent investigation in which he was a mere witness. This included [redacted]

IG Cuffari also participated in client updates provided by WilmerHale where WilmerHale discussed [redacted]

[redacted]

IG Cuffari had used the premise that Ms. Costello unlawfully or improperly held herself out as the Acting IG as a basis for her removal from federal service less than two months prior.

IG Cuffari reacted to the news that WilmerHale was [redacted]

- [redacted]

[36] The Federal Acquisition Regulation (FAR), codified at Title 48 of the Code of Federal Regulations, contains the uniform policies and procedures for acquisitions by all federal agencies. The contract between DHS OIG incorporated by reference FAR 52.212-4 and FAR 52.212-5, which allow termination of a contact for the government's convenience. In pertinent part, FAR 52.212-4 states, "[t]*he Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination…*"

[37] *See* ROI at 88.

[redacted]

As early as August 6, 2020, another DHS OIG senior executive [redacted]

[redacted]

[redacted]

IG Cuffari's apparent ex post facto attempt to use the WilmerHale investigation to justify his removal of Ms. Costello failed. Certain facts developed above by WilmerHale [redacted] Ultimately, DHS OIG and Ms. Costello settled her MSPB action for $1.17 million.

IG Cuffari also abused his authority by personally attempting to intervene in the WilmerHale investigation for his own benefit. Specifically, IG Cuffari asked two successive Acting IGs at the Department of State, who were also United States Ambassadors and Ms. Shaw's supervisors, to pressure Ms. Shaw (who was represented by counsel) to agree to an interview with WilmerHale investigators, that was not otherwise mandatory, without conditions. The investigation found that IG Cuffari personally asked one of these Acting IGs to "order" Ms. Shaw to submit to the interview. The Acting IG refused.

Additionally, IG Cuffari's statements to Congress and the IC's investigators were not consistent with evidence obtained during the investigation. For example, despite the above facts, in response to Questions for the Record from members of the U.S. House of Representatives Committee on Homeland Security, dated June 4, 2021, regarding the hiring of an outside law

[38] *See* ROI at 72.
[39] *See* ROI at 88.
[40] *See* ROI at 49.

firm, IG Cuffari stated, "I was also not involved in guiding the work of the firm." Similarly, IG Cuffari described his role in the WilmerHale investigation to IC investigators as that of a witness. IG Cuffari recalled participating in three meetings with WilmerHale: one prior to investigative work starting, one in August or September 2020, and one at the completion of the investigation. When asked if WilmerHale was just providing an update, or if IG Cuffari was involved in taskings with Wilmer Hale, IG Cuffari responded:

[redacted]

However, IG Cuffari did recall suggesting at the August 2020, meeting with WilmerHale that [redacted]

IG Cuffari engaged in conduct undermining the independence or integrity reasonably expected of his position due to inaccurate and misleading explanations for the decision to engage a private firm to investigate the allegations against the three former senior executives and his misrepresentations about his level of involvement in the investigation.

B. Ms. Costello

After thoroughly reviewing the evidence and carefully considering the subject's comments, the IC finds by a preponderance of the evidence that Ms. Costello, while she was Acting IG and Principal Deputy IG, abused her authority in the exercise of her official duties when she wrongfully resisted newly confirmed IG Cuffari's leadership through a series of divisive words and actions. This is also the subset of Allegation 1 that was substantiated by the IC's investigators.

1. Ms. Costello Wrongfully Resisted Newly-Confirmed IG Cuffari's Leadership Through Her Words and Actions (Allegations 1)

The investigation obtained testimony from several witnesses that after IG Cuffari became IG, Ms. Costello, among other things:

- continued to make disparaging comments about IG Cuffari to members of DHS OIG staff, including that he was "dumber than a box of rocks;"

- behaved in an unwelcoming manner by not leading the transition and being visibly upset, in front of senior staff, when he was sworn in as IG;

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[41] *See* ROI at 73.

- acted in an unprofessional manner, including during meetings with IG Cuffari and DHS OIG staff by turning her back on him when he was speaking, ignoring him, and typing or texting on her mobile device; and

- at times, failed to appropriately copy IG Cuffari on emails and attend meetings with IG Cuffari.

Ms. Costello was a senior leader at DHS OIG and served as Acting IG immediately prior to IG Cuffari's arrival. It is reasonable to expect a heightened level of professionalism from someone in her role. Moreover, her unique position in the organization gave her a platform to significantly impact the success of the transition in leadership – either positively or negatively. Therefore, even if Ms. Costello believed she was raising legitimate concerns about IG Cuffari's experience or background during the nomination and confirmation process, once IG Cuffari was confirmed, she should have endeavored to help make that transition successful for the sake of the organization and mission. She did not do so. The animus that resulted, in part from her unprofessional behavior, further exacerbated the situation, distracted from the important work of the office, and was a misuse of her authority.

While the remaining allegations against Ms. Costello were not substantiated by a preponderance of the evidence as rising to misconduct under the IC's standards, that does not, however, mean the IC condones her performance as a senior executive in this matter.

2. Other Unsubstantiated Allegations

The unsubstantiated allegations against Ms. Costello and the IC's findings are as follows:

The IC did not substantiate by a preponderance of the evidence that Ms. Costello "abuse[d] her authority and/or engage[d] in conduct undermining the independence and integrity reasonably expected of her position by wrongfully holding herself out as the Acting IG in 2019, in violation of the Federal Vacancies Reform Act (FVRA)." The investigation uncovered clear evidence that the then [redacted], intended (and widely communicated this intention) for Ms. Costello to take over as Acting IG upon [redacted] retirement, to include submitting revised Orders of Succession plainly showing Ms. Costello as next in line. However, [redacted] and others, to include Ms. Costello, appeared to be under the mistaken belief that these changes did not require DHS Secretary approval to be effective. [redacted].

The IC did not substantiate by a preponderance of the evidence that Ms. Costello "wrongfully took steps, with the assistance of then-AIG Shaw, to attain and keep the position as the Acting IG, to include actively working to force the retirement of then [redacted]." [redacted] told IC investigators that the decision to retire was [redacted] alone, and that [redacted] felt "compelled" to retire to ensure that the Agency could move on from the fallout associated with an internal review of certain DHS OIG audit reports, issued under [redacted] leadership. [redacted] was rightly recused from the review of the audit reports and Ms. Costello, as the next most senior official,

ultimately oversaw the review. The review concluded that the audit reports had to be retracted for not meeting required industry standards, a fact that was transparently shared with the public. While [redacted] believed that the internal review report was published to force [redacted] out of DHS OIG, and that Ms. Costello "was behind all of it," witnesses interviewed, including Ms. Costello, explained otherwise. That said, Ms. Costello's professional relationship with [redacted] deteriorated during this time, she did not speak professionally about him in all instances, and she did want him to go through with his pre-planned retirement.

The IC did not substantiate by a preponderance of the evidence that Ms. Costello "wrongfully resist[ed] the arrival of then IG nominee Cuffari by leading and executing an effort to thwart his confirmation by Congress." While the investigation found that Ms. Costello did raise concerns to multiple individuals outside DHS OIG that IG Cuffari's prior civil service management experience was limited to serving in a GS-14 position as an ASAC, and that he had acquired his Ph.D. from a school identified as an unaccredited "diploma mill" by GAO, the investigation did not find by a preponderance of evidence that Ms. Costello communicated these concerns to Congress, or that the information she provided to others was in an effort to thwart IG Cuffari's confirmation.

The nomination and confirmation process is designed to allow the President and the Senate to fully vet a nominee for a position of trust. This necessitates a fulsome accounting of the individual's background, experience, and character, drawn from a variety of sources, for appropriate consideration. Even had Ms. Costello shared this information with members of Congress or their staffs, the IC could not label that act alone as "misconduct" as many members of the IG community engage regularly with Congress (and are encouraged to do so by members and staff) as part of their critical oversight role.

The IC did not substantiate by a preponderance of the evidence that Ms. Costello "wrongfully resist[ed] the arrival of then IG nominee Cuffari by attempting to fill key leadership positions in DHS OIG designed to limit IG nominee Cuffari's ability to hire Senior Executive Service [SES] employees." The investigation found that a plan to fill certain DHS OIG SES vacancies had been set in motion by former [redacted] prior to IG Cuffari's nomination. As a part of this plan, one SES position was filled between IG Cuffari's nomination and confirmation, and IG Cuffari concurred with this hire when he arrived at DHS OIG.

Ms. Costello did attempt to fill one additional SES position during her time as the Acting IG, and had selected a candidate; however, IG Cuffari cancelled that hiring action once he was sworn in. The IC did not substantiate by a preponderance of evidence that attempting to fill this position was "wrongful resistance."

The IC did not substantiate by a preponderance of the evidence that Ms. Costello "undermine[d] IG Cuffari's leadership by soliciting DHS OIG's Office of Investigations to conduct a baseless investigation of his travel." The IC's investigation did not find evidence that Ms. Costello contacted DHS OIG's Office of Investigations regarding IG Cuffari's travel.

The IC did not substantiate by a preponderance of the evidence that Ms. Costello "solicit[ed] DHS OIG employees to complain about IG Cuffari to CIGIE." The investigation did not find evidence that Ms. Costello engaged in such actions.

IV. Related Attached IC Matters

During the IC 20-059 investigation, the IC continued to receive numerous allegations of wrongdoing against IG Cuffari and other Covered Persons at DHS OIG. For some of these allegations, the IC requested responses from the subjects in accordance with the ICP&P and the matters were subsequently closed. For the majority of allegations, the IC closed the matters without requesting a subject response because the allegations did not meet threshold standards.

However, three of these additional allegations of wrongdoing, IC 22-046, IC 22-069, and IC 23-057, were combined into one overarching matter, IC 22-046.069, and are appended to this report.[42] The IC has not investigated this matter, nor has it made findings or conclusions regarding it. Instead, pursuant to the ICP&P, the IC is referring them to you for your awareness and any action you deem appropriate.[43]

A. Substance of Referral

The allegations involve possible abuse of authority, substantial misconduct—including gross mismanagement—and conduct undermining independence or integrity reasonably expected of a covered person. The allegations include that:

1. IG Cuffari and a DHS OIG senior executive diminished and delayed reports regarding sexual harassment at DHS and domestic abuse by its personnel (IC 22-046);

2. IG Cuffari and one of his senior executives failed to timely and adequately disclose to Congress the Secret Service's deletion of text messages that were potentially relevant to Congress' January 6th investigation (IC 22-069); and

3. IG Cuffari deleted his own work-related text messages and one of his senior executives failed to report that fact to National Archives and Records Administration (IC 23-057).

The IC requested and received responses from the subjects: IG Cuffari, and his two senior executives. IC requests to these subjects began in October 2022, and responses were received over a 10-month period from December 2022 - October 2023. The subjects' responses are enclosed herewith.[44]

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[42] IC 22-046 was received on April 27, 2022, IC 22-069 was received on July 26, 2022, and IC 23-057 was received on March 12, 2023.
[43] ICP&P, Section 7(B)(v).
[44] It took one senior DHS OIG official a year to respond to the IC's request. After [redacted] claimed that [redacted] was "not

B. Rationale for Referral

During its January 11, 2024, meeting the IC voted to close IC 22-046.069 without making any finding or determination, attach it to this report, and refer it to you, as the DHS IG's appointing authority, for any action you deem necessary. Before making that determination, the IC considered other actions available to it under its ICP&P, but ultimately determined that referral to you was the appropriate course of action because:

1. An IC investigation into the matters would be unlikely to uncover further relevant information as the subjects have already provided responses, and in some cases multiple responses, through their attorneys.[45] Additionally, much of what was alleged and provided in response is publicly available via press reporting and congressional testimony and responses. Likewise, the IC has significant doubts about the cooperation it would receive going forward from key witnesses in light of the fact that both IG Cuffari and certain other subjects of IC investigations sued the IC in a case that was later dismissed; IG Cuffari declined to be interviewed regarding Allegation 8 in IC 20-059; and one subject required four separate requests from the IC, and explicit permission from DHS OIG, before they provided a full response to one of the matters;[46]

2. Expanding the scope of the IC 20-059 investigation to include these matters would have added significant time to an already lengthy investigation; added further strain on the resources of the Assisting OIG conducting the IC 20-059 investigation; and continued to require the time and resources of the Subjects, who work for an OIG that provides oversight for an agency with a vitally important missions; and

3. Providing IC 22-046.069 as an attachment to IC 20-059 allows you to see the related allegations previously reviewed by the IC, the Subjects, and DHS OIG more broadly.

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authorized to disclose" pertinent requested information, the IC went to DHS OIG's [redacted] and sought assistance from [redacted] in assuring the senior official that, pursuant to Addendum A of the ICP&P, [redacted] was authorized to cooperate with IC's requests. Rather than simply conveying the authorization, the [redacted] responded to the IC that [redacted] was "unclear" on how DHS OIG can honor the request, and professed to be uncertain about what the IC was requesting. However, during the same timeframe, the [redacted] sua sponte engaged the Office of Special Counsel (OSC) with concerns about the IC's information request regarding January 6th and clearly identified what the IC was looking for. OSC notified the [redacted] that they had no objection to DHS OIG sharing any information that the IC requested. Of note, the [redacted] did not inform the IC about [redacted] communications with OSC, nor did [redacted] change [redacted] earlier determination based on the response OSC provided. Instead, the IC was forced to, again, go back to the [redacted] in order to get [redacted] to provide the authorization to the senior official. This process alone took approximately four months.

[45] In response to the three matters that make up IC 22-046.069, the IC received a total of nine responses from the subjects.

[46] See January 23, 2022, email from IG Cuffari's attorneys to IC Investigators; August 30, 2023, IC letter "Integrity Committee Case 22-046 and 22-069: Request for Further Response; and *Fredricks v. Council of the Inspectors Gen. of Integrity & Efficiency*, 2023 U.S. Dist. LEXIS 197432.

V. Conclusions and Recommendations

The IC determines the allegations of wrongdoing against former IG Cuffari are substantiated as described above. The IC makes the following recommendation: referred for appropriate action, up to and including removal.

The IC determines that one allegation of wrongdoing against Ms. Costello was substantiated, and the others were not substantiated, as described above. Because Ms. Costello is no longer in federal service, the IC offers no related recommendation.

The IC determines that the allegations of wrongdoing against Ms. Shaw, Ms. Ouzts, and Mr. De Mello are not substantiated.

The IC is also providing its findings and conclusions to the CIGIE Executive Chairperson, the CIGIE Chairperson, and the Congressional committees of jurisdiction, as required by 5 U.S.C. § 424 (d)(8)(A).

Sincerely,

Kimberly A. Howell
Chairperson
Integrity Committee

Thomas A. Monheim
Vice Chairperson
Integrity Committee

Brian M. Tomney
Member
Integrity Committee

Kevin H. Winters
Member
Integrity Committee

Andrew Katsaros
Member
Integrity Committee

Dale A. Christopher
Member
Integrity Committee

Enclosures:
1. DOT OIG Report to the Integrity Committee
2. IG Cuffari's Response to the DOT OIG Report
3. Ms. Shaw's Response to the DOT OIG Report
4. Ms. Ouzts' Response to the DOT OIG Report
5. Ms. Costello's Response to the DOT OIG Report
6. Integrity Committee matter 22-046.069 and Supporting Documents

Enclosure 1

DOT OIG Report to the Integrity Committee

U. S. Department of Transportation
Office of Inspector General

September 6, 2024

MEMORANDUM TO: Integrity Committee
Council of the Inspectors General on Integrity and Efficiency

FROM: [redacted]

SUBJECT: Report on Complaint Number 20-059

Executive Summary

Pursuant to the Inspector General Act of 1978, as amended, the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is to receive, review, and refer for investigation allegations of wrongdoing made against Inspectors General (IGs) who are members of CIGIE and designated members of the senior staffs of those IGs, to ensure the fair, consistent, timely, and impartial disposition of allegations that fall within the IC's statutory mandate.[1]

On May 14, 2021, the IC requested that the U.S. Department of Transportation, Office of Inspector General (DOT OIG), conduct an investigation on behalf of the IC into allegations of wrongdoing by current and former U.S. Department of Homeland Security, Office of Inspector General (DHS OIG), employees: Joseph Cuffari, Inspector General (IG Cuffari); Andrew De Mello (Mr. De Mello), former Senior Counsel (SC); Jennifer Costello (Ms. Costello), former Chief Operating Officer (COO); and Diana Shaw (Ms. Shaw), former Assistant Inspector General (AIG). As additional allegations came to light, the scope of this investigation was expanded by the IC, on October 1, 2021, to include Karen Ouzts, (Ms. Ouzts), former Deputy Counsel and on June 25, 2021, and September 9, 2022, to include additional allegations regarding Ms. Shaw and IG Cuffari, respectively.

Most of the allegations investigated contained multiple "sub-allegations" and some of the allegations and sub-allegations named multiple parties as potentially committing wrongdoing. As such, condensed versions of the allegations, sub-allegations, and the corresponding findings are described in this Executive Summary.

[1] 5 U.S.C. App. § 11(d)(6)(A).

Investigative Findings

After thoroughly reviewing the evidence, the applicable IC criteria for wrongdoing, and the applicable preponderance of the evidence burden of proof, IC investigators found the following:

Allegation 1 – COO Costello: Substantiated in Part

A. Abused her authority and engaged in conduct undermining the independence and integrity reasonably expected of her position by wrongfully holding herself out as the Acting IG in 2019, in violation of the Federal Vacancies Reform Act (FVRA).[2]

Finding: Unsubstantiated – The investigation identified clear evidence that the then [redacted] Witness #1 intended (and widely communicated this intention) for Ms. Costello to take over as Acting IG upon his retirement, to include submitting revised Orders of Succession plainly showing Ms. Costello as next in line. This evidence also indicated that Witness #1 and others, to include Ms. Costello, acted under the mistaken belief that these changes did not require DHS Secretary approval in order to be effective. DHS OIG subsequently worked to resolve this error.

B. Wrongfully took steps, with the assistance of then-AIG Shaw, to attain and keep this position, which included actively working to force the retirement of then [redacted] Witness #1

Finding: Unsubstantiated – Although Witness #1 told IC investigators that he believed that DHS OIG published an internal review report to force him out of DHS OIG, the decision to retire was his alone, and that he felt "compelled" to retire to ensure that the Agency could move on from the fallout associated with DHS OIG's Emergency Management Oversight Team (EMOT) audit reports. While Witness #1 believes that the internal review report was published to force him out of DHS OIG, and that Ms. Costello "was behind all of it," witnesses interviewed, including Ms. Costello, adequately refuted that suggestion. The investigation also did not substantiate wrongdoing by AIG Shaw.

C. Ms. Costello and then-AIG Shaw wrongfully resisted the arrival of then IG nominee Cuffari, by:

i. Leading and executing an effort to thwart his confirmation by Congress;

Finding: Unsubstantiated – While the investigation found that Ms. Costello did raise concerns about IG Cuffari to multiple individuals outside DHS OIG, the investigation did not find evidence that Ms. Costello communicated these concerns to Congress, or that the information she provided to others was in an effort to thwart IG Cuffari's confirmation.

ii. Attempting to fill key leadership positions in DHS OIG designed to limit IG nominee Cuffari's future ability to hire Senior Executive Service employees.

Finding: Unsubstantiated – A plan to fill certain DHS OIG SES vacancies had been set in motion

[2] COO Costello also used the titles Deputy IG and/or Acting IG during the relevant time period covered in this report. The matter of Ms. Costello's proper title relates to allegations addressed in the course of this IC investigation.

by former [redacted] prior to IG Cuffari's nomination. As a part of this plan, one SES position was filled between IG Cuffari's nomination and confirmation. Ms. Costello did attempt to fill one additional SES position during her time as the Acting IG, and had selected a candidate, however, IG Cuffari cancelled that hiring action once he was sworn in.

iii. Undermined IG Cuffari's leadership by:

a. Soliciting DHS OIG's Office of Investigations to conduct a baseless investigation of his travel.

Finding: Unsubstantiated – The investigation did not find evidence that Ms. Costello contacted the DHS OIG's Office of Investigations regarding IG Cuffari's travel.

b. Soliciting OIG employees to complain about him to CIGIE.

Finding: Unsubstantiated – The investigation did not find evidence that Ms. Costello solicited OIG employees to complain about IG Cuffari to CIGIE.

D. Wrongfully resisted IG Cuffari's leadership by publicly disparaging IG Cuffari to DHS OIG staff.

Finding: Substantiated – The investigation obtained testimony from several witnesses that Ms. Costello made disparaging comments about IG Cuffari to members of DHS OIG staff and behaved in an unwelcoming and unprofessional manner, including during meetings with IG Cuffari and DHS OIG staff.

Allegation 2 - DC Ouzts: Unsubstantiated

A. Abused her authority and engaged in conduct undermining the independence and integrity reasonably expected of her position by wrongfully directing HR to make several retroactive changes to former [redacted] personnel paperwork in an effort to create a paper trail to support COO Costello's ascension to the role of Acting IG following [redacted] retirement.[3]

Finding: Unsubstantiated – While the investigation found that Ms. Ouzts did request that DHS OIG HR make retroactive changes to [redacted] personnel paperwork, the emails and testimony obtained by the investigation document an administrative error identified by DHS OGC and created by [redacted] changing his position title to Senior Official Performing the Duties of Inspector General (SOPDIG) while concurrently appointing Ms. Costello as the DIG. The investigation did not identify evidence that the request was made in bad faith.

B. In doing so, DC Ouzts and COO Costello agreed to obstruct the lawful functioning of DHS OIG through deceit.[4]

[3] Knowingly making or using a false writing or document in any matter within the jurisdiction of the executive, legislative, or judicial branch of the United States could be a violation of 18 U.S.C. §1001(a)(3).
[4] Conspiring to defraud an agency of the United States could be a violation of 18 U.S.C. §371.

Finding: Unsubstantiated – The investigation did not find evidence that Ms. Ouzts and Ms. Costello agreed to obstruct the lawful functioning of DHS OIG through deceit regarding the retroactive changes made to [redacted] personnel paperwork.

Allegation 3 - AIG Shaw: Unsubstantiated

Abused her authority and engaged in conduct undermining the independence and integrity reasonably expected of her position when she allegedly took actions to undermine IG Cuffari's leadership by denying IG Cuffari an opportunity to make an informed decision regarding DHS OIG's publication of a report related to alleged violations of immigration laws at the Tecate, California, Port of Entry by U.S. Customs and Border Protection personnel, known as the Tecate report, by failing to alert him to the Office of Special Counsel's (OSC) objections or concerns regarding publication of the report before OSC could complete its review.

Finding: Unsubstantiated – The evidence did not substantiate that Ms. Shaw abused her authority or engaged in conduct undermining the independence and integrity reasonably expected of her position by denying IC Cuffari an opportunity to make an informed decision regarding publication of the Tecate report. Although the evidence did show that Ms. Shaw did not inform IG Cuffari of OSC's previous frustrations with DHS OIG's practice of releasing OIG products upon completion of an official response from DHS management (which sometimes occurred prior to OSC completing their statutory process), the investigation found evidence that Ms. Shaw informed IG Cuffari of the report and offered an opportunity to explain the process to him, which he did not pursue. Further, the evidence developed shows that upon learning of IG Cuffari's decision to take down the report, Ms. Shaw repeatedly attempted to engage with IG Cuffari to further discuss the matter, but never received a response from IG Cuffari. Finally, the evidence supports that Ms. Shaw explained DHS OIG past practice to [redacted], [redacted] and requested guidance from [redacted] as to whether IG Cuffari was going to change the past practice as it related to release of reports, but did not receive an answer to that question prior to her leaving DHS OIG in May 2020.

Allegation 4 - AIG Shaw: Unsubstantiated

A. Abused her authority and engaged in substantial misconduct undermining her integrity when she:

i. Deleted approximately 6,000 files from her government- issued laptop;

Finding: Unsubstantiated – According to both Ms. Shaw and the [redacted], Ms. Shaw worked properly with DHS OIG IT to identify and transfer all relevant work files prior to her departure. Further, after the IC investigators had begun investigating this allegation, the alleger contacted investigators and asked to withdraw this allegation.

ii. Engaged a commercial Information Technology consultant to assist her in deleting these files, thereby permitting a private citizen to view and/or alter data on her

government-issued laptop without authority from DHS OIG.[5]

Finding: Unsubstantiated – The investigation did not find any evidence that this occurred. Additionally, when IC investigators interviewed the individual identified as having "direct knowledge" of the allegation, that individual was unable to provide any first-hand knowledge or evidence. Finally, as with the subpart above, shortly after IC investigators began investigating this allegation, the alleger contacted IC investigators and asked to withdraw the allegation.

Allegation 5 - IG Cuffari: Substantiated in Part

Abused his authority by initiating multiple investigations, including referring allegations to the IC and initiating the WilmerHale investigation (described below), into COO Costello and AIG Shaw, in retaliation for COO Costello and AIG Shaw's protected disclosures to the IC, Congress, and/or the Office of Special Counsel.

Finding: Substantiated in Part – While there is no direct evidence that IG Cuffari initiated investigations in retaliation for protected disclosures made by Ms. Costello, Ms. Shaw, or Ms. Ouzts, the investigation found clear circumstantial evidence to support a finding of retaliation. For example, IG Cuffari initiated the WilmerHale investigation into Ms. Costello, Ms. Shaw, and Ms. Ouzts, while knowing that Ms. Costello had made a protected disclosure about him.

[redacted]

Allegation 6 - IG Cuffari: Substantiated

A. Abused his authority, engaged in a gross waste of funds, and grossly mismanaged DHS OIG by spending over $800K for a contract between DHS OIG and WilmerHale, a private law firm, to investigate former senior members of his staff who had formally complained about him, most likely for his personal interest.

Finding: Substantiated – The IC investigation identified evidence of IG Cuffari's role in engaging the private law firm WilmerHale in an investigation that cost a total of $1.393 million. Prior to the contract being awarded, DHS OIG leadership was aware that Ms. Shaw was leaving, and Ms. Costello had been provided with a Notice of Proposed Removal. Moreover, four days

[5] Deletion of files with intent to obstruct the internal investigation could be a violation of 18 U.S.C. §1505.

after the contract was awarded, Ms. Shaw was no longer employed by DHS OIG, Ms. Costello remained on administrative leave pending removal, and Ms. Ouzts had been placed on administrative leave. [redacted]

B. Lacked candor in his explanations for the decision to engage a private firm to investigate the allegations, including, but not limited to, his relevant communications with the CIGIE Chairperson and the IC.

Finding: Substantiated – IG Cuffari's explanations to the CIGIE Chairperson and the IC in letters dated August 10, 2020, and November 3, 2020, did not accurately disclose the extent of his involvement in the decision to engage a private firm to investigate the allegations against Ms. Costello, Ms. Ouzts, and Ms. Shaw. Further, IG Cuffari did not indicate the volume of allegations which were solely focused on three individuals or the complete context such as the increase in the number of allegations between the request to a counterpart OIG and the engagement of WilmerHale.

C. Personally attempted to intervene in the WilmerHale investigation for his own benefit, when he twice asked Witness #3 [redacted] who was at that time the [redacted] at the [redacted] and AIG Shaw's new supervisor, to pressure AIG Shaw to agree to an interview with WilmerHale investigators without conditions.

Finding: Substantiated – IG Cuffari personally attempted to intervene in the WilmerHale investigation when he requested that Witness #3 [redacted] instruct Ms. Shaw to submit to an interview in the WilmerHale investigation.

Allegation 7 - SC De Mello: Unsubstantiated

A. Abused his authority and engaged in conduct that undermined the independence and integrity reasonably expected of his position by engaging in a scheme to violate Federal records laws and the Freedom of Information Act by instructing employees at DHS OIG to avoid documenting any work with him on official government information systems and demanding employees destroy records of their meetings with him.

Finding: Unsubstantiated – The investigation did not find evidence that Mr. DeMello instructed any employees at DHS OIG to avoid documenting any work with him on official government information systems, and/or demanded employees destroy records of their meetings with him. [redacted]. During the investigation, DHS OIG informed IC investigators that DHS OIG could not locate Mr. DeMello's laptop and could not account for what happened to the computer.

B. Created conditions for substantial misconduct and gross mismanagement by:

i. Asking DHS OIG employees to work on projects or provide information and then telling those employees not to discuss their work with their managers or supervisors;

Finding: Unsubstantiated – The investigation did not find evidence that this occurred.

ii. Advising the agency head to make policy changes for the express purpose of targeting a single employee;

Finding: Unsubstantiated – [redacted].

iii. Encouraging DHS OIG employees to file complaints against senior management with the intent to target two specific senior executives;

Finding: Unsubstantiated – While one witness informed IC investigators that a DHS OIG employee complained to their supervisor that Mr. DeMello prompted discussions with them about any grievances that the employee had and inquired whether that employee wanted to submit a complaint to the IG about Ms. Costello, IC investigators were not able to identify any first-hand accounts of Mr. DeMello encouraging employees to file complaints.

iv. Demanding a DHS OIG employee sign a non-disclosure agreement but then refusing to provide that employee with a copy; and

Finding: Unsubstantiated – The investigation found evidence that IG Cuffari, with Mr. DeMello's assistance, did ask two DHS OIG employees to sign NDAs and that the employees were not provided a copy of the NDAs after signing. However, both employees did not recall asking for a copy and both employees were accustomed to signing NDAs in the course of their work.

v. Attempting to surreptitiously monitor protected employee communications with Congress and the Office of Special Counsel.

Finding: Unsubstantiated – The investigation did not find evidence that this occurred.

Allegation 8 - IG Cuffari: Substantiated in Part

Engaged in conduct undermining the independence and integrity reasonably expected of his position because IG Cuffari's answers to the following questions, in the context of his

confirmation process,[6] were wrongfully inaccurate and/or misleading:

> *Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.*
>
> IG Cuffari: *No.*
>
> *Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of a security policy?*
>
> IG Cuffari: *No.*

Finding: Substantiated in Part – IG Cuffari's answers to the above questions were incomplete. Specifically, at the time of his answers, IG Cuffari was aware that he had been the subject of two separate complaints during his employment at DOJ OIG. Further, at the time of his answers, IG Cuffari was aware that he had retired from DOJ OIG while an internal DOJ OIG management inquiry into allegations of misconduct was on-going; and after he had been interviewed in a separate DOJ OIG O&R misconduct investigation focusing on his actions. Additionally, IG Cuffari's answer to a separate question on his pre-hearing questionnaire, "Question 10," did not convey the full extent of the investigation or its allegations, thus appearing to misrepresent the totality of the circumstances, and lacked candor expected of an IG.

Investigative Scope and Methodology

DOT OIG initiated its investigation in June 2021 on behalf of the IC. During the course of the investigation, DOT OIG agents (referred to in this report as the IC investigative team) conducted interviews of current and former DHS OIG employees (some were interviewed multiple times). The IC investigative team also interviewed the five subjects of the investigation. However, IG Cuffari declined to be interviewed a second time following the addition of Allegation 8.[7] In total, the investigative team conducted 67 interviews. The investigation was performed in accordance with CIGIE investigative standards.

[6] Hearing before the Committee on Homeland Security and Governmental Affairs, Nomination of Joseph V. Cuffari to be Inspector General, U.S. Department of Homeland Security, March 5, 2019, Attachment entitled, "HSGAC Biographical Questions for Executive Nominees," questions 11(A) 11(B).

[7] *See* Interview, IG Joseph Cuffari (August 30, 2022) ("Cuffari Interview"); Andrew De Mello (June 22, 2022 and August 23, 2022) ("De Mello Interviews"); Diana Shaw (May 16, 2022) ("Shaw Interview"); Karen Ouzts (January 28, 2022 and November 25, 2022) ("Ouzts Interviews"); Jennifer Costello (July 21, 2023) ("Costello Interview"); November 30, 2022 email to IG Cuffari's counsel requesting a follow-up interview after the addition of allegation 8; and related email thread with IG Cuffari's counsel whereby IG Cuffari declines to sit for an interview regarding allegation 8 (January 23, 2023 email).

The IC investigative team also sought documents from DHS OIG.[8] Despite significant delays, to date, DHS OIG has provided approximately 3.6 million documents, and the IC investigative team performed a targeted review of the records. Additionally, during the course of the investigation, Mr. De Mello's laptop computer, used during his detail to DHS OIG, became an item of interest, because the investigative team learned that the computer may contain evidence related to the allegations that was not saved to other systems of record at DHS OIG. DHS OIG did not produce Mr. De Mello's computer in response to the investigative team's request on January 12, 2023, and was ultimately unable to account for what happened to the computer.[9]

[8] Document requests dated June 16, 2021, July 27, 2021, October 18, 2021, January 13, 2022, January 25, 2022, and September 16, 2022.

[9] Memorandum of Activity, Record of Conversation, [redacted] dated February 17, 2022 and March 4, 2022; DOT OIG letter, dated January 12, 2023; DHS OIG letter dated February 3, 2023; DOT OIG letter dated February 10, 2023.

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DRAFT REPORT TO THE INTEGRITY COMMITTEE OF THE COUNCIL OF INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

A. BACKGROUND

Pursuant to the Inspector General Act of 1978, as amended, of the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is to receive, review, and refer for investigation allegations of wrongdoing made against Inspectors General who are members of CIGIE (IGs) and designated members of the senior staffs of those IGs, to ensure the fair, consistent, timely, and impartial disposition of allegations that fall within the IC's statutory mandate.[10]

On May 14, 2021, the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) requested that the U.S. Department of Transportation, Office of Inspector General (DOT OIG), conduct an investigation on behalf of the IC into allegations of wrongdoing by current and former U.S. Department of Homeland Security, Office of Inspector General (DHS OIG)[11] employees: Joseph Cuffari, Inspector General (IG Cuffari); Andrew De Mello (Mr. De Mello), former Senior Counsel (SC); Jennifer Costello (Ms. Costello), former Chief Operating Officer (COO); and Diana Shaw (Ms. Shaw), former Assistant Inspector General (AIG). As additional allegations came to light, the scope of this investigation was expanded by the IC, on October 1, 2021, to include Karen Ouzts, former Deputy Counsel (Ms. Ouzts) and on June 25, 2021, and September 9, 2022, to include additional allegations regarding Ms. Shaw and IG Cuffari, respectively. DOT OIG agreed to conduct the investigation on behalf of the IC.

This section provides a brief summary of: (1) the allegations, how they were initiated, and their resulting referral of the IC for the pending investigation by the IC investigative team; (2) the investigation conducted by the team; and (3) DHS OIG's role in delays associated with their production of documents and the unwillingness of certain witnesses to submit to voluntary interviews.

1. Procedural Background

The allegations investigated by the IC investigative team are as follows:

1) COO Costello abused her authority and engaged in conduct undermining the independence and integrity reasonably expected of her position by wrongfully holding herself out as the Acting IG in 2019, in violation of the Federal Vacancies Reform Act (FVRA), calling into question the authority for actions she took during that time.[12]

[10] 5 U.S.C. App. § 11(d)(6)(A).
[11] The Department of Homeland Security (DHS) has a vital mission: to secure the nation from the many threats we face. This requires the hard work of more than 260,000 employees in jobs that range from aviation and border security to emergency response, from cybersecurity analyst to chemical facility inspector. https://www.dhs.gov/about-dhs. The DHS OIG's mission statement is to provide independent oversight and promote excellence, integrity, and accountability within DHS. https://www.oig.dhs.gov/about
[12] COO Costello also used the titles Deputy IG and/or Acting IG during the relevant time period covered in this report.

Further, that she wrongfully took steps, with the assistance of then AIG Shaw, to attain and keep this position, which included actively working to force the retirement of then [redacted] Witness #1 her direct supervisor and the most senior DHS OIG official (following the retirement of [redacted] in 2017). Finally, that while in the senior-most position in DHS OIG, she and AIG Shaw wrongfully resisted the arrival of then IG nominee Cuffari, by, among other actions, leading and executing an effort to thwart his confirmation by Congress and attempting to fill key leadership positions in DHS OIG designed to limit IG nominee Cuffari's future ability to hire Senior Executive Service employees. After his confirmation, COO Costello wrongfully resisted IG Cuffari's leadership by publicly disparaging IG Cuffari to DHS OIG staff and sought ways to undermine IG Cuffari's leadership by, among other actions, soliciting DHS OIG's Office of Investigations to conduct a baseless investigation of his travel and by soliciting OIG employees to complain about him to CIGIE.

2) DC Ouzts abused her authority and engaged in conduct undermining the independence and integrity reasonably expected of her position by wrongfully directing HR to make several retroactive changes to former [redacted] Witness #1 personnel paperwork. DC Ouzts directed HR personnel to falsify approval dates and position descriptions on several of [redacted] Witness #1 SF-50s, in an effort to create a paper trail to support COO Costello's ascension to the role of Acting IG following [redacted] Witness #1 retirement.[13] In doing so, DC Ouzts and COO Costello agreed to obstruct the lawful functioning of DHS OIG through deceit.[14]

3) AIG Shaw abused her authority and engaged in conduct undermining the independence and integrity reasonably expected of her position when she allegedly took actions to undermine IG Cuffari's leadership. Specifically, she denied IG Cuffari an opportunity to make an informed decision regarding publication of the Tecate report. In her email dated September 5, 2019, AIG Shaw notified IG Cuffari that DHS OIG planned to publish the report but failed to alert him to OSC's objections or concerns regarding publication of the report before OSC could complete its review.

4) Former AIG Shaw abused her authority and engaged in substantial misconduct undermining her integrity when she deleted approximately 6,000 files from her government- issued laptop. AIG Shaw deleted these files after DHS OIG awarded a contract to WilmerHale to conduct an independent investigation into several DHS OIG personnel, including AIG Shaw. Additionally, AIG Shaw engaged a commercial Information Technology consultant to assist her in deleting these files, thereby permitting a private citizen to view and/or alter data on her government-issued laptop without authority from DHS OIG.[15]

[13] A relevant criminal statute is 18 U.S.C. § 1001(a)(3), which is knowingly making or using a false writing or document in any matter within the jurisdiction of the executive, legislative, or judicial branch of the United States.
[14] A relevant criminal statute is 18 U.S.C. § 371, which is the conspiring to defraud an agency of the United States.
[15] A relevant criminal statue is 18 U.S.C. § 1505, if there was deletion of files with the intent to obstruct the internal investigation.

5) IG Cuffari abused his authority by initiating multiple investigations, including referring allegations to the IC and initiating the WilmerHale investigation (described below), into COO Costello and AIG Shaw, in retaliation for COO Costello and AIG Shaw's protected disclosures to the IC, Congress, and/or the Office of Special Counsel.

6) IG Cuffari abused his authority, engaged in a gross waste of funds, and grossly mismanaged DHS OIG by spending over $800K for a contract between DHS OIG and WilmerHale, a private law firm, to investigate former senior members of his staff who had formally complained about him, most likely for his personal interest. IG Cuffari also lacked candor in his explanations for the decision to engage a private firm to investigate the allegations, including, but not limited to, his relevant communications with the CIGIE Chairperson and the IC. Further, IG Cuffari personally attempted to intervene in the WilmerHale investigation for his own benefit, when he twice asked Witness #3 [redacted] who was at that time the [redacted] and AIG Shaw's new supervisor, to pressure AIG Shaw to agree to an interview with WilmerHale investigators without conditions.

7) SC De Mello abused his authority and engaged in conduct that undermined the independence and integrity reasonably expected of his position by engaging in a scheme to violate Federal records laws and the Freedom of Information Act by instructing employees at DHS OIG to avoid documenting any work with him on official government information systems and demanding employees destroy records of their meetings with him. SC De Mello also created conditions for substantial misconduct and gross mismanagement by:

   a) Asking DHS OIG employees to work on projects or provide information and then telling those employees not to discuss their work with their managers or supervisors;

   b) Advising the agency head to make policy changes for the express purpose of targeting a single employee;

   c) Encouraging DHS OIG employees to file complaints against senior management with the intent to target two specific senior executives;

   d) Demanding a DHS OIG employee sign a non-disclosure agreement but then refusing to provide that employee with a copy; and

   e) Attempting to surreptitiously monitor protected employee communications with Congress and the Office of Special Counsel.

8) IG Cuffari engaged in conduct undermining the independence and integrity reasonably expected of his position because IG Cuffari's answers to the following questions, in the context of his confirmation process,[16] were wrongfully inaccurate and/or misleading:

[16] Hearing before the Committee on Homeland Security and Governmental Affairs, Nomination of Joseph V. Cuffari to be Inspector General, U.S. Department of Homeland Security, March 5, 2019, Attachment entitled, "HSGAC Biographical Questions for Executive Nominees," questions 11(A) 11(B).

Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

IG Cuffari: *No.*

Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of a security policy?

IG Cuffari: *No.*[17]

The IC received the above allegations, reviewed them using its normal process, and then referred them to DOT OIG (referred to in this report as the IC investigative team) for investigation beginning in May 2021, as described above.

Throughout this report, the allegations will be frequently referred to by their number (i.e., Allegation 1), but may not be described in order. Rather, we have arranged the report by the respondent (i.e., subject) of each allegation, so that all allegations that pertain to an individual are grouped together. When an allegation references more than one respondent, that allegation will be discussed separately for each respondent. Wherever possible, we have also presented the evidence chronologically for clarity and completeness.

Definitions

Under the IC's Policies and Procedures "wrongdoing" includes: (1) Abuse of Authority; (2) Substantial Misconduct; or (3) Conduct that undermines the independence or integrity reasonably expected of a Covered Person. Substantial Misconduct includes gross mismanagement, gross waste of funds, and substantial violations of law, rule, or regulation. The definitions applied in this investigation are reflected in the IC Policies and Procedures, and listed below.

- "*abuse of authority*" means arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to her/him or to preferred other persons. There is no de minimis standard for abuse of authority;
- "*gross mismanagement*" means action or inaction that creates a substantial risk of significant adverse impact on the OIG's ability to accomplish its mission. It does not

[17] Letter from [redacted] "Request for Independent Inspector General Investigation into Case Number 20-059," (May 14, 2021); letters expanding the scope of IC Investigation 20-059, dated June 25, 2021, October 1, 2021, and September 9, 2022.

include discretionary management decisions, or action or inaction that constitutes simple negligence or wrongdoing. There must be an element of willful misconduct or gross and wanton negligence; and

- "*gross waste of funds*" means an expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government; it is more than a debatable expenditure.[18]

Burden of Proof

The Integrity Committee reviews and assesses the Report of Investigation to determine whether the facts contained within are proven by a preponderance of the evidence and if those facts provide a reasonable basis to conclude that the Subject(s) engaged in particular wrongdoing. (IC P&P Section 10B and 10C) As such, the IC investigative team utilized the same standard of proof throughout the Report of Investigation and when determining whether to substantiate an allegation.

2. The IC Investigative Team's Investigation

The information contained in this report is based on the witnesses, documents, and information available during the course of the investigation. In keeping with law and policy, the IC investigative team made every effort to conduct a thorough investigation into the allegations associated with IC 20-059. Section 11(d)(6)(A) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. (IG Act) requires that "[t]he Chairperson of the Integrity Committee shall cause a thorough and timely investigation of each allegation referred [to it] … to be conducted."[19] The IG Act also requires that, "[i]nvestigations initiated under this subsection shall be conducted in accordance with the most current Quality Standards for Investigations issued by the Council."[20] Consistent with the IG Act, IC Policy states that, "[t]he investigation will be conducted in accordance with the most current Quality Standards for Investigations issued by CIGIE and utilize the investigative procedures of the Assisting IG unless otherwise directed by the IC Chairperson."[21] DOT OIG's internal Investigations Policies and Procedures Manual also states that all investigations will be conducted in accordance with these Quality Standards for Investigations.

The most current CIGIE Quality Standards for Investigations, like the IG Act, state that thoroughness is a requirement for investigations:

> *Thoroughness—All investigations must be conducted in a diligent and complete manner, and reasonable steps should be taken to ensure that pertinent issues are sufficiently resolved and to ensure that all appropriate criminal, civil, contractual, or administrative remedies are considered.*[22]

[18] IC Policies and Procedures (January 2018) (IC Policies).
[19] 5 U.S.C. App. § 11(d)(6)(A).
[20] 5 U.S.C. App. § 11(d)(7)(A).
[21] IC Policies at 10, (January 2018).
[22] Council of the Inspectors General on Integrity and Efficiency's Quality Standards for Investigations, at 8 (Nov. 15, 2011).

The IC team initiated its investigation in June 2021. During the course of the investigation, agents conducted interviews of current and former DHS OIG employees and other individuals with knowledge of the facts surrounding the allegations (including follow-up interviews of several individuals). The IC investigative team also interviewed the five subjects of the investigation. However, IG Cuffari declined to be interviewed a second time following the addition of Allegation 8.[23] In total, the team conducted 67 interviews.

The investigative team also sought documents from DHS OIG, as described below.[24] Despite significant delays in producing these documents, to date, DHS OIG has provided approximately 3.6 million documents, and the IC investigative team performed a targeted review of the records. Additionally, during the course of the investigation, Mr. De Mello's DHS OIG issued laptop computer, used during his detail to DHS OIG, became an item of interest and was requested. DHS OIG did not produce Mr. De Mello's computer and was ultimately unable to account for the computer.

To the fullest extent possible, this report includes footnotes with citations for evidence from written documentation and interviews.[25]

Document Requests, Delays in Document Production, and Reluctance to Cooperate by DHS OIG

The IC investigative team sent document requests to DHS OIG on the following dates:

- June 16, 2021
- July 27, 2021
- October 18, 2021
- January 13, 2022
- January 25, 2022
- September 16, 2022

See Appendix D for a list of the documents requested.

Additionally, the team requested and obtained materials from the U.S. Department of Justice (DOJ OIG) related to allegations concerning misconduct by IG Cuffari while employed by DOJ OIG.[26] The IC investigative team also obtained information from the Federal Bureau of

[23] *See* Interview, IG Joseph Cuffari (August 30, 2022) ("Cuffari Interview"); Andrew De Mello (June 22, 2022 and August 23, 2022) ("De Mello Interviews"); Diana Shaw (May 16, 2022) ("Shaw Interview"); Karen Ouzts (January 28, 2022 and November 25, 2022) ("Ouzts Interviews"); Costello (July 21, 2023) ("Costello Interview); November 30, 2022 email to IG Cuffari's counsel requesting a follow-up interview after the addition of allegation 8; and related email thread with IG Cuffari's counsel whereby IG Cuffari declines to sit for an interview regarding allegation 8 (January 23, 2023 email).
[24] Document requests were sent to DHS OIG on June 16, 2021, July 27, 2021, October 18, 2021, January 13, 2022, January 25, 2022, September 16, 2022. *See* Appendix D.
[25] In regard to interview evidence, for convenience, interview transcripts are included as attachments to this report, but the IC investigative team's findings are based on reviews of the audio recordings for accuracy.
[26] IC investigative team document request to DOJ OIG, dated September 30, 2022; and October 17, 2022.

Investigation (FBI), Security Division, associated with the background investigation of IG Cuffari prior to his confirmation as IG.[27]

The IC investigative team experienced a number of delays and complications with receiving the requested documents from DHS OIG. For example, on July 27, 2021, the investigative team requested that DHS OIG provide native email files associated with 19 employees and approximately 26 WilmerHale contractors. Rather than provide the email files in native format (i.e., in .pst format), as requested, DHS OIG replied that the responsive materials included attorney-client and otherwise privileged documents and took the position that they had to review every email file prior to turning them over to the IC investigative team.[28]

This approach appeared unreasonable given IC Policies and caused many months of delay to the investigation. In particular, Addendum A to the IC Policies (dated March 25, 2021), which was approved by a vote of CIGIE's membership, states,

> *Upon request by the IC under section 7(B) or 7(C) of these Policies, an IG or other person with full and final authority to provide access under this section (Authorized Person) must provide and direct the staff of the OIG to provide the IC or its designated investigators with full and timely access to all OIG records, documents, witnesses, and other information that the IC or its designee deems necessary to carry out the IC's duties and responsibilities under section 11(d) of the IG Act. In reviewing or investigating an allegation of wrongdoing against a Covered Person in a particular OIG, the IC shall have access to OIG records, documents, witnesses, and other information to the same extent, and under the same terms, that section 6 of the IG Act provides each IG with such access with respect to its establishment.*

With respect to privileges specifically, Addendum A to the IC Policy states,

> *The IC does not consider the provision by an OIG of access to OIG records, documents, witnesses, or other information to constitute a waiver of any applicable privilege or similar doctrine as to third parties. The IC will take appropriate measures to protect the confidentiality of records, documents, information, or witness statements as to which the OIG informs the IC that it claims a privilege or other protection from disclosure as to third parties, including where necessary the redaction of information from IC reports.*[29]

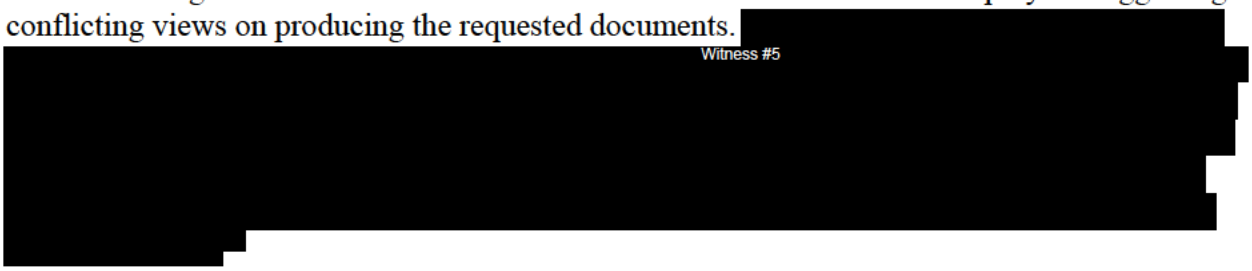
Ultimately, it took DHS OIG 6 months to produce the requested emails. This pace was far slower than the email production process previously followed by DHS OIG in producing emails to their outside law firm, WilmerHale, as discussed below.[30]

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[27] IC investigative team document request to the FBI Security Division, dated October 7, 2022; FBI response, dated October 27, 2022, and related materials.
[28] Memorandum of Activity, Record of Conversation, [redacted] August 30, 2021; [redacted] letter, dated September 15, 2021.
[29] ICP&P Access Addendum (March 2021) (ICP&PAccessAddendum-March2021.pdf (ignet.gov))
[30] Interview of Witness #4 [redacted] dated February 9, 2023.

DHS OIG initially raised issues with providing emails in more readily searchable .pst format but did provide Ms. Shaw's emails in such a manner.[31] Instead of providing other emails in the requested native .pst format, they converted emails to Adobe .pdf format, which made the IC investigative team's review process more difficult, and likely led to the errors in production described below.

The IC investigative team identified communications between DHS OIG employees suggesting conflicting views on producing the requested documents.



On September 15, 2021, sent a letter to the IC investigative team. In his letter stated,

> *As background, for purposes of section A of Addendum A, Integrity Committee Policies & Procedures, I have full and final authority to 'provide and direct the staff of the OIG to provide the IC or its designated investigators with full and timely access to all OIG records, documents, witnesses, and other information.' As you know, and as described in detail in the attached memorandum, has been working under my direction to ensure DHS OIG's full cooperation in this investigation. When I learned that you had indicated to that you would prefer that the pace of e-mail production increase, I instructed to assign an additional, highly-trained full-time to the task of reviewing e-mails, starting with the custodians that you prioritized to*[33]

DHS OIG continued to reiterate its position that it would review all emails prior to providing the materials to the IC investigative team.

After DHS OIG and the IC investigative team exchanged letters about the situation, a virtual meeting with the IC investigative team, Witness #2 and Witness #5 occurred on October 4, 2021. During the meeting, DHS OIG took the position of questioning the legality of CIGIE's access clause and asserted the need to review each document, for a variety of reasons, prior to providing them to the IC investigative team. The IC investigative team stressed the importance of receiving timely and readily searchable documents for the purposes of this investigation.

Rather than change course, DHS OIG continued at a pace of providing about 2 months of email files for one employee each week. In part, the process directed by DHS OIG leadership involved copying out and converting emails into Adobe .pdf format before producing them to the IC

[31] Document request, dated June 16, 2021; Production letter from dated July 9, 2021.

[33] letter, dated September 15, 2021.

investigative team. The process not only changed the format, but in so doing, presented a concern that emails could be inadvertently left out. In fact, numerous emails were identified which appeared to have been excluded from the initial productions.[34]

Overall, the IC investigative team experienced a reluctance by DHS OIG leadership, specifically, IG Cuffari, Witness #2 Witness #5 and [redacted] to cooperate with this investigation. [redacted]

By comparison, DHS OIG did not impose comparable delays on productions to WilmerHale, an outside law firm DHS OIG hired to investigate allegations against Ms. Costello, Ms. Shaw, and Ms. Ouzts.[37] Rather, WilmerHale appeared to receive timely access to DHS OIG documents and computer files. [redacted]

DHS OIG informed the IC investigative team that they believed emails associated with the 45 individuals identified as of the second document request, dated July 27, 2021, would be produced by January 1, 2022. However, as of January 1, 2022, DHS OIG had only provided responsive email files for three individuals. After being provided with a deadline of January 27, 2022, to produce the materials from the July 27, 2021, request, DHS OIG began providing the materials in the requested format without delay.[40] On January 27, 2022, DHS OIG sent a letter to the IC investigative team explaining the bulk of the requested materials, which were identified in the July 27, 2021, document request, were provided by DHS OIG. Furthermore, [redacted] referenced that they worked tirelessly to provide the requested materials by the deadline set.[41]

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[34] Memorandum of Activity, Record of Conversation, [redacted] March 10, 2022.

[35] Witness #2 [redacted]

[37] Interview of Witness #4 dated February 9, 2023. [redacted]

[40] [redacted] letter, dated January 13, 2022.

[41] [redacted] letter, dated January 27, 2022.

While DHS OIG ultimately provided most of the materials as requested, DHS OIG took six months to provide data files which easily could have been provided in a timelier fashion, causing delays to the overall investigation.

WilmerHale Report of Investigation

As referenced in some of the allegations, DHS OIG contracted with the law firm of WilmerHale to conduct an investigation. The IC investigative team obtained WilmerHale's report of investigation, dated December 14, 2020, concerning allegations of misconduct by Ms. Costello, Ms. Ouzts, and Ms. Shaw.[42] WilmerHale's respective report is relevant to multiple allegations in this IC investigation and is referenced throughout this report.

The IC investigative team reviewed the WilmerHale report as one piece of evidence in this investigation. The IC investigative team did not attempt to evaluate WilmerHale's investigation. However, where evidence developed by the IC investigative team supported, differed from, or was informed by WilmerHale's findings and was relevant to this investigation, it has been included in this report.

The Role of Witness #2

During the IC investigative team's initial meeting with DHS OIG, Witness #2 indicated that was not certain if would be the agency point-of-contact for the IC's investigative team as might be conflicted. This was understandable given that Witness #2 was a fact witness for matters involved in this investigation. In particular, and as described in detail below, Witness #2 was involved in the removal of Ms. Costello,[43] served as a non-voting member of the technical evaluation team (TET) awarding a DHS OIG contract to the outside law firm WilmerHale, and —all of which are at issue in this investigation. Additionally, Witness #2 served as the point of contact in IG Cuffari's request to DOJ OIG pursuant to a Freedom of Information Act (FOIA) request for an internal investigation and related report of findings of misconduct associated with IG Cuffari when IG Cuffari was employed by DOJ OIG, which relates to Allegation 8 of this investigation.

During the initial meeting with the IC investigative team, Witness #2 also expressed concerns with the IC's access rule in Addendum A to the IC Policies, which is not a waiver of attorney-client privilege, but had not, in view, been tested.[44] On June 11, 2021, Witness #2 identified (as the IC investigative team's point-of-contact within DHS OIG's .[45] Witness #2 provided the IC investigative team with a memorandum from to dated June 11, 2021, with subject "Delegation and instruction in IC 20-059." In this memo, Witness #2 stated that, due to the fact that the IC investigative team would likely seek information about Witness #2 communications with DHS OIG employees,

[42] WilmerHale Report of Independent Investigation: Allegations of Misconduct by Jennifer Costello, Karen Ouzts, and Diana Shaw, dated December 14, 2020.
[43] Interview of Witness #6 dated September 2, 2021; Interview of Witness #7 dated April 29, 2022.
[44] Addendum A was adopted by majority vote of CIGIE's membership.
[45] Memorandum of Activity, Record of Conversation, Witness #2 dated June 13, 2021.

and [redacted] determined that in order to avoid the appearance of impropriety, [redacted] should delegate the responsibility to coordinate production of evidence to the IC investigative team. [redacted] stated that [redacted] delegated this responsibility to [redacted] The memorandum further stated that [redacted] had decided that DHS OIG will not withhold material requested by the IC investigative team, even if it was privileged.[46]

Despite this memorandum and the potential appearance of impropriety noted by DHS OIG in the aforementioned memo, [redacted] chose not to recuse himself, and instead was involved in some of DHS OIG's responses to the IC investigative team.[47] [redacted] continued involvement in an investigation where [redacted] was simultaneously a fact witness, may have had differing personal interests than the organization [redacted] represents, and may have been attempting to further the personal interests of IG Cuffari, even where those interests diverged from DHS OIG, raises ethical questions.[48]

Mr. De Mello's DHS OIG Laptop Computer

During the course of the investigation, it became evident that Mr. De Mello's computer was of interest and likely contained responsive materials related to the allegations.[49] More problematically, as discussed further in *Allegation 5 (Cuffari)* below, the evidence developed suggested the possibility that some information on Mr. De Mello's computer was not otherwise captured in DHS OIG's systems of record. As described in more detail in *Allegation 7 (De Mello)* below, DHS OIG was unable to locate Mr. De Mello's computer.[50]

Witnesses

During the investigation approximately 70 individuals were contacted; however, certain potential witnesses elected not to be interviewed or re-interviewed when new allegations were added to the scope of the investigation following their initial interview. Two former DHS OIG employees, [redacted], and [redacted] declined to be interviewed. Additionally, IG Cuffari declined to be re-interviewed after an additional allegation (Allegation 8) was added to the scope of the investigation on September 9, 2022.

The investigation examined a convoluted web of allegations and concerns of reprisal. During the investigation, witnesses requested confidentiality and expressed concerns about retaliation at the

[46] Memorandum from [redacted] to [redacted] Delegation and instruction in IC 20-059, dated June 11, 2021.
[47] [redacted] email, August 5, 2021, Possible revocation of delegation; email and draft letter to DOT OIG; [redacted] email, dated September 11, 2021, Memo regarding production of e-mails to DOT OIG and attached DRAFT memo [redacted] to [redacted]
[48] The District of Columbia Bar - A. Rules of Professional Conduct, Rule 1.13: Organization as Client, (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. Rule 1.7: Conflict of Interest: General Rule, (4) The lawyer's professional judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer's responsibilities to or interests in a third party or the lawyer's own financial, business, property, or personal interests.
[49] Interview of Andrew De Mello, dated June 22, 2022 and [redacted]
[50] Letter from [redacted] dated February 3, 2023; Letter from DOT OIG, dated February 10, 2023.

hands of current DHS OIG leadership. It should be noted that this concern was not limited to merely a few witnesses.[51]

[51] Interview of Witness #8 [redacted] dated December 3, 2021; Interview of WitnessWitness #9 [redacted] dated May 18, 2022; Interview of Witness #10 [redacted] dated August 4, 2021; Interview of Witness #11 [redacted] dated February 9, 2022.

B. FACTUAL SUMMARY

The following is a summary of the facts gathered by the IC investigative team related to the allegations detailed in the IC's May 14, 2021, June 25, 2021, October 1, 2021, and September 9, 2022, letters. For each allegation, the report includes: relevant background information; factual summaries of witness statements and relevant documents; subjects' responses to the allegations and, in some instances, representations made by their personal counsel; and the IC investigative team's conclusions.

This report is organized by subject, so that all allegations that pertain to an individual are grouped together, as well as chronologically, wherever possible, for clarity and completeness. When an allegation references more than one respondent, that allegation will be discussed separately for each respondent.

For ease of reference, this report includes a series of appendices. They are A: Index of Individuals Referenced in Report; B: Sample DHS OIG Organizational Charts; C: Investigative Timeline; D: Documents Requested During the Investigation; E: Additional Concerns Identified; F: Transcripts of Witness Interviews; and G: Referenced Correspondence and Documentary Materials.

1. Timeline of Events

The following presents a list of certain events pertinent to this investigation. This is not an exhaustive list; rather, it is the IC investigative team's attempt to offer key dates that may assist with putting other events in context.

- November 6, 2012 – Letter sent by the U.S. Attorney's Office, District of Arizona, to DOJ OIG, concerning then ASAC Joseph Cuffari's conduct.
- November 20, 2012 – Then ASAC Joseph Cuffari submitted a written response to the allegations against him at the instruction of DOJ OIG counsel.
- December 5, 2012 – Allegations involving DOJ OIG then ASAC Joseph Cuffari sent to DOJ O&R for investigation.
- January 29, 2013 – Then ASAC Joseph Cuffari was interviewed as part of the DOJ O&R investigation. Then ASAC Joseph Cuffari was read Kalkines rights and signed the Warnings and Assurances to Employee Required to Provide Information which specifically stated that the investigation pertained to certain actions of then ASAC Joseph Cuffari.
- April 19, 2013 – DOJ O&R issued a memorandum to [redacted] Witness #12 [redacted] summarizing the results of the investigation of then ASAC Joseph Cuffari. The memorandum included additional allegations uncovered during the DOJ O&R investigation, which were referred to DOJ OIG Investigations Division for further review.
- May 3, 2013 – Then ASAC Joseph Cuffari is notified of additional allegations against him.
- May 20, 2013 – Then ASAC Joseph Cuffari is notified that he would be required to sit for an interview.

- May 21, 2013 – Then ASAC Joseph Cuffari's attorney notifies DOJ OIG that he was retiring.
- May 31, 2013 – Then-ASAC Joseph Cuffari retires from DOJ OIG while under investigation.
- September 2017 – Ms. Costello was hired as the COO at DHS OIG.
- December 2017 – [redacted] [redacted] retired and Witness #1 assumed the role of Acting IG.
- November 1, 2018 – The President announced his intention to nominate Joseph Cuffari as DHS IG
- November 7, 2018 – Joseph Cuffari nominated as the IG of DHS OIG.
- November 7, 2018 – Acting Witness #1 sent an email to all DHS OIG employees that he planned to retire in the near future and named Ms. Costello the DIG, effective immediately, to lead the agency upon his retirement.
- June 10, 2019 – Retirement of Acting Witness #1
- July 25, 2019 – Joseph Cuffari is confirmed as IG by the Senate.

2. Allegations Related to Inspector General Cuffari

Allegations 8, 5, and 6 relate to IG Cuffari and are being addressed in the order that the events occurred in time. The factual backgrounds applicable to Allegations 5 and 6 overlap significantly, and will consequently be addressed together. The allegations are as follows:

a. Allegation 8 (Cuffari)

IG Cuffari engaged in conduct undermining the independence and integrity reasonably expected of his position because IG Cuffari's answers to the following questions, in the context of his confirmation process,[52] were wrongfully inaccurate and/or misleading:

Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

IG Cuffari: ***No.***

Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of a security policy?

IG Cuffari: ***No.***

i. Background

As part of IG Cuffari's nomination process to become the IG of DHS OIG, he was presented with a questionnaire by the U.S. Senate Homeland Security and Governmental Affairs Committee (HSGAC) to fill out and return entitled, "HSGAC Biographical Questions for Executive Nominees" (the Questionnaire). The Questionnaire and IG Cuffari's responses were included in the record at the "Hearing before the Committee on Homeland Security and Governmental Affairs, Nomination of Joseph V. Cuffari to be Inspector General, U.S. Department of Homeland Security, March 5, 2019."

Allegation 8 places IG Cuffari's answers to two of the questions in the Questionnaire at issue in this investigation. As noted in the text of Allegation 8 above, IG Cuffari responded "no" to both questions.

Also included in the record at the "Hearing before the Committee on Homeland Security and Governmental Affairs, Nomination of Joseph V. Cuffari to be Inspector General, U.S.

[52] Hearing before the Committee on Homeland Security and Governmental Affairs, Nomination of Joseph V. Cuffari to be Inspector General, U.S. Department of Homeland Security, March 5, 2019, Attachment entitled, "HSGAC Biographical Questions for Executive Nominees," questions 11(A) 11(B).

Department of Homeland Security, March 5, 2019" was the "U.S. Senate Committee on Homeland Security and Governmental Affairs Pre-hearing Questionnaire For the Nomination of Joseph V. Cuffari to be Inspector General, Department of Homeland Security" (the Pre-hearing Questionnaire). IG Cuffari's response to a question within the Pre-hearing Questionnaire, question 10, is also relevant for context. That question reads:

> *At any point during your career, has your conduct as a Federal employee ever been the subject of an OIG, Government Accountability Office (GAO), Office of Special Counsel (OSC), Office of Government Ethics (OGE), Equal Employment Opportunity Commission, or Federal law enforcement investigation? Please explain.*

Then-IG nominee Cuffari responded:

> *While I was working in the DOJ OIG, members of an IG staff interviewed me about concerns expressed by the U.S[.] Attorney's Office for the District of Arizona (D/AZ) stemming from my participation as a criminal investigator in a Federal civil rights case, wherein two Federal corrections officers were alleged to have physically assaulted a Federal inmate who was in their custody. I answered the IG staff's questions truthfully and completely.*
>
> *The matter stemmed from an underlying Federal criminal investigation wherein I complied with my statutory obligation and U.S. Attorney General Guidelines to inform the crime victim (the Federal inmate) of* [redacted] *rights as provided for in the Crime Victims' Rights Act. The victim later retained legal counsel and filed a notice of claim for a civil tort case against the U.S. Government based on the corrections officers' alleged physical abuse. After the notice of claim was filed, the D/AZ declined to proceed with prosecution in the underlying criminal investigation.*
>
> *I was subsequently subpoenaed to appear as a fact witness at a deposition and at a follow-up hearing before the U.S. Magistrate Judge, who was presiding over the civil tort case. I answered the judge's and the attorneys' questions truthfully and completely. The civil case was subsequently settled between the parties. No adverse action was proposed against me.*[53]

IG Cuffari worked for DOJ OIG from March 21, 1993 to May 31, 2013, when he retired under investigation. His title during the 2012 and 2013 timeframe was Assistant Special Agent in Charge (ASAC) and he was based in Tucson, Arizona.

Brief Summary of Relevant Dates

- November 6, 2012 – Letter sent by the U.S. Attorney's Office, District of Arizona, to DOJ OIG, concerning then ASAC Joseph Cuffari's conduct.

[53] Hearing before the Committee on Homeland Security and Governmental Affairs, Nomination of Joseph V. Cuffari to be Inspector General, U.S. Department of Homeland Security, March 5, 2019, Attachment entitled, "HSGAC Biographical Questions for Executive Nominees," question 10.

- November 20, 2012 – then ASAC Joseph Cuffari submitted a written response to the allegations against him at the instruction of DOJ OIG counsel.
- December 5, 2012 – Allegations involving DOJ OIG then ASAC Joseph Cuffari sent to DOJ O&R for investigation.
- January 29, 2013 – then ASAC Joseph Cuffari was interviewed as part of the DOJ O&R investigation. Then ASAC Joseph Cuffari was read Kalkines rights and signed the Warnings and Assurances to Employee Required to Provide Information which specifically stated that the investigation pertained to certain actions of Joseph Cuffari.
- April 19, 2013 – DOJ O&R issued a memorandum to [redacted] Witness #12 [redacted] summarizing the results of the investigation of then ASAC Joseph Cuffari. The memorandum included additional allegations uncovered during the DOJ O&R investigation, which were referred to DOJ OIG Investigations Division for further review.
- May 3, 2013 – Then ASAC Joseph Cuffari notified of additional allegations against him.
- May 20, 2013 – Then ASAC Joseph Cuffari notified that he would be required to sit for an interview.
- May 21, 2013 – Then ASAC Joseph Cuffari's attorney notifies DOJ OIG that he was retiring.
- May 31, 2013 – Then-ASAC Joseph Cuffari retires from DOJ OIG while under investigation.

ii. Investigative Steps

To investigate Allegation 8, the IC investigative team reviewed aspects of IG Cuffari's prior employment with DOJ OIG. The investigative team obtained a copy of a 2013 DOJ OIG Oversight and Review Division's (O&R) memorandum of findings from their investigation into then-ASAC Cuffari. DOJ OIG also provided the investigative team with access to the underlying investigative file. Interviews were conducted of individuals involved in investigating then-ASAC Cuffari. Additionally, the IC investigative team obtained a separate management inquiry stemming from the DOJ OIG O&R investigation that was conducted into then-ASAC Cuffari's conduct and interviewed several individuals in then-ASAC Cuffari's supervisory chain. The investigative team also obtained a copy of materials DOJ OIG provided the FBI during IG Cuffari's background investigation in the lead up to his nomination and confirmation as IG for DHS. Further, the investigative team obtained a copy of IG Cuffari's Official Personnel File (OPF).

iii. Documentary Evidence and Witness Interviews

The DOJ OIG Investigation and Inquiry into Then-ASAC Cuffari's Conduct

In 2012, while employed at DOJ OIG, then-ASAC Cuffari was investigated by DOJ OIG's O&R Division. Allegations were raised against then-ASAC Cuffari regarding his conduct in connection with a civil matter against the United States being defended by the U.S. Attorney's Office. The civil matter was filed by a Federal inmate who alleged that [redacted] was assaulted by two U.S. Bureau of Prisons corrections officers. Then-ASAC Cuffari was the case agent who

conducted a criminal investigation of the inmate's allegations. It was alleged that over the objections of the Assistant U.S. Attorney handling the civil matter, then-ASAC Cuffari testified on behalf of the plaintiff at an October 25, 2012, hearing on a motion to compel. The U.S. Attorney's Office had taken the position that the information being sought by the plaintiff was privileged and should not be disclosed. Further, by failing to notify the Assistant U.S. Attorney and his own supervisors about the plaintiff's request for his testimony, then-ASAC Cuffari violated the DOJ *Touhy* regulations that govern the permissibility of testimony by agency employees.

DOJ OIG O&R's conclusions were documented in an April 19, 2013, memorandum of findings from [redacted] O&R Division, to [redacted] Witness #12 [redacted] DOJ OIG O&R concluded that then-ASAC Cuffari testified at the October 25, 2012, hearing without first notifying DOJ OIG and obtaining approval to do so, in violation of the Inspector General Manual. They also found that his 'personal relationship' with the inmate's attorneys raised questions about his impartiality and created a potential conflict of interest with respect to his involvement in the civil litigation. Further, under the applicable ethics guidelines and the Inspector General Manual, O&R determined that then-ASAC Cuffari should have informed his supervisor and the DOJ OIG's Office of General Counsel (OGC) of this relationship. DOJ OIG O&R concluded that then-ASAC Cuffari ran afoul of a separate ethics regulation when he provided the plaintiff's mother with the names of his friends' law firms.[54] Additionally, DOJ OIG O&R did not find then-ASAC Cuffari's explanation regarding his conduct to be credible, subsequently raising questions about his candor.[55]

Further, included in the memorandum of findings were additional allegations against then-ASAC Cuffari, which were referred to DOJ OIG's Office of Investigations for further inquiry. DOJ OIG's Office of Investigation subsequently initiated a management inquiry into four separate allegations of misconduct by then-ASAC Cuffari. The management inquiry was a separate matter from the DOJ OIG O&R investigation. Although then-ASAC Cuffari retired prior to any disciplinary action being proposed upon the conclusion of the DOJ OIG O&R investigation, the evidence obtained by the IC investigative team demonstrates that he was aware of both the initial allegations against him, investigated by O&R, as well as the additional concerns being addressed through a management inquiry.

On May 3, 2013, then-ASAC Cuffari was notified of these additional matters in an email from his supervisor, [redacted] Witness #13 [redacted] which stated,

> *During the Oversight and Review investigation of the allegations made against you by the United States Attorney's Office, District of Arizona arising from the […] case; the following four additional matters of concern were found:*
>
> *1. It appears that you sought appointment to and served on an Arizona State Commission on Appellate Court Appointments without first seeking approval from the OIG's General Counsel or anyone in his supervisory chain, or reporting your appointment to the commission on your Confidential Financial Disclosure form (OGE 450) as would be required. In addition you used your OIG email account to*

[54] DOJ OIG Memorandum for Witness #12 [redacted] dated April 19, 2013.
[55] Interview of Witness #14 [redacted] dated September 30, 2022.

seek such appointment and to conduct the activities of the commission. It also appears that you previously served on a similar commission.

2. *It appears that you donated surplus OIG printers to a high school where your wife is the principal. Although you requested permission of INV management to do so, it does not appear that you disclosed to INV management or to OGC your wife's position at the school.*
3. *It appears that you used your OIG e-mail account, rather than a personal account, in correspondence seeking a position as the Inspector General for the Arizona National Guard.*
4. *It appears that you wrote a recommendation letter in your official capacity and on OIG letterhead in support of an Assistant U.S. Attorney's candidacy to become a U.S. Magistrate Judge in Tucson, and did so without consulting INV management or OGC.*

As part of the Oversight and Review investigation, e-mails from your OIG Outlook account for the period of January 2011 to October 2012 were reviewed, and I have attached the e-mails relating to the above concerns for your review. Please provide me with a written response for each of the identified concerns by May 20, 2013."[56]

Following the aforementioned email, then-ASAC Cuffari's attorney, [redacted] became involved in communications regarding the request. On May 15, 2013, Witness #13 wrote [redacted] stating,

The matters of concern that I forwarded to ASAC Cuffari for his response are not the subject of an investigation. As I stated in my email to ASAC Cuffari, these matters came to our attention during the O&R review. We are addressing them as a management matter, and I would like to consider ASAC Cuffari's input in determining whether they warrant any management action. Please inform me if ASAC Cuffari is requesting to be compelled to provide the requested responses, or if he will do so voluntarily. If he is requesting to be compelled, I will contact our OGC to confirm that I am able to do so. The attached exhibits relate to the outlined management concerns and were prepared by O&R. The exhibits were attached for ASAC Cuffari to review and assist him with his response.[57]

On May 20, 2013, Witness #13 sent a follow-up email to [redacted] stating,

I was expecting to receive ASAC Cuffari's response to the outlined concerns this afternoon. If ASAC Cuffari is unwilling to respond without being compelled, please let me know so I can consult with the DOJ/OIG General Counsel. If you require an extension of time to respond, or to notify us that ASAC Cuffari is declining to respond voluntarily, please let me know by COB Tuesday, May 21, 2013.[58]

On May 21, 2013, [redacted] responded to Witness #13 stating,

[56] Witness #13 email, dated May 3, 2013, with exhibits.
[57] Witness #13 email, dated May 15, 2013.
[58] Witness #13 email, dated May 20, 2013.

I recommend all clients to only respond when compelled by the government. I have given this advice to Joe who has chosen to accept it. That said, I understand you are aware Joe has decided to retire effective May 31st, and has submitted retirement papers accordingly. Under that circumstance, I write to inquire whether your office will still be proceeding to compel responses.[59]

On May 24, 2013, Witness #13 responded, stating, "If ASAC Cuffari proceeds with his retirement on May 31, 2013, the issue will be moot and I will not seek his response. However, if for any reason ASAC Cuffari decides not to retire on that date, I request ASAC Cuffari's compelled response by COB June 1, 2013."[60]

Witness #13 indicated to the IC investigative team that [redacted] interactions with IG Cuffari's attorney likely would have been coordinated with others within DOJ OIG.[61]

During the DOJ OIG O&R investigation, then-ASAC Cuffari was read Kalkines rights, signed a Warnings and Assurances to Employee Required to Provide Information, and was interviewed on January 29, 2013. The Warnings and Assurances to Employee Required to Provide Information specifically stated, "This investigation pertains to the OIG's investigation of certain actions of OIG Special Agent Joseph Cuffari relating to the matter …" In the interview, then-ASAC Cuffari expressed his concerns about the severity of the allegations against him. He discussed a memorandum he wrote to Witness #15 who was then DOJ OIG's [redacted]. Specifically, then-ASAC Cuffari stated "You know I wrote that memo in haste. I was angry because the U.S. Attorney's Office had raised serious allegations about my character and my integrity. I was forced to hire an attorney who was the former [redacted]"[62]

The IC investigative team interviewed Witness #15 regarding these events. Witness #15 characterized the allegations and findings against then-ASAC Cuffari in the O&R investigation as significant and serious. DOJ OIG did not want to delay moving forward and taking action based on the findings, and thus decided to treat the additional issues arising from the O&R investigation as a management matter. While Witness #15 was not anticipating then-ASAC Cuffari resigning or retiring rather than answering questions associated with the management inquiry, he stated that then-ASAC Cuffari's retirement essentially precluded the disciplinary process from moving forward. At the time then-ASAC Cuffari retired, there were findings against then-ASAC Cuffari; however, DOJ OIG had not finalized any disciplinary action against him.[63]

Witness #15 opined that then-ASAC Cuffari's actions as a tenured agent in a supervisory role undermined the integrity and objectivity expected of a Federal employee. Further, then-ASAC Cuffari was not candid nor forthcoming with his supervisor and there was an issue with his

[59] [redacted] email, dated May 21, 2013.
[60] Witness #13 email, dated May 24, 2013 and subsequent email response by [redacted]
[61] Interview of Witness #13 dated December 8, 2022.
[62] Joseph Cuffari interview transcript from DOJ OIG O&R, dated January 29, 2013; Kalkines form signed by Joseph Cuffari.
[63] Interview of Witness #15 dated December 19, 2022.

conduct in referring a victim in one of his cases to attorneys with whom he had a personal relationship.[64]

At the time of his retirement from DOJ OIG, then-ASAC Cuffari was aware of the allegations against him, both in the O&R investigation and the separate management inquiry. Evidence supporting the allegations raised in the management inquiry had been sent to him for a response. He subsequently retired shortly after the management inquiry began and before being compelled to sit for an interview. The O&R investigation concluded prior to his retirement, resulting in findings against then-ASAC Cuffari. However, at the time of his departure, DOJ OIG had not yet notified him of the findings.

Review of IG Cuffari's Background During His Nomination and Confirmation

On August 3, 2018, prior to his nomination as IG for DHS OIG, the Counsel to the President sent a request to the FBI for a full field investigation, Level II, of IG Cuffari. On October 18, 2018, the FBI sent the initial background report to the White House. The initial background report did not include information associated with the DOJ OIG O&R internal investigation or management inquiry.

On November 1, 2018, the President announced his plans to appoint IG Cuffari to serve as IG at DHS OIG. On November 6, 2018, DOJ OIG informed the FBI of the internal DOJ OIG O&R investigation involving IG Cuffari and provided the FBI with a copy of the report. The FBI included the DOJ OIG O&R report in a revised background report that was sent to the White House on November 7, 2018.[65]

It currently remains unclear if members of Congress were aware of the facts and findings of the DOJ OIG O&R investigation of IG Cuffari, or the additional allegations being examined as a separate management matter associated with his conduct leading up to his retirement. Around the time of IG Cuffari's nomination, and as part of IG Cuffari's background investigation, DOJ OIG provided the FBI with information associated with the DOJ OIG O&R investigation; however, DOJ OIG did not independently provide the information to the White House or to Congress.[66] Likewise, the DOJ OIG witnesses we spoke with stated that they were not asked, and did not share, what they knew about the DOJ OIG O&R investigation into IG Cuffari during his nomination and confirmation process with Congress.[67]

Witness #16 former , DHS, who handled the at the time of IG Cuffari's confirmation, stated that was unaware of the DOJ OIG internal investigation of IG Cuffari. Witness #16 surmised that had a report existed, Congressional members would have wanted to know what it contained. Witness #16 stated that did not assist IG Cuffari with responding to the questionnaire and that the answers IG Cuffari provided were his own.[68]

[64] Interview of Witness #15 dated December 19, 2022.
[65] FBI Security Division - Response to October 7, 2022 IC Request.
[66] Interview of Witness #15 dated December 19, 2022; Interview of Witness #12 dated January 26, 2023.
[67] Interview of Witness #15 dated December 19, 2022; Interview of Witness #12 dated January 26, 2023.
[68] Interview of Witness #16 dated November 18, 2022.

As a note, prior to IG Cuffari's official nomination by the President, he was interviewed by the CIGIE Inspector General Candidate Recommendations Panel. The CIGIE Inspector General Candidate Recommendations Panel often interviews potential IG candidates; however, it does not conduct background checks or take any additional actions to evaluate a potential candidate, because, as stated above, such reviews are conducted by the FBI at the request of the White House, when and if the President considers nominating a candidate to an IG position.

Reaction of DOJ OIG Witnesses to IG Cuffari's Nomination and Questionnaire Responses

In an interview with the IC investigative team, Witness #15 stated [redacted] found IG Cuffari's nomination concerning, given the allegations and findings from the internal DOJ OIG O&R investigation and subsequent management inquiry. The IC investigative team asked Witness #15 about questions 11a and 11b in the HSGAC Biographical Questions for Executive Nominees, which IG Cuffari answered during the course of his confirmation. Witness #15 surmised that some of the questions at issue were likely ambiguous enough that IG Cuffari could state he answered the questions truthfully when responding in the negative.

However, Witness #15 was more troubled by IG Cuffari's response to question 10 in the U.S. Senate Committee on Homeland Security and Governmental Affairs Pre-hearing Questionnaire For the Nomination of Joseph V. Cuffari to be Inspector General, Department of Homeland Security, where he made reference to the situation surrounding the DOJ OIG O&R internal investigation. Witness #15 did not think IG Cuffari's response was truthful. Rather than responding affirmatively that he was the subject of a DOJ OIG investigation and providing an accurate overview of the allegations against him, IG Cuffari provided an incomplete and inaccurate narrative.[69] Specifically, the question stated,

> *At any point during your career, has your conduct as a Federal employee ever been the subject of an OIG, Government Accountability Office (GAO), Office of Special Counsel (OSC), Office of Government Ethics (OGE), Equal Employment Opportunity Commission, or Federal law enforcement investigation? Please explain.*

To which IG Cuffari responded,

> *While I was working in the DOJ OIG, members of an IG staff interviewed me about concerns expressed by the U.S[.] Attorney's Office for the District of Arizona (D/AZ) stemming from my participation as a criminal investigator in a Federal civil rights case, wherein two Federal corrections officers were alleged to have physically assaulted a Federal inmate who was in their custody. I answered the IG staff's questions truthfully and completely.*
>
> *The matter stemmed from an underlying Federal criminal investigation wherein I complied with my statutory obligation and U.S. Attorney General Guidelines to inform the crime victim (the Federal inmate) of [redacted] rights as provided for in the Crime Victims' Rights Act. The victim later retained legal counsel and filed a notice of claim for a civil*

[69] Interview of Witness #15 dated December 19, 2022.

tort case against the U.S. Government based on the corrections officers' alleged physical abuse. After the notice of claim was filed, the D/AZ declined to proceed with prosecution in the underlying criminal investigation.

I was subsequently subpoenaed to appear as a fact witness at a deposition and at a follow-up hearing before the U.S. Magistrate Judge, who was presiding over the civil tort case. I answered the judge's and the attorneys' questions truthfully and completely. The civil case was subsequently settled between the parties. No adverse action was proposed against me.[70]

Witness #15 further explained that IG Cuffari was clearly the subject of an OIG investigation. As a part of the internal investigation, then-ASAC Cuffari was interviewed by DOJ OIG investigative counsel about his conduct.[71]

While the question related to whether IG Cuffari was the subject of an investigation, his response focused on whether there was adverse action proposed against him. Witness #12 DOJ OIG, also noted IG Cuffari's limited narrative to the aforementioned question, stating the answer IG Cuffari provided was not complete. Witness #12 told the IC investigative team that if IG Cuffari knew of the findings in the DOJ OIG O&R report and additional allegations against him at the time he answered the questionnaire, IG Cuffari's answer would be inaccurate. As described above, IG Cuffari was aware of the allegations, the O&R investigation, and the supporting documentation for the additional management inquiry when he departed DOJ OIG. Witness #12 added that the last sentence of the response where IG Cuffari stated "No adverse action was proposed against me" seemed to be a statement without a factual basis as an adjudication process had not yet occurred. Witness #12 explained,

It is technically accurate, but it's because he retired that the adjudication process never occurred, right. There wasn't an adverse action taken – proposed against him, but that's because the process ended when he retired… The potential implication of it is to a reader, is that the adjudication process actually happened, right… My belief is when you're going through the confirmation process, you, uh you have an obligation to the nominating, you know, the White House that's nominating you, to the FBI that's vetting you and the Congress that's considering you to be full and complete and candid and open in your answers so that the process can occur.[72]

Witness #12 recalled that DOJ OIG was concerned about then-ASAC Cuffari's candor in the DOJ O&R investigation. He stated,

I recall there were concerns about his candor, um, during the questioning. Um, and so again I, um, I think this is for you all to assess and decide, but obviously I don't know

[70] GPO – Nomination of Joseph Cuffari, Hearing before Congress – Committee on Homeland Security and Governmental Affairs – U.S. Senate – Pre-hearing Questionnaire - Question 10
[71] Interview of Witness #15 dated December 19, 2022.
[72] Interview of Witness #12 dated January 26, 2023.

how much he knew. I don't know what -- what he was told. Um, but certainly the conclusion on the OIG's side was concern about his, um, candor.[73]

Had then-ASAC Cuffari not retired, DOJ OIG would have likely had internal discussions concerning whether his conduct created an issue or impairment under *United States v. Giglio*.[74] A Giglio impairment is related to the Government's obligation to disclose, in certain proceedings, relevant information relating to the credibility, bias, or impairment of an individual who has been untruthful, lacked candor, or has some other type of pervasive issue placing their credibility into question.[75] Therefore, Federal agents who are Giglio impaired are not effective witnesses in criminal cases and are not frequently called by prosecutors in support of their cases.

IG Cuffari's Information Request and Related Discussions in 2020

The IC investigative team learned that questions regarding DOJ OIG's O&R investigation of then-ASAC Cuffari surfaced again in 2020. Witness #15 explained to the IC investigative team that DOJ OIG notified DHS OIG that the DOJ OIG O&R report concerning IG Cuffari was going to be provided to a Congressional committee in response to that committee's request. DOJ OIG notified DHS OIG of this as a courtesy.

Following this notification to DHS OIG, in September 2020, Witness #2 on behalf of IG Cuffari, requested a copy of the DOJ OIG O&R administrative investigation and underlying documents concerning IG Cuffari when he was employed by DOJ OIG via a Freedom of Information Act (FOIA) request sent by email to , DOJ OIG.[76] Witness #12 told the IC investigative team that Witness #2 made the request on behalf of the individual [IG Cuffari] and not the agency. When asked if the request seemed odd that it was coming from an Witness #12 stated, "You know I -- I don't know if it's odd or not. We did discuss whether we were okay doing it through this process and we decided it was [okay] to provide since Mr. Cuffari had authorized a request it, and it was, um, our understanding a pass through."[77]

Based on the request signed by IG Cuffari, DOJ OIG provided responsive materials to Witness #2 via email to Witness #2 government email account as requested.[78] Witness #2 forwarded a copy of the DOJ OIG O&R investigative report via email to Witness #5 on October 1, 2020.[79]

[73] Interview of Witness #12 dated January 26, 2023.
[74] Interview of Witness #12 dated January 26, 2023.
[75] Pursuant to *Giglio*, the Government must disclose in certain proceedings potential impeachment information relating to witnesses, including law enforcement officers. *Giglio* information includes any finding of misconduct that reflects upon the truthfulness of an employee and information that reflects that the agency employee's ability to perceive and recall truth is impaired. (*Justice Manual*, Department of Justice, Section 9-5.001.) If there is potential impeachment information such that the witness testimony would be of little value, it is referred to as a *Giglio*-impairment. (*Hathaway v. Department of Justice,* 384 F.3d 1342, 1349 [Fed.Cir.2004].
[76] Witness #2 email, dated September 9, 2020.
[77] Interview of Witness #12 dated January 26, 2023.
[78] email – RE: Cuffari request for records, dated September 29, 2020.
[79] Witness #2 email, dated October 1, 2020.

During the interview with the IC investigative team, Witness #5 said that Witness #2 received a call from DOJ OIG advising Witness #2 that Congress had requested the DOJ OIG O&R report. Witness #5 recounted,

> *'We're going to provide it to them [Congress]. Would you like a copy?' is what I recall DOJ OIG asking* Witness #2*, I think, went to the IG and said, 'There's this report out there about you. It is going to be shared with COR Chairwoman Maloney. Um, have you seen it? Would you like a copy?' And he said, 'I've never seen it. I remember the, you know, inquiry. Haven't seen the report. Um, go ahead,* Witness #2*, ask for a copy.'* [redacted] *did.* [redacted] *got it. And it was, you know, a question of –* [redacted] *asked the IG if he wanted to see it, and he said, 'No, I don't want it.'*[80]

Witness #5 explained that IG Cuffari did not want the report, stating,

> *[b]ecause there was no action ever taken about it. And he was like, uh, next, you know, this was something that was fully vetted by the FBI. This was something that had come up during his confirmation process…. Fully vetted by the FBI, asked and answered at the White House, he actually had to answer the question… sitting with a couple of different senators asking the questions specifically about it. He answered to their satisfaction. And, you know, 100 senators confirmed him.*[81]

Witness #5 explained to the IC investigative team that the first time [redacted] spoke with IG Cuffari about the report was in 2020. When asked if [redacted] was aware that IG Cuffari was under investigation when he retired, Witness #5 answered, "Was I aware – um, so, again, I learned in reading the report and talking about it with him – or I guess I learned when we first talked about it … that um he had been investigated. That's the way he described it. And then he retired shortly thereafter."[82] Witness #5 also stated, "Well, he knows that the report is about that investigation. And he knows the underlying – again, I don't want to put words in his mouth, but again, he certainly knows the subject of the investigation."[83]

On August 4, 2022, after learning of an article in *The Washington Post* in which DHS OIG appeared to have made an inaccurate statement concerning IG Cuffari's awareness of the DOJ OIG O&R report and related documents, [redacted] emailed Witness #2 to remind [redacted] of [redacted] prior FOIA request for the DOJ OIG O&R report and related materials. Four days later, a representative from DOJ OIG also contacted Witness #5 regarding inaccurate statements attributed to DHS OIG received from the *Washington Post*, including that IG Cuffari's nomination was put forward to the White House by [redacted] Witness #12 On August 8, 2022, Witness #5 [redacted] wrote to DOJ OIG with DHS OIG's updated response to *The Washington Post.* The updated response still included a statement that IG Cuffari had not seen the DOJ OIG O&R report, as well as revised language regarding IG Cuffari's nomination. When interviewed by the

[80] Interview of Witness #5 dated October 20, 2022.
[81] Interview of Witness #5 dated October 20, 2022.
[82] Interview of Witness #5 dated October 20, 2022.
[83] Interview of Witness #5 dated October 20, 2022.

IC investigative team, [redacted] stated that although IG Cuffari requested that [redacted] obtain the DOJ OIG O&R investigative report, IG Cuffari told [redacted] he had not read the report.[84] The IC investigative team interviewed [redacted] regarding [redacted] involvement and role in acquiring the DOJ OIG O&R report on behalf of IG Cuffari. [redacted] stated that [redacted] was contacted by [redacted] at DOJ OIG and made aware that the DOJ OIG O&R report regarding IG Cuffari had been requested by Congress. After discussing the situation with IG Cuffari, IG Cuffari asked [redacted] to request a copy of the report under FOIA. After [redacted] received a copy of the report, [redacted] stated that [redacted] did not forward it to IG Cuffari; rather, [redacted] saved the report to [redacted] computer and provided IG Cuffari [redacted] perspective of the report's findings. [redacted] characterized the DOJ OIG O&R report and findings against IG Cuffari when he was employed by DOJ OIG as "ticky-tacky." [redacted] stated that IG Cuffari had obligations under the Crime Victim's Rights Act; however, an assistant U.S. attorney involved in a particular matter did not like the way IG Cuffari conducted himself. The whole thing struck [redacted] as "breathtaking," "off the rails," and "crazy."[85]

According to [redacted] IG Cuffari informed [redacted] he had not seen the report and that he retired from DOJ OIG in good standing, and nothing ever came of the allegations against him.[86]

[redacted] stated [redacted] had seen,

> *the machine… uh... certain committees in the House and the press… work together… and, and others, work together… to try to tear down this Presidential appointee… uh… over anything they could find against him… and… again, IG Cuffari asked me to read the report and assess if there was going to be a horrifically embarrassing news story about it or Congressional hearing, and so looking at it in that light it did not seem grave, it seemed as though somebody was mad that he was doing his job.*[87]

When asked by the IC investigative team if [redacted] had conversations with [redacted] about whether it would be a good idea if IG Cuffari did not read the report, [redacted] responded, "Well it did become a matter I think of OIG's institutional interest when the *Washington Post* was asking questions about it and my -- my thought was if he hasn't read it, he can't comment and, you know, why – why give the press a negative story."[88]

iv. IG Cuffari's Response

On November 30, 2022, the IC investigative team contacted IG Cuffari through his attorneys to determine if he would be willing to sit for a voluntary follow-up interview regarding the additional allegation (Allegation 8) that was added to the scope of this investigation after his initial interview.[89] When the IC investigative team initially did not receive a response, a follow-up email was sent on January 23, 2023, to IG Cuffari's attorneys in an effort to determine if he

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[84] [redacted] email, touching base, dated August 4, 2022; [redacted] email, RE: Re: Please give me a call, dated August 8, 2022; Interview of [redacted] dated October 20, 2022.
[85] Interview of [redacted] dated March 6, 2023.
[86] Interview of [redacted] dated March 6, 2023.
[87] Interview of [redacted] dated March 6, 2023.
[88] Interview of [redacted] dated March 6, 2023.
[89] [redacted] email, dated November 30, 2022.

was willing to be interviewed regarding this allegation.[90] Later that day, IG Cuffari's attorney responded indicating that IG Cuffari had elected not to participate in a follow-up interview focusing on Allegation 8.[91]

On February 1, 2023, the investigative team sent an email to IG Cuffari's attorneys acknowledging that he did not wish to sit for a voluntary interview regarding this allegation.[92] On February 2, 2023, IG Cuffari's attorney responded via email advising that IG Cuffari would be amenable to responding to written questions. Later that day, the investigative team responded to IG Cuffari's attorneys advising that IG Cuffari was welcome to send anything he would like in writing to the IC regarding the allegations against him; however, the investigative team was requesting an interview.[93] Subsequently, IG Cuffari did not consent to a voluntary interview regarding this allegation, and no additional materials were received from IG Cuffari or his attorneys regarding this allegation.

v. Investigative Conclusions

High-Level Summary of Evidence Leading to Investigative Conclusions (Allegation 8 - Cuffari)

Allegation
8. IG Cuffari engaged in conduct undermining the independence and integrity reasonably expected of his position because IG Cuffari's answers to the following questions, in the context of his confirmation process, were wrongfully inaccurate and/or misleading. *[see above for the full text of this allegation.]*
Summary of Evidence
Note: The following provides a non-exhaustive summary of certain evidence supporting the investigative conclusions. Full details, including additional evidence and source citations, are contained in the "iii. Documentary Evidence and Witness Statements" section for this allegation above.
• In 2012, then-ASAC Cuffari was investigated by DOJ OIG O&R. The investigation raised questions about Cuffari's impartiality and found that Cuffari testified without approval, in violation of DOJ OIG policies.
• DOJ OIG O&R felt Cuffari lacked candor in his responses to their investigation.
• DOJ OIG O&R referred additional allegations to the DOJ OIG Office of Investigations regarding concerns surrounding then-ASAC Cuffari's conduct. The Office of Investigations began a management inquiry, and informed then-ASAC Cuffari of the matters of concern, requesting a response. Then-ASAC Cuffari retained counsel, who advised him not to respond to the allegations unless compelled.
• Then-ASAC Cuffari retired from DOJ OIG on May 31, 2013, after being notified he would be compelled to respond to the management inquiry, but prior to any potential disciplinary actions related to the DOJ OIG O&R investigation's findings. His retirement precluded any disciplinary process from moving forward.

[90] [redacted] email, dated January 23, 2023.
[91] [redacted] email, dated January 23, 2023.
[92] [redacted] email, dated February 1, 2023.
[93] [redacted] email, dated February 2, 2023.

• In 2019, during his confirmation process, IG Cuffari answered questions related to whether he was ever disciplined for a breach of ethics, the subject of a complaint to any administrative agency, or left a job by mutual agreement following allegations of misconduct. IG Cuffari answered "No." In addition, question 10 of his pre-hearing questionnaire asked if his conduct had ever been the subject of an OIG investigation. IG Cuffari's response did not convey complete and accurate details of the DOJ OIG O&R investigation.
• Persons knowledgeable with the DOJ OIG O&R investigation and management inquiry told the investigative team that they believed IG Cuffari's response to Question 10 of his pre-hearing questionnaire was not candid.
Investigative Conclusions
Substantiated in Part. IG Cuffari's answers to some of the questions during his confirmation hearing were incomplete, particularly to question 10 of his pre-hearing questionnaire. IG Cuffari was aware of the allegations against him during his time at DOJ OIG. His response did not convey the full extent of the investigation or its allegations, thus appearing to misrepresent the totality of the circumstances, and lacked candor expected of an IG.

Detailed Description of Investigative Conclusions

The investigation partially substantiated Allegation 8. IG Cuffari's answers during his confirmation hearing were incomplete and he was not forthcoming regarding the findings against him when he was employed by DOJ OIG. It is unknown to the IC investigative team whether IG Cuffari has attempted to amend his responses to Congress even after obtaining a copy a DOJ OIG's report in 2020. However, the lack of inclusion of significant details minimized the significance of the issue.

Specifically, question 10 of the written responses to IG Cuffari's confirmation hearing—contained in the *U.S. Senate Committee on Homeland Security and Governmental Affairs Pre-hearing Questionnaire for the Nomination of Joseph V. Cuffari to be Inspector General, Department of Homeland Security*—was regarding whether his conduct as a Federal employee had ever been the subject of a Federal investigation. IG Cuffari's response to the question appears to be incomplete and misleading, and potentially a lie by omission. The DOJ OIG O&R investigation into then-ASAC Cuffari's conduct was based on a complaint made to DOJ OIG by an AUSA. The DOJ OIG O&R investigation found ethical concerns and violations of policy as well as a lack of candor. The DOJ OIG O&R investigation uncovered additional matters of concern which were forwarded to DOJ OIG Office of Investigations for a management review. Then-ASAC Cuffari was notified of these additional matters of concern. Then-ASAC Cuffari retired while under DOJ OIG O&R investigation and after a separate management inquiry involving potential misconduct was ongoing. The IC investigation found that then-ASAC Cuffari was aware of the allegations against him at that time.

The IC investigative team noted that IG Cuffari's responses to questions regarding aspects of his conduct were incomplete or inaccurate and conflicted in numerous instances with evidence obtained during the course of the investigation. In regard to Allegation 8, this included IG Cuffari's response to question 10 of the confirmation hearing written record, as noted above; the answers provided by IG Cuffari to Congress contributed to an impression of an overall lack of

candor. IG Cuffari declined to be interviewed by the IC investigative team regarding this allegation.

b. Allegation 5 (Cuffari)

IG Cuffari abused his authority by initiating multiple investigations, including referring allegations to the IC and initiating the WilmerHale investigation (described below), into COO Costello and AIG Shaw, in retaliation for COO Costello and AIG Shaw's protected disclosures to the IC, Congress, and/or the Office of Special Counsel.

Note: Allegations 5 and 6 contain overlapping issues. In some cases, information presented in each section of these allegations pertains to both allegations.

i. Background

Overview of Events

On November 1, 2018, the President announced his intention to nominate IG Cuffari to lead DHS OIG. Around the time of his confirmation, DHS OIG senior executives Ms. Costello, Ms. Ouzts, and Ms. Shaw raised concerns regarding IG Cuffari's background and conduct to numerous entities, including within DHS OIG and to the IC.

Within a few months after IG Cuffari became IG, he began submitting allegations for investigation to various entities about these DHS OIG senior executives, including to the IC. He also asked the IG of the U.S. Social Security Administration (SSA) to review 22 such allegations in a February 6, 2020 letter, and made a referral to the U.S. Attorney's Office (USAO), District of Columbia.[94] For various reasons, the aforementioned entities declined to investigate the respective allegations.

In May 2020, DHS OIG hired a contractor to conduct an investigation of Ms. Costello, Ms. Ouzts, and Ms. Shaw. [redacted]

Around the same time as the WilmerHale investigation into Ms. Costello, Ms. Ouzts, and Ms. Shaw, the employment status of all three DHS OIG employees changed. By the time WilmerHale began its work, Ms. Shaw had voluntary transferred to another agency. Ms. Ouzts was informed on May 8, 2020 that she was being placed on administrative leave, and on May 21, 2020, she was provided written notice informing her that she was being placed on investigative leave "pending the results of an investigation into [her] suspected misconduct."[96] Additionally, on June 11, 2020, IG Cuffari removed Ms. Costello from the DIG position, placed her back in her former position as COO, and terminated her employment with DHS OIG. Ms. Costello's removal preceded the completion of the WilmerHale report by approximately 6 months.

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[94] Interview of Witness #17 dated February 22, 2023; Memorandum of Activity, Record of Conversation, [redacted] dated July 23, 2021. [redacted].

[96] Memorandum from [redacted] dated May 8, 2020, Placement on Administrative Leave; Memorandum from Witness #2 dated May 21, 2020, Investigative Leave Notice.

Following her removal from DHS OIG, Ms. Costello contested the action with the Merit Service Protection Board (MSPB).

The WilmerHale report, issued on December 14, 2020, partially substantiated some of the allegations; however, the majority were unsubstantiated.[97] When interviewed as a part of this IC investigation, two individuals in DHS OIG's Office of Counsel characterized the allegations against the three senior executives as "personal."[98] Ultimately, DHS OIG paid WilmerHale nearly $1.4 million for the report.[99]

On July 17, 2023, Ms. Costello and DHS OIG reached a settlement in her MSPB case regarding her termination from DHS OIG, whereby DHS OIG agreed to pay Ms. Costello $1.17 million and provide her with a "clean record" by referencing her departure from the DHS OIG as being for personal reasons rather than a termination.[100]

Brief Summary of Relevant Dates

- February 6, 2020 – Letter from IG Cuffari to SSA [redacted] requesting investigation of 22 allegations concerning Ms. Costello, Ms. Ouzts, and Ms. Shaw[101]
- February 28, 2020 – Notice of Proposed Removal of Ms. Costello.[102]
- April 17, 2020 – DHS OIG received proposals for investigative services from law firms WilmerHale and Davis Polk
- April 29, 2020 – IG Cuffari announced via email that Ms. Shaw was selected to be the Department of State (DOS) OIG DIG[103]
- May 4, 2020 – Contract for investigative services awarded to WilmerHale[104]
- May 8, 2020 – Amended Notice of Proposed Removal of Ms. Costello[105]
- May 8, 2020 – Ms. Shaw's last day at DHS-OIG
- May 8, 2020 – Ms. Ouzts placed on administrative leave status
- May 22, 2020 – Ms. Ouzts placed on investigative leave status[106]
- June 11, 2020 – Ms. Costello removed from Federal service[107]

[97] WilmerHale Report of Investigation, dated December 14, 2020.
[98] Interviews of [redacted]
[99] WilmerHale contract and modifications, Contract No. 70VT1520C00003.
[100] Interview of Jennifer Costello, dated July 21, 2023; Settlement Agreement, dated July 17, 2023.
[101] Letter from IG Cuffari to [redacted] dated February 6, 2020.
[102] Notice of Proposed Removal of Ms. Costello, dated February 28, 2020
[103] IG Cuffari email, dated April 29, 2020.
[104] Contract 70VT1520C00003 awarded to WilmerHale, May 4, 2020.
[105] Amended Notice of Proposed Removal of Ms. Costello, dated May 8, 2020.
[106] Memorandum from [redacted] dated May 21, 2020, placing Ms. Ouzts on Investigative Leave effective May 22, 2020.
[107] Ms. Costello notice of removal, dated June 11, 2020.

- July 14, 2020 – [redacted]
- September 30, 2020 – Modification P00002 to WilmerHale contract provided additional funding, increasing the total obligation value from $793,000 to $1,393,000[109]
- December 14, 2020 – WilmerHale final Report of Investigation issued[110]
- December 28, 2020 – Notice of Proposed Removal sent to Ms. Ouzts[111]
  - Ms. Ouzts resigned from DHS OIG in January 2021[112]
- January 13, 2021 – Redacted WilmerHale report published to DHS OIG FOIA Reading Room website

ii. Investigative Steps

The IC investigative team obtained information regarding IG Cuffari's various referrals of allegations to the IC associated with Ms. Costello and Ms. Shaw. Furthermore, electronic files including email files were obtained for numerous individuals, including IG Cuffari, Ms. Costello, and Ms. Shaw. The IC investigative team conducted interviews of various witnesses. The investigative team also reviewed the WilmerHale report and the underlying contract between DHS OIG and WilmerHale.[113] Additionally, the IC investigative team learned that Mr. De Mello's laptop was an item of interest relevant to this allegation; however, DHS OIG was not able to produce the laptop when requested by the IC investigative team, as described later in this report.

iii. Documentary Evidence and Witness Statements

Concerns Expressed by DHS OIG Senior Executives

After IG Cuffari's nomination, several DHS OIG senior executives raised questions regarding his qualifications to become the IG. In general, concerns were expressed that IG Cuffari's prior Federal management experience was limited to serving as a GS-14 position of Assistant Special Agent in Charge (ASAC), and that he had acquired his Ph.D. from a school identified as a diploma mill by the Government Accountability Office (GAO). For example, Ms. Ouzts told the investigative team that she believed IG Cuffari's qualifications were a concern for the agency. Specifically, she was concerned that IG Cuffari receiving his Ph.D. from a diploma mill would harm DHS OIG's reputation and credibility. Ms. Ouzts stated she expressed her concerns to both then [redacted] Witness #18 as well as [redacted] the DHS [redacted].[114] Ms. Costello also raised concerns regarding IG Cuffari which are discussed later in

[redacted].

[110] WilmerHale final Report, dated December 14, 2020.
[111] Notice of Proposed Removal of Ms. Ouzts, dated December 28, 2020.
[112] Interview of Karen Ouzts, January 28, 2022.
[113] DOT OIG investigators did not attempt to validate or invalidate WilmerHale's report. Rather, it was considered, along with other evidence relevant to IC20-059.
[114] Interview of Karen Ouzts, dated January 28, 2022.

this report. In addition, Ms. Shaw told the IC investigative team that she recalled Ms. Costello raising concerns regarding IG Cuffari's Ph.D., and that these concerns were raised with CIGIE.[115]

The IC investigative team found that IG Cuffari was aware of at least one complaint made against him to the IC. On November 14, 2019, Ms. Costello sent an email to IG Cuffari notifying him that she had submitted a formal complaint against him to the CIGIE IC.[116]

Referring Allegations for Outside Investigation

At some point after IG Cuffari was confirmed by the Senate, DHS OIG began compiling allegations against Ms. Costello, Ms. Ouzts, and Ms. Shaw. IG Cuffari submitted three complaints to the IC prior to Ms. Costello notifying IG Cuffari that she filed a complaint with the IC against him. Subsequently, IG Cuffari submitted two additional referrals to the IC, one against Ms. Shaw and one against Ms. Costello. In addition to the IC, allegations associated with these senior executives were referred to other entities, including the U.S. Attorney's Office (USAO), District of Columbia and another OIG for investigation.[117] For various reasons, the aforementioned entities declined to take action on the respective allegations, as described in part below.

Around this general time period, IG Cuffari and others sent allegations to the IC concerning Ms. Costello, Ms. Shaw, and Ms. Ouzts. Some of the allegations included:

1. Ms. Costello and Ms. Shaw had knowledge of a DHS OIG employee's misconduct and purposely shielded the employee from any inquiries, questions, or investigation;[118]
2. Ms. Ouzts and Ms. Costello directed the DHS OIG [redacted] to investigate the legitimacy of IG Cuffari's planned travel to Arizona and Texas on official business.[119]
3. Misconduct and potential whistleblower reprisal by Ms. Costello, Ms. Ouzts, and Ms. Shaw[120]
4. IG Cuffari provided a letter from the counsel for [redacted] that requested preservation of records associated with Ms. Costello, and stated it wasn't clear whether proper steps to preserve the information were made.[121]
5. Ms. Shaw had a conflict of interest when she led the team that conducted the internal investigation of [redacted] Witness #1 and that she had authored the final report of that investigation. Ms. Shaw should not have been the individual responding to the IC's request for information.[122]

[115] Interview of Diana Shaw, dated May 16, 2022.
[116] IG Cuffari email, dated November 18, 2019, forwarding Ms. Costello's email.
[117] Memorandum of Activity, Record of Conversation, [redacted] dated July 23, 2021; Interview of Witness #17 dated February 22, 2023; Correspondence with CIGIE, dated August 10, 2020.
[118] October 21, 2019 Complaint to the IC – ref. IC 20-006 Complaint
[119] October 23, 2019 Complaint to the IC – ref. IC 20-007 Complaint
[120] October 22, 2019 Complaint to the IC – ref. IC 20-009 Complaint
[121] November 14, 2019 Complaint to the IC – ref. IC 20-012 Complaint
[122] November 24, 2019 Complaint to the IC – ref. IC 20-015 Complaint

6. Ms. Costello and Ms. Ouzts used administrative investigations to target employees who did not subscribe to their personal agendas or their clear desire to undermine the current Inspector General.[123]

On October 24, 2019, the IC received a letter from IG Cuffari, requesting that the IC designate SSA IG Witness #17 to investigate complaints referred to the IC alleging misconduct by senior executives at DHS OIG. On October 30, 2019, the IC sent a letter to IG Cuffari explaining, in part, that IG Cuffari's "proposal to have Witness #17 as your selectee to conduct investigations on the IC's behalf would be contrary to the specific process set forth in the Policies and Procedures." The letter further advised that all allegations within the jurisdiction of the IC must be resolved through the required IC process.[124]

Following the declination by the IC to investigate the allegations against Ms. Costello, Ms. Shaw, and Ms. Ouzts, representatives from DHS OIG again approached SSA OIG to conduct the investigation into the three DHS OIG senior executives.[125] [redacted] On February 6, 2020, IG Cuffari sent a letter to Witness #17 requesting an independent investigation of approximately 22 allegations concerning Ms. Costello, Ms. Ouzts, and Ms. Shaw.[127] IG Cuffari had reached an agreement in principle with Witness #17 [redacted] SSA OIG, to conduct the investigation.[128]

Witness #2 then engaged with SSA OIG to enter into an interagency agreement and provided background on the investigation. Witness #2 explained to the IC investigative team that [redacted] provided a list of allegations to SSA OIG, at which time Witness #17 contacted IG Cuffari and explained that the scope of the investigation was too big and would tie up too many SSA OIG staff for too much time, and declined to continue with the investigation.[129]

However, when the IC investigative team interviewed Witness #17 [redacted] stated that the reason [redacted] declined to have SSA OIG conduct the investigation for DHS OIG was because Witness #5 who was [redacted], was [redacted], and Witness #17 was concerned that no matter what the outcome of the investigation, there could be a perception of bias. Witness #17 also stated that some of the allegations seemed to be personnel issues and not necessarily something SSA OIG could or should review. Witness #17 recalled telling IG Cuffari that "there's a lot of law firms that do this work… you could hit a – throw a stone in Washington and find a firm that does this. My old firm used to do this work; all the firms do it. You could just go and find somebody to do it and that way you don't have to worry about an IG being conflicted off like I was. That way you're not going to have a worry."[130] Although Witness [redacted] previously worked for [redacted] did not have discussions with IG Cuffari about

[123] December 2, 2019 Complaint to the IC – ref. IC 20-016 Complaint
[124] CIGIE IC letter, dated October 30, 2019.
[125] Interview of Witness #17 dated February 21, 2023.
[126] [redacted]
[127] DHS OIG letter to Witness #17 dated February 6, 2020.
[128] Interview of Witness #2 dated September 1, 2022.
[129] Interview of Witness #2 dated September 1, 2022.
[130] Interview of Witness #17 dated February 21, 2023.

using WilmerHale. Further, Witness #17 stated, "I didn't even know they selected WilmerHale until probably I read it in the paper or something. I had no idea."[131]

Documentation obtained during the investigation corroborates the explanation provided by Witness

After Witness #17 declined to investigate, DHS OIG looked to hire a contractor to conduct an investigation of Ms. Costello, Ms. Shaw, and Ms. Ouzts, as described below.[133]

Overview of the WilmerHale Investigation

[131] Interview of IG Witness #17 dated February 21, 2023.

[134] Interview of Witness #4 dated February 9, 2023.

[redacted]

The most notable finding of WilmerHale's investigation that was consistent with this investigation (IC20-059) concerned Ms. Costello and her derogatory comments about and towards IG Cuffari, as described later in this report. [redacted]

[redacted]

[redacted]

[redacted]

By way of background, this allegation reflected concerns that Witness #2 and IG Cuffari raised regarding Ms. Costello's role as Acting IG upon Witness #1 retirement.[141] Looking further into the facts and circumstances, IG Cuffari used these concerns as an opportunity to bolster his case to remove Ms. Costello from DHS OIG, despite contradictory information indicating that Witness #1 intended for Ms. Costello to serve in an acting capacity and took numerous steps to ensure this occurred.[142] DHS OIG attorneys involved in the personnel action taken against Ms. Costello characterized the situation as "personal."[143] Further, a DHS OIG attorney characterized the investigation as "very personal," and that there was a need by DHS OIG to be proven right.[144]

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[137] The IC investigative team reviewed the WilmerHale report as one piece of evidence in IC 20-059 and in relation to all other evidence gathered during the IC20-059 investigation. The investigative team did not attempt to evaluate WilmerHale's investigation or go behind its findings. However, where evidence developed by the investigative team supported, differed from, or informed, WilmerHale's findings and was relevant to 1C20-059, we have included it in this report.

[redacted]

[141] Interview of IG Cuffari, dated August 30, 2022.

[142] Witness #1 interviews, dated August 19, 2021 and August 19, 2022.

[143] Interview of Witness #7 dated April 29, 2022; Interview of WitnessWitness #9 dated May 18, 2022.

[144] Interview of WitnessWitness #9 dated May 18, 2022.

Specifically, as discussed elsewhere in this report (see *Allegation 1 [Costello]*), Witness #1 submitted changes to DHS OIG's succession plan to DHS[145] and promoted Ms. Costello in November 2018 to the role of DIG.[146] Although Witness #1 actions may have unintentionally created a potential conflict with the Federal Vacancies Reform Act (FVRA), Ms. Costello and the DHS OIG executive team believed they resolved the conflict when Witness #1 retired by consulting with DHS's Office of General Counsel (OGC) and taking retroactive HR actions.[147] However, in June 2020, IG Cuffari ultimately decided to undo what was previously done to resolve the matter and removed Ms. Costello from the position of DIG, retroactively placing her back in her prior position as COO, and ultimately removed her from Federal service. IG Cuffari then proceeded to email the DHS OIG workforce regarding Ms. Costello's removal and notified Congress of the action.[148] (Note: Further details regarding these changes to the succession plan, Ms. Costello's role, and FVRA are included later in this report—see *Allegation 1 [Costello]*.)

When interviewed by the IC investigative team, IG Cuffari was asked if he had any conversations with Witness #1 regarding his reassignment of Ms. Costello to the role of DIG, thereby possibly inadvertently assigning Ms. Costello to his own position. IG Cuffari stated, "No. Not at all." When asked if it would change his perspective if it was Witness #1 intent to elevate Ms. Costello to the DIG role, he stated, "No. I have that written right there."[149]

[redacted]

Witness #9

[redacted]

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[145] [redacted] email, FW: OIG Succession, February 19, 2019; Memorandum of Activity, Record of Conversation, [redacted] dated January 19, 2022.
[146] Jennifer Costello, Notice of Personnel Action, SF-50, dated November 11, 2018.
[147] Witness #19 email, dated June 12, 2019.
[148] IG Cuffari email to all DHS OIG employees, dated June 11, 2020; IG Cuffari letter to Congressional Oversight Committees, dated June 11, 2020.
[149] Interview of IG Cuffari, dated August 30, 2022.

[redacted]

[redacted]

Witness #9

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Witness #9

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

The Bid Proposal Process and Contract Award to WilmerHale

During the course of the IC's investigation, additional information surfaced raising questions of impropriety regarding the contract award to WilmerHale. [redacted]

[redacted]

[166] During the interview, it took IG Cuffari approximately 1 minute and 38 seconds to point to where he believed [redacted] was referenced in WilmerHale's 108-page investigative report – including appendices.
[167] Interview of Witness #2 dated September 1, 2022.
[168] Interview of Andrew De Mello, dated August 23, 2022.

[redacted]

[redacted]

[redacted]

Witness #2 served as a non-voting advisor to the DHS OIG Technical Evaluation Team (TET), which evaluated proposals submitted by the firms. When asked about [redacted] involvement on the TET, Witness #2 stated, "I don't remember him [IG Cuffari] asking me [to be on the TET]. [redacted]

Witness #2 did not recall if [redacted] provided any advice to the TET. When asked if there was any plan to course correct and select WilmerHale if the TET selected Davis Polk, Witness #2 stated, "I'm not aware of any such plan and if anybody had raised that idea post award, let's change it, I, I would have objected."[173]

[redacted], the IC investigation team found the TET appeared to

[169] Interview of Andrew De Mello, dated August 23, 2022.
[170] Interview of Andrew De Mello, dated August 23, 2022.
[171] Interview of Andrew De Mello, dated August 23, 2022.
[172] Interview of Witness #2 dated September 1, 2022, transcript part 2.
[173] Interview of Witness #2 dated September 1, 2022, transcript part 2.

have ultimately selected WilmerHale without interference. The voting members of the TET were not aware of any effort to steer their decision to one particular firm.[174]

As discussed later in this report (see *Allegation 6*), Witness #2 initially directed DHS OIG procurement staff not to send the solicitation to Davis Polk. However, the procurement staff inadvertently sent it. Had the solicitation not been sent to Davis Polk, WilmerHale would have been the sole bidder for the contract.

IG Cuffari has made several statements, including to Congress and to the IC, regarding the awarding of the contract to WilmerHale. IG Cuffari has stated that he did not have any involvement in the awarding of the contract.[175] IG Cuffari also denied knowing anything about WilmerHale or Davis Polk submitting proposals prior to the contract award. Despite evidence to the contrary, when interviewed, IG Cuffari denied political bias played a role in the contract award and stated he did not have a preference between the competing firms.[176]

Recommendation of Mr. De Mello for IG at the U.S. Department of Education

Mr. De Mello told the IC investigative team that [redacted] IG Cuffari threatened to pull or reconsider his recommendation for Mr. De Mello's nomination to be IG at the U.S. Department of Education. In June 2020, IG Cuffari provided a letter of recommendation to Congress in support of Mr. De Mello after he was nominated by the President to be the IG of the U.S. Department of Education.[177] Mr. De Mello stated,

> *The particular committee that I had to go through, um, in order to have my, uh, nomination be heard, did not have a live hearing. So, they do it differently than all the other committees. And they instead rely on letters of recommendation, um, submitted by people that you worked with, or have worked with. And it was–- it was clear that, you know, without Joe's [Cuffari's], um, recommendation that would be solid and kept in place, uh, this was going to be a huge problem, a huge problem.*

Mr. De Mello went on to state,

> *Joe [Cuffari] was very unhelpful regarding my, uh, situation here with the CIGIE investigation. And at each of those junctures, he had some intemperate remarks that he conveyed to me privately when other people weren't in the room.*

Mr. De Mello further stated,

[174] Interview of Witness #20 dated November 4, 2021 and October 5, 2022; Interview of Witness #21 dated September 22, 2022; Interview of Witness #22 dated September 28, 2022; Interview of Witness #2 dated September 1, 2022.
[175] Joseph Cuffari, QFRs, dated June 4, 2021 and Joseph Cuffari letter to the IC, dated August 10, 2020.
[176] Interview of IG Cuffari, dated August 30, 2022.
[177] IG Cuffari letter of recommendation, dated June 5, 2020.

So, likewise, you can kind of imagine how, how radically the shift was, where, like, first, Joe's, you know, recommending me for the thing. And then all of a sudden, uh, out of the– - out of the blue, uh, he's telling me that he doesn't write letters of recommendation for wise guys.[178]

Although Mr. De Mello was not aware of IG Cuffari rescinding his recommendation, IG Cuffari did revoke Mr. De Mello's SES management board training a few days before it was to occur. Mr. De Mello stated that the cancellation of training occurred in close proximity to [redacted]

IG Cuffari's Involvement in the WilmerHale Report and Misleading Statements to Congress

IG Cuffari made public statements to Congress about his involvement in the WilmerHale investigation that were misleading and inaccurate. Specifically, in his response to Questions for the Record (QFR), dated June 4, 2021, to The Honorable Bennie G. Thompson, then-Chairman, Committee on Homeland Security, U.S. House of Representatives, IG Cuffari minimized his involvement in the WilmerHale investigation.

In response to question 12, which stated "Dr. Cuffari, what steps did Wilmer Hale take to ensure that the investigation into allegations of misconduct would be independent? • To what extent were you involved in selecting the firm, or guiding its work, if at all?" IG Cuffari stated,

As mentioned in response to question 11, I was not at all involved in the process for selecting WilmerHale. I was also not involved in guiding the work of the firm. WilmerHale personnel carried out their work under the supervision of a senior partner in that firm, [redacted] *who served as* [redacted] *WilmerHale decided who would be interviewed, what documents and other evidence it needed, how the final report would be organized, and most importantly, what the final report said. I did not engage an outside firm with a particular outcome in mind, nor did I or anyone at DHS OIG telegraph a particular outcome to WilmerHale.* [180]

[redacted]
Witness #9
Witness #9

[178] Interview of Andrew De Mello, dated August 23, 2022.
[179] Interview of Andrew De Mello, dated August 23, 2022.
[180] Joseph Cuffari, QFRs, dated June 4, 2021.
[redacted]
Witness #9



One DHS OIG [redacted] whom the IC investigative team interviewed stated that IG Cuffari requested that WilmerHale interview certain people and provided direction to WilmerHale. This employee's perspective was that IG Cuffari and his new senior leaders had a large stake in the outcome of WilmerHale's investigation. However, despite IG Cuffari and other senior leaders' actions, the employee believed WilmerHale's investigation was independent.[186]

[183] [redacted] email, dated August 19, 2020.
[184] Witness #4 [redacted] email, dated August 27, 2020.
[185] [redacted] email, dated September 18, 2020.
[186] Interview of WitnessWitness #9 [redacted] dated May 18, 2022.

The IC investigative team also found that IG Cuffari requested that two of Ms. Shaw's supervisors, [redacted] and [redacted] intervene to ensure that Ms. Shaw would submit to an interview with WilmerHale. On August 4, 2020, [redacted]

Following [redacted] resignation, [redacted] was named as [redacted] at [redacted] The IC investigative team found that IG Cuffari again requested Ms. Shaw's supervisor, this time [redacted], to order Ms. Shaw to provide testimony in the WilmerHale investigation. However, [redacted] opted not to honor IG Cuffari's request.[189]

IG Cuffari told the IC investigative team that he believed he spoke with both [redacted] and [redacted] who was serving as Ms. Shaw's supervisor prior to [redacted] on two different occasions. IG Cuffari stated the purpose of his contact was to request the [redacted] inform Ms. Shaw of her ethical obligations as a government employee to cooperate with the investigation.[190] Based on records obtained, it appears one of the dates IG Cuffari contacted [redacted] was October 8, 2020.[191] At the time he made this request to [redacted] DHS OIG senior leaders were aware that Ms. Shaw was represented by counsel.[192]

The Role of DHS OIG Staff in the WilmerHale Investigation

During the course of WilmerHale's investigation, they relied on DHS OIG for personnel law expertise. In particular, [redacted] stated that during WilmerHale's investigation they relied on [redacted] and DHS OIG to provide the relevant personnel law expertise as WilmerHale did not have any in-house government personnel law experts. WilmerHale also requested that DHS

[redacted]

[189] Interview of [redacted] dated June 25, 2021.
[190] Interview of IG Cuffari, dated August 30, 2022.
[191] [redacted] email, IG Telecom w/ [redacted] dated October 5, 2020.
[192] [redacted] email, RE: Shaw call, dated September 4, 2020.

OIG [redacted] Witness #7 [redacted] review a draft of the final report prior to its release as [redacted] was essentially a [redacted] at DHS OIG who was not involved in the investigation.[193]

One area of consultation pertained to interfacing with Ms. Shaw's attorney. In [redacted] interview with the IC investigative team, Witness #4 [redacted]

[193] Interview of Witness #4 [redacted] dated February 9, 2023.

[redacted]

Witness #9

[redacted]

Mr. De Mello's Laptop

As described above, at the time that DHS OIG was in the process of contracting investigation services with WilmerHale, Mr. De Mello was on detail to DHS OIG as a senior special counsel. Mr. De Mello was involved in the contracting process, and his duties in that respect included aspects of the statement of work.[203] [redacted]

[redacted]

[203] Andrew De Mello email, dated April 1, 2020, Updated SOW.

[redacted]

[redacted]

IG Cuffari was asked about this letter when interviewed by the IC investigative team. He thought he previously saw the letter in question; however, he did not recall signing it, nor did he recall instructing Mr. De Mello to draft it. During the interview, IG Cuffari initially agreed with the context of what was written in the letter. However, later in the interview, IG Cuffari disputed what a "desktop" was on a computer. Specifically, IG Cuffari stated that he thought a "desktop" was his 'H' drive, which was a network drive. Yet, the draft letter specifically stated, "Save all documents he created exclusively on his DHS OIG laptop desktop screen and not on any of the shared OIG drives." IG Cuffari later clarified that he would be concerned if documents were only being saved to a local computer drive and not to a network drive.[206] When asked by the IC investigative team if he directed anyone not to save information to the network, IG Cuffari replied "no."[207]

The IC investigative team requested information concerning Mr. De Mello's computer to understand if government records were not being properly maintained and if materials requested in the course of the investigation were not turned over.[208] However, while DHS OIG had a record of Mr. De Mello's computer and other equipment being returned by Mr. De Mello, they were unable to locate Mr. De Mello's laptop computer. During this investigation, the apparent disappearance of this specific laptop was brought to the attention of several senior executives at DHS OIG, to include IG Cuffari, [redacted] Witness #2 and Witness #5 [redacted].[209] Further details regarding the search for Mr. De Mello's computer are included later in this report (*Allegation 7 [De Mello]*).

To date, the DHS OIG laptop computer previously assigned to Mr. De Mello has not been produced.

Additional Security Concerns

[redacted]

[206] Interview of IG Cuffari, dated August 30, 2022.
[207] Interview of IG Cuffari, dated August 30, 2022.
[208] DOT OIG document request, dated July 27, 2021; Memorandum of Activity, Record of Conversation, [redacted] dated February 17, 2022; DOT OIG letter, dated January 12, 2023.
[209] Interview of IG Cuffari, dated August 30, 2022; Interview of Witness #2 [redacted] dated September 1, 2022; Interview of Witness #23 [redacted] dated March 15, 2022 and April 11, 2022; DHS OIG letter, dated February 3, 2023; DOT OIG letter, dated February 10, 2023.

During the IC's investigation, additional security concerns were identified regarding WilmerHale's investigation. In one instance, a WilmerHale attorney was the victim of a residential burglary in which a DHS OIG laptop and PIV card were stolen. The theft was promptly reported to DHS OIG by WilmerHale.[210] In another incident, a WilmerHale attorney attempted to log into DHS OIG's network using a DHS OIG issued laptop while on overseas travel in Europe.[211] These security issues were confirmed by [redacted] [212]

iv. IG Cuffari's Response

On August 30, 2022, during an interview with the IC investigative team, IG Cuffari was provided an opportunity to respond to the allegations that IG Cuffari abused his authority by initiating multiple investigations, including referring allegations to the IC and initiating the WilmerHale investigation (described below), into COO Costello and AIG Shaw, in retaliation for COO Costello and AIG Shaw's protected disclosures to the IC, Congress, and/or the Office of Special Counsel. IG Cuffari stated that he believed the allegation was false. When asked why, he stated, "I never initiated any investigations into any one in my office that I'm thinking about as of today. Especially the three. Not multiple investigations. I made multiple referrals to the Integrity Committee." When asked if he ever threatened to revoke training or other career advancing opportunities to employees because they didn't agree with him or in retaliation for them not agreeing. IG stated, "Not that I'm aware of."[213]

IG Cuffari told the IC investigative team that he viewed his involvement in the WilmerHale investigation as that of a witness. When asked by the IC investigative team if he was involved in providing any tasking of WilmerHale, IG Cuffari responded, "No tasking that I recall."[214] Further, IG Cuffari did not perceive his actions were leading nor created a problem of independence. Rather, IG Cuffari took the position that he would not change any of the statements he previously made to Congress and the IC.[215]

The IC investigative team also asked IG Cuffari about some of the concerns raised against him, including those questioning his Ph.D. IG Cuffari advised that he received his Ph.D. from California Coast University (CCU) [in 2002[216]] at a time when the school was accredited. He went on to state that he thought the GAO reports referring to CCU as a diploma mill had been retracted and the group which conducted the review was disbanded.[217] However, this statement by IG Cuffari was inaccurate, as CCU was not accredited until January 2005, and the relevant testimonial reports from GAO on diploma mills stood as written and have not been retracted. [218]

Prior Statement Regarding the WilmerHale Investigation

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[210] [redacted] email, dated October 14, 2020.
[211] Interview of [redacted] dated November 4, 2021.
[212] Interview of [redacted] dated February 9, 2023.
[213] Interview of IG Cuffari, dated August 30, 2022.
[214] Interview of IG Cuffari, dated August 30, 2022.
[215] Interview of IG Cuffari, dated August 30, 2022.
[216] CCU school transcript of Joseph Cuffari from OPF, page 60.
[217] Interview of IG Cuffari, dated August 30, 2022.
[218] US Dept. of Education, Office of Postsecondary Education, institutional accreditation information for CCU; Memorandum of Activity, dated October 13, 2022, regarding GAO reports GAO-04-771T and GAO-04-1096T.

IG Cuffari explained his rationale in continuing an investigation into two DHS OIG employees who had already left the agency in his November 3, 2020, response to CIGIE. In response to the question: "b. If any of the senior managers are no longer employed by DHS OIG, then please explain the reasons behind continuing the investigation, including any analysis of the benefits reasonably expected from the investigation and how those benefits compare with the cost of the contract."

IG Cuffari wrote,

> *Under 5 U.S.C. § 3322, if an employee "who is the subject of a personnel investigation" resigns prior to resolution of the investigation, the agency shall note any adverse findings in the employee's official personnel file upon completion of the investigation. While strictly speaking section 3322 does not apply because Ms. Costello and Ms. Shaw did not resign from employment with DHS OIG, the broad principle underlying the statute, namely, a Federal employee should not be allowed to escape accountability for their misdeeds by leaving before an investigation is complete, strongly militates in favor of investigating the allegations concerning Ms. Costello and Ms. Shaw.*

IG Cuffari added,

> *I wish to emphasize that the allegations under investigation are significantly serious in their own right, but they are even more so considering that the individuals whose actions are being scrutinized held high-level positions. Ms. Costello was the Chief Operating Officer of DHS OIG during the period covered by the allegations, and in fact during the relevant period DHS OIG employees believed her to be either Acting Inspector General or Deputy Inspector General. Ms. Ouzts was Acting Counsel to the Inspector General for most of the period covered by the allegations. Ms. Shaw was either Assistant Inspector General for Legal Affairs or Assistant Inspector General for Special Reviews and Evaluations during the period covered by the allegations.*[219]

v. Investigative Conclusions

High-Level Summary of Evidence Leading to Investigative Conclusions (Allegation 5 - Cuffari)

Allegation 5 (Cuffari)
5. IG Cuffari abused his authority by initiating multiple investigations, including referring allegations to the IC and initiating the WilmerHale investigation (described below), into COO Costello and AIG Shaw, in retaliation for COO Costello and AIG Shaw's protected disclosures to the IC, Congress, and/or the Office of Special Counsel.
Summary of Evidence

[219] IG Cuffari letter to CIGIE, dated November 3, 2020, Re: Integrity Committee Cases 20-056/059, 20-070, and 20-079.

Note: The following provides a non-exhaustive summary of certain evidence supporting the investigative conclusions. Full details, including additional evidence and source citations, are contained in the "iii. Documentary Evidence and Witness Statements" section for this allegation above.
• Following IG Cuffari's nomination to be IG at DHS, DHS OIG executives began expressing concerns regarding IG Cuffari's background and other matters. Ms. Costello sent an email to IG Cuffari in November 2019 notifying him that she had submitted a formal complaint against him to the IC.
• IG Cuffari referred allegations to multiple entities related to Ms. Costello and Ms. Shaw. These included the SSA OIG, U.S. Attorney's Office, and the IC. These entities declined to pursue the investigations.
• After those investigations were declined, DHS OIG contracted with WilmerHale on May 4, 2020. The scope of WilmerHale's investigation included [redacted] pertaining to Ms. Costello, Ms. Shaw, and Ms. Ouzts.
• [redacted]
• IG Cuffari sought to remove or reassign all three senior executives prior to receiving WilmerHale's investigative results, yet continued to pursue the investigation.
• [redacted]
Investigative Conclusions
Substantiated in Part. IG Cuffari was involved in initiating and directing an investigation against Ms. Costello, Ms. Shaw, and Ms. Ouzts, who had previously questioned IG Cuffari and/or filed complaints against him. The WilmerHale investigation was scoped at IG Cuffari's direction and focused solely on allegations against these three executives. No direct evidence substantiated that IG Cuffari initiated these investigations in retaliation for protected disclosures made by Ms. Costello, Ms. Shaw, or Ms. Ouzts. However, circumstantial evidence suggests that IG Cuffari was interested in casting these three senior executives in a negative light.

Detailed Description of Investigative Conclusions

The investigation substantiated Allegation 5, in part, in that IG Cuffari was involved in directing investigations against Ms. Costello, Ms. Shaw, and Ms. Ouzts. The WilmerHale investigation [redacted] and focused solely on allegations against three senior executives who had previously questioned IG Cuffari, made disclosures about him, and filed complaints against him.

Moreover, IG Cuffari's responses to IC inquiries as well as to Congress were incomplete, inaccurate, or evasive. For example, despite IG Cuffari [redacted], contacting potential witnesses, contacting supervisors of Ms. Shaw in an attempt to compel her interview, and [redacted] he stated that he viewed his role in the WilmerHale investigation as a witness.

While there is no direct evidence of IG Cuffari's intent to retaliate against Ms. Costello, Ms. Shaw, and Ms. Ouzts, there is circumstantial evidence including:

- IG Cuffari and his senior staff levied approximately [redacted] against three senior executives after concerns had been raised against him;
- [redacted] DHS OIG then failed to produce this computer when requested by the IC investigative team;
- IG Cuffari continued to pursue the investigation after Ms. Shaw transferred, and Ms. Costello was terminated;
- After initiating the WilmerHale investigation and terminating Ms. Costello, IG Cuffari notified the workforce and Congress providing an incomplete history of Ms. Costello's role as DIG;
- [redacted]
- [redacted]

Based on these findings, it is reasonable to conclude that the totality of the actions taken by IG Cuffari were intended to cast a negative light on the three former DHS OIG senior executives with whom he had difficult relations and to protect his basis for attempting to remove or removing them from Federal service.

Throughout the investigation, the IC investigative team noted that IG Cuffari's responses to questions regarding aspects of his conduct were incomplete or inaccurate and conflicted in numerous instances with evidence obtained during the course of the investigation. In regard to Allegation 5, this included IG Cuffari's characterization of his role in the WilmerHale investigation, as noted above. In instances where statements made by IG Cuffari ran contrary to information provided by Mr. De Mello, it seemed reasonable to consider Mr. De Mello's account to be more plausible, especially given that Mr. De Mello's account was supported, at least in part, by documentation. [redacted]

It should be noted that DHS OIG recently resolved allegations raised by Ms. Costello at MSPB regarding her removal. Some of the charges supporting Ms. Costello's removal were similar to allegations put forwarded by IG Cuffari to WilmerHale and the IC, including some related to this investigation.[220] While DHS OIG did not admit fault, they settled the MSPB case with Ms. Costello and agreed to compensate her $1.17 million.[221] Further, IG Cuffari was asked during his

[220] IG Cuffari deposition transcript, dated June 29, 2023.
[221] DHS OIG MSPB Settlement Agreement with Ms. Costello, dated July 17, 2023.

deposition, "Do you think individuals at OIG who express concerns about your qualifications for your position as inspector general should be removed for expressing those concerns?" To which IG Cuffari responded, "I believe it's sewing [sic] seeds of dissension." When pressed, he added "Not solely on that."[222] The response provided by IG Cuffari in the MSPB deposition indicates that those who raised questions regarding his qualifications might face retaliation.

[222] IG Cuffari deposition transcript, dated June 29, 2023.

c. Allegation 6 (Cuffari)

IG Cuffari abused his authority, engaged in a gross waste of funds, and grossly mismanaged DHS OIG by spending over $800K for a contract between DHS OIG and WilmerHale, a private law firm, to investigate former senior members of his staff who had formally complained about him, most likely for his personal interest. IG Cuffari also lacked candor in his explanations for the decision to engage a private firm to investigate the allegations, including, but not limited to, his relevant communications with the CIGIE Chairperson and the IC. Further, IG Cuffari personally attempted to intervene in the WilmerHale investigation for his own benefit, when he twice asked Witness #3 who was at that time the Acting IG at the Department of State and AIG Shaw's new supervisor, to pressure AIG Shaw to agree to an interview with WilmerHale investigators without conditions.

Note: Allegations 5 and 6 contain overlapping issues, including retaliation concerns. In some cases, information presented in each section of these allegations pertains to both allegations.

i. Background

As described in Allegation 5 (above), DHS OIG contracted with WilmerHale to conduct an investigation into [redacted] allegations associated with Ms. Costello, Ms. Ouzts, and Ms. Shaw. The IC posed various questions regarding the WilmerHale contract, which resulted in IG Cuffari explaining his decision to use an outside law firm. As noted above under Allegation 5, IG Cuffari and other DHS OIG senior leaders had personal involvement in the allegations being investigated as well as the content of the report.

At various times after Ms. Shaw's departure from DHS OIG, [redacted] [redacted] and Witness #3 served as her supervisor at DOS OIG.

For a brief summary of relevant dates, see Allegation 5, above.

ii. Investigative Steps

For a summary of investigative steps, see Allegation 5, above.

iii. Documentary Evidence and Witness Statements

Note: The facts associated with the subsections in Allegation 5, including: The Bid Proposal Process and Contract Award to WilmerHale, Recommendation of Mr. De Mello for IG at the U.S. Department of Education, the Role of DHS OIG Staff in the WilmerHale Investigation, Mr.

De Mello's Laptop, and Additional Security Concerns, are incorporated into the Documentary Evidence and Witness Statements of Allegation 6.

DHS OIG Investigation into Three Senior Executives Coinciding with Changes to Their Employment Status

As discussed in Allegation 5 above, allegations were sent to the IC concerning Ms. Costello, Ms. Shaw, and Ms. Ouzts. The IC ultimately did not investigate these allegations. Subsequently, IG Cuffari requested that SSA OIG conduct an investigation.

Following the request to SSA OIG and prior to SSA OIG's declination, in a memorandum dated February 28, 2020, IG Cuffari provided Ms. Costello with a Notice of Proposed Removal for failing to accept a reassignment.[223] At the time, Ms. Costello was asking questions surrounding IG Cuffari's pending reassignment of her to the DHS Countering Weapons of Mass Destruction Office and had not yet failed to report to her reassignment.

In April 2020, Ms. Shaw informed DHS OIG [redacted] that she had accepted a position with another Federal agency. In an email exchange with HR personnel, Ms. Shaw advised that IG Cuffari was aware that she had accepted a tentative offer with DOS OIG, and had offered to IG Cuffari assistance in preparing the solicitation to hire a replacement.[224]

On or around April 27, 2020, DHS OIG's TET issued a report recommending WilmerHale be selected to conduct an internal investigation.[225] On May 4, 2020, DHS OIG awarded the contract to WilmerHale to conduct an investigation focused on three senior executives, Ms. Costello, Ms. Shaw, and Ms. Ouzts.

Four days later, on May 8, 2020, an Amended Notice of Proposed Removal for Ms. Costello was issued by IG Cuffari. In the Amended Notice of Proposed Removal numerous additional allegations were listed supporting the proposed action in addition to the initial charge of failing to accept a reassignment.[226]

Ms. Shaw's last day at DHS OIG was also May 8, 2020, with an effective date of transfer of May 20, 2020. Ms. Ouzts was also placed on administrative leave on May 8, 2020, and then investigative leave status on May 22, 2020.[227] Ms. Costello was terminated from DHS OIG on June 11, 2020. The WilmerHale investigation at this point was in the very initial stages, with an interview of IG Cuffari conducted three days earlier, on June 8, 2020.

The Amended Notice of Proposed Removal associated with Ms. Costello's termination contained some allegations that were similar to what WilmerHale was tasked with investigating ex post facto.[228]

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[223] Jennifer Costello, Notice of Proposed Removal, dated February 28, 2020.
[224] Diana Shaw email thread, dated April 28, 2020.
[225] Technical Evaluation Report, from Response 2 – Contract Award and Supporting Docs – ref. pages 499-504.
[226] Jennifer Costello, Amended Notice of Proposed Removal, dated May 8, 2020.
[227] Memorandum from [redacted] dated May 8, 2020, Placement on Administrative Leave; Memorandum from Witness #2 dated May 21, 2020, Investigative Leave Notice.
[228] Jennifer Costello, Amended Notice of Proposed Removal, dated May 8, 2020.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

On April 17, 2020, DHS OIG received two solicitations. The firms that submitted proposals were WilmerHale and Davis Polk.[235] If the RFP not been inadvertently sent to Davis Polk, WilmerHale would have been the sole bidder on the contract.

Scope and Cost of the WilmerHale Investigation

As referenced above, on May 4, 2020, WilmerHale was contracted by DHS OIG to conduct an investigation with an initial cost of $793,000.[236] On July 14, 2020, [redacted] At this time, as described above, Ms. Costello had already been terminated, Ms. Shaw had transferred to another agency, and Ms. Ouzts had been placed on investigative leave.

It was the opinion of WitnessWitness #9 [redacted] an [redacted] for DHS OIG, that had [redacted] been involved developing the scope of the investigation, the scope would have been 10 or 12 allegations, with the possibility of expanding the scope if the findings warranted an expansion. In assessing whether the cost of the WilmerHale investigation was reasonable, WitnessWitness #9 [redacted] believed that WilmerHale performed that amount of work based on the number of allegations; however, it was a lot of taxpayer money and [redacted] questioned whether it was a good expenditure.[238]

On September 2, 2020, [redacted]

[redacted]

[235] Technical Evaluation Report, from Response 2 – Contract Award and Supporting Docs – ref. pages 499-504; Witness #24 [redacted] email, dated July 9, 2020, RE: IC inquiry on WH contract, from Response 2 – Contract Award and Supporting Docs, ref. page 762.

[redacted]

[238] Interview of WitnessWitness #9 [redacted] dated May 18, 2022.

[redacted]

Witness #9

Witness #9

[redacted]

WilmerHale issued its investigative report on December 14, 2020. The total final cost for the investigation was nearly $1.4 million.

[redacted]

[241] Amendment of Solicitation/Modification of Contract, Amendment/Modification No P00002, signed by Witness #25 on September 30, 2020.

Witness #9

Witness #9

[redacted].

Explanation of Hiring an Outside Law Firm

IG Cuffari has stated that he hired an outside law firm as there was no one else who was interested in investigating.[245] On August 10, 2020, IG Cuffari provided a response to questions raised by the IC. One of the IC's questions was "Please provide the facts and circumstances for any recent contracts between DHS OIG and a private law firm. For example, please explain the award process for the contract and the services provided, and please include a copy of the contract, the statement of work, and DHS OIG's written determination that none of the functions to be performed are inherently governmental."

In response, IG Cuffari stated,

> *On July 29, 2019, my first day as Inspector General of DHS, I was told by the senior executives who had taken control of DHS OIG upon* Witness #1 *June 10, 2019 retirement that DHS OIG would be bringing on 40 new employees in the coming weeks. This concerned me greatly because if, as expected, DHS OIG began FY 20 under a continuing resolution, DHS OIG was projected to have a budget shortfall of $7 - $12 million, which would have been exacerbated as a result of these new hires. When I instituted a hiring freeze, a senior executive informed me that I was exposing DHS OIG to liability because formal final job offers had already been made to these 40 individuals. I decided to consult with seasoned members of the Inspector General community, who advised me to ask for evidence that final job offers had actually been made. I did so, and after much prodding and delay, a senior executive reluctantly admitted to me that in fact formal final offers of employment had been made to only nine individuals. Thus, from the outset at DHS OIG I was confronted with gross mismanagement, failure to uphold fiduciary responsibilities, obfuscation, and a lack of cooperation from some of the senior executives who were in place when I arrived. Over the next few months I personally observed or received credible reports of insubordination, incivility, abuse of authority, and other forms of misconduct on the part of senior executives at DHS OIG. After again conferring with several members of the Inspector General community, I referred multiple, credible allegations of serious misconduct on the part of senior executives at DHS OIG to the Integrity Committee. At least two other DHS OIG employees independently filed complaints with the Integrity Committee alleging serious misconduct on the part of senior executives at DHS OIG. The Integrity Committee advised me that it would take no action on my referrals, and I later learned that the Integrity Committee intended to take no action on the other complaints. Given the nature of the allegations and the high level of the employees involved, I determined that "an internal investigation of the matter[s] might not be objective in fact or appearance." Integrity Committee Policies and Procedures, § 5.A.ii.b. In this connection, three DHS OIG employees are pursuing retaliation and discrimination complaints in which the senior executives, who are the subjects of the above-referenced allegations, are the accused officials. Additionally, those senior executives took apparently unwarranted actions directed at two DHS employees, resulting in two complaints for violation of the Privacy Act against DHS OIG. Collectively, these matters represent significant legal exposure to the DHS OIG. After conferring with members of the Inspector General community and to avoid*

[245] Interview of IG Cuffari, dated August 30, 2022.

> *any appearance of a conflict, I asked another Inspector General if [redacted] employees could investigate the allegations, and [redacted] agreed. Shortly before that investigation was about to begin, however, the Inspector General informed me that [redacted] had changed [redacted] mind and that [redacted] employees would not conduct the investigation. I nevertheless continued to believe that I was obligated to investigate the allegations, that it was in the public interest to do so, and that leaving the allegations unexamined would be irresponsible. To avoid any appearance of a conflict, I knew that the investigation should not be conducted by DHS OIG personnel. Accordingly, after conferring with members of the Inspector General community, I decided that the best course was to engage the services of a private firm to carry out an independent investigation.*[246]

Of note, the response provided by IG Cuffari did not indicate the volume of allegations which were solely focused on three individuals.[247] Additionally, IG Cuffari did not provide the complete context regarding the scope of the investigation. When IG Cuffari requested another IG conduct an investigation, the scope included 22 allegations;[248] however, when IG Cuffari engaged an outside law firm, [redacted]

As referenced in Allegation 5, [redacted]. However, in response to QFRs from Congress associated with hiring an outside law firm, IG Cuffari stated,

> *I was also not involved in guiding the work of the firm. WilmerHale personnel carried out their work under the supervision of a senior partner in that firm, [redacted] who served as [redacted].*
> *WilmerHale decided who would be interviewed, what documents and other evidence it needed, how the final report would be organized, and most importantly, what the final report said. I did not engage an outside firm with a particular outcome in mind, nor did I or anyone at DHS OIG telegraph a particular outcome to WilmerHale.* [250]

IG Cuffari Personally Attempting to Intervene in the WilmerHale Investigation and Outreach to [redacted]

As previously referenced in Allegation 5, the IC investigative team confirmed that IG Cuffari requested that two of Ms. Shaw's supervisors, [redacted] and [redacted] intervene to ensure that Ms. Shaw would submit to an interview with WilmerHale. [redacted]

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[246] Letter from IG Cuffari to the IC, dated August 10, 2020, Re: Integrity Committee Case 20-056/20-059.

[redacted]

[248] Letter from IG Cuffari to IG [redacted] dated February 6, 2020.

[redacted]

[250] Joseph Cuffari, QFRs, dated June 4, 2021.

[redacted] Witness #9 [redacted]

Following [redacted] resignation, Witness #3 [redacted] was named as [redacted] The IC investigative team found that IG Cuffari again requested Ms. Shaw's supervisor, this time Witness #3 [redacted], to order Ms. Shaw to provide testimony in the WilmerHale investigation. However, Witness #3 [redacted] opted not to honor IG Cuffari's request.[253]

IG Cuffari told the IC investigative team that he believed he spoke with both Witness #3 [redacted] and [redacted] who was serving as Ms. Shaw's supervisor prior to Witness #3 [redacted] on two different occasions. IG Cuffari stated the purpose of his contact was to request the [redacted] inform Ms. Shaw of her ethical obligations as a government employee to cooperate with the investigation.[254] However, IG Cuffari's characterization does not correlate with the context provided by Witness #3 [redacted] who told the investigative team that IG Cuffari wanted [redacted] to order Ms. Shaw to provide testimony. [redacted] Rule 4.2 of the American Bar Association's Model Rules of Professional Conduct provides: "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order."[256]

As described in Allegation 5 above, [redacted]

[redacted] Witness #9 [redacted] Witness #9 [redacted] Witness #7 [redacted]

[redacted] Witness #9 [redacted]

[253] Interview of Witness #3 [redacted] dated June 25, 2021.

[254] Interview of IG Cuffari, dated August 30, 2022.

[redacted]

[256] American Bar Association - Model Rules of Professional Conduct - Rule 4.2: Communication with Person Represented by Counsel

[redacted]

[redacted] went on to say, "I think that their, their belief in their viewpoint was very strong and so they had a difficult time that other people did not see things the way they saw things…"[258] [redacted] described the investigation as personal. When asked by the IC investigative team how that affected the course of the investigation, [redacted] stated, "Well, you know, first would be, um independent investigation, independent investigation. [redacted]. Um, and, um, I think the personalities might have, um – I, I think they were probably astonished that people did not perceive it the way that they had believed it to have happened…"[259]

When asked if anyone at DHS OIG tried to manipulate WilmerHale's findings or influence the outcome of the report, [redacted] stated "I don't think manipulate because I'm not sure that they knew exactly what they – but, you know, I'm not sure what the motive -- what the full motive was behind [redacted] wanting [redacted] to like go in and save the day. Is that influence? Possibly. [redacted] didn't. Um, [redacted] a straight shooter…Um, was that a hail Mary pass? Maybe." In describing "save the day" [redacted] stated, "As I mentioned, they had a certain point of view about it…they, it was their truth, [redacted] -- when it was clear that there was gonna be sort of mixed findings…you'll have to ask [redacted] exactly what [redacted] said to [redacted] but it was something along the lines of, you know, [redacted] was gonna save, save – something about that." [redacted] added that [redacted] informed [redacted] after speaking with [redacted] that they wanted her to "[redacted]," as they appeared to not have an understanding of [redacted]

[redacted]

[redacted] stated,

> *I remember after that, you know, I was starting to get to know [redacted] and I said to [redacted] -- I said, you know, I don't know what to think about this. I feel uncomfortable because why is this all riding on me? What am I supposed to do? You know, I thought this was -- they -- these are the -- and -- and also, you know, this is a -- a big firm. I mean, this is a really expensive well-known law firm and I'm thinking, okay, I'm a, I'm a [redacted]. What, you know, I have [redacted], but why do they need me to explain it to them…" "…And I told [redacted] I said, you know, I feel really uncomfortable. I said because what if they're not happy with the WilmerHale report and then it's my fault? You know I don't want to be -- you know, that, to me, was very strange. I felt uncomfortable about it. I -- what could I do? I was trying to*

[258] Interview of [redacted] dated May 18, 2022.
[259] Interview of [redacted] dated May 18, 2022.
[260] Interview of [redacted] dated May 18, 2022.

determine, okay, what does that really mean because I'm not supposed to be -- I'm not writing it for them. If it's just a matter of me trying to help them make a sense of these crazy allegations, well, I can try to do that. But it was just awkward. That's -- I remember being, um, nervous about it and a little -- and it felt awkward.[261]

iv. IG Cuffari's Response

During his interview with the IC investigative team, IG Cuffari explained that the decision to engage an outside firm to conduct an investigation was ultimately his decision. IG Cuffari made this decision after discussion with other IGs and internal deliberations. IG Cuffari delegated contracting responsibilities to a DHS OIG contracting officer. IG Cuffari stated that he was not aware of Witness #2 [redacted] prior to the bids being submitted to DHS OIG. IG Cuffari advised that he did not have any involvement in the selection of WilmerHale. Rather, it was Witness #2 decision to act as an advisor to the TET to review the bid submissions. [redacted] However, when asked if IG Cuffari had conversations with others within the OIG community or elsewhere about the firms that provided bid submissions, and the pros and cons regarding WilmerHale versus Davis Polk, IG Cuffari responded, "I don't remember. It's possible."[262]

IG Cuffari told the IC investigative team that he was not aware of any effort within DHS OIG to steer the contract to WilmerHale. If a pre-selection had been made, however, that would be outside the contracting process and would be a problem. [redacted]

Furthermore, IG Cuffari described his role in the WilmerHale investigation as that of a witness. [redacted]

Regarding the interview of Ms. Shaw, IG Cuffari recalled that [redacted] to advise Ms. Shaw or her supervisor that, as a current

[261] Interview of Witness #7 [redacted] dated April 29, 2022.
[262] Interview of IG Cuffari, dated August 30, 2022.
[263] Interview of IG Cuffari, dated August 30, 2022.
[264] Interview of IG Cuffari, dated August 30, 2022.

federal employee, she was obligated to cooperate in an ongoing investigation. [redacted]. IG Cuffari stated he talked to both of Ms. Shaw's supervisors, [redacted] and Witness #3 to remind them that Ms. Shaw had an obligation to cooperate in the WilmerHale investigation. When asked if IG Cuffari requested that they order Ms. Shaw to cooperate, IG Cuffari stated, "I don't know if I asked them. I can't tell you today and I don't remember my exact words, but as I'm sitting here today, it was a reminder to the individuals who were [redacted] about her obligation to cooperate in an investigation. At some point you asked about her attorney. She was represented and I left it alone and I left it in WilmerHale's hands to coordinate with her attorney."[265]

When asked by the IC investigative team if the answers given to CIGIE or Congress in respect to the WilmerHale report were complete, accurate, and truthful, IG Cuffari responded, "To the best of my knowledge, yes."[266]

IG Cuffari was provided an opportunity to directly address the allegations against him when interviewed on August 30, 2022. IG Cuffari was asked about the specific allegation that he abused his authority, engaged in a gross waste of funds, and grossly mismanaged DHS OIG by spending over $800,000 for a contract between DHS OIG and WilmerHale, most likely for personal interest. IG Cuffari responded that the allegation was false. He further stated, "I didn't abuse my authority. I didn't engage in gross waste of funds. And I didn't grossly mismanage my organization. Furthermore, I had nothing to do with the contract between our organization and WilmerHale, nor the funding. And I take big umbrage with the insinuation here. This is likely for my personal interest. I was asked to do a review, a thorough review of my organization. I was asked to put it back in the stability, accountability and civility. Everything that I did in here was for the benefit of this organization." IG Cuffari also stated that he while he was aware of the complaint filed against him by Ms. Costello, but was not aware of any complaints made by either Ms. Shaw or Ms. Ouzts. IG Cuffari further stated, "I had multiple communications with Witness #12 [redacted] with Witness #18 [redacted], with multiple members of the IG community and I never lacked candor. I was always truthful."[267]

When IG Cuffari was asked about personally attempting to intervene in the WilmerHale investigation for his own benefit when he twice asked a former employee's current supervisor to pressure the former employee to agree to an interview with WilmerHale investigators without conditions, he stated, "There's actually three incorrect things here. Again it's not for my personal benefit and I didn't pressure the former sup --- or ask the former supervisor to pressure Diana Shaw who's referenced here. And I didn't place any conditions whatsoever. She was represented by an attorney and it was up to WilmerHale and that team to coordinate with her attorney."[268]

[265] Interview of IG Cuffari, dated August 30, 2022.
[266] Interview of IG Cuffari, dated August 30, 2022.
[267] Interview of IG Cuffari, dated August 30, 2022.
[268] Interview of IG Cuffari, dated August 30, 2022.

v. Investigative Conclusions

High-Level Summary of Evidence Leading to Investigative Conclusions (Allegation 6 - Cuffari)

Allegation 6
6. IG Cuffari abused his authority, engaged in a gross waste of funds, and grossly mismanaged DHS OIG by spending over $800K for a contract between DHS OIG and WilmerHale, a private law firm, to investigate former senior members of his staff who had formally complained about him, most likely for his personal interest. IG Cuffari also lacked candor in his explanations for the decision to engage a private firm to investigate the allegations, including, but not limited to, his relevant communications with the CIGIE Chairperson and the IC. Further, IG Cuffari personally attempted to intervene in the WilmerHale investigation for his own benefit, when he twice asked Witness #3 [redacted] who was at that time the [redacted] and AIG Shaw's new supervisor, to pressure AIG Shaw to agree to an interview with WilmerHale investigators without conditions.
Summary of Evidence
Note: The following provides a non-exhaustive summary of certain evidence supporting the investigative conclusions. Full details, including additional evidence and source citations, are contained in the "iii. Documentary Evidence and Witness Statements" section for this allegation above.
(A) Cost and Scope of WilmerHale Investigation
• The WilmerHale investigation cost a total of $1.393 million.
• The original contract was for $793,000. During the investigation, [redacted]
• Witness #2 [redacted]. Had DHS OIG contracting employees not inadvertently sent the RFP to DavisPolk, WilmerHale would have been the only firm to submit a bid.
• [redacted].
• IG Cuffari's initiation of the WilmerHale investigation into Ms. Costello, Ms. Shaw, and Ms. Ouzts occurred after the three executives had expressed concerns about his nomination and qualifications, and he had knowledge of at least one formal complaint made to the IC against him.
• DHS OIG employees characterized the allegations as personal in nature.
• IG Cuffari continued the investigation although two of the executives were no longer with DHS OIG and the other had been placed on administrative leave.
• DHS OIG originally requested SSA OIG investigate 22 allegations involving Ms. Costello, Ms. Shaw, and Ms. Ouzts. [redacted]
• Witness #2 [redacted].

(B) IG Cuffari's Explanations on the Decision to Engage a Private Firm
• IG Cuffari told the IC and others that he engaged a private firm because no other entity agreed to conduct the investigation. However, his explanations did not include details on how the scope of the WilmerHale investigation increased significantly beyond what the other entities had already declined to investigate.
• IG Cuffari did not accurately describe the breadth of his involvement in directing the WilmerHale investigation in his response to QFRs to Congress.
(C) IG Cuffari's Communications With Witness #3 [redacted]
• IG Cuffari spoke with Witness #3 [redacted] on two separate occasions regarding Ms. Shaw's lack of cooperation with the WilmerHale investigation at a time when it was known to DHS OIG that Ms. Shaw was represented by counsel.
• IG Cuffari wanted Witness #3 [redacted] to order Ms. Shaw to provide testimony.
Investigative Conclusions
Substantiated. (A) Under IG Cuffari's leadership and direction, DHS OIG contracted with a law firm to conduct a nearly $1.4 million investigation that was not scoped to limit costs. The investigation was characterized as personal in nature, focusing solely on Ms. Shaw, Ms. Ouzts, and Ms. Costello, who had filed a complaint against IG Cuffari with the IC. Although two of the executives were no longer with DHS OIG and the other had been placed on administrative leave, IG Cuffari continued the investigation without reducing its scope. (B) IG Cuffari's explanation on the decision to engage WilmerHale lacked candor because he did not accurately disclose his involvement, [redacted] (C) The investigation was not reasonably scoped. Rather, the number of allegations provided to WilmerHale for investigation was [redacted] what IG Cuffari unsuccessfully requested another IG to investigate before WilmerHale was hired. The large number of allegations led to WilmerHale's submission of a contract modification, almost doubling the cost of the contract. (D) IG Cuffari intervened in the WilmerHale investigation on multiple occasions, including when he requested that Witness #3 [redacted] instruct Ms. Shaw to provide testimony.

Detailed Description of Investigative Conclusions

Allegation 6 is substantiated. The WilmerHale investigation was not reasonably scoped to limit costs. Instead, DHS OIG spent nearly $1.4 million to conduct an investigation into approximately 89 allegations solely focused on three individuals, two of whom were no longer employed by DHS OIG and one who had been placed on administrative leave. Further, given the timing and scope of the investigation, it appears that IG Cuffari was attempting to use the WilmerHale investigation to support the course of action he had already taken—removing Ms. Costello—and to discredit those who had raised concerns about him.

[redacted]

[redacted]

Additionally, the IC's investigation confirmed that IG Cuffari requested that two of Ms. Shaw's supervisors, including U.S. [redacted] instruct Ms. Shaw to submit to an interview in the WilmerHale investigation.[270]

[269] [redacted] email, dated August 6, 2020.
[270] Interview of [redacted] dated June 25, 2021.

3. Allegations Related to Jennifer Costello

Allegations 1 and 2 relate to Ms. Costello. Allegation 1 is addressed below in four parts. First, we addressed the questions regarding DHS OIG's succession plan and Ms. Costello's titles. Second, we addressed Ms. Costello's actions prior to [redacted] retirement. Third, we addressed her conduct with respect to IG Cuffari during his nomination process, including the filling of senior leadership positions; and fourth, her conduct following IG Cuffari's confirmation. The allegations are as follows:

a. <u>Allegation 1 (Costello)</u>

COO Costello abused her authority and engaged in conduct undermining the independence and integrity reasonably expected of her position by wrongfully holding herself out as the Acting IG in 2019, in violation of the Federal Vacancies Reform Act (FVRA), calling into question the authority for actions she took during that time.[271] Further, that she wrongfully took steps, with the assistance of then AIG Shaw, to attain and keep this position, which included actively working to force the retirement of then [redacted] her direct supervisor and the most senior DHS OIG official (following the retirement of [redacted] in 2017). Finally, that while in the senior-most position in DHS OIG, she and AIG Shaw wrongfully resisted the arrival of then IG nominee Cuffari, by, among other actions, leading and executing an effort to thwart his confirmation by Congress and attempting to fill key leadership positions in DHS OIG designed to limit IG nominee Cuffari's future ability to hire Senior Executive Service employees. After his confirmation, COO Costello wrongfully resisted IG Cuffari's leadership by publicly disparaging IG Cuffari to DHS OIG staff and sought ways to undermine IG Cuffari's leadership by, among other actions, soliciting DHS OIG's Office of Investigations to conduct a baseless investigation of his travel and by soliciting OIG employees to complain about him to CIGIE.

i. Background

[redacted] served as Acting IG upon [redacted] retirement on November 30, 2017. [redacted] served in the role of Acting IG [and later the Senior Official Performing the Duties of Inspector General (SOPDIG)] until June 10, 2019, when he retired. Prior to his retirement, he sought to revise the DHS OIG succession plan, so that leadership would be in place following his retirement and available to assist the new permanent IG during their eventual transition. [redacted] reassigned Jennifer Costello from her prior role as COO to DIG; however, issues arose in modifying the DHS OIG succession plan.

The Federal Vacancies Reform Act (FVRA) provides the means to temporarily authorize an acting official to perform the functions and duties of any executive office that is appointed by the President and confirmed by the Senate. The position of Inspector General of DHS is covered by

[271] COO Costello's title is in dispute. The facts indicate she, at least for part of this time, held herself out as the Deputy IG or Acting IG. It remains unclear whether this was appropriate.

the FVRA because the position is required to be appointed by the President with the advice and consent of the Senate.

The FVRA limits who can be appointed to serve as "Acting" by the President and how long the position may be "Acting." The FVRA also establishes that the "first assistant" to the office will serve as the acting officer unless the President appoints someone else in accordance with FVRA.[272] If the "first assistant" is not established by statute, Federal agencies "may, prior to a vacancy occurring, designate first assistant positions through various means, including regulations, agency orders, agency directives, or position descriptions."[273] If there is no first assistant identified or if the acting first assistant runs against the time limitations of the FVRA, then no one may serve as acting in the office. When an agency has had an acting officer outside an established line of succession, the courts have found that violates the FVRA. For DHS OIG, the first assistant was established by an Order of Succession.

The Order of Succession at the time [redacted] retired was as follows:

DHS OIG Order of Succession, as of November 2017, per DHS Order 00106
1. Inspector General – [redacted]
2. Deputy Inspector General – [redacted] Witness #1
3. Counsel to the Inspector General
4. Assistant Inspector General, Audits
5. Assistant Inspector General, Inspections
6. Assistant Inspector General, Emergency Management Oversight

Upon the retirement of [redacted] on November 30, 2017, [redacted] Witness #1 as the DIG, and therefore "first assistant," became the Acting IG. Ms. Costello held the position of COO, which at that time was not a position in the Order of Succession.

ii. Investigative Steps

The investigative team requested and reviewed emails from DHS OIG and interviewed fact witnesses. The investigative team also reviewed applicable DHS OIG personnel files. Additionally, the investigative team worked with counsel to research the applicability of the FVRA to the facts uncovered. The IC investigative team also interviewed Ms. Costello.

[272] 5 U.S.C. § 3345
[273] GAO, FAQs on the Vacancies Act.

iii. Documentary Evidence and Witness Statements

(A) Acting IG and Succession within DHS OIG

Acting [redacted] *Reassigned Ms. Costello to the DIG Position With the Intent That Ms. Costello Act as IG Upon His Departure*

The IC investigative team found evidence that Acting [redacted] intended for Ms. Costello to take over leadership of DHS OIG as Acting IG upon his retirement. Specifically, in May 2018, while serving as Acting IG, [redacted] made a change to DHS OIG's Order of Succession. On May 17, 2018, [redacted], informed [redacted] and others that [redacted] sent the change in the Order of Succession to DHS and OIG Security.[274] The new order of succession identified the COO (then filled by Ms. Costello) to be in the third position directly after the DIG ([redacted] as follows:

DHS OIG Order of Succession as of May 17, 2018, per [redacted] email to DHS
Inspector General – Vacant
Deputy Inspector General – [redacted] (Acting Inspector General)
Chief Operating Officer – Jennifer Costello
Counsel to the Inspector General – Vacant
Assistant Inspector General, Information Technology Audits – [redacted]
Assistant Inspector General, Office of External Affairs – [redacted]

Following this change to the Order of Succession in May 2018, [redacted] took additional actions in November 2018 with the intent of securing Ms. Costello as his successor. In an August 19, 2021, interview with the IC investigative team, [redacted] explained that his intention was to ensure that there would be a seamless transition for the next appointed IG.[275]

Specifically, on November 5, 2018, [redacted] instituted a change to his position title to Senior Official Performing the Duties of Inspector General (SOPDIG). [redacted] instituted this change in an email to [redacted]. [redacted] email stated, in part,

> *Last week the President stated he intends to nominate someone to be the Inspector General of the Department of Homeland Security. To ensure for an orderly transition and the continuity of our operations, I plan on retiring April 2, 2019. Please provide me the forms that I need to retire on that date. In addition, as we discussed, please initiate the process of changing my position description to Senior Official Performing the Duties of Inspector General and Jennifer Costello's title to Deputy Inspector General.*[276]

[274] [redacted] email, dated May 17, 2018.
[275] Interview of [redacted] dated August 19, 2021.
[276] [redacted] email, dated November 5, 2018.

On November 7, 2018, [redacted] held a DHS OIG Town Hall and then sent an email to all DHS OIG employees stating in part that he planned to retire and that, effective immediately, he was naming Ms. Costello as the new DIG.[277] [redacted] notified Ms. Costello of her new title of DIG in a letter dated November 9, 2018.[278]

In carrying out [redacted] title change, [redacted] sent an email on November 16, 2018, to DHS OIG HR Operations providing documentation to support two SES reassignments, per [redacted] announcement to all staff on November 7, 2018. Those two reassignments moved [redacted] from the DIG position to the SOPDIG, and Ms. Costello from the COO position to the DIG.[279]

Later in November 2018, DHS OIG revised its Order of Succession for a second time at the direction of [redacted] to reflect the new positions. On November 28, 2018, [redacted] sent an email to [redacted], DHS, whereby [redacted] stated that [redacted] was providing OIG's current succession plan (*Order of Succession*). This plan listed [redacted] as first in line to the IG with the title of SOPDIG. The next position in line within this chart was the DIG position held by Ms. Costello.[280] [redacted] responded to the email acknowledging receipt. The revised Order of Succession communicated to DHS was as follows:

DHS OIG Order of Succession as of November 28, 2018, per [redacted] email to DHS
1. Inspector General – Vacant 2. Senior Official Performing the Duties of the Inspector General – [redacted] 3. Deputy Inspector General – Jennifer L. Costello 4. Counsel to the Inspector General – Vacant 5. Assistant Inspector General, Information Technology Audits– [redacted] 6. Assistant Inspector General, Office of External Affairs – [redacted]

On January 16, 2019, the President nominated Joseph Cuffari for the position of DHS IG. Subsequently, in February 2019, DHS provided comments on DHS OIG's revised Order of Succession. On February 8, 2019, [redacted] who worked in the Office of the Under Secretary for Management at DHS, raised questions regarding [redacted] position of SOPDIG. [redacted] wrote, "The list should be created for the positions of succession, not who is actually performing the duties currently. SOPDIG is not a separate position. And in fact, he is not currently the SOPDIG, but is the Acting IG."[281]

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277 [redacted] email, dated November 7, 2018.
278 [redacted] letter, dated November 9, 2018.
279 [redacted] email, dated November 16, 2018.
280 [redacted] email, dated November 28, 2018.
281 [redacted] email, dated February 8, 2019.

DHS OIG officials Witness #1 Ms. Costello, [redacted] and Witness #28 [redacted] discussed [redacted] comments in an email chain on February 19, 2019. Witness #1 wrote,

> *It is complicated. My PD is SOPDIG. However, because the President nominated someone for the position of IG, per the Vacancy Act as first assistant I have the title of Acting IG. The key is who is the first assistant.*
>
> *That is why we should point out that in November I changed the titles of the positions to enable an easier transition if either (a) I retire before Joseph Cuffari is confirmed or (b) if he is confirmed before I retire.*[282]

[redacted] subsequently replied to [redacted] and [redacted] at DHS, writing, "The information we sent earlier is in fact correct. Jennifer Costello was reassigned to the Deputy position description in November 2018. Witness #1 will occupy a position description titled Senior Official Performing the Duties of the Inspector General until he retires on May 3, 2019—since we have a nominee his title is Acting Inspector General." [redacted] included the following Order of Succession in [redacted] email:[283]

DHS OIG Order of Succession as of February 19, 2019, per [redacted] email to DHS
1. Inspector General – Witness #1 [redacted] (Acting) 2. Senior Official Performing the Duties of the Inspector General – Witness #1 [redacted] 3. Deputy Inspector General – Jennifer L. Costello 4. Counsel to the Inspector General – Vacant 5. Assistant Inspector General, Office of Audits– [redacted] 6. Assistant Inspector General, Office of Investigations – [redacted]

[redacted] then informed Witness #1 Ms. Costello, and Witness #28 [redacted] that the Department received the list.

When interviewed by the IC investigative team, Witness #1 [redacted] explained that he made changes to his title and Ms. Costello's title and designated Ms. Costello as the DIG because he planned to retire in either the spring or immediately after the nominee took office, whichever was sooner. In his opinion, Ms. Costello had been the de facto deputy and the new IG would need her to perform in that position until the new IG decided if he or she wanted a change.[284]

Numerous records obtained during the investigation further supported Witness #1 [redacted] statement that he intended for Ms. Costello to take over upon his retirement. In one such instance, Witness #1 [redacted] sent an email on February 15, 2019, to all DHS OIG employees where he stated, "In other news, I would like to share with you my official retirement date, which will be Friday, May 3. As I

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282 Witness #1 [redacted] email, dated February 19, 2019.
283 [redacted] email, dated February 19, 2019
284 Witness #1 [redacted] interview, dated August 19, 2021.

mentioned last fall, it has been my intention to retire for some time. Now, with the agency funded through the year and Jennifer Costello firmly established in her role as Deputy Inspector General, I feel the time is right for me to pass the torch."[285]

Missteps in Updating the DHS OIG Order of Succession and Attempts to Resolve Issues With the FVRA

While it was Witness #1 intention for Ms. Costello to succeed him as Acting IG following his retirement, the steps that he and DHS OIG took to implement this intention have raised questions regarding their compliance with the FVRA.

Specifically, under the FVRA, when the President has nominated a candidate who has not yet been confirmed, the organization's "first assistant" becomes the Acting IG (unless the President specifies otherwise). As such, in some interpretations, by placing himself in a position description of SOPDIG, it is possible Witness #1 could no longer be considered the "first assistant." This is because the "first assistant" position at DHS OIG was designated as the DIG, per the Order of Succession that was in place at [redacted] retirement. Under this interpretation, as soon as Witness #1 purported to remove himself from the position of DIG, he may no longer have been the Acting IG. Therefore, by changing his position to SOPDIG, Witness #1 may have removed himself from the Order of Succession and created a situation in which he may have been inadvertently wrongfully acting as IG. This could then potentially impact any actions Witness #1 took as Acting IG during that time.

Nevertheless, the evidence shows Witness #1 appointed Ms. Costello to the role of DIG, he was unaware of the potential conflict he created. Ms. Costello was appointed to the role of DIG in the same pay period that Witness #1 had himself placed in the position description of SOPDIG.[286] This was reflected in SF-50s for both Ms. Costello and Witness #1 [287]

When interviewed by the IC investigative team, Witness #1 stated that when he appointed Ms. Costello to the role of DIG, he relied on HR and potentially others to handle any adjustments that might have been necessary. During this time, Witness #1 also believed that his own title needed to be changed to reflect SOPDIG, rather than DIG. Witness #1 was not certain regarding what needed to occur administratively and whether there was an official change in the Order of Succession to address the situation.[288] Witness #1 assumed his various actions, including his requested changes to the Order of Succession and his appointment of Ms. Costello to DIG would make her the next in-line to serve as Acting IG upon his planned retirement.[289]

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[285] Witness #1 email, dated February 15, 2019 [ref. IC 1015].
[286] [redacted] SF-50, featuring an effective date of November 11, 2018.
[287] [redacted] and Costello SF-50s, featuring an effective date of November 11, 2018; Memorandum of Activity, dated July 2, 2021, Review of Costello SF-50s. The appointment of Ms. Costello to the position of DIG featured identification information associated with the action of "HS OG0100000000000000 PP 23 2018." The reference to "PP 23 2018" indicates that the entry was made in the 23rd pay period (PP) of 2018. This conforms to the date occurring in November, as there are normally 26 pay-periods in a year in the Federal payroll system.
[288] Interview of Witness #1 dated August 19, 2021.
[289] Interview of Witness #1 dated August 19, 2021.

Shortly after Witness #1 retired, DHS OIG learned from DHS Office of General Counsel (OGC) of potential concerns associated with Witness #1 actions whereby he put himself in the role of SOPDIG.

In March 2019, DHS OIG created a Senior DIG position for Witness #1 to be placed in upon having concerns about his placement in the position of SOPDIG. Ms. Ouzts stated,

Witness #1 retired from DHS OIG under the Senior DIG position.[294] Once Ms. Ouzts was notified of DHS OGC's concerns, Ms. Ouzts attempted to correct the issues. On June 25, 2019,

[290] Interview of Witness #29 dated August 24, 2021.
[291] Interview of Karen Ouzts, dated January 28, 2022.
[292] Interview of Karen Ouzts, dated January 28, 2022.
[293] Witness #1 SF-50, personnel action, Cancellation and Reassignment, dated March 31, 2019.
[294] Witness #1 SF-50, personnel action, Retirement, dated June 10, 2019.
[295] Karen Ouzts email, dated June 25, 2019.
[296] PD 19Q103.
[297] Karen Ouzts email, dated June 25, 2019.

[redacted]

Ms. Ouzts told the IC investigative team that these corrective actions were to resolve the apparent conflict created by Witness #1 while preserving his appointment of Ms. Costello to the position of DIG.[299] Ms. Ouzts also reached out to DHS OGC for consultation and guidance on the issue. Specifically, Ms. Ouzts consulted with Witness #19 [redacted], DHS OGC, regarding Witness #1 placing himself in the role of SOPDIG. In [redacted]

[redacted]

Based on this response and the HR actions that had been taken, Ms. Ouzts considered the matter to be resolved.[301]

Another potential area in which there are multiple interpretations pertains to whether the changes DHS OIG made to its succession plan in May and November 2018 could be considered final. There is conflicting information surrounding what the DHS OIG Order of Succession was at the time of Witness #1 retirement—i.e., whether, as Acting IG, he changed the Order of Succession, or whether the Order of Succession from [redacted] was still in place.

The IC investigative team contacted (now former) DHS employees who were the recipients of the emails to better understand what occurred regarding Witness #1 requested changes to the DHS OIG Order of Succession. The IC investigative team came to understand that although requests might have been made by DHS OIG, the respective changes were not incorporated in DHS' master succession plan.[302] Rather, at the time, the last approved update to the master DHS succession plan occurred in 2016. While DHS was always very deferential to the OIG and would include the Order of Succession without comment, DHS staff believed the Order of Succession

[298] Karen Ouzts email, dated June 25, 2019.
[299] Interview of Karen Ouzts, dated January 28, 2022 and October 25, 2022.
[300] Witness #19 email, dated June 12, 2019; Interview of Witness #19 dated September 17, 2021.
[301] Interview of Karen Ouzts, dated January 28, 2022 and October 25, 2022.
[302] DHS OIG succession plan.

still required Secretarial approval and had not received it. It was also noted that changes to the Order of Succession would be reviewed by DHS OGC for accuracy in titles and any clean-up that was necessary. If there were questions during this process, DHS OGC would raise them to the particular agency's counsel. Further, it was noted that the process of modifying succession plans became more fluid during this timeframe with numerous changes and people serving in acting capacities.[303]

In contrast, DHS OIG executives believed that their Orders of Succession became official once DHS received them. The understanding of the DHS OIG executives in 2018 and 2019, including Acting [redacted] was that he could make changes to the Order of Succession and once communicated to the Secretary's Office, no further action was necessary. Ms. Costello also held this understanding, based on the premise that DHS OIG operates more or less independently from the Department.[304]

IG Cuffari Revisited Succession Plan Concerns

Although the situation appeared to be resolved by the actions taken by Ms. Ouzts following [redacted] retirement, IG Cuffari revisited the issue. [redacted] told the IC investigative team that after DHS OIG issued the Notice of Proposed Removal to Jennifer Costello in February 2020, [redacted]. Based on this research, the allegation that Ms. Costello falsely held herself out as Acting IG was added to the amended Notice of Proposed Removal, which DHS OIG issued to Ms. Costello on May 8, 2020.[305]

On June 11, 2020, IG Cuffari terminated Ms. Costello, and on the same day provided a letter to the Committee on Oversight and Reform, U.S. House of Representatives, informing them that Ms. Costello falsely held herself out as Acting IG of DHS. In an attachment in support to his letter, IG Cuffari stated "[t]he retroactive cancellation of [redacted] reassignment out of the Deputy Inspector General position nullified Ms. Costello's reassignment to that position because there could only be one Deputy Inspector General at the time." He went on to state,

> *Moreover, it makes no difference that prior to his retirement [redacted] acquiesced in his reassignment out of the Deputy Inspector General position. Upon the resignation of [redacted], under the FVRA [redacted] became the highest-ranking official in DHS OIG. There is no indication that [redacted] ever intended to cede power to anyone else in DHS OIG. Accordingly, [redacted] cannot be considered to have consented to being reassigned from the Deputy Inspector General position, and no subordinate employee in DHS OIG had authority to reassign [redacted] involuntarily. Thus any action purporting to reassign [redacted] from the Deputy Inspector General position was void.*[306]

[303] Memorandum of Activity, Record of Conversation, [redacted] dated January 12, 2022; Memorandum of Activity, Record of Conversation, [redacted] dated January 19, 2022.
[304] Interview of Jennifer Costello, dated July 21, 2023.
[305] Interview of [redacted] dated September 1, 2022; Amended NOPR, Jennifer Costello, dated May 8, 2020.
[306] IG Cuffari letter to Congress/HSGAC, dated June 11, 2020.

IG Cuffari did not mention in his letter to Congress that, as noted above, Witness #1 in fact had intended to cede power to Ms. Costello upon his retirement, communicated this intention widely throughout DHS OIG, and took steps to ensure that occurred.[307] Moreover, Witness #1 did not acquiesce, rather he was the person who initiated the reassignment of himself from the DIG position, based on his own misunderstanding at the time. IG Cuffari's letter also did not note the corrective actions that had already been taken to resolve the apparent FVRA conflict.

Further, IG Cuffari's letter to Congress, dated June 11, 2020, was either incomplete or misleading regarding what transpired.[308] IG Cuffari advised that "for more than six weeks in 2019 Jennifer Costello falsely held herself out as the Acting Inspector General at DHS. The attachment to this letter lays out the series of extraordinary events in detail." While the attachment IG Cuffari provided to Congress reflected concerning actions, it did not provide the complete context regarding Ms. Costello's appointment to the role of DIG described above.[309]

[redacted] However, when interviewed by the investigative team, IG Cuffari could not recall any actions Ms. Costello took during the 45 days in which she served as the Acting IG that adversely impacted the agency.[310]

Moreover, the IC investigative team found that in April 2020, prior to Ms. Costello's Amended Notice of Proposed Removal, Ms. Costello's termination, and IG Cuffari's June 11th letter to Congress, Witness #2 and Witness #5 (direct reports of IG Cuffari) received information regarding Witness #1 intent to place Ms. Costello in the DIG role and therefore be Acting IG upon his retirement. Specifically, Witness #2 received the email chain containing the previously referenced November 2018 and February 2019 discussions regarding intended changes to the Order of Succession and Witness #1 explanation of changes to his and Ms. Costello's titles.[311]

WilmerHale's Review of Succession Issues

As referenced in other parts of this report, DHS OIG contracted with WilmerHale to investigate [redacted] involving three individuals, including Ms. Costello.[312] [redacted]

[redacted]

[redacted]

[redacted]

[307] Interview of Witness #1 dated August 19, 2021.
[308] IG Cuffari letter to Congress, dated June 11, 2020.
[309] Witness #1 SF-50 personnel actions.
[310] Interview of IG Cuffari, dated August 30, 2022.
[311] Witness #5 email, dated April 22, 2020, Re: OIG Succession Plan.
[redacted]



(B) Ms. Costello's Actions Surrounding Witness #1 Retirement and the Emergency Management Oversight Team Reports

Another aspect of Allegation 1 pertained to Ms. Costello's actions related to Witness #1 retirement.

While serving in the capacity as Acting IG, Witness #1 pushed back his planned retirement date on multiple occasions. Witness #1 told the IC investigative team that eventually, he felt pressured to retire based on a situation associated with DHS OIG's Emergency Management Oversight Team (EMOT) audit reports. When allegations that the published EMOT reports did not meet the applicable standards arose, Witness #1 recused himself due to his prior involvement in the reports and requested the matter be properly investigated. DHS OIG conducted in internal review, which



was led by Ms. Shaw and overseen by Ms. Costello, and found that several reports did not meet established auditing standards. These findings did not look favorable for Witness #1 Ultimately, the decision was made to take the reports down from the DHS OIG website and to publish the findings of the internal DHS OIG review. Witness #1 told the IC investigative team that he felt compelled to retire immediately to ensure the agency could move on. Witness #1 told the IC investigative team that he felt the DHS OIG report was published for one reason, and that was to force him out of DHS OIG. He attributed the actions concerning the EMOT reports as being driven by Ms. Costello. Witness #1 stated, "I think Jennifer [Costello] was behind all of it. Um, I could be mistaken. I did not think that Diana Shaw was orchestrating all of this."[319]

Witness #30 a former DHS OIG employee involved in the EMOT report told the IC investigative team that there were a lot of discussions about whether the DHS OIG report regarding the EMOT reports should be publicly published. Witness #30 stated, "I can tell you none of the – none of the reasons for publishing or not publishing involved should Witness #1 you know, should this push Witness #1 out the door? That was not the purpose of those discussions, um you know, or the decision to publish. Um, what ultimately carried the day was that we felt … if we did this review of any other group, not DHS OIG, we – there's no question we would publish, so why would we act differently if it was about us?... so that was the primary reason for deciding to publish this report, and two, there was you know, thoughts of, okay, this information is out there, and if it gets more publicly known then people are gonna wonder why we didn't publish our report and does it look like we're trying to cover something up."[320]

Witness #1 informed the IC investigative team that while he did not appreciate the actions of several senior executives at the time, including Ms. Costello, he did not take any action to install someone other than Ms. Costello to accede to the role of Acting IG upon his retirement. Although Witness #1 characterized Ms. Costello's demeanor towards him immediately prior to his retirement as terse and unprofessional, Witness #1 did not initiate any discipline nor personnel action against her and wanted to ensure a smooth transition.[321]

The IC investigative team identified an email discussion that provided some context regarding these events. In the email, dated April 30, 2019, with a subject of "I think we need to do a public report/letter," Ms. Costello stated,

> *Cc all the oversight committees and the department and cigie. In the letter as part of corrective action note that we are making concurrent notification to ic for whatever action they deem appropriate. We try to do a bipartisan call with Hsgac today to update them about* [redacted] *and program office/staff briefings and tell them we have to kill more emot reports in the pipeline. We ask them what they are planning to do if anything and let them know what our current thinking is.*

[319] Interview of Witness #1 dated August 19, 2021.
[320] Interview of Witness #30 dated March 21, 2022.
[321] Interview of Witness #1 dated August 19, 2021.

To which Ms. Shaw responded, "Would we include the synopsis? And would we tell [redacted] in advance or just drop the bomb and deal with the aftermath? Just to be clear, this is the nuclear option, yes?" Ms. Costello then replied,

> *Yes, we would be just as transparent as we have been so far. We tell [redacted] before we hit send. If hsgac says they have plans to do something else with the materials we sent we can reassess. The more I think about it I don't see how we do anything else. [redacted] has put both of us in an untenable position and it [sic] you are right will appear to some as if we are in on it. Also we need to go on official record now. [redacted] already told me [redacted] doesn't support the findings and now [redacted] will clearly be here when Cuffari arrives. I don't think [redacted] will be truthful. Private communications to IC could be just seen as disgruntled complaints. A public report looks like a public report.*[322]

When interviewed by the IC investigative team, Ms. Costello stated,

> *We wanted to have a good transition. You know, we wanted to ha -- talk about everything with [redacted] from plans, you know, for [redacted] retirement party, up to more serious things like, well, [redacted] if you're leaving and Jennifer's here, we don't have an IG. Who's helping Jennifer, right? You needed Jennifer to help you. Who's going to help -- you know, the gamut of things. And on top of that, as I said, once mid-March hit, Mr. Cuffari is on the executive calendar. And I'm just trying to figure out from [redacted] what are you doing? Like, do you want to stay here? Do you -- do you want the deputy job back? I mean, you know, given everything that had happened with the EMOT situation, certainly, that would have been strange. But I mean, I wouldn't have -- I wouldn't have argued with [redacted] Um, I would have, you know, tried to get a detail out somewhere. But it just snowballed to the point where we were past the point of no return with the senior official performing the duties PD.*

Ms. Costello explained that there had been an ongoing discussion about how to address the EMOT report situation since around December 2018. She stated, "Diana and I started having discussions about what we were going to do with a final report when a letter from HSGAC came in."[323] She went on to state that it would not be good if anyone on the Hill reported the finding for DHS OIG, rather than DHS OIG putting forward the findings.[324] Ms. Costello stated,

> *We [Ms. Shaw and Ms. Costello] both really wanted* [redacted] *to be retired before any report would be issued. I mean, I, if [redacted] is not there it lessens the sting, right, no matter what we do. And remember, I mean you must have heard by now, that we had, we had a pass on deficiencies on our peer review, from EPA, so we, we owed them an answer, they wanted to know what, what - you need to explain to us what happened here. Then we started getting in FOIA requests for the information, we started getting, you know, discovery requests for the information. The staff, particularly the audit staff, when we finally briefed them out were very upset, um, and [redacted] kept maintaining that [redacted] was recused, [redacted] was recused, [redacted] was recused, [redacted] wouldn't talk about it. The only time that I*

[322] Jennifer Costello email, dated April 30, 2019.
[323] Interview of Jennifer Costello, dated July 21, 2023.
[324] Interview of Jennifer Costello, dated July 21, 2023.

tried to talk about it with [redacted] berated me for believing the findings. And there is nothing wrong with the findings. So, there is not one moment right, Diana and I talking about this, but yes, when [redacted] delayed for the final time at the end of April, it created bigger problems. Right. It created an independence issue that I was getting asked about. [redacted] had asked [redacted] to stay, but [redacted] didn't tell [redacted] about the EMOT findings.[325]

Ms. Costello went on to state, "It became just glaringly apparent that a report needed to be, something public, needed to happen."[326] Ms. Costello was concerned about [redacted] being truthful, as [redacted] would not talk about the situation and did not believe the findings. Ms. Costello did not think the underlying situation associated with [redacted] involvement in the EMOT reports was misconduct; rather, she believed it was a management failure.[327]

Ms. Costello added,

If we put it up and we said that FEMA was great on these 13 reports over seven years, we should have the guts to say what happened when we take them down. Um, and so, when Diana [Shaw] says "nuclear option," yeah, it is a nuclear option. It's a really - you know, it's a courageous move. It is the right move. It is literally the right thing to do, to release a report on the situation, but it is a really hard decision for us to make.[328]

(C) Ms. Costello's Conduct With Respect to IG Cuffari During His Nomination Process

Another aspect of the aforementioned allegations was that Ms. Costello wrongfully resisted the arrival of then IG nominee Cuffari, by, among other actions, leading and executing an effort to thwart his confirmation by Congress and attempting to fill key leadership positions in DHS OIG designed to limit IG nominee Cuffari's future ability to hire Senior Executive Service (SES) employees.

Costello's Actions Surrounding IG Cuffari's Nomination

After IG Cuffari was nominated by the President, Ms. Costello raised concerns about IG Cuffari's qualifications. Ms. Costello reached out to then-[redacted] regarding her concerns, which were primarily related to IG Cuffari receiving his Ph.D. from a diploma mill as identified by GAO. In an interview with the IC investigative team, [redacted] stated,

It's the sort of thing that could be an embarrassment, um, if people aren't aware of it. And I didn't have any reason to know if this is something that had come up in the vet and been addressed, or if it was just a little, um, you know, ticking time bomb that, that someone could become aware of and that could be raised in the confirmation process. And that's why my recommendation was to let the White House know, and then they could -- they

[325] Interview of Jennifer Costello, dated July 21, 2023.
[326] Interview of Jennifer Costello, dated July 21, 2023.
[327] Interview of Jennifer Costello, dated July 21, 2023.
[328] Interview of Jennifer Costello, dated July 21, 2023.

would know if they were, A, already aware of it, and had, you know, run the issue to ground and weren't concerned about it. Or, you know, if they weren't concerned about it, then they at least wouldn't be blindsided if the issue was raised at some point during the confirmation process. [329]

[redacted] added,

I reached out to -- looking at my emails, I, I saw that I, I reached out to [redacted] *who was the person in the* [redacted] *that I was engaging with on* [redacted] *wasn't the person who was handling the* [redacted] *when IG Cuffari was nominated. There had been turnover. So, um, I reached out to* [redacted] *just to say, you know, this issue has been brought to our attention. I don't know if y'all are aware of it, but, you know, here's, here's what I know. And, um, and, and I think that was it. I don't think I ever heard back from* [redacted] *I wouldn't have expected to…*

Witnesses come forward sometimes, and they can have their own reasons for doing things. But you know, what you're left with is, is, is the issue that they're raising an issue of substance. And if it's an issue of substance, then, you know, it's something that you have to grapple with regardless of whatever the personal, you know, ideas that the, the individual reaching out to you might have. And so, my, my focus in the conversation with Ms. Costello was on the issue that she was putting in front of me, and, um, and, and not, you know, her, her animus. [330]

The IC investigative team learned that Ms. Costello also expressed concerns over IG Cuffari's qualifications in a casual conversation with [redacted] of the [redacted] stated "I don't think she [Ms. Costello] was necessarily pleased with his nomination, if I remember correctly. I don't think she thought -- I don't think she thought he was highly qualified. That's the impression I got. You know, I believe her making reference to his maybe perhaps his grade level, um, when he was in government, things like that. It, it wasn't a lengthy discussion, but I, I do remember her telling me that."[331]

[redacted] former [redacted], was a [redacted] during IG Cuffari's nomination process. [redacted] stated that [redacted] was not contacted by Ms. Costello, Ms. Shaw, or Ms. Ouzts regarding then nominee-Cuffari's qualifications. However, [redacted] later came to learn that some unspecified individuals in the office "raised some issues with folks on the Hill" related to IG Cuffari's Ph.D. [redacted] did not have any additional information regarding these rumored contacts.[332]

The IC investigative team conducted a review of Ms. Costello's emails and did not identify emails regarding Ms. Costello relaying any concerns to members of Congress or their staff regarding IG Cuffari's qualifications prior to his confirmation. In her interview with the IC

[329] Interview of [redacted] dated April 22, 2022.
[330] Interview of [redacted] dated April 22, 2022.
[331] Interview of [redacted] dated February 4, 2022.
[332] Interview of [redacted] dated May 19, 2022.

investigative team, Ms. Costello acknowledged expressing her concerns about IG Cuffari's qualifications to others, including Witness #18 however, she stated that she did not reach out to Congress about her concerns prior to IG Cuffari's confirmation.[333]

Filling Leadership Positions

The IC investigative team found that the push to fill SES vacancies began prior to Ms. Costello's arrival at DHS OIG. In approximately February 2017 through April 2017, DHS OIG was going through the OPM certification process for the agency's SES performance management system. In a February 28, 2017 email from Witness #28 to OPM personnel, Witness #28 stated,

> *Thank you again for all of your guidance and assistance as we work to obtain our certification. I wanted to touch base again now that we have submitted our revised plans, and request your assistance in expediting our package through the approval process. As I discussed with you after our meeting, we are anxious to move forward in recruiting for our vacant SES positions, which are important positions within our organization, and are of course reluctant to do so without the certification in place.*[334]

Approximately 3 weeks later, on March 21, 2017, Witness #28 sent an email to then- and Witness #1 stating,

> *See below from OPM. Good news – OMB concurred with OPM's recommendation for provisional certification on our SES performance system. I'm working with OPM to try and get that letter signed before the end of this week. We need the official letter before we can safely move forward on announcing or filling the remaining vacant SES positions.*[335]

A few weeks later, DHS OIG received a provisional certification of DHS OIG's SES performance management system from OPM. In an email exchange dated April 3, 2017, Witness #28 notified then- and Witness #1 that DHS OIG had received their provisional certification from OPM, to which Witness #1 replied, "That is great news, now we can recruit AIGs."[336] Witness #28 explained during an interview with the IC investigative team on January 12, 2023, that during this time in 2017, there were some vacancies that then- was concerned about filling, and that then- had made a determination on how he wanted to rearrange the SES staff and had identified critical positions wanted to fill as quickly as possible.[337]

Following this provisional certification, DHS OIG began announcing vacant SES positions, including the AIG for Inspections and Evaluations, for which Ms. Costello was hired. Between Ms. Costello's hiring at DHS OIG in September 2017 and the nomination of Joseph Cuffari to be the IG of DHS OIG on November 7, 2018, DHS OIG filled six SES positions, two of which were

[333] Interview of Jennifer Costello, July 21, 2023.
[334] Witness #28 email, dated February 28, 2017.
[335] Witness #28 email, dated March 21, 2017.
[336] Witness #1 email, dated April 3, 2017.
[337] Interview of Witness #28 dated January 12, 2023.

posted prior to Ms. Costello's arrival at DHS OIG. One of these was an AIG position, four were Deputy AIG positions, and one was a deputy counsel position. Following the nomination of IG Cuffari, while Witness #1 was Acting IG, candidates for two additional SES vacancies were selected, but only one SES completed the process and was finalized by the time IG Cuffari was confirmed. During the 45 days in which Ms. Costello was Acting IG, she attempted to fill one additional SES vacancy and had selected a candidate; however, once Joseph Cuffari was sworn in as the IG, he cancelled this hiring action.

At Witness #1 direction, Ms. Costello was actively involved in the filling of SES positions. When asked by the IC investigative team, Witness #1 explained that he had delegated the filling of these positions to Ms. Costello because he was ultimately leaving the organization. Witness #1 acknowledged that it was ultimately his responsibility, but he went along with what Ms. Costello was doing.[338] In an email from Witness #1 to all employees, dated April 29, 2019, Witness #1 stated,

> *In November, I appointed Jennifer to be the Deputy Inspector General. I did this because I know she will work tirelessly to lead OIG, and appointing her would ensure a smooth transition if the Senate did not confirm an Inspector General before I retired. Jennifer and I worked to fill vacant SES positions throughout the organization as quickly as possible.*[339]

When interviewed, Witness #1 explained that Ms. Costello was pushing to fill the SES vacancies; however, he insisted that the General Counsel position remain open to ensure that the incoming IG had the ability to fill that position. Witness #1 further explained that, while he did not know the motives behind Ms. Costello wanting to fill SES positions, the reason why agencies have those senior positions is because the agency needs people to perform those duties. The positions are needed to execute the mission of the office. Witness #1 also noted that most of the positions being filled were deputy AIG positions, so they were not the most senior level positions.[340]

According to Ms. Ouzts, the number of SES vacancies created another problem for DHS OIG. Ms. Ouzts told the IC investigative team that it was her understanding that OPM had put DHS OIG on "probation" in relation to the certification process, in part because there were so many vacancies for so long, which resulted in a push to fill them despite Witness #1 departure.[341]

The IC investigative team reached out to OPM which confirmed that open SES vacancies in smaller organizations, such as OIGs, could adversely impact an agency's ability to compensate, attract, and retain senior leaders.[342] In 2017, DHS OIG received provisional certification from OPM for the agency's SES performance management system; however, the provisional certification did not appear to be based on any concerns by OPM of DHS OIG's open SES allocations.[343] OPM conducts performance reviews on a biennial basis; therefore, the next

[338] Interview of Witness #1 dated August 19, 2022.
[339] Witness #1 email, dated April 29, 2019 [ref IC 1015].
[340] Interview of Witness #1 dated August 19, 2022.
[341] Interview of Karen Ouzts, dated October 25, 2022.
[342] Memorandum of Activity, Record of Conversation, dated December 15, 2022.
[343] Interview of Witness #32 dated January 19, 2023.

timeframe whereby a review was conducted was 2019, at which time DHS OIG secured full certification from OPM.

The IC investigative team also found other motivations for filling SES positions. Ms. Ouzts explained, while not initially the case, at some point Ms. Costello was motivated to fill SES vacancies in order to make it less likely that Witness #1 would extend his retirement date. In late April 2019, there were several email chains discussing filling SES positions and how many open SES slots remained.

On that same day, 12 minutes later, Ms. Costello sent an email to Witness #1 and Ms. Ouzts, stating, "we were planning to fill INV's current vacancy with your SES slot and post the last slot on May 6."[345] Later in that email chain, the next day Ms. Costello suggested moving Ms. Ouzts into the counsel position. Ms. Costello wrote, "Counsel is required by the IG act. So we could move Karen to the counsel position now. That would free up her deputy spot to be used for INV."[346]

Ms. Ouzts later that day responded to Ms. Costello, stating,

> *just called me in to office. is going to call and tell that can fill 3rd deputy position, using the slot that currently is designated for the counsel. Once Cuffari gets here he can use slot to select a counsel. Given how long it takes to fill positions in the SES, and that be gone within a couple of days or weeks of Cuffari's arrival, there won't be a problem or delay with Cuffari being able to pick his counsel. Also, doesn't want to elevate me because "it's not fair to me." Cuffari could come in and downgrade me back to Deputy.* [347]

According to Ms. Ouzts, Ms. Costello asked her to move into the role of Chief Counsel; however, Ms. Ouzts declined the opportunity. It was Ms. Ouzts' perspective that the incoming IG needed to be able to bring in his own senior counsel.[348] Additionally, Ms. Shaw stated that the Chief Counsel position was left open for the new IG to fill. She advised that Witness #1 needed legal counsel, so DHS OIG utilized a limited term appointment to address the need without filling the position prior to the new IG's arrival.[349] Further, Ms. Ouzts told the IC investigative team that Ms. Costello was concerned that Witness #1 would continue to postpone his retirement.

[344] Karen Ouzts email, dated April 29, 2019.
[345] Jennifer Costello email, dated April 29, 2019.
[346] Jennifer Costello email, dated April 30, 2019.
[347] Karen Ouzts email, dated April 30, 2019.
[348] Interview of Karen Ouzts, dated January 28, 2022.
[349] Interview of Diana Shaw, dated May 16, 2022.

[redacted], Ms. Ouzts explained that there was a push to fill the SES positions independent of [redacted] retiring, [redacted] at some point Ms. Costello wanted to make it less likely that [redacted] would extend or change his retirement date.[350]

Furthermore, the IC investigative team reviewed several email conversations regarding SES positions and potential motivations for filling those positions. In an email exchange in December 2018 between Ms. Costello and a DHS OIG HR employee discussing the OPM Call for Biennial Review Submission for Executive Allocations for Fiscal Years 2020 and 2021, there was a discussion regarding whether DHS OIG should request more SES slots and the regulations surrounding any such requests. During this exchange, on December 19, 2018, Ms. Costello wrote,

> *You can't change an SES to an SL [Senior Leader]. If we asked for SLs, could a new IG change those to SES during the second part of this process? I haven't decided yet but I don't think we should ask for any SES so new IG is limited. I would like to ask for SL but only if it's "safer".*[351]

The DHS OIG employee responded, in part,

> *Under a new moratorium, the new IG may not have the "right" to change what was submitted on December 31st, but may be given the opportunity after the 120-day moratorium is up. Yikes! It is definitely safer to ask for an SL slot than an SES slot in our current SES situation, however, there are moving parts in making this request that may not be feasible at this moment.* [The DHS OIG employee stated later in the email exchange,] *When a new head of agency comes on board there is a 120-day moratorium which gives that person a chance to assess the organization, its needs, and their executive leadership. There is no movement of SES during this period. We had discussed this a couple of times and this is one of the reasons why we needed the SES positions filled so after the moratorium there is no where to move.*[352]

The next day, on December 20, 2018, Ms. Costello stated in the email exchange that DHS OIG would not request more SES positions.[353]

Others indicated that Ms. Costello had personal motives for filling SES positions prior to the arrival of the IG Cuffari:

- [redacted] stated that Ms. Costello told [redacted] that she was filling positions prior to the arrival of IG Cuffari as Ms. Costello thought it would be better for her.[354]
- IG Cuffari told the IC investigative team that he believed that Ms. Costello and Ms. Ouzts were undermining his ability to build his own leadership team.

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[350] Interview of Karen Ouzts, dated October 25, 2022.
[351] Jennifer Costello email, dated December 19, 2018.
[352] [redacted] email, dated December 19, 2018.
[353] Jennifer Costello email, dated December 20, 2018.
[354] Interview of [redacted] dated February 4, 2022.

- Witness #28 stated that after IG Cuffari was nominated, there seemed to be a sense of urgency around filling vacant SES positions. It was [redacted] belief that there was normally a moratorium placed around the time of a confirmation with a limited window of opportunity for SES recruitments before that respective moratorium would occur. Witness #28 recalled that Ms. Costello, on a number of occasions, mentioned that she wanted to fill as many of the SES vacancies as possible. Witness #28 further stated that Ms. Costello was vocal about the fact that she wanted to ensure that there was very little "wiggle room" for the new IG to rearrange the SES positions.[355]
- Ms. Shaw expressed that Ms. Costello's concern lay with an incoming IG's ability to move Ms. Costello to a different position, rather than preventing an incoming IG to fill the vacant SES positions.[356]
- Ms. Ouzts further told the IC investigative team that Ms. Costello was concerned that she would be removed from the DIG position if Witness #1 stayed on at DHS OIG.[357]

Ms. Costello's Response Related to the Filling of SES Positions

When interviewed, Ms. Costello explained that when she was hired, DHS OIG had several open SES positions. Ms. Costello stated, "One of the first things he [Witness #1 told me was [redacted] did not want a new IG ever to come on board to the same kind of situation that [redacted] had had when [redacted] onboarded, which was disarray, uh, vacant positions, or people in positions they really weren't qualified to be there…And he put me in charge of the entire SES effort…"[358]

Ms. Costello explained that her role in the hiring process was chairing the interview panels; however, Ms. Costello did not review the applications. Following the interview panels, the final two applicants were referred to Witness #1 for an interview. In a few instances, there was only one suitable candidate, and that individual was referred to Witness #1 was the selecting official for these hires. In addition, Witness #1 signed off on all the packages which were sent to OPM to request a waiver to the moratorium process.[359]

After Witness #1 retired, during the 45-day period in which Ms. Costello was the Acting IG, she attempted to fill one SES vacancy. When interviewed, Ms. Costello explained that, toward the end of June 2019, the [redacted], [redacted] told Ms. Costello that [redacted] planned to retire in approximately 30 days. According to Ms. Costello, [redacted] had previously delayed retirement, and, in the winter of 2018, had lunch with a few potential replacements, including [redacted] which was based on Ms. Costello's recommendation. Ms. Costello stated that [redacted] "felt very strongly, um, that we needed to get a replacement in there for [redacted]…So, we immediately went back to the two best candidates from that earlier time in the winter where [redacted] had lunch with people, and that was [redacted] And I forget who [redacted] person was…Uh, but that person, um, was not interested. [redacted] was. And so, we got it done, um, really quickly, um, you know, by the middle of July."[360]

[355] Interview of Witness #28 dated December 13, 2022.
[356] Interview of Diana Shaw, dated May 16, 2022.
[357] Interview of Karen Ouzts, dated October 25, 2022.
[358] Interview of Jennifer Costello, dated July 21, 2023.
[359] Interview of Jennifer Costello, dated July 21, 2023.
[360] Interview of Jennifer Costello, dated July 21, 2023.

In addition to the attempt to hire [redacted] during the 45-day period in which Ms. Costello was the Acting IG, Ms. Costello explained that she sent a package to OPM for the hiring of [redacted] to fill the Deputy AIG for Investigations. Ms. Costello explained that, with [redacted] "we had already finished the process. So, [redacted] was going to select someone else. He was in the process of doing it, and for a variety of very good reasons, we didn't agree with him. So, uh, we, we sent [redacted] name up to OPM. I did. Yeah. I mean, [redacted] is the only one that I sent a package up to OPM under my signature."[361]

Ultimately, once IG Cuffari arrived at DHS OIG, he reviewed the hiring of both [redacted] and [redacted] IG Cuffari rescinded the hiring of [redacted] and concurred with the selection of [redacted]

When asked by the IC investigative team if SES positions were filled prior to IG Cuffari's arrival at DHS OIG in order to hamper his ability to fill the positions himself, Ms. Costello replied,

> *No. I mean, as I described, that – [redacted] had [redacted] view about wanting to present a strong executive front for, for a new IG and to aid in, in transitioning, right, if I was going to be there, if he was going to be there, and what have you. My concerns were a lot different once I got into the process. Like, this is – we are in desperate need of – to fill these leadership positions… there was just just a dearth of, of strong leadership. There were no 15s on the horizon to put in an acting position. And I was worried that I was going to have to – you know, keep this train moving in John's departure. Um, I had several conversations with [redacted] about what you could and what you could not do. I mean, I was an SES when I took over the SES program, but I did not know the ins and outs. Um, so, you know, yes, you can go to OPM, for example, and request a waiver in the moratorium. That's really clear in the regs. Is that what people do? Do people do this a lot" Is it for – you know, I mean, there are things in government that you can do. But unless you work in the environment, you don't know whether it's frowned on or not. So, I, you know, I sought [redacted] counsel about, can we – is it bad to fill all these positions? Um, so, you know, I engaged in a lot of discussions like that. Um, we, you know, we had also, under [redacted] – I mean, [redacted] didn't intend to, but we had lost our, our SES certification, um, because we didn't have a strategic plan that linked to the executive performance goals blah-blah-blah, and what have you. So, we also had to do all of that. There was a real revamping of what was going on with the SES, um, and I took that on as my responsibility. Um, you know, [redacted] put me in there to do it, but once I realized what we needed to do and how dire the situation was, I mean, I took that on…And I mentioned it in my performance evaluations, like, as a – as an accomplishment – you know, not as something that's being done to, to try to, uh, be, again, queen of DHS OIG or whatever the accusation is.*[362]

In response to the IC investigative team's question of whether Ms. Costello thought it would be more beneficial for her to fill the SES positions than an incoming IG, Ms. Costello responded, in part,

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[361] Interview of Jennifer Costello, dated July 21, 2023.
[362] Interview of Jennifer Costello, dated July 21, 2023.

So, yeah, I mean, do I think that somebody who was there at the moment was a little bit better positioned to deal with trying to fix some of the dysfunction? Sure, sure. I don't know how any new person can come in and automatically go, well, this is what we need. You, you just don't know enough. I didn't know enough until I took on these responsibilities. But once I did, it was glaringly obvious that we were like one, you know, one person away from even a worse failure than, than EMOT in certain situations. So, you know, yeah, probably.[363]

(D) Ms. Costello's Conduct Regarding IG Cuffari Following His Confirmation

Another aspect of the allegations against Ms. Costello were that after his confirmation, Ms. Costello wrongfully resisted IG Cuffari's leadership by disparaging IG Cuffari to DHS OIG staff and sought ways to undermine IG Cuffari's leadership by, among other actions, soliciting DHS OIG's Office of Investigations to conduct a baseless investigation of his travel and by soliciting OIG employees to complain about him to CIGIE.

As noted previously, the IC investigative team found Ms. Costello was outspoken to others at DHS OIG about her concerns over IG Cuffari's qualifications prior to his confirmation.[364] The investigation revealed that some of the apparent comments and concerns expressed by Ms. Costello were related to IG Cuffari receiving his Ph.D. from what GAO had designated a diploma mill.[365] While her comments in relation to IG Cuffari receiving a Ph.D. from a diploma mill may have been troubling to IG Cuffari, they also were accurate as IG Cuffari received his Ph.D. from California Coast University at a time when the school was not accredited and had been identified by the GAO as part of an investigation into diploma mills used by Federal employees.[366] According to DHS OIG's website and IG Cuffari's prior response to the IC, IG Cuffari received his Ph.D. in Management in 2002.[367] While California Coast University eventually received accreditation from the Distance Education Accrediting Commission (DEAC) (formerly the Distance Education and Training Council (DETC)), it occurred in 2005, and was not accredited at the time when IG Cuffari received his Ph.D.[368]

Ms. Costello previously worked at GAO and had first-hand knowledge of GAO's work on diploma mills used by government employees.[369] Although she had concerns with IG Cuffari's Ph.D. being received from a diploma mill, how her concerns were expressed to others is in question. Ms. Ouzts also expressed concerns about the optics of IG Cuffari having received a Ph.D. from a diploma mill.[370]

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[363] Interview of Jennifer Costello, dated July 21, 2023.
[364] Interview of Diana Shaw, dated May 16, 2022; Interview of Karen Ouzts, dated October 25, 2022.
[365] WilmerHale report, dated December 14, 2020.
[366] GAO testimonial reports on Diploma Mills – GAO-04-771T, dated May 11, 2004; and GAO-04-1096T, dated September 23, 2004.
[367] DHS OIG website information, Meet the IG, November 15, 2022.
[368] US Dept. of Education, Office of Postsecondary Education, institutional accreditation information for CCU.
[369] Interview of Jennifer Costello, dated July 21, 2023.
[370] Interview of Karen Ouzts, dated January 28, 2022.

According to Ms. Shaw, Ms. Costello was very outspoken about IG Cuffari. Ms. Shaw recalled a discussion in which Ms. Costello stated something to the effect of "you know, if he thinks it's a real Ph.D. then he's not smart enough to have a Ph.D."[371]

During the course of the investigation, witnesses also told the IC team that Ms. Costello made various derogatory comments about IG Cuffari, including one who recalled Ms. Costello stating, "he was dumber than a box of rocks."[372] These comments were allegedly made both prior to and after his confirmation as the IG. While Ms. Costello, through her attorney, disputed this in correspondence with DHS OIG, witnesses indicated hearing such comments from Ms. Costello. A senior executive at DHS OIG told the investigative team that Ms. Costello had made up her mind prior to IG Cuffari's confirmation that IG Cuffari was not someone who should be leading the OIG, and made this known repeatedly to executive team members at DHS OIG. Witness #34 [redacted], did not know if Ms. Costello used the specific words "dumber than a box of rocks" to describe IG Cuffari; however, [redacted] was aware that Ms. Costello questioned IG Cuffari's intelligence while in meetings.[373]

As time passed, the relationship between IG Cuffari and Ms. Costello continued to sour. After IG Cuffari came on board, Ms. Costello's behavior was described as "volatile," "radioactive," and "a little bit unstable." That same senior executive believed that at some point, Ms. Costello's actions became undermining towards IG Cuffari as she was making various comments about him and complaints against him.[374]

Witness #28 [redacted] advised that at IG Cuffari's first staff meeting with senior leaders, which he attended via video conference, IG Cuffari came on to say hello to the senior leaders. Based on [redacted] understanding, IG Cuffari would not be able to participate in agency business until he was confirmed and sworn in. When he came on, IG Cuffari informed the senior leaders that he was sworn in that morning. Witness #28 [redacted] added,

> *So, my impression was that perhaps Jennifer [Costello] wasn't aware. I'm not sure that anyone was aware that they were going ahead with the swearing-in process on that particular day. And because he was sworn in, he then participated in the rest of the meeting. After the meeting, there was definitely sort of a stunned, wow, okay, he's sworn in. Jennifer was visibly, you know, upset at being surprised by this, and I think, again, commented with the other executives in the room, well, I'm going to be on vacation when he comes on board.*
>
> *…That set the tone almost immediately for questions and concerns, you know, around Dr. Cuffari coming in. There was additional resistance almost at every step that we had to take to do the processing in. You know, lots and lots of scrutiny. Not that you, you wouldn't, but these are kind of routine activities. We're not making the rules up as we go. We have to follow a certain set of rules, for instance, on what we pay for when we move them in. This is all handled by our budget folks. It's, it's – there's SOPs in place for this.*

[371] Interview of Diana Shaw, dated May 16, 2022.
[372] Interviews of Witness #1 [redacted] dated August 19, 2021 and August 19, 2022.
[373] Interview of Witness #34 [redacted] dated June 17, 2022.
[374] Interview of Witness #8 [redacted] dated December 3, 2021.

> *There are rules surrounding this. And it's just kind of following those steps. Communicating – and I personally communicated all of these things to Dr. Cuffari so he understood. There's a process that we have to go through. Here's what we can do. Here's what we can't do. You know, communicating all of that. But there was just a lot of resistance, in even the processing piece for trying to bring him on board, and just unprofessional behavior. But again, my observation, when you're now the head of the agency, you're setting the tone for the rest of your leadership team and staff on how you receive and interact with new leadership. And it was definitely a negative perception.*[375]

IG Cuffari's arrival to the DHS OIG office coincided with a previously planned vacation by Ms. Costello. Ms. Costello went on vacation as she had planned. Ms. Shaw was concerned that this would be perceived negatively by IG Cuffari and suggested to Ms. Costello that she may want to come back to the office.[376]

Another senior executive at DHS OIG recalled that the executive team had pulled together a detailed plan for onboarding IG Cuffari including greeting him, preparing briefing books, and being prepared to facilitate meetings. This senior executive stated that Ms. Costello "just essentially walked out the door… she just decided that she was not going to lead the transition." This senior leader opined that a core responsibility of career senior executives is continuity, and to facilitate the transition of power from one administration to the next.[377] Other senior leaders, including Witness #26 [redacted] also believed it would have been better for everybody and for the office if Ms. Costello, as Acting IG, was onsite to welcome him as she was the DIG.[378] One senior leader described that Ms. Costello's absence upon IG Cuffari's arrival, together with previous remarks made by Ms. Costello about IG Cuffari's degree, kicked off a very bad relationship between Ms. Costello and IG Cuffari, which in turn had a ripple effect on the office. Witness #26 [redacted] stated that, "from the get go, the two of them did not get along, um, and it was visible to everybody in the office. Even though you never saw sparks – I meant, they sat right across from each other. Um, they did not talk."[379]

A senior leader noted that upon IG Cuffari's arrival at DHS OIG, "Everything was already off to a bad start anyway um because of, you know, the – the – just the, uh, abruptness of … the way he was, uh, sworn in and – and, you know, came into the office, and then Jennifer not being there, and then the bad blood that was already created, you know, um, from, uh, you know, the whole papermill, um – um, diploma mill thing."[380]

IG Cuffari stated that during staff meetings, Ms. Costello engaged in unprofessional conduct such as turning her back on him when he was speaking, typing or texting on her mobile device, and ignoring him.[381] Witness #28 [redacted] also reported observing unprofessional demeanor by Ms. Costello towards IG Cuffari.[382]

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[375] Interview of Witness #28 [redacted] dated December 13, 2022.
[376] Interview of Diana Shaw, dated May 16, 2022.
[377] Interview of Witness #8 [redacted] dated December 3, 2021.
[378] Interview of [redacted] dated August 12, 2021.
[379] Interview of [redacted] dated August 12, 2021.
[380] Interview of [redacted] dated August 12, 2021.
[381] Interview of IG Cuffari, dated August 30, 2022.
[382] Interview of Witness #28 [redacted] dated December 13, 2022.

Over time, the relationship between IG Cuffari and Ms. Costello continued to deteriorate. One senior official stated, "I kept hoping that they [Ms. Costello and IG Cuffari] would be able to work this out. Because, uh – and I'm – I'm going to say it – it – it was almost a little immature the way things were happening with the two of them not talking to each other… I wished that they had been able to – like professional, mature people on both sides, sit down and talk this out."[383]

In describing behavior exhibited by Ms. Shaw, Ms. Ouzts, and Ms. Costello, Witness #34 characterized their behavior as "petty and unprofessional."[384] Witness #34 further explained that they would do things like not copying IG Cuffari on emails or not attending the same meetings as IG Cuffari. It seemed to Witness #34 like "high school… fighting going on that wasn't healthy for the office."[385]

Witness #34 was present during several senior staff meetings and either Ms. Shaw, Ms. Ouzts, or Ms. Costello would raise concerns of IG Cuffari not having enough leadership experience, that he had a degree from a diploma mill, that he had no experience managing any type of audits or inspections, and that he was generally unqualified for the job.[386]

Witness #34 opined that IG Cuffari was not doing as much as he potentially could have to bring Ms. Costello into the fold. According to Witness #34 IG Cuffari jumped Ms. Costello in the chain of command which created a very disruptive and fractured reporting environment for everyone involved, which was not healthy.[387]

Ms. Costello's Demeanor Towards Mr. De Mello

The IC team also found evidence that Ms. Costello made disparaging remarks regarding staff that IG Cuffari had hired and brought to DHS OIG. Specifically, Andrew De Mello, as referenced in other parts of this report, is an attorney whom IG Cuffari brought over on a detail to DHS OIG from the DOJ, Tax Division. Witnesses reported that Ms. Costello referred to Mr. De Mello using a nickname intended to mock him. Witness #8 advised Ms. Costello referred to Mr. De Mello as "Sheldon" in reference to the character Sheldon Cooper from a television show.[388] The investigation found emails, including an October 17, 2019 email exchange, which corroborated her use of "Sheldon" to characterize Mr. De Mello.[389]

[383] Interview of dated August 12, 2021.
[384] Interview of Witness #34 dated June 17, 2022,
[385] Interview of Witness #34 dated June 17, 2022.
[386] Interview of Witness #34 dated June 17, 2022.
[387] Interview of Witness #34 dated June 17, 2022.
[388] Interview of Witness #8 dated December 3, 2021; Sheldon Cooper is a fictional character in the television series *The Big Bang Theory* and its spinoff series *Young Sheldon*.
[389] Jennifer Costello email, dated October 17, 2019, Re: Memorandum from Inspector General Cuffari, Dated October 17, 2019.

[redacted]. Ms. Costello stated that although she at times made reference to Mr. De Mello as "Sheldon" in email to peers, she did not come up with the nickname.[391]

Investigation into IG Cuffari's Travel and Solicitating Employees to Complain to CIGIE

Another aspect of Allegation 1 against Ms. Costello concerned the solicitation of DHS OIG's Office of Investigations to conduct a baseless investigation of IG Cuffari's travel and by soliciting OIG employees to complain about him to CIGIE.[392] This allegation was initially brought by IG Cuffari against Ms. Costello and Ms. Ouzts and involved a trip IG Cuffari took to Arizona. While DHS OIG deemed the trip to be work related, concerns were initially raised regarding the optics of the trip.

Specifically, questions regarding the nature of the trip were raised by Ms. Ouzts, who shared her concerns with others, including DHS OIG employee [redacted] who helped schedule meetings for IG Cuffari's trip to the Southwest border and attended the trip. Although Ms. Ouzts discussed her concerns about the trip with [redacted] the IC investigative team was not able to locate documentation reflecting that Ms. Ouzts forwarded her request for an investigation in writing. While there are conflicting stories regarding what transpired, the IC investigative team did not identify additional information to support the allegation.

Shortly before Ms. Costello was removed, she called Witness #34 to raise issues about how IG Cuffari operated related to his style, leadership, or competence.[393] Witness #34 explained to Ms. Costello that none of her complaints involved a serious administrative regulatory violation or a criminal violation, adding that even if they did the investigative side of DHS OIG was not authorized to investigate the IG. Witness #34 told Ms. Costello that investigations into an IG had to go over to the CIGIE Integrity Committee, which Ms. Costello acknowledged.[394]

The investigation did not find evidence to support the allegation that Ms. Costello solicited employees to complain to CIGIE about IG Cuffari.

iv. Ms. Costello's Response

On July 21, 2023, Ms. Costello sat for a voluntary interview with IC investigators. Ms. Costello responded directly to the allegations and provided additional information.

In response to this allegation overall, Ms. Costello stated,

> *I mean, there's nothing in there that is true. Um, I mean, even to the extent that there's been a lot of dust kicked up over some of this stuff, whether it's the EMOT situation with* [redacted] *whether it's, um, hiring, you know, it's just taking grains of information*

[redacted]

[391] Interview of Ms. Costello, dated July 21 ,2023.
[392] CIGIE IC, referral no. IC 20-007.
[393] Interview of Witness #34 dated June 17, 2022.
[394] Interview of Witness #34 dated June 17, 2022.

and creating a story. Um, and, and that's what it is and that's what it's persisted to be. I mean, just look at the travel thing. That never happened. Um, [redacted] *took a look at the, the position that I was in.* [redacted] *put me in that position. He made the announcement over and over again. We filed succession plans. I mean, I don't – I don't really know what to say. I just can't believe we're still here three and a half years later, four years later, and you are only now getting to the bottom of all this. I mean, it –it's, it's disgraceful for the entire community.*[395]

V. Investigative Conclusions

High-Level Summary of Evidence Leading to Investigative Conclusions (Allegation 1 – Costello)

Allegation 1 (Costello)
COO Costello abused her authority and engaged in conduct undermining the independence and integrity reasonably expected of her position by wrongfully holding herself out as the Acting IG in 2019, in violation of the Federal Vacancies Reform Act (FVRA), calling into question the authority for actions she took during that time. Further, that she wrongfully took steps, with the assistance of then AIG Shaw, to attain and keep this position, which included actively working to force the retirement of then [redacted] Witness #1 her direct supervisor and the most senior DHS OIG official (following the retirement of [redacted] in 2017). Finally, that while in the senior-most position in DHS OIG, she and AIG Shaw wrongfully resisted the arrival of then IG nominee Cuffari, by, among other actions, leading and executing an effort to thwart his confirmation by Congress and attempting to fill key leadership positions in DHS OIG designed to limit IG nominee Cuffari's future ability to hire Senior Executive Service employees. After his confirmation, COO Costello wrongfully resisted IG Cuffari's leadership by publicly disparaging IG Cuffari to DHS OIG staff and sought ways to undermine IG Cuffari's leadership by, among other actions, soliciting DHS OIG's Office of Investigations to conduct a baseless investigation of his travel and by soliciting OIG employees to complain about him to CIGIE.
Summary of Evidence
Note: The following provides a non-exhaustive summary of certain evidence supporting the investigative conclusions. Full details, including additional evidence and source citations, are contained in the "iii. Documentary Evidence and Witness Statements" section for this allegation above.
(A) Ms. Costello's Position as Acting IG in 2019
• Witness #1 intended for Ms. Costello to take over leadership of DHS OIG as Acting IG upon his retirement.
• While Witness #1 was serving as Acting IG, DHS OIG submitted two revised Orders of Succession that included Ms. Costello as the next in line. Witness #1 also requested that Ms. Costello's title be changed to DIG and that his title be changed to SOPDIG, and later, Senior DIG.
• After Witness #1 retirement, DHS Office of General Counsel (OGC) raised concerns about Witness #1 position. Based on these concerns, DHS OIG HR, at the direction of Ms. Ouzts, retroactively changed Witness #1 position description back to the DIG. Based in part by their consultation with DHS OGC, DHS OIG believed these changes resolved the issue.

[395] Interview of Jennifer Costello, dated July 21, 2023.

• [redacted]
(B) Ms. Costello's Role in the Retirement of Witness #1
• [redacted] postponed his retirement several times. Witness #1 retired suddenly because of allegations that surfaced about the EMOT audit reports. The findings did not look favorable for Witness #1 and Witness #1 told the IC investigative team that he felt compelled to retire immediately to ensure the agency could move on.
• Ms. Costello and Ms. Shaw were concerned about the EMOT reports and believed publishing the DHS OIG report regarding the EMOT reports would be the most transparent and appropriate way for the agency to move forward.
• Witness #1 believed Ms. Costello's demeanor towards him was terse and unprofessional before his retirement, but he did not change his intention that she would serve as Acting IG following his retirement.
(C) Ms. Costello's Conduct With Respect to IG Cuffari Prior to His Confirmation, Including Filling SES Positions
• After IG Cuffari was nominated by the President, Ms. Costello shared concerns about IG Cuffari's qualifications to others, including DHS OIG senior executives, then [redacted], Witness #18 as well as in a casual conversation with WitnWitness #31 These concerns specifically centered on IG Cuffari's Ph.D. from what GAO had identified as a "diploma mill."
• The IC team did not identify emails regarding Ms. Costello relaying any concerns to members of Congress or their staff regarding IG Cuffari's qualifications prior to his confirmation.
• DHS OIG's efforts to fill vacant SES positions began in 2017, prior to then-[redacted] retirement and prior to Ms. Costello's arrival. This was due in part to DHS OIG receiving provisional certification from OPM on its SES performance management system.
• Witness #1 delegated efforts to fill SES positions to Ms. Costello. Witness #1 acknowledged that Ms. Costello was pushing to fill the vacancies.
• Several sources stated they believed Ms. Costello had personal reasons to fill SES vacancies urgently following IG Cuffari's nomination, including that Ms. Costello hoped it would prevent Witness #1 [redacted] from staying at DHS OIG, and it would help preserve her position as DIG when IG Cuffari arrived.
• Following the nomination of IG Cuffari, while Witness #1 was Acting IG, candidates for two additional SES vacancies were selected, but only one SES completed the process and was finalized by the time IG Cuffari was confirmed.
• During the 45 days in which Ms. Costello was Acting IG, she attempted to fill one additional SES vacancy and had selected a candidate; however, IG Cuffari cancelled this hiring action.
(D) Ms. Costello's Conduct With Respect to IG Cuffari Following His Confirmation, Including Investigations into His Travel and Soliciting Others to File Complaints
• Ms. Costello was outspoken at DHS OIG regarding her concerns about IG Cuffari's Ph.D. coming from a "diploma mill."
• Ms. Costello made disparaging comments about IG Cuffari following his confirmation, and behaved unprofessionally and unwelcoming in meetings, according to multiple witnesses.

• The IC team did not find evidence that Ms. Costello requested an investigation of IG Cuffari's travel or that she solicited employees to complain about IG Cuffari to CIGIE.
Investigative Conclusions
Substantiated in Part. (A) The investigation **did not substantiate** that Ms. Costello wrongfully held herself out as the Acting IG in 2019; rather, Witness #1 intended (and widely communicated his intention) for Ms. Costello to become Acting IG after his retirement. The actions Witness #1 took to revise DHS OIG's succession plan, and to change his position to SOPDIG, were made with that intent, even though they subsequently raised questions related to the FVRA. There was no evidence that Ms. Costello nor anyone else at DHS OIG believed there were unresolved administrative/legal complications following the action to retroactively change Witness #1 position back to DIG following his retirement. This action was made in consultation with DHS OGC. (B) The investigation **did not substantiate** that Ms. Costello forced out Witness #1 retired earlier than planned in an attempt to resolve the situation created by the flawed EMOT reports. However, Ms. Costello did benefit from his expedited retirement. (C) The investigation **did not substantiate** that Ms. Costello led an effort to explicitly thwart IG Cuffari's confirmation in Congress. However, Ms. Costello was vocal about her concerns regarding his qualifications to multiple parties before his confirmation, including to the [redacted]. The IC investigation did not substantiate that Ms. Costello was trying to undermine IG Cuffari by limiting his ability to hire his own people. However, Ms. Costello did seek to fill vacancies prior to his arrival in ways that witnesses believed to be self-serving. (D) The investigation **substantiated** the allegations regarding Ms. Costello's demeanor and conduct regarding IG Cuffari following his confirmation. Several witnesses reported that she made disparaging comments regarding his qualifications and stated that Ms. Costello's behavior towards IG Cuffari was unwelcoming and unprofessional.

Detailed Description of Investigative Conclusions

The investigation substantiated Allegation 1 in part, specifically regarding Ms. Costello's demeanor and conduct regarding IG Cuffari. Ms. Costello had concerns regarding IG Cuffari's qualifications to serve in the role of IG, such as his Ph.D. coming from a diploma mill. The investigation found evidence substantiating Ms. Costello made disparaging comments about IG Cuffari. Several witnesses stated that Ms. Costello's behavior towards IG Cuffari was inappropriate and unprofessional. For example, one witness described Ms. Costello's behavior as volatile, radioactive, and a little bit unstable. Witnesses also characterized Ms. Costello's demeanor upon IG Cuffari's arrival as unwelcoming, which set a negative tone during a time of transition.

The investigation did not substantiate that Ms. Costello wrongfully held herself out as the Acting IG in 2019. Rather, Witness #1 intended for Ms. Costello to become Acting IG after his retirement. Based on the IC investigative team's interviews with Witness #1 he was under the presumption that he needed to change his title and position description. While it appeared Witness #1 was under the misimpression that he had to change position descriptions to reflect his new assumed role, it was not Ms. Costello's fault that he made such a mistake.

[redacted]

Given the communications and actions taken by then Acting [redacted] prior to his retirement to ensure OIG leadership would transition to Ms. Costello, there is no evidence to conclude that Ms. Costello was intentionally and wrongfully holding herself out as the Acting IG. While she did approve "corrections" to the relevant position descriptions after [redacted] retired and following communication between DHS OIG and DHS OGC, thereby demonstrating some awareness of the underlying problem, there is no evidence that supports she was aware a potential problem persisted following those corrections.

Thus, any errors that may have resulted in a misapplication of the FVRA were made prior to [redacted] retirement and at his direction. At the time [redacted] retired, Ms. Costello believed she was serving in the role of DIG, making her the "first assistant" and next in-line in DHS OIG's Order of Succession. While there are varying interpretations regarding whether Ms. Costello was legitimately in the DIG position, the possible defect in her appointment was not caused by Ms. Costello. Furthermore, no information was identified to indicate that Ms. Costello intended to wrongfully hold herself out in such a capacity.

The IC investigation did not substantiate that Ms. Costello was "actively working to force the retirement of then [redacted] While [redacted] told the IC investigative team that he felt pressured to retire and Ms. Costello was frustrated that [redacted] repeatedly postponed his retirement, as well as being concerned about [redacted] continuing presence at DHS OIG during the release of the EMOT, the IC investigative team did not find by a preponderance of the evidence that she wrongfully took steps to force his retirement for her own benefit.

While Ms. Costello was not devoid of personal motivation, the IC investigation did not substantiate that Ms. Costello was trying to undermine IG Cuffari by limiting his ability to hire his own people. Prior to IG Cuffari assuming the role of IG at DHS OIG, there were numerous vacancies, including several in leadership positions. Although an email from Ms. Costello stated a desire that IG Cuffari be "limited" and several individuals interviewed during the course of the investigation recalled similar statements from Ms. Costello, other individuals shared different opinions regarding the agency's budget situation and circumstances surrounding the filling of vacancies. Information was obtained during the course of the investigation which indicated [redacted] initiated a plan to fill open vacancies prior to IG Cuffari's arrival and even his nomination. A review of the timeline associated with the filling of SES positions did not reflect a mass hiring by Ms. Costello during the 45 days she served as Acting IG. And, while Ms. Costello might have been vocal about wanting to insulate herself, IG Cuffari would still have had the discretion in reassigning Ms. Costello to a different SES position upon his arrival, as evidenced by the fact that he initially attempt to move her from the DIG position to another position within DHS. Thus the allegation that Ms. Costello or Ms. Shaw "wrongfully resisted" IG Cuffari by filling vacant positions is not substantiated by a preponderance of the evidence.

Additional aspects of the allegations were unsubstantiated, including that Ms. Costello solicited DHS OIG's Office of Investigations to conduct a baseless investigation of IG Cuffari's travel and solicited OIG employees to complain about him to CIGIE.

b. Allegation 2 (Costello)

DC Ouzts abused her authority and engaged in conduct undermining the independence and integrity reasonably expected of her position by wrongfully directing HR to make several retroactive changes to former [redacted] Witness #1 [redacted] personnel paperwork. DC Ouzts directed HR personnel to falsify approval dates and position descriptions on several of [redacted] Witness #1 [redacted] SF-50s, in an effort to create a paper trail to support COO Costello's ascension to the role of Acting IG following [redacted] Witness #1 [redacted] retirement.[396] In doing so, DC Ouzts and COO Costello agreed to obstruct the lawful functioning of DHS OIG through deceit.[397]

The role of Ms. Costello with respect to Allegation 2 is addressed here. The role of Ms. Ouzts will be addressed later in this report (Allegation 2 [Ouzts]).

i. Background

Brief Summary of Relevant Dates

- November 7, 2018, IG Cuffari nominated by the President
- November 11, 2018, Ms. Costello SF-50 moving from COO to DIG[398]
- November 11, 2018, Witness #1 [redacted] SF-50 moving from DIG to SOP DOIG [sic].[399]
- June 10, 2019, Witness #1 [redacted] retired and Ms. Costello begins serving as Acting IG
- June 13, 2019, Ms. Ouzts directed HR personnel to retroactively create second DIG position[400]
- June 25, 2019, Ms. Ouzts directed [redacted] to make a number of corrections to Witness #1 [redacted] SF-50
- July 25, 2019, IG Cuffari confirmed by the Senate

ii. Investigative Steps

The IC investigative team obtained email, documents, and relevant information regarding the personnel actions taken associated with Ms. Costello and Witness #1 [redacted] The team reviewed materials to understand the timeline of events and conducted witness interviews. Ms. Ouzts and Ms. Costello were interviewed regarding this allegation.

iii. Documentary Evidence and Witness Statements

As noted in Allegation 1 above, when interviewed for this investigation, Witness #1 [redacted] advised that it was his intention to have Ms. Costello take over as Acting IG upon his retirement.[401] Further,

[396] Knowingly making or using a false writing or document in any matter within the jurisdiction of the executive, legislative, or judicial branch of the United States could be a violation of 18 U.S.C. § 1001(a)(3).
[397] Conspiring to defraud an agency of the United States could be a violation of 18 U.S.C. § 371.
[398] Jennifer Costello, SF-50, personnel action, dated November 11, 2018.
[399] Witness #1 [redacted] SF-50, personnel action, dated November 11, 2018.
[400] Karen Ouzts email, dated June 13, 2019 [included in the email thread].
[401] Interview of Witness #1 [redacted] dated August 19, 2021.

Witness #1 placed Ms. Costello into the position of DIG as reflected on her notice of official personnel action form (SF-50).[402] Witness #1 relied on others in HR to ensure Ms. Costello was in line to be his successor as Acting IG upon his retirement.[403]

A review of the coding associated with Ms. Costello's SF-50 reflected that the action was contemporaneous to the notification provided by Witness #1 in which he placed Ms. Costello in the role of DIG. Specifically, Ms. Costello was appointed to the position of DIG on November 11, 2018, which featured identification information associated with the action of "HS OG0100000000000000 PP 23 2018." The reference to "PP 23 2018" indicated the entry was made in the 23rd pay period (PP) of 2018. This conforms to the date occurring in November, as there are normally 26 pay-periods in a year in the Federal payroll system.[404]

On the same date (November 11, 2018), Witness #1 had himself placed in the position of "SOP DOIG [sic]."[405] Based on the documentation, the entries associated with these changes were made in the 23rd pay period of 2018.[406]

Subsequently, in March 2019, Witness #1 was placed in the position of "Senior DIG." This change in Witness #1 title featured an SF-50 with an effective date of March 31, 2019, and an approval date of March 27, 2019, and was made during the 7th pay period of 2019,[407] which coincided with the effective date.[408] Witness #1 remained in the position of Senior DIG until he retired, effective June 10, 2019, which occurred in and coincides with the 12th pay period of 2019.[409]

Shortly after Witness #1 retired, after learning of concerns from DHS OGC [redacted] The plan for corrective action to be taken was discussed with DHS OIG HR representatives [redacted] and [redacted] Witness #35 who was [redacted] at the time.[410] The changes were made without further challenges. Specifically, another PD for a DIG position was created to which Witness #1 was assigned, which stated that if there were two DIGs, the new DIG position which Witness #1 was assigned to would be the senior level position to the other deputy. This correction featured an approval and effective date of June 10, 2019 (the date of his retirement); however, it was entered in the 14th pay period of 2019 (July 7-July 20, 2019).[411]

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[402] Jennifer Costello SF-50, personnel action, dated November 11, 2018.
[403] Interview of Witness #1 dated August 19, 2021.
[404] Memorandum of Activity, Document Review, dated July 2, 2021; Interview of Witness #35 dated July 6, 2021.
[405] Witness #1 SF-50, personnel action, dated November 11, 2018.
[406] Jennifer Costello SF-50, personnel action, dated November 11, 2018, featuring PP23 2018 in box 22; Witness #1 SF-50, personnel action, dated November 11, 2018, featuring PP23 2018 in box 22.
[407] NFC-1217, revised 7/15, for pay period calendar 2019.
[408] Witness #1 SF-50, personnel action, dated March 27, 2019, featuring PP07 2019 in box 22.
[409] Witness #1 SF-50, personnel action, Retirement Voluntary, dated June 10, 2019, featuring PP12 2019 in box 22.
[410] Karen Ouzts email thread, dated June 25, 2019, re Status Update.
[411] Witness #1 SF-50, personnel action, Correction, dated June 10, 2019, featuring PP14 2019 in box 22.

In contrast, Ms. Costello remained in the DIG position from November 11, 2018, up until IG Cuffari terminated her employment. At which time, IG Cuffari retroactively cancelled her prior promotion to DIG and placed her back in the role of COO, in the 12th pay period of 2020.[412] Documentation cancelling Ms. Costello's prior promotion to DIG features an effective date of November 11, 2018, and an approval date of January 6, 2019, yet was entered in the 12th pay period of 2020 based on the respective coding present in box 22 of the SF-50.[413]

The IC investigative team interviewed Ms. Ouzts regarding what transpired with the modifications made to [redacted] SF-50s.[414] [redacted] to ensure corrective actions were taken to resolve an issue created by [redacted] when he directed HR to put him in a different position description. Essentially, [redacted] created an issue with the FVRA, which was later resolved through the corrective actions taken. Based on the information provided by [redacted], Ms. Ouzts believed the matter was properly resolved and that DHS OIG had remedied an approximate 6-month conflict whereby [redacted] inadvertently removed himself from the line of succession.[415]

iv. Ms. Costello's Response

On July 21, 2023, Ms. Costello sat for a voluntary interview and responded directly to the allegations. When asked to respond to this allegation, she stated,

> *I mean, not even close. Um, you know, like I told you, nobody questioned my job. [redacted] /[redacted]shouldn't have done some of the things he did with respect to his own position. The only thing Karen [Ouzts] did was to try to make a correction to accurately reflect his vision, what he wanted, and what the true state of affairs at, at DHS OIG was. The alternative, the easier fix would for -- been -- had been for me to raise my hand and say, "Oh, guess what? When you made me deputy in 2018, I was in charge." Can you imagine the stories that would have been told if I had done that? Like the actual first answer under the, the vacancy act? So, no.*[416]

v. Investigative Conclusions

High-Level Summary of Evidence Leading to Investigative Conclusions (Allegation 2 - Costello)

Allegation 2 (Costello)
DC Ouzts abused her authority and engaged in conduct undermining the independence and integrity reasonably expected of her position by wrongfully directing HR to make several retroactive changes to former [redacted] personnel paperwork. DC Ouzts directed HR personnel to falsify approval dates and position descriptions on several of [redacted] SF-50s, in an effort to create a paper trail to support COO Costello's ascension to the role of Acting IG following [redacted] retirement. In

[412] Jennifer Costello, SF-50, personnel action, Cancellation, featuring PP12 2020 in box 22.
[413] Jennifer Costello, SF-50, personnel action, Cancellation, featuring PP12 2020 in box 22; Interview of [redacted] dated July 6, 2021, ref. coding within box 22 of SF-50s.
[414] Interview of Karen Ouzts, dated January 28, 2022.
[415] Interview of Karen Ouzts, dated January 28, 2022.
[416] Interview of Jennifer Costello, dated July 21, 2023.

doing so, DC Ouzts and COO Costello agreed to obstruct the lawful functioning of DHS OIG through deceit.
Summary of Evidence
• Ms. Costello was appointed to the role of DIG at Witness #1 request in November 2018.
• In November 2018, Witness #1 had himself placed in the position of SOPDIG. In March 2019, his title was changed to Senior DIG.
• [redacted]
• Ms. Ouzts worked in consultation with DHS OGC to make those changes. She was motivated by the need to take corrective actions to resolve the perceived FVRA issue that occurred when Witness #1 changed his position description. She was informed of this conflict by DHS OGC after Witness #1 retirement.
• Based on the information provided by DHS OGC Ms. Ouzts believed the matter was properly resolved following these changes.
Investigative Conclusions
Unsubstantiated. The investigation did not find evidence that Ms. Costello worked with Ms. Ouzts to change Witness #1 paperwork with the intent to deceive, obstruct DHS OIG's lawful functioning, or create a paper trail supporting her prior ascension to DIG.

Detailed Description of Investigative Conclusions

The allegations referenced in this section concerning Ms. Costello were unsubstantiated. While the actions taken by [redacted] associated with Witness #1 SF-50s were to essentially remedy mistakes made, there appears to be no intent to deceive or create a paper trail associated with Ms. Costello's prior ascension to the role of DIG. [redacted] As reflected in Witness #1 email, dated November 5, 2018, and Ms. Costello's SF-50, Ms. Costello had already been appointed in November 2018 to the role of DIG at Witness #1 request.[418]

[redacted]

[418] Witness #1 email, dated November 5, 2018; Jennifer Costello SF-50, personnel action, dated November 11, 2018.

4. Allegations Against Karen Ouzts

Allegation 2, described above in connection with Ms. Costello, also involves Ms. Ouzts:

> **a. <u>Allegation 2 (Ouzts)</u>**
> **DC Ouzts abused her authority and engaged in conduct undermining the independence and integrity reasonably expected of her position by wrongfully directing HR to make several retroactive changes to former [redacted] Witness #1 [redacted] personnel paperwork. DC Ouzts directed HR personnel to falsify approval dates and position descriptions on several of [redacted] Witness #1 [redacted] SF-50s, in an effort to create a paper trail to support COO Costello's ascension to the role of Acting IG following [redacted] Witness #1 [redacted] retirement. In doing so, DC Ouzts and COO Costello agreed to obstruct the lawful functioning of DHS OIG through deceit.[419]**

The background, investigative steps, and documentary evidence and witness statements for Allegation 2 are described above in Section 3, Allegations Against Jennifer Costello. The sections below detail Ms. Ouzts' response to Allegation 2 and the IC investigative team's conclusions with respect to her role in the allegation.

i. Ms. Ouzts' Response

The IC investigative team interviewed Ms. Ouzts on January 28, 2022. During the course of her interview, she advised that she had discussions with [redacted] Witness #29 [redacted] and [redacted] Witness #19 [redacted] at DHS OGC and felt comfortable moving forward with the steps that she took in order to resolve the situation associated with [redacted] Witness #1 [redacted] personnel actions. It was her understanding that changes to the Order of Succession had to be signed by the Secretary at DHS. She recalled there were a number of appendices and OIG was one of the appendices within the Order of Succession. However, no one had any record of changes, so it was her understanding that the request went into "a black hole into the management chain at DHS and was never published." Further, it was her impression at the time that the actions she took resolved the situation.[420]

ii. Investigative Conclusions

Allegation 2 (Ouzts)
DC Ouzts abused her authority and engaged in conduct undermining the independence and integrity reasonably expected of her position by wrongfully directing HR to make several retroactive changes to former [redacted] Witness #1 [redacted] personnel paperwork. DC Ouzts directed HR personnel to falsify approval dates and position descriptions on several of [redacted] Witness #1 [redacted] SF-50s, in an effort to create a paper trail to support COO Costello's ascension to the role of Acting IG following [redacted] Witness #1 [redacted] retirement. In doing so, DC Ouzts and COO Costello agreed to obstruct the lawful functioning of DHS OIG through deceit.
Summary of Evidence
Ms. Costello was appointed to the role of DIG at [redacted] Witness #1 [redacted] request in November 2018.

[419] Conspiring to defraud an agency of the United States could be a violation of 18 U.S.C. §371.
[420] Interview of Karen Ouzts, dated January 28, 2022.

In November 2018, Witness #1 had himself placed in the position of SOP DIG. In March 2019, his title was changed to Senior DIG.
Ms. Ouzts took actions in July 2019 to retroactively change Witness #1 HR paperwork following his retirement. She changed his role back to DIG, effective June 10, 2019 (the date of his retirement.)
Ms. Ouzts worked in consultation with DHS OGC and DHS OIG HR to make those changes. Ms. Ouzts took reasonable measures to ensure what she was doing was correct. She was motivated by the need to take corrective actions to resolve the perceived FVRA issue that occurred when Witness #1 changed his position description. She was informed of this conflict by DHS OGC after Witness #1 retirement.
Based on the information provided by DHS OGC, Ms. Ouzts believed the matter was properly resolved following these changes.
Investigative Conclusions
Unsubstantiated. The investigation did not find evidence that Ms. Ouzts worked with Ms. Costello to change Witness #1 paperwork with the intent to deceive, obstruct DHS OIG's lawful functioning, or create a paper trail supporting her prior ascension to DIG.

The allegations concerning Ms. Ouzts were unsubstantiated. Ms. Ouzts took reasonable measures to ensure what she was doing was correct as reflected in the SF-50s. While the actions taken [redacted] associated with Witness #1 SF-50s were to essentially remedy mistakes made, there appears to be no intent to deceive or create a paper trail associated with Ms. Costello's prior ascension to the role of DIG.[redacted] As reflected in Witness #1 email, dated November 5, 2018, and Ms. Costello's SF-50, Ms. Costello had already been appointed in November 2018 to the role of DIG at Witness #1 request.[422]

[redacted]

[422] Witness #1 email, dated November 5, 2018; Jennifer Costello SF-50, personnel action, dated November 11, 2018.

5. Allegations Against Diana Shaw

Allegations 1, 3, and 4 pertain to Ms. Shaw. The role of Ms. Shaw with respect to Allegation 1 is addressed here.

a. Allegation 1 (Shaw)

COO Costello abused her authority and engaged in conduct undermining the independence and integrity reasonably expected of her position by wrongfully holding herself out as the Acting IG in 2019, in violation of the Federal Vacancies Reform Act (FVRA), calling into question the authority for actions she took during that time.[423] Further, that she wrongfully took steps, with the assistance of then AIG Shaw, to attain and keep this position, which included actively working to force the retirement of then [redacted] Witness #1 her direct supervisor and the most senior DHS OIG official (following the retirement of [redacted] [redacted] in 2017). Finally, that while in the senior-most position in DHS OIG, she and AIG Shaw wrongfully resisted the arrival of then IG nominee Cuffari, by, among other actions, leading and executing an effort to thwart his confirmation by Congress and attempting to fill key leadership positions in DHS OIG designed to limit IG nominee Cuffari's future ability to hire Senior Executive Service employees. After his confirmation, COO Costello wrongfully resisted IG Cuffari's leadership by publicly disparaging IG Cuffari to DHS OIG staff and sought ways to undermine IG Cuffari's leadership by, among other actions, soliciting DHS OIG's Office of Investigations to conduct a baseless investigation of his travel and by soliciting OIG employees to complain about him to CIGIE.

i. Background

Witness #1 was the DIG at the time of [redacted] retirement on November 30, 2017, and served as Acting IG until June 10, 2019, when he retired. Prior to his retirement, Witness #1 sought to put a succession plan in place so that leadership would be established following his retirement and available to assist the new permanent IG during their eventual transition. He was advised, incorrectly, by his HR employees that as acting, he encumbered a new position. Following this advice, he believed the DIG position to be vacant. Witness #1 selected Jennifer Costello to fill the DIG position and elevated her from her prior role as COO on November 7, 2018. Additionally, as described earlier in this report, Witness #1 also attempted to make changes to the DHS OIG succession plan. While Witness #1 discussed his anticipated retirement since at least November 2018, his planned retirement date changed on multiple occasions.

During the time leading up to Witness #1 retirement, Ms. Shaw worked as AIG of Special Reviews and Evaluations and previously worked in various legal positions within DHS OIG since starting with the agency in July 2016. Ms. Shaw was employed with DHS OIG until she transferred to the DOS OIG in May 2020.

[423] GAO, FAQs on the Vacancies Act.

ii. Investigative Steps

The IC investigative team requested and reviewed emails from DHS OIG and interviewed fact witnesses. The investigative team also reviewed applicable DHS OIG personnel files.

iii. Documentary Evidence and Witness Statements

(A) Ms. Shaw's Role in Ms. Costello Serving as Acting IG and the Retirement of Witness #1

began serving as the Acting IG upon retirement in 2017. As described earlier in this report, Witness #1 told the IC investigative team that it was his intention for Ms. Costello to take over as Acting IG upon his own retirement, originally planned for April 4, 2019. He requested changes to the order of succession and relied on HR to make the necessary arrangements for Ms. Costello to be next in line upon his retirement. Witness #1 assumed that the necessary arrangements were made, and in November 2018, he elevated Ms. Costello to DIG. Witness #1 ultimately postponed his retirement on multiple occasions prior to retiring on June 10, 2019.

While serving in the capacity as Acting IG, Witness #1 pushed back his planned retirement date on multiple occasions. Witness #1 told the IC investigative team that eventually, he felt pressured to retire based on a situation associated with DHS OIG's Emergency Management Oversight Team (EMOT) audit reports. When allegations that the published EMOT reports did not meet the applicable standards arose, Witness #1 recused himself due to his prior involvement in the reports and requested the matter be properly investigated. DHS OIG conducted an internal review, which was led by Ms. Shaw and overseen by Ms. Costello, and found that several reports did not meet established auditing standards. These findings did not look favorable for Witness #1 Ultimately, the decision was made to take the reports down from the DHS OIG website and to publish the findings of the internal DHS OIG review. Witness #1 told the IC investigative team that he felt compelled to retire immediately to ensure the agency could move on; however, he felt the DHS OIG report was published for one reason, and that was to force him out of DHS OIG. He attributed the actions concerning the EMOT reports as being driven by Ms. Costello. Witness #1 stated, "I think Jennifer [Costello] was behind all of it. Um, I could be mistaken. I did not think that Diana Shaw was orchestrating all of this."[424]

Witness #30 a former DHS OIG employee involved in the EMOT report told the IC investigative team that there were a lot of discussions about whether the DHS OIG report regarding the EMOT reports should be publicly published. Witness #30 stated,

> *I can tell you none of the – none of the reasons for publishing or not publishing involved should* Witness #1 *you know, should this push* Witness #1 *out the door? That was not the purpose of those discussions, um you know, or the decision to publish. Um, what ultimately carried the day was that we felt … if we did this review of any other group, not DHS OIG, we – there's no question we would publish, so why would we act differently if it was about us?... so that was the primary reason for deciding to publish this report, and*

[424] Interview of Witness #1 dated August 19, 2021.

two, there was you know, thoughts of, okay, this information is out there, and if it gets more publicly known then people are gonna wonder why we didn't publish our report and does it look like we're trying to cover something up.[425]

In his interview with the IC investigative team, Witness #1 felt he was being pushed out of DHS OIG based on a situation surrounding a review of EMOT reports, in which audit reports were pulled back because they did not meet established auditing standards. While Witness #1 stated he did not appreciate the actions of several senior executives at the time, including Ms. Costello, he did not take any action to install someone other than Ms. Costello to accede to the role of Acting IG upon his retirement. Although Witness #1 characterized Ms. Costello's demeanor towards him immediately prior to his retirement as terse and unprofessional, Witness #1 did not initiate any discipline nor personnel action against her and wanted to ensure a smooth transition.[426]

When interviewed, Ms. Shaw was asked about the context of an email discussion, where she characterized an approach related to the EMOT report situation as the "nuclear option."[427] Ms. Shaw stated,

So, we had briefed the Hill in the fall, I think in October sometime. And then we had gotten a letter asking for documents. And in response to sending them the documents, we had written kind of a synopsis of our findings. It was first time we'd really kind of put in writing what we found, because we wanted there to be context for the documents. We sent that over, then we had to decide what we were going to do next. We had promised the workforce that we would brief them out on the findings. […] Then my recollection is that we, we had a FOIA request pending that asked basically, for our findings too. And so, we had to decide, like, how are we going to wrap this up? What is our final product gonna look like?

And I had explained to Jennifer [Costello] what I saw as potential options. And I felt like issuing a public report was going to be the one that had the biggest impact. It was the biggest risk because we couldn't control what would happen once it was out there. At the same time, I thought there was a lot of upside to that option, because it was an opportunity for us to gain credibility by being accountable, by being fully transparent. And what I liked about the public report option also was that if, if we did it in the way that we typically do an oversight report, we could provide our corrective action. So, it wasn't just laying a problem out. It was like, "Here's what we're going to do to fix it." But it was a big roll of the dice and I was grappling with it.

And then [redacted] *announced that [*Witness #1 *wasn't going to retire. And as I recall, this [email] was the first communication I got from Jennifer after he announced that he was kicking off his retirement. And I felt like this was a little bit of an emotional reaction. And so, I wanted to start asking some questions and maybe make sure, you know, that we were thinking with cool heads. So, my recollection was my first response was more sort*

[425] Interview of Witness #30 [redacted] dated March 21, 2022.
[426] Interview of Witness #1 dated August 19, 2021.
[427] Email thread between Jennifer Costello and Diana Shaw, dated April 30, 2019, RE: I think we need to do a public report/letter.

of in that vein, like, "Let's think about what we're proposing here. You realize that's the riskiest option. Let's think about it."

The team was very nervous about doing something public because I think it's natural to want to, like, hide your faults and not have your neck out. […] Um, but at the same time, to me it's sort of like publishing our, our peer review findings, right? When, when there's something like that, you, you own it and you put forward your corrective action.

So, anyway, we went multiple rounds with everybody. Jennifer [Costello] clearly wanted a public report. Um, and I felt like ultimately, the decision was down to me. And I had to go with the decision that I felt comfortable defending to the world. […] I felt that it was more important to our long-term credibility with our stakeholders to be honest and upfront about what we'd found, to own it, to lay out a plan of action that showed that we were committed to getting it right going forward. And it was -- to me it was gonna be yes, a bombshell. But the kind that sort of presses reset, because that's it, it's out there. And then you can rebuild from that. […] So, that's ultimately what, what I decided to do.[428]

Ms. Shaw stated that Ms. Costello lost confidence in Witness #1 leadership and believed he contributed to the problems with the EMOT reports. Ms. Shaw advised "she [Ms. Costello] was very disappointed in him. And that also, I think, played kind of in the aggregate a role in her crisis of confidence."[429]

(B) Ms. Shaw's Conduct Following IG Cuffari's Nomination, Including Hiring of Senior Executives

The IC investigation did not find evidence of Ms. Shaw resisting IG Cuffari's arrival or attempting to thwart his confirmation.

The decision to fill SES positions prior to IG Cuffari's arrival was not made by Ms. Shaw. Rather, as mentioned earlier in this report, on April 29, 2019, Witness #1 sent an email to all employees where he stated, "Jennifer [Costello] and I worked to fill vacant SES positions throughout the organization as quickly as possible."[430]

iv. Ms. Shaw's Response

The IC investigative team interviewed Ms. Shaw on May 16, 2022. Ms. Shaw was asked about various aspects of filling senior executive positions. She stated,

So, I do think they moved quickly. I will say, having now been in an acting position, I have been very -- I've been -- I don't even know what the right word is. I have not moved as quickly to fill some of the SES roles. And I can't say that that's better or worse. I will tell you that sitting with a bunch of vacancies when you are yourself also an acting is a really hard way to lead. And so, while I've personally made the decision to kind of go

[428] Interview of Diana Shaw, dated May 16, 2022.
[429] Interview of Diana Shaw, dated May 16, 2022.
[430] Witness #1 email, dated April 29, 2019, A Slight Delay in My Retirement.

slowly and try to reserve as many SES positions, especially the -- what I consider to be kind of like positions of intimacy, like a deputy IG or a general counsel or chief of staff, where people really like to have someone they know and trust in that role. I've been particularly, um, reluctant to fill those roles myself. But I will tell you that it is extremely, extremely challenging to try to lead without an advisory team. So, I don't know if one way is better than the other. But, um, but her take and maybe it's because she had more experience than I did was you can't -- you can't lead with all of these positions left vacant. It's too hard. So, she was definitely -- and [redacted] too. I mean, I think they wanted to create as much stability as they could. And so, getting a leadership team in place was, was critical to that.[431]

v. Investigative Conclusions

High-Level Summary of Evidence Leading to Investigative Conclusions (Allegation 1 - Shaw)

Allegation 1 (Shaw)
COO Costello abused her authority and engaged in conduct undermining the independence and integrity reasonably expected of her position by wrongfully holding herself out as the Acting IG in 2019, in violation of the Federal Vacancies Reform Act (FVRA), calling into question the authority for actions she took during that time. Further, that she wrongfully took steps, with the assistance of then AIG Shaw, to attain and keep this position, which included actively working to force the retirement of then [redacted] Witness #1 her direct supervisor and the most senior DHS OIG official (following the retirement of [redacted] [redacted] in 2017). Finally, that while in the senior-most position in DHS OIG, she and AIG Shaw wrongfully resisted the arrival of then IG nominee Cuffari, by, among other actions, leading and executing an effort to thwart his confirmation by Congress and attempting to fill key leadership positions in DHS OIG designed to limit IG nominee Cuffari's future ability to hire Senior Executive Service employees. After his confirmation, COO Costello wrongfully resisted IG Cuffari's leadership by publicly disparaging IG Cuffari to DHS OIG staff and sought ways to undermine IG Cuffari's leadership by, among other actions, soliciting DHS OIG's Office of Investigations to conduct a baseless investigation of his travel and by soliciting OIG employees to complain about him to CIGIE.
Summary of Evidence
Note: The following provides a non-exhaustive summary of certain evidence supporting the investigative conclusions. Full details, including additional evidence and source citations, are contained in the "iii. Documentary Evidence and Witness Statements" section for this allegation above.
(A) Ms. Shaw's Role in Ms. Costello Serving as Acting IG and the Retirement of Witness #1
• [redacted] intention was for Ms. Costello to take over as Acting IG.
• Witness #1 postponed his retirement several times. Witness #1 retired suddenly because of allegations that surfaced about the EMOT audit reports. The findings did not look favorable for Witness #1 and Witness #1 told the IC investigative team that he felt compelled to retire immediately to ensure the agency could move on.

[431] Interview of Diana Shaw, dated May 16, 2022.

• Ms. Costello and Ms. Shaw were concerned about the EMOT reports and believed publishing the DHS OIG report regarding the EMOT reports would be the most transparent and appropriate way for the agency to move forward.
• Witness #1 attributed the actions concerning the EMOT reports as being driven by Ms. Costello.
(B) Ms. Shaw's Conduct With Respect to IG Cuffari Prior to His Confirmation, Including Filling SES Positions
• The IC investigation did not find evidence of Ms. Shaw resisting IG Cuffari's arrival or attempting to thwart his confirmation.
• DHS OIG's efforts to fill vacant SES positions began in 2017, prior to then- retirement and prior to Ms. Costello's arrival. This was due in part to DHS OIG receiving provisional certification from OPM on its SES performance management system.
• Witness #1 delegated efforts to fill SES positions to Ms. Costello. Witness #1 acknowledged that Ms. Costello was pushing to fill the vacancies. Ms. Shaw did not play a role.
Investigative Conclusions
Unsubstantiated. (A) The investigation **did not substantiate** that Ms. Shaw assisted Ms. Costello in forcing out Witness #1 retired earlier than planned in an attempt to resolve the situation created by the flawed EMOT reports. However, Ms. Costello did benefit from his expedited retirement. (B) The investigation **did not substantiate** that Ms. Shaw wrongfully resisted the arrival of IG Cuffari by leading and executing an effort to thwart his confirmation by Congress and attempting to fill key leadership positions in DHS OIG.

Detailed Description of Investigative Conclusions

The allegations concerning Ms. Shaw within Allegation 1 were unsubstantiated. As referenced in other parts of this report, Ms. Costello's prior promotion to the DIG position occurred at the direction of Witness #1 in November 2018 and was separate and apart from Witness #1 retirement. Although Ms. Shaw was involved in discussions regarding the findings associated with the EMOT reports, no evidence was obtained indicating she was conducting herself in an improper manner. Additionally, allegations regarding Ms. Shaw leading and executing an effort to thwart IG nominee Cuffari's confirmation and attempting to fill key leadership positions in DHS OIG designed to limit IG nominee Cuffari's future ability to hire Senior Executive Service employees were unsubstantiated.

b. Allegation 3 (Shaw)

AIG Shaw abused her authority and engaged in conduct undermining the independence and integrity reasonably expected of her position when she allegedly took actions to undermine IG Cuffari's leadership. Specifically, she denied IG Cuffari an opportunity to make an informed decision regarding publication of the Tecate Report. In her email dated September 5, 2019, AIG Shaw notified IG Cuffari that DHS OIG planned to publish the report but failed to alert him to OSC's objections or concerns regarding publication of the report before OSC could complete its review.

i. Background

The Office of Special Counsel (OSC) received information from a whistleblower regarding alleged violations of immigration laws at the Tecate, California, Port of Entry (Tecate Port of Entry) by U.S. Customs and Border Protection (CBP) personnel. OSC subsequently referred the matter to DHS OIG for investigation. DHS OIG conducted an investigation and provided a final report (the Tecate report) to the Department (DHS) on July 9, 2019. Eventually, DHS OIG published the report on its website. The initial posting of the report on DHS OIG's website disclosed the identity of the whistleblower.

ii. Investigative Steps

The IC investigative team obtained emails, documents, and materials associated with Ms. Shaw, as well as others at DHS OIG, who were involved in the Tecate report. The investigative team also obtained information from OSC to understand what was discussed and the respective timeline associated with the situation. Subsequently, Ms. Shaw and others were interviewed regarding what occurred.

iii. Documentary Evidence and Witness Statements

In late June 2019, DHS OIG was drafting a report responding to an OSC referral alleging violations of immigration law by CBP personnel at the Tecate Port of Entry. [redacted]

[redacted]

According to Ms. Shaw, IG Cuffari did not reach out to her or have anyone reach out to her on his behalf prior to the report being published.[438] According to IG Cuffari, he reviewed the report and met with Ms. Shaw in his office. IG Cuffari believed no one else was present at this meeting.

[redacted]

[redacted]

[438] Interview of Diana Shaw, dated May 16, 2022.

[redacted]

When interviewed, IG Cuffari told the IC investigative team that Ms. Shaw could have contacted Witness #36 [redacted], and made an appointment with him to further discuss the situation and process. He stated it would have been relatively easy for her to schedule such an appointment.[440]

However, Witness #36 [redacted] told the IC investigative team that this was generally not the situation with Ms. Shaw and Ms. Ouzts. [redacted] stated that it was difficult for Ms. Shaw and Ms. Ouzts to get on IG Cuffari's calendar. Witness #36 [redacted] characterized IG Cuffari as being deflective of their attempts to meet with him.[441]

The report was posted on the DHS OIG website on, or around, September 26, 2019. The report was unredacted and contained the name of the whistleblower. It appears that there was a misunderstanding on the part of DHS OIG personnel regarding whether the whistleblower had consented to the release of their name. OSC learned both that the report had been posted to the DHS OIG website and the report contained the whistleblower's name when the whistleblower contacted OSC on October 15, 2019.

The IC investigative team interviewed a DHS OIG employee involved in the report, who explained that there were discussions about if, when, and how to post the report, and obligations by DHS OIG to post the report. According to the employee, the decision was made to publish the report, and either Ms. Shaw or Ms. Costello ran it by IG Cuffari, who did not object. The same DHS OIG employee explained that, prior to publishing the report, there was some confusion as to whether DHS OIG had permission to publish the whistleblower's name, stating,

> *Prior to publishing the report, um, the person [redacted] who primarily worked on the report had reached out to the complainant and asked if we could release [redacted] name. Um, the complainant agreed; however, the email [redacted] was not particularly clear. I think there was some room for ambiguity and so after we published the report the – the complainant got back in touch with us and was upset that we had included [redacted] name. So we pulled the report down, we redacted [redacted] name. We put the report back up. Um, I had spoke to the – the complainant. Um, [redacted] was totally okay with everything; was not upset with us, you know, just didn't want [redacted] name on there.*[442]

The belief that the whistleblower had consented to the disclosure of [redacted] identity appeared in a July 8, 2019, email from a DHS OIG employee involved in the report, stating, "I suggest that we

[439] Interview of IG Cuffari, dated August 30, 2022.
[440] Interview of IG Cuffari, dated August 30, 2022.
[441] Interview of Witness #36 [redacted] dated January 7, 2022.
[442] Interview of Witness #30 [redacted] dated March 21, 2022.

add to the sentence that we're disclosing [whistleblower's] identity (while no one else's) because [redacted] consented to the disclosure."

Furthermore, an email exchange between [redacted] and the whistleblower on October 28, 2019, memorialized a discussion between them in which [redacted] apologized for the miscommunication over the release of the whistleblower's name.[443] Additionally, it was the DHS OIG employee's understanding that OSC did not raise any concerns to DHS OIG regarding the publishing of the report until after the report was published to the DHS OIG website.[444]

The IC investigative team obtained information from OSC regarding the timeline of events and when they came to learn of the release of the whistleblower's identity in the DHS OIG report. The information provided by OSC reflected they were not aware of the issuance of DHS OIG's report and the release of the whistleblower's identity until after it occurred. Specifically, OSC learned of the posting of DHS OIG's report from the whistleblower on October 15, 2019. OSC then participated in a teleconference call with Ms. Shaw and Ms. Costello on October 24, 2019, regarding what occurred.[445]

While no standard process exists for an agency to release a report prior to the completion of the process set forth in 5 U.S.C. § 1213, this situation was different in that DHS OIG had not previously released a § 1213 report prior to the Secretary providing the report to OSC. However, OSC was not provided with any information to suggest the release of the whistleblower's identity was anything but an accidental oversight.[446]

[redacted]. After Ms. Shaw pushed back, OSC requested that DHS OIG provide OSC a heads up a day or two prior to the public release in order to allow OSC to notify the complainant that a report was coming out.[447]

In addition, during an interview with the IC investigative team, when asked about the initial posting of the Tecate report to the DHS OIG website, [redacted] stated that [redacted] was not aware of anything that would suggest the posting was anything other than a misunderstanding.[448]

iv. Ms. Shaw's Response

Ms. Shaw responded in writing to the IC in a letter dated May 28, 2021. Ms. Shaw's response stated,

> *At some point in 2018, OSC referred to DHS a complaint alleging that CBP officials at the Tecate port of entry were physically escorting asylum seekers who had crossed onto*

[443] [redacted] email, dated October 28, 2019.
[444] Interview of [redacted] dated March 21, 2022.
[445] Information provided by OSC, dated February 24, 2022, regarding file number DI-18-5034.
[446] Information provided by OSC, dated February 24, 2022, regarding file number DI-18-5034.
[447] Ms. Shaw email, dated October 24, 2019.
[448] Interview of [redacted] dated September 1, 2022.

U.S. soil back to Mexico and redirecting them to another port of entry in violation of immigration laws. The DHS Secretary referred the allegations to DHS OIG for review. DHS OIG's final report of findings was completed and sent to the DHS Secretary on July 9, 2019. The report was signed by then-Acting IG Jennifer Costello. Consistent with past DHS OIG practice, we planned to publish the report on DHS OIG's website following issuance of the Department's management response to the report.

By way of background, this practice was adopted under former [redacted] who instructed that final OIG products should be posted on DHS OIG's website immediately upon completion (i.e., following the official response by DHS management), including OSC referrals. At the time I was informed of this practice (in the 2016-2017 timeframe), I was an attorney advisor in the DHS OIG Office of Counsel. While I'd heard OSC had previously expressed frustration to [redacted] about [redacted] position – preferring that DHS OIG not publish such reports until OSC had completed its process – I was told that OIG's equities – including our obligation to our stakeholders to timely report our findings – outweighed OSC's concerns about its own statutory process, which sometimes took years to complete and, in any event, did not preclude OIG from publishing while OSC completed its work. Both former [redacted] and [redacted] would be able to corroborate this fact.

With respect to the Tecate report, we remained in contact with DHS during July and August 2019 to monitor the status of their management response. I believe in late August 2019, we learned that DHS expected to complete their management response within a few weeks, which triggered our publication timeline. In early September (I believe based on your letter that it was likely September 5, 2019), I emailed a copy of the final report to our new IG, Mr. Cuffari, for his situational awareness, explained the process we intended to follow with respect to publishing the report, and offered to brief him if he were interested on our OSC referral process. IG Cuffari acknowledged receipt of the report but did not take me up on the offer to explain our process for handling OSC referrals. We received confirmation of DHS's completed management response in late September and, as I had previously disclosed to IG Cuffari, published the report thereafter. I believe IG Cuffari received contemporaneous notice when the report was published (the IG is on the distribution list for all published reports).

Sometime in October 2019, I was informed by one of my employees that OSC had contacted our office to relay concerns raised by the complainant who had lodged the initial complaint that prompted our review. Apparently the complainant had not consented to release of [redacted] name to the public. I immediately looked into the situation and determined that the complainant had consented to release of [redacted] name to DHS and OSC, but arguably had not explicitly consent to release of [redacted] name to the public. I learned that there was a misunderstanding on the DHS OIG review team as to the extent of the complainant's consent to release of [redacted] name, primarily due to the fact that the individual who had communicated with the complainant about [redacted] consent had left the agency and those remaining knew that [redacted] had given consent but did not realize the consent was limited.

I believe that within one day of learning of the issue, we had pulled the report from our website. I also instructed the [redacted] to contact the complainant to explain the situation and express our apologies for the misunderstanding. I was later informed that the [redacted] had a good conversation with the complainant who understood how the error occurred and appreciated our prompt attention to the situation. I believe following this discussion (or around this same time) we reposted the report on our website with the complainant's name and identifying information redacted.

Around this same time, we also received a request from someone at OSC for a call to discuss the report. On that call, the OSC representative indicated that OSC's preference would be that DHS OIG not publish any reports of reviews relating to OSC referrals until OSC had completed its end of its statutory process under 5 U.S.C. § 1213. I explained what I understood to be DHS OIG's practice with respect to publication of such reports and the basis for that practice in the Inspector General Act. The OSC representative said [redacted] understood our position but asked that we provide OSC with some amount of advance notice (I think 24 or 48 hours) prior to publication, which we agreed to do.

I believed the matter to be resolved until I learned in November sometime while I was out on leave that IG Cuffari had ordered the report taken off our website, purportedly due to the issue with release of the complainant's name. I believe he was informed that the issue with the complainant's name had been addressed a month prior; nevertheless, he ordered the report removed from the website, which it was.

When I returned from leave, I contacted IG Cuffari to learn why the report had been removed and to inquire when it would be reposted. Receiving no response, I sent IG Cuffari a series of follow-up emails over many weeks asking for the opportunity to speak with him about the report. I never received a response or explanation from IG Cuffari.

[redacted]

On May 16, 2022, the IC investigative team interviewed Ms. Shaw regarding this allegation. Ms. Shaw did not remember objections from OSC before DHS OIG posted the report. She recalled

[449] Letter from Diana Shaw to the Integrity Committee Working Group, "Integrity Committee Case 20-059: Request for Response" (May 28, 2021).

the philosophy under [redacted] was DHS OIG had a reporting requirement to keep Congress and the Department informed. She stated,

> *And so, particularly, in a situation where we have evidence that laws are being violated, we need to go forward with our publication. So, um, so I want to be really honest, I knew that this was out there, but it was my understanding that at DHS OIG, at least under [redacted] -- and I know this is true, because other OIGs have taken the same position -- that we would go ahead when it was final and publish, and then OSC could run the rest of its process.*[450]

Ms. Shaw added,

> *I mean, to have a report go out when we have a new IG here and he's never even looked at it seemed weird to me. […] I wanted to make sure he saw it well in advance of the publication date and that he knew when it was going to be published and I offered to brief him. As I said before, he kept me and others very much at arm's length. So, most of the time, he wouldn't engage with me directly. And he just insisted that either I speak to Andrew [De Mello] or* Witness #2 *who became [redacted] or things like that. But even on this one, I mean, he never reached out or asked anyone to, to meet with me. So, it got published. And then like two months later, he ordered that it be taken down. And the only explanation he gave was that the complainant's name had been released and they hadn't given consent. But we were aware of that issue and had resolved it months before. So, you know, I, I made that clear and asked, you know, what -- so with that fixed, why aren't we putting the report back up? And he just refused to even respond to me. So, I just kept every couple of weeks sending a follow on, 'Hey, I'd like to just talk about this report.'* [redacted]

Ms. Shaw further stated,

> *When I read the allegation that I hadn't apprised him of this, for a second I was like, there's no way I didn't send him this report. And then I thought about it. I'm like, no, I absolutely did. Because I remember specifically sending it to him in advance, so that we weren't having a report get published without his knowledge.*[452]

With respect to the allegation concerning efforts to undermine IG Cuffari's leadership, Ms. Shaw stated,

> *From my perspective, I don't think I did anything improper. I tried always to remember that my job is to serve the agency and the taxpayer and I believe that you get in line*

[450] Interview of Diana Shaw, dated May 16, 2022.
[451] Interview of Diana Shaw, dated May 16, 2022.
[452] Interview of Diana Shaw, dated May 16, 2022.

behind leadership. Like leaders will take different policy positions. They'll have a different vision and it's your job as an executive to either get behind that vision or decide you want to go someplace else and I decided pretty quickly that I needed to go someplace else, but I never actively tried to undermine him as a leader or sabotage him, which I think is the impression that he had of me, but at the same time I was very concerned about some of the things that I saw happening, particularly sitting on findings. Wanting to take out references that were factual and supported and material to our findings because it cast the department or sometimes the White House in a negative light. My hackles were way up on that stuff and I -- I was very concerned about an independence impairment and so to the extent he -- he sensed that from me, that was definitely there. But I did not try to undermine him as a person, as a leader. I just was trying to be a civil servant, an executive, that understood that my obligation is to the broader community and our values and not to a single person, and especially when that person isn't leading in a way that's consistent with our values. So that was my perception.[453]

v. Investigative Conclusions

High-Level Summary of Evidence Leading to Investigative Conclusions (Allegation 3 - Shaw)

Allegation 3 (Shaw)
AIG Shaw abused her authority and engaged in conduct undermining the independence and integrity reasonably expected of her position when she allegedly took actions to undermine IG Cuffari's leadership. Specifically, she denied IG Cuffari an opportunity to make an informed decision regarding publication of the Tecate report. In her email dated September 5, 2019, AIG Shaw notified IG Cuffari that DHS OIG planned to publish the report but failed to alert him to OSC's objections or concerns regarding publication of the report before OSC could complete its review.
Summary of Evidence
Note: The following provides a non-exhaustive summary of certain evidence supporting the investigative conclusions. Full details, including additional evidence and source citations, are contained in the "iii. Documentary Evidence and Witness Statements" section for this allegation above.
• In late June 2019, Ms. Shaw received the draft Tecate report for review and took part in an email chain discussing questions of how to package and when to send and post the report. Topics covered included how past OSC referrals were handled at DHS OIG as well as responses from others in the IG community as to how they have handled OSC reports.
• On September 5, 2019, Ms. Shaw notified IG Cuffari via email of the upcoming release of the final report and offered to brief IG Cuffari on the report and the OSC process. IG Cuffari acknowledged receipt and said he would review the report.
• Ms. Shaw's email described the plan and timeline for publishing the Tecate report on the DHS OIG website. It did not describe in depth that OSC would not be reviewing the report before DHS OIG's publication of it.
• Ms. Shaw was aware that, during [redacted] time, OSC had expressed concerns with DHS OIG's practice of posting reports to their website prior to OSC review. However, she understood that DHS

[453] Interview of Diana Shaw, dated May 16, 2022.

OIG did not have to wait for OSC. DHS OIG's process was aimed at timely reporting their findings to stakeholders.
• Ms. Shaw advised that she did not proactively set up a meeting to inform IG Cuffari of the report process or her knowledge of previous concerns from OSC regarding the timing of report publication. However, IG Cuffari's [redacted] said it was difficult for Ms. Shaw to get on his calendar.
• Following the report being published to the DHS OIG website, Ms. Shaw and OSC conducted a call whereby it was decided that going forward DHS OIG notify OSC at least one business day prior to posting a report on the website.
• Multiple interviewees, including [redacted] OSC, and DHS OIG staff, did not think the initial posting of the report to the DHS OIG website (including the release of the whistleblower's name) was anything other than an accidental oversight or misunderstanding.
Investigative Conclusions
Unsubstantiated. Ms. Shaw was aware that OSC had previously expressed frustration with DHS OIG's practice of publishing reports prior to OSC's review. Although Ms. Shaw did not proactively share this with IG Cuffari, she did make an attempt to inform him of the publication and offered an opportunity to explain the process to him, which he did not pursue. There was no evidence that the missteps regarding publishing the Tecate report with the whistleblower's name was anything other than an accidental oversight or misunderstanding.

Detailed Description of Investigative Conclusion

This allegation regarding Ms. Shaw was unsubstantiated. While Ms. Shaw did offer to discuss the OSC process, she did not notify IG Cuffari of previous frustration expressed by OSC regarding DHS OIG's past practices surrounding the handling of OSC reports under the former IG. Additionally, DHS OIG had not previously released a §1213 report prior to the Secretary providing the report to OSC.

Overall, evidence did not substantiate Ms. Shaw intentionally denied IG Cuffari an opportunity to make an informed decision regarding the publication of the Tecate report. Rather, Ms. Shaw appeared to make an effort to inform IG Cuffari of the process DHS OIG had previously followed. At the time the report was released, OSC was unaware of DHS OIG's intention to publish the report and had not received a copy of the report from the DHS Secretary, and therefore had not objected to the publishing of the report. Furthermore, OSC became aware of the publishing reports and discussed their concerns with DHS OIG, the situation was resolved by OSC requesting that DHS OIG provide OSC a heads up a day or two prior to the public release in order to allow OSC to notify the complainant that a report is coming out. Finally, the posting of the report with the whistleblower's name appeared to be due to a miscommunication and was not intentional. DHS OIG mistakenly believed that the whistleblower had consented to the release of their name.

c. Allegation 4 (Shaw)

Former AIG Shaw abused her authority and engaged in substantial misconduct undermining her integrity when she deleted approximately 6,000 files from her government- issued laptop. AIG Shaw deleted these files after DHS OIG awarded a contract to WilmerHale to conduct an independent investigation into several DHS OIG personnel, including AIG Shaw. Additionally, AIG Shaw engaged a commercial Information Technology consultant to assist her in deleting these files, thereby permitting a private citizen to view and/or alter data on her government-issued laptop without authority from DHS OIG.

i. Background

Ms. Shaw worked at DHS OIG from February 2017 until she transferred to DOS OIG, on May 20, 2020. Her last day in DHS OIG's office was on or around May 8, 2020. On May 1, 2020, Ms. Shaw received an email regarding the off-boarding process from [redacted], DHS OIG.[454] On May 4, 2020, DHS OIG awarded a contract to WilmerHale to conduct an investigation into allegations of misconduct focused on three DHS OIG senior executives, including Ms. Shaw.

On March 23, 2021, the above allegation was sent to the IC. The allegation referenced the WilmerHale report section entitled "Deleted Materials:" which reads as follows:

> *WilmerHale learned that prior to her departure Ms. Shaw deleted approximately 6,000 files from her laptop. DHS OIG was able to restore approximately 3,500 of these files for review. WilmerHale performed an analysis of the metadata for these files to identify only files that were reviewable and could potentially be business related. This yielded a document population of approximately 2,100 files, all of which were reviewed.*[455]

The allegation also included the following information about a potential witness to Ms. Shaw's alleged conduct as follows:

> *Moreover, earlier today* [redacted] Witness #37 [redacted] *a former colleague of Ms. Shaw at DHS OIG, informed me that Ms. Shaw accomplished the deletion of files by engaging a commercial IT consultant to "wipe" the DHS OIG laptop. If* Witness #37 [redacted] *is correct, Ms. Shaw aided and abetted unlawful access to a government device. Ms. Shaw had no authority to permit a private citizen to view and/or alter the data on her DHS OIG laptop, and indeed, there is no legitimate reason for a Federal employee to surreptitiously engage a private citizen to sanitize a government-issued device.*

On July 8, 2021, after the IC investigative team began its work on this allegation, the alleger contacted the IC and sought to withdraw their allegation. In an abundance of caution, the IC investigative team proceeded with its review.

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[454] [redacted] email thread, dated May 1, 2020, regarding Off-Boarding Process.
[455] WilmerHale Report, dated December 14, 2020.

ii. Investigative Steps

The IC investigative team requested records associated with the alleged deletion of some 6,000 files by Ms. Shaw from DHS OIG, including a forensic copy of the DHS OIG laptop.[456] DHS OIG only produced the restored records and the IC investigative team reviewed them. The IC investigative team also conducted relevant interviews.

iii. Documentary Evidence and Witness Statements

The previously restored files provided by DHS OIG were grouped into two folders marked by DHS OIG, one named "Shaw_Deleted – 01252020" and another named "Shaw Deleted – 04172020."

Based on the names of the folders, it appears there were two groups of previously deleted files, one featuring a deletion date of January 25, 2020 and another group dated April 17, 2020:

- The "Shaw_Deleted – 01252020" folder featured first-level subfolders titled AIG for SRE, AIGLA, Legislative Affairs, Office of Counsel, OIG Jobs, Performance, Personal, and Scan Inbox.
- The "Shaw_Deleted – 04172020" folder featured first-level subfolders titled 2017 Photos, AIGLA, Legislative Affairs, Office of Counsel, OIG Jobs, Performance, and Scan Inbox. The various subfolders contained numerous work-related documents and drafts.

Some of the previously deleted files were personal materials, including financial information and personal photographs. The IC investigative team did not identify any previously deleted files that could have been considered evidence that Ms. Shaw was trying to hide information from the WilmerHale investigation.

Given that the materials provided by DHS OIG were already restored and not a forensic copy of the hard drive as requested, the IC investigative team was not able to otherwise verify or independently validate details associated with the file deletion and subsequent restoration, including the total number of deleted files contained on the device. Essentially, there could be additional documents that had been deleted, or were overwritten, that were not restored; however, it could not be confirmed that some 6,000 files were deleted based on the materials provided.

On July 8, 2021, the IC investigative team interviewed Witness #37 [redacted], formerly with DHS OIG, about this allegation, and specifically, what if anything [redacted] knew about the allegation that Ms. Shaw had hired a commercial IT consultant to delete files on her laptop computer. Witness #37 had been identified in the allegation as someone with direct knowledge of the matter.

Witness #37 could not point to any first-hand knowledge or evidence related to the allegation in [redacted] interview with the IC investigative team. Witness #37 stated,

[456] DOT OIG document request, dated June 16, 2021; DOT OIG document request, dated July 27, 2021

> *I first became aware of the fact that Diana [Shaw] deleted files from her laptop and -- it could have been when I was [redacted] And the -- [redacted], we received a FOIA request for her file. When we did a search, we were told that the search would be incomplete. That is when I -- either somebody told me, I don't know if I have that -- I have that in writing in my e-mails. But someone told me that before she turned in her laptop -- and when I say someone, what I can't remember if it was INV, or someone within Office of Counsel...*[457]

Witness #37 added that [redacted] was informed by someone within INV or the Office of Counsel, "[t]hat whatever we retrieved would not be a complete pull because she [Ms. Shaw] had deleted -- she had sent -- the term that I think was used to me was she had wiped her laptop."[458] When Witness #37 was asked if [redacted] was aware of Ms. Shaw hiring an outside consultant to wipe or delete files, [redacted] stated, "I feel like I definitely heard that. But I don't have that knowledge individually right now."[459]

Later that day, on July 8, 2021, the alleger reached out to the IC and asked to withdraw their allegation and request for investigation by the IC. Despite this request, the IC proceeded with its investigation, in an abundance of caution.

Given that the alleger withdrew their allegation on the same day as Witness #37 interview with the IC investigative team, the investigative team sought a follow-up interview with Witness #37 to see if [redacted] had shared information about her interview with anyone. During that interview, conducted on July 19, 2021, Witness #37 advised the investigative team that after being contacted by agents, [redacted] spoke with Witness #10 [redacted], and told [redacted] [redacted] had been contacted by the IC's investigators but did not discuss the substance of the interview with Witness #10 [redacted] also stated that [redacted] did not speak with the alleger about being contacted.[460]

No information was identified supporting the allegation that Ms. Shaw engaged a commercial IT consultant to assist her in deleting files.

On September 28, 2021, the IC investigative team interviewed Witness #38 [redacted], DHS OIG, regarding Ms. Shaw's deletion and/or transferring of files prior to her departure from DHS OIG. Witness #38 stated,

> *Diana [Shaw] worked with her predecessor to identify all of her records that she was transferring over. I, I, I specifically remember that. So, she worked with, um, with me, and she worked with the -- her predecessor, the supervisor at that time. She identified all the locations where her records were stored and one the H -- on the -- on the -- on the shared drives.*[461]

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[457] Interview of Witness #37 dated July 8, 2021.
[458] Interview of Witness #37 dated July 8, 2021.
[459] Interview of Witness #37 dated July 8, 2021.
[460] Interview of Witness #37 dated July 19, 2021.
[461] Interview of Witness #38 dated September 28, 2021.

Witness #38 added, "I know that she [Ms. Shaw] was working, um, with specific people, with the IT people, um, to, uh, make sure that her records were transferred or would be accessible, you know, to her predecessor [sic]."[462]

iv. Ms. Shaw's Response

On May 16, 2022, the IC investigative team interviewed Ms. Shaw regarding this allegation. Ms. Shaw stated she was not provided with instructions or guidance regarding preservation of records prior to her departure outside of her normal [annual] refresher course on records retention. Ms. Shaw departed DHS OIG around two months into the COVID-19 pandemic.

Ms. Shaw recalled giving her paper files to Witness #33 because was the . Ms. Shaw said she also provided files from her time as the head of Congressional Affairs to Witness #27 who was . Materials related to her work as counsel were provided to Ms. Ouzts. She also recalled copying everything off the local drive on her computer into folders on shared drives. Ms. Shaw added that she made sure the folders had limited access because the counsel materials were sensitive, so she ensured only those who should have access were able to access the materials. After transferring the files, Ms. Shaw deleted them off of her local drive. Ms. Shaw stated that she did not engage a commercial IT consultant to assist in deleting files. She added that, as far as she knew, she did not delete anything unless there was a copy. On her last day, she heard from Witness #38 who was the , but by that time she had already completed her organizing. She informed Witness #38 of what she had done and who had the paper files.[463]

v. Investigative Conclusions

High-Level Summary of Evidence Leading to Investigative Conclusions (Allegation 4 - Shaw)

Allegation 4 (Shaw)
Former AIG Shaw abused her authority and engaged in substantial misconduct undermining her integrity when she deleted approximately 6,000 files from her government- issued laptop. AIG Shaw deleted these files after DHS OIG awarded a contract to WilmerHale to conduct an independent investigation into several DHS OIG personnel, including AIG Shaw. Additionally, AIG Shaw engaged a commercial Information Technology consultant to assist her in deleting these files, thereby permitting a private citizen to view and/or alter data on her government-issued laptop without authority from DHS OIG.
Summary of Evidence
Note: The following provides a non-exhaustive summary of certain evidence supporting the investigative conclusions. Full details, including additional evidence and source citations, are contained in the "iii. Documentary Evidence and Witness Statements" section for this allegation above.

[462] Interview of Witness #38 dated September 28, 2021.
[463] Interview of Diana Shaw, dated May 16, 2022.

• DHS OIG provided the IC investigative team with recovered deleted files from Ms. Shaw. These files were delivered in two batches that were dated had deletion dates of January 25, 2020, and April 17, 2020. The IC investigative team did not identify any previously deleted files that could have been considered evidence that Ms. Shaw was trying to hide from the WilmerHale investigation.
• On May 4, 2020, DHS OIG awarded its contract to WilmerHale. Ms. Shaw's last day in the office at DHS OIG was around May 8, 2020.
• According to the DHS OIG Records Manager and to Ms. Shaw, Ms. Shaw worked with IT to identify records that needed to be transferred prior to her departure from DHS OIG.
• Ms. Shaw took steps to transfer all relevant work files to relevant parties at DHS OIG prior to her departure.
• No information was identified supporting the allegation that Ms. Shaw engaged a commercial IT consultant to assist her in deleting files.
• The person identified as having first-hand knowledge related to this allegation did not have any knowledge supporting it when interviewed by the IC investigative team.
• The alleger requested to withdraw the allegation after the IC investigative team began its inquiries.
Investigative Conclusions
Unsubstantiated. The IC investigative team did not identify anyone with first-hand knowledge of this allegation or any other evidence supporting the allegation.

Detailed Description of Investigative Conclusion

The allegations concerning Ms. Shaw's file deletion, and the hiring of a commercial IT contractor to assist her in deleting files, were unsubstantiated. The IC investigative team's interviews, including of the source identified by the alleger in the allegation, did not identify anyone with first-hand knowledge or any evidence supporting the allegation. The IC investigative team also did not identify any deleted files that could be considered evidence that Ms. Shaw was trying to hide information from WilmerHale. Additionally, the IC investigative team did not identify any evidence that Ms. Shaw engaged a commercial IT consultant to assist her in deleting files.

6. Allegations Against Andrew De Mello

Allegation 7, and its subparts, relate to Mr. De Mello, as follows.

c. <u>Allegation 7 (De Mello)</u>
SC De Mello abused his authority and engaged in conduct that undermined the independence and integrity reasonably expected of his position by engaging in a scheme to violate Federal records laws and the Freedom of Information Act by instructing employees at DHS OIG to avoid documenting any work with him on official government information systems and demanding employees destroy records of their meetings with him. SC De Mello also created conditions for substantial misconduct and gross mismanagement by:

a) Asking DHS OIG employees to work on projects or provide information and then telling those employees not to discuss their work with their managers or supervisors;
b) Advising the agency head to make policy changes for the express purpose of targeting a single employee;
c) Encouraging DHS OIG employees to file complaints against senior management with the intent to target two specific senior executives;
d) Demanding a DHS OIG employee sign a non-disclosure agreement but then refusing to provide that employee with a copy; and
e) Attempting to surreptitiously monitor protected employee communications with Congress and the Office of Special Counsel.

i. Background

From September 19, 2019, until on or about June 30, 2020, Mr. De Mello was detailed to DHS OIG as a special counsel (SC) from DOJ's Tax Division, where he worked as an attorney.[464] The SC detail was created by IG Cuffari to provide additional legal expertise.

ii. Investigative Steps

During the course of the investigation, the IC investigative team reviewed records and conducted interviews regarding Mr. De Mello's actions while he was detailed to DHS OIG as SC. Additionally, during the course of the investigation, Mr. De Mello's laptop computer, used during his detail to DHS OIG, became an item of interest, because the investigative team learned that the computer may contain evidence related to the allegations that was not saved to other systems of record at DHS OIG. This included documentation related to his entire time at DHS OIG, such as matters related to the WilmerHale contract. DHS OIG did not produce Mr. De Mello's computer in response to the investigative team's request on January 12, 2023, and was ultimately unable to account for what happened to the computer.[465]

[464] Memorandum of Understanding, dated September 19, 2019; Interview of Andrew De Mello, dated June 22, 2022, part 1.
[465] Memorandum of Activity, Record of Conversation, [redacted] dated February 17, 2022 and March 4, 2022;

iii. Documentary Evidence and Witness Statements

[redacted]

[redacted]

[redacted]

filing cabinet where Mr. De Mello's laptop was stored, along with items employees placed on administrative leave were also stored (even though Mr. De Mello was never placed on administrative leave). While there were several laptops located in the cabinet, none belonged to Mr. De Mello. However, all the other items that Mr. De Mello returned and that were identified in an email from Witness #28 dated July 2, 2020 (including two iPhones, a PIV card, a building access card, and three physical keys) were present.[472]

WitnessWitness #9 stated that Mr. De Mello's laptop was preserved by DHS OIG at the request of Witness #2 WitnessWitness #9 advised DHS OIG Office of Management that the laptop needed to be preserved in the event it was needed by DHS OIG or the IC.[473] Witness #28 also told the IC investigative team that a request had been made to preserve Mr. De Mello's laptop. stated that the request more than likely came from Witness #2 Witness #28 advised that Mr. De Mello's laptop, along with other equipment, was returned to her on approximately July 2, 2020, so that the equipment would not be returned back for re-distribution. Witness #28 stated that the equipment was given to who was the prior to Witness #23 [474] This information was corroborated in an email from Witness #28 to Witness #39 and Witness #8 on July 2, 2020, which stated,

> *Yesterday, Andrew [De Mello] returned the following to me: Laptop 2 iPhones DataWatch card Desk/Office keys [...] – we will retain Andrew's laptop and iPhones in a secure location, as it may need to be accessed by members of the external investigation team. – I can provide you with the equipment when you return to the office next week.*[475]

During the interview of IG Cuffari on August 30, 2022, IG Cuffari stated that he did not know what happened to Mr. De Mello's laptop after Mr. De Mello's departure from DHS OIG.[476] When interviewed, Witness #2 also stated that did not know what happened to Mr. De Mello's laptop upon Mr. De Mello's departure. Witness #2 stated it was odd that Mr. De Mello's laptop was unaccounted for. Witness #2 could not recall if provided instructions to anyone regarding Mr. De Mello's laptop.[477]

On January 12, 2023, the IC investigative team sent a letter to the at DHS OIG and point of contact for the IC investigative team, requesting DHS OIG identify the current physical location of Mr. De Mello's laptop computer, or its respective hard drive, by January 20, 2023, along with chain of custody documentation. The IC investigative team was still interested in conducting a forensic review of the hard drive to determine if it contained responsive documents to prior document requests sent to DHS OIG, consistent with witness testimony.[478]

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[472] Interviews of Witness #23 dated March 15, 2022 and April 11, 2022.
[473] Interview of WitnessWitness #9 dated May 18, 2022.
[474] Interview of Witness #28 dated January 12, 2023.
[475] Witness #28 email, dated July 2, 2020.
[476] Interview of IG Cuffari, dated August 30, 2022.
[477] Interview of Witness #2 dated September 1, 2022.
[478] Letter to dated January 12, 2023.

On February 3, 2023, [redacted] sent a letter to the IC investigative team that did not include the requested information. Instead, he directed the team to [redacted][479]

On February 10, 2023, [redacted] ([redacted] told the investigative team that he recalled the situation regarding Mr. De Mello's laptop. He stated that he created a chain of custody document for the computer and passed the computer to an individual he described as a DHS OIG criminal investigator, whose name he could not recall.[480]

On February 15, 2023, [redacted] followed up to the investigative team's inquiry, and stated via text message,

> *I believe we are at a dead end regarding this matter. I have no information or more to say. If the former President can keep classified documents in his home…. losing a computer ([redacted], not my fault) is no longer a concern of mine. Having worked at DHS OIG, I can only imagine who is being thrown under the bus. But it is not me. Look inside the Agency.*[481]

On March 6, 2023, the IC investigative team again asked [redacted] about Mr. De Mello's computer. [redacted] stated that [redacted] could not recall if [redacted] was involved in the preservation of Mr. De Mello's materials upon his departure; however, [redacted] stated that [redacted] had taken some responsibility for Mr. De Mello's out processing. Mr. De Mello's out processing was not normal, as the head of security ([redacted] put Mr. De Mello's laptop aside. Further, [redacted] suggested that [redacted] or the U.S. Department of Treasury OIG—who had previously investigated a separate IC matter involving Mr. De Mello—might have information regarding the whereabouts of Mr. De Mello's DHS OIG laptop.[482] Subsequently, the IC investigative team reached out to the U.S. Department of Treasury OIG and was informed that they never requested, nor received, Mr. De Mello's DHS OIG laptop computer.[483]

To date, the DHS OIG laptop computer previously assigned to Mr. De Mello has not been produced, nor has any associated chain of custody document. Accordingly, the investigative team was not able to evaluate what materials Mr. De Mello saved off-network in violation of Federal record retention policies.

Policy Changes

In the Fall of 2019, IG Cuffari changed DHS OIG's telework policy, which specifically had an impact on one employee, [redacted]. While the policy applied to everyone, [redacted] had requested to telework in a manner that was characterized as long distance telework.

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[479] Letter from [redacted] to the IC investigative team, dated February 3, 2023.
[480] Memorandum of Activity, Record of Conversation, [redacted] dated February 10, 2023.
[481] Memorandum of Activity, text message from [redacted] dated February 15, 2023.
[482] Interview of [redacted] dated March 6, 2023.
[483] Memorandum of Activity, Record of Conversation, Treasury OIG Special Agent, dated March 9, 2023.

On October 15, 2019, Witness #30 supervisor, Diana Shaw, sent an email to IG Cuffari to follow up with IG Cuffari, stating, "I wanted to follow up with you regarding Witness #30 As we discussed last week, the proposed arrangement would merely require a modification to telework agreement, permitting to telework to the full extent allowable (i.e., reporting to HQ twice per pay period), like many other OIG employees currently do"[484] IG Cuffari responded, requesting that Ms. Shaw schedule to meet with him that afternoon. That evening, Ms. Shaw sent an email to Mr. De Mello and IG Cuffari in the same email string, providing DHS OIG's telework directive and handbook, as requested, along with citations to regulations regarding locality pay.[485]

In a memorandum dated, October 17, 2019, to Ms. Shaw, IG Cuffari requested information on the telework request.[486] On October 21, 2019, Ms. Costello emailed IG Cuffari with an attached memo from Ms. Shaw containing additional information regarding Witness #30 telework. In the email, Ms. Costello stated,

> *Joe, Attached is Diana's response to your October 17, 2019, memo related to telework request… To reiterate, is simply making a request to modify existing telework agreement and Diana raised the issue for your visibility. Per the attached DHS OIG telework directive, Diana is manager and she is responsible for approving or disapproving proposed telework arrangement… With regard to the policy itself, let me know if you want to move it up on the priority list for discussion at the EPRP. I should point out that telework is one of the few areas where we receive consistently high scores on the [Federal Employee Viewpoint Survey].*[487]

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[484] Diana Shaw email, dated October 15, 2019.
[485] Diana Shaw email, dated October 15, 2019.
[486] Memo for Diana Shaw from IG Cuffari, with a subject of Telework Policy Matter, dated October 17, 2019.
[487] Jennifer Costello email, dated October 21, 2019.
[488] Andrew De Mello email, dated October 22, 2019.

[redacted]

On November 7, 2019, IG Cuffari sent an email to Ms. Shaw, Witness #30 Ms. Costello, Ms. Ouzts and Witness #28 advising of the denial of Witness #30 request to telework and updated Grievance Handbook. IG Cuffari stated, "I have also made a minor change to the Grievance Handbook that now excludes telework matters/decisions from the grievance procedure."[490] This email contained two attachments, a memo from IG Cuffari dated November 6, 2019, and the updated Grievance Handbook. The memo from IG Cuffari to Ms. Shaw, dated November 6, 2019, subject "Telework Policy Matter Regarding Witness #30 presented IG Cuffari's decision to deny Witness #30 telework request. The conclusion stated, in part, "This decision is final and will not be reconsidered. Earlier today, I modified the grievance policy to prevent any possible means by which this decision could be circumvented."[491] The second attachment to the email contained the DHS OIG Grievance Handbook. On page three, in section III(A)(2), Matters that are not grievable, IG Cuffari added, in handwriting, item q, "Telework request/telework matters."[492]

[redacted]

[489] Andrew De Mello email, dated November 5, 2019.
[490] IG Cuffari email, dated November 7, 2019.
[491] Memo from IG Cuffari to Diana Shaw, dated November 6, 2019.
[492] DHS OIG Grievance Handbook, dated April 2007.
[493] Karen Ouzts email, dated November 7, 2019.
[494] Interview of Karen Ouzts, dated January 28, 2022.
[495] Interview of Andrew De Mello, dated June 22, 2022.
[496] Interview of Andrew De Mello, dated June 22, 2022.

[redacted]. Although there were differing opinions, IG Cuffari initially permitted Witness #30 to telework for approximately 120 days, so [redacted] could find a new job. This situation occurred prior to the COVID-19 pandemic; however, when the pandemic started in March 2020, IG Cuffari informed Witness #30 that [redacted] could stay indefinitely in [redacted] as long as DHS OIG was in a remote work posture agency-wide. Witness #30 stayed with DHS OIG, teleworking from [redacted] until sometime in [redacted] when [redacted] found another job.[497]

When discussing the environment at DHS OIG, a former DHS OIG employee described the situation with Witness #30 This former employee stated that Ms. Shaw had approved Witness #30 [redacted] telework arrangement, and added,

> *And then the IG – and Andrew De Mello kind of put a kibosh on it… So, once COVID hit, everything was stalled. Um, and [redacted] ends up [redacted] … [redacted] was, you know, [redacted] was you know, [redacted] – [redacted] certainly had [redacted] right to be 'pissy' about things, but [redacted] um, was my most productive [redacted]. And, um, in December, [redacted] told me [redacted] was leaving, December of [redacted] So, this has been now, like, [redacted] years since the whole brouhahah roughly, right?*[498]

Following Witness #30 [redacted] notification of [redacted] departure, the former DHS OIG employee and Witness #5 [redacted] conducted a video call. During this call, Witness #5 [redacted] described Witness #30 [redacted] departure as "great news." When the former DHS OIG employee replied to Witness #5 that Witness #30 [redacted] was the most productive investigator, Witness #5 [redacted] responded, "Well, you know [redacted] had to go."[499] The former DHS OIG employee stated they discussed this during their exit from DHS OIG: "I'm like, 'You know, it's been [redacted] years.' Like, that – screaming about being personal. I mean, you had no idea of what [redacted] was like as an employee. [redacted] actually was a good employee. It actually is a loss for the agency, and it's great news [to Witness #5 [redacted]][500]

The IC investigative team questioned Ms. Shaw regarding this situation. Ms. Shaw stated that this telework issue was the main interaction Ms. Shaw had with Mr. De Mello. Mr. De Mello attended a meeting with Ms. Shaw and IG Cuffari to talk through the telework policy and the telework situation with Witness #30 [redacted] Ms. Shaw explained that IG Cuffari told her that the telework arrangement would not be approved. Ms. Shaw stated,

> *And so, I said, 'On what basis? You know, because that's what our policy is now and I'm the supervisor and I'm – I've approved it. So, are you changing the telework policy or what is the basis for not doing this?' And then we got into this whole exchange – I think*

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[497] Interview of Witness #2 [redacted] dated September 1, 2022.
[498] Interview of WitnessWitness #9 [redacted] dated May 18, 2022.
[499] Interview of WitnessWitness #9 [redacted] dated May 18, 2022.
[500] Interview of WitnessWitness #9 [redacted] dated May 18, 2022.

> *almost all of his [IG Cuffari's] emails and memos were written by Andrew – um, about why he didn't want to do it. And then finally, he [IG Cuffari] had gotten so sick of me that he once again said, 'You can't – [redacted] – [redacted], not – I'm changing the telework policy for all employees. [redacted] can't tele – can't telework four day per week and I'm going to handwrite a change into the grievance policy that says, 'Telework decisions are no longer grievable.' So that [redacted] can't grieve this decision.'*[501]

Ms. Shaw further stated,

> *I just couldn't believe that an inspector general would change a policy, so that his decision couldn't be grieved by one employee. It just seems so wrong to me. And, and I wrote back a long memo explaining how I felt about it and why I felt that it was actually an abuse of authority to target a single individual and basically restrict their due process rights because you don't want to have to be accountable for your decision or give an explanation.*[502]

During the interview of Ms. Shaw, when asked whether IG Cuffari's reaction to [redacted] telework situation was specifically because it was [redacted] making the request, Ms. Shaw stated,

> *I don't think it was because it was [redacted]. I think it was because it was me. That's my impression. I think that because it was me championing it, he was immediately suspicious. He did not want to be told that he didn't have total authority to decide whatever he wanted. I think he wanted to punish me and he knew that I was going to bat for [redacted] and this was a way to do it. And I, I – this is again, my impression, but I think he had a really hard time hearing 'no' from women from the senior executives. He wanted people to agree with him, and he did not like people asking questions… So, I don't actually think he had a problem with [redacted] I think, unfortunately for [redacted] IG Cuffari had a problem with me. And so, you know, I don't know if, if it had been someone else, if IG Cuffari would have agreed to it because it is, you know, it's different… But, um, my impression was that it got way out of proportion because it was me.*[503]

Encouraging DHS OIG Employees to File Complaints Against Senior Management

As part of his detail to DHS OIG, Mr. De Mello was tasked, by IG Cuffari, with hearing from individuals who had complaints concerning DHS OIG. The IC investigative team obtained information from one individual that suggested Mr. De Mello was inquiring if employees wanted to make complaints against senior leaders.

Specifically, a former senior leader within DHS OIG reported that an employee had come to them with a complaint that Mr. De Mello had prompted discussions with this individual about any grievances they had, and inquired as to whether the individual wanted to submit a complaint

[501] Interview of Diana Shaw, dated May 16, 2022.
[502] Interview of Diana Shaw, dated May 16, 2022.
[503] Interview of Diana Shaw, dated May 16, 2022.

to the IG about Ms. Costello. The former senior leader found it unusual that a lawyer within the government was prompting an employee to submit a complaint against a senior executive.[504]

Use of NDAs

Witness #39 told the IC investigative team that [redacted] was asked by Mr. De Mello and IG Cuffari to sign an NDA regarding a front office matter. Witness #39 explained that in the course of working with investigators [redacted] frequently signed NDAs. Witness #39 estimated signing approximately five NDAs, per year, for many years while working at DHS OIG. However, the NDA [redacted] signed regarding this particular matter stood out as it was very unique. Witness #39 stated that the NDA was drafted by Mr. De Mello and was created specifically for the situation. [redacted] pointed out that the NDA [redacted] signed with IG Cuffari and Mr. De Mello was different in that [redacted] was, for the first time, doing something at the request of the IG.[505]

Witness #39 stated that [redacted] had a series of conversations with Mr. De Mello and IG Cuffari in which they conveyed something had come up and they needed Witness #39 assistance. Witness #39 [redacted] stated,

> *Mr. De Mello was new and he was asking a lot of questions about the -- everything in IT and systems and technology and, um, Mr. Cuffari had instructed me to provide Mr. De Mello with everything he needed. So I had been meeting with him frequently to give him information and then sometimes I would talk to Mr. Cuffari about it. But this was a meeting with the three of us together, and they said before we could discuss what the issue was that I needed to sign the NDA because it was sensitive information. So that particular set of circumstances had not occurred prior to this incident, and I don't think it happened again.*[506]

Witness #39 explained that, typically, when [redacted] had signed NDAs previously, a copy was provided to [redacted] at the time of signing. Witness #39 stated that while [redacted] was never provided a copy of the specific NDA discussed above, [redacted] did not recall if [redacted] requested a copy. Witness #39 explained that not receiving a copy of the NDA was a simple oversight and there was no malicious intent behind [redacted] not receiving a copy of the NDA.[507]

Witness #40 DHS OIG [redacted], recalled being handed an NDA by IG Cuffari, and at the time [redacted] signed it no one else was in the room other than [redacted] and IG Cuffari.[508] Once Witness #40 signed the NDA, [redacted] was told by IG Cuffari that [redacted] would be working with Mr. De Mello. Witness #40 was not provided a copy of the NDA; however, Witness #40 did not ask for a copy of it. In Witness #40 experience signing NDAs with the investigative side of DHS OIG [redacted] never asked for a copy.

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[504] Interview of Witness #8 [redacted] dated December 3, 2021.
[redacted]
[506] Interview of Witness #39 dated December 16, 2021.
[507] Interview of Witness #39 dated February 10, 2022.
[508] Interview of Witness #40 dated November 5, 2021.

[redacted]

When interviewed, IG Cuffari recalled the NDAs were used when DHS OIG met with another Federal agency's IT department. IG Cuffari did not recall who suggested that NDAs should be signed in this instance. IG Cuffari explained,

> *We [DHS OIG] were going outside of our office to another office, to ask them about their security arrangements. To take a look at our security arrangements. And if there was anybody in our office who may have been penetrating our system, I didn't want the scope of that work to be outside of a very select number of people.*[510]

Concerns of Improper Access to Protected Employee Communications and DHS OIG Security System Deficiencies

[redacted]

When asked by the IC investigative team whether anyone at DHS OIG had raised concerns with [redacted] regarding the security of the DHS OIG network, specifically concerns that someone could inappropriately access IG Cuffari's email or other network information, Witness #34 responded "No, … I almost certainly would have been contacted." Adding, that [redacted] so if there had been any attempted breaches of IG Cuffari's email, [redacted] would have been or should have been the first phone call. Witness #34 further stated that [redacted] had not heard that nor been notified of that.[512]

As a result of the review, DHS OIG purchased a software product that was used by another Federal agency. It was Mr. De Mello's understanding that the software would assist in identifying and preventing improper access to DHS OIG's computer system.

[509] Interview of Andrew De Mello, dated June 22, 2022.
[510] Interview of IG Cuffari, dated August 30, 2022.
[511] Interview of Andrew De Mello, dated June 22, 2022.
[512] Interview of Witness #34 dated June 17, 2022.

Witness #39 stated that Mr. De Mello believed the other Federal agency had an enterprise tool to fulfill a function that DHS OIG did not have which they needed to acquire. Witness #39 stated that [redacted] recalled,

> *Very clearly being very embarrassed that some non-IT people opened the conversation to explain to the other IT people that we had severe security deficiencies. That statement was untrue and embarrassing, but that was the perception that Mr. De Mello had that we needed -- we didn't have all the tools that we needed, and so therefore we had security deficiencies.*

Witness #39 believed the cost of the computer program was six figures or above.[513]

No evidence was found that Mr. De Mello was attempting to surreptitiously monitor protected employee communications with Congress and the Office of Special Counsel.

[redacted]

[513] Interview of Witness #39 dated February 10, 2022.
[514] CIGIE IC Notification Letter - IC20-042, dated April 29, 2020.

[redacted]

[redacted],

[redacted]

[redacted]

iv. Mr. De Mello's Response

The investigative team interviewed Mr. De Mello regarding the allegations. On the subject of his missing laptop, Mr. De Mello stated he did not have a specific recollection of what happened with his work product upon departing DHS OIG; however, he believed he left materials in his office when his detail ended. He stated,

> *It did not seem like they had a very good system for, you know, collecting and preserving this type of stuff. And, uh, in, in the rush to get out of there and get everything taken care*

[redacted]

[516] Interview of IG Cuffari, dated August 30, 2022.

of, I may have, uh, had some type of, um, uh, mistake on the hand-in sheet as to where it was that, uh, we were leaving -- or whom we were giving the notes to. Um, because there may have been a change at the last minute from leaving it in the office to giving it to [redacted] *or it might have been originally we were going to give it to* [redacted] *and I was told to leave, leave it in the -- in the office. Um, and again, I'm afraid I just can't remember, uh, this far out.*[517]

c. Investigative Conclusions

High-Level Summary of Evidence Leading to Investigative Conclusions (Allegation 7 – De Mello)

Allegation 7 (De Mello)
SC De Mello abused his authority and engaged in conduct that undermined the independence and integrity reasonably expected of his position by engaging in a scheme to violate Federal records laws and the Freedom of Information Act by instructing employees at DHS OIG to avoid documenting any work with him on official government information systems and demanding employees destroy records of their meetings with him. SC De Mello also created conditions for substantial misconduct and gross mismanagement by: a) Asking DHS OIG employees to work on projects or provide information and then telling those employees not to discuss their work with their managers or supervisors; b) Advising the agency head to make policy changes for the express purpose of targeting a single employee; c) Encouraging DHS OIG employees to file complaints against senior management with the intent to target two specific senior executives; d) Demanding a DHS OIG employee sign a non-disclosure agreement but then refusing to provide that employee with a copy; and e) Attempting to surreptitiously monitor protected employee communications with Congress and the Office of Special Counsel.
Summary of Evidence
Note: The following provides a non-exhaustive summary of certain evidence supporting the investigative conclusions. Full details, including additional evidence and source citations, are contained in the "iii. Documentary Evidence and Witness Statements" section for this allegation above.
Documenting Work on Official Government Information Systems and Destroying Records
• [redacted].
• The IC investigative team was unable to investigate Mr. De Mello's files because DHS OIG could not produce Mr. De Mello's laptop.
• No evidence was found of Mr. De Mello requesting employees destroy records of their meetings with him.

[517] Interview of Andrew De Mello, dated August 23, 2022.

(a) Asking Employees to Work on Projects Without Communicating With Their Supervisors
• No evidence was found of Mr. De Mello asking employees not to discuss certain matters with their managers or supervisors.
(b) Policy Changes
• IG Cuffari changed DHS OIG's telework policy, which specifically had an impact on one employee. IG Cuffari changed the policy after Ms. Shaw requested that one of her staff be permitted to telework from another location.
• IG Cuffari updated the DHS OIG grievance handbook to prevent his policy decision from being challenged.
• At IG Cuffari's direction, Mr. De Mello assisted IG Cuffari in implementing and communicating the changes to the policy by drafting documents, participating in meetings, and emailing with the affected employee's supervisor.
(c) Encouraging Employees to File Complaints
• According to a former DHS OIG senior leader, an employee had come to them with a complaint that Mr. De Mello had prompted discussions with them about any grievances they had. According to the former senior leader, the employee stated that Mr. De Mello inquired as to whether the individual wanted to submit a complaint to the IG about Ms. Costello. • The IC investigative team did not identify any first-hand accounts of Mr. De Mello encouraging employees to file complaints.
(d) Use of NDAs
• Two witnesses reported being asked by IG Cuffari with Mr. De Mello's assistance to sign NDAs related to the access of and security of government information systems.
• The witnesses did not receive copies of the NDA but did not recall asking for a copy.
• Both witnesses were accustomed to signing NDAs in the course of their work for DHS OIG's [redacted]
(e) Monitoring Protected Employee Communications
• No evidence was found that Mr. De Mello was attempting to surreptitiously monitor protected employee communications with Congress and the Office of Special Counsel.
Investigative Conclusions
Unsubstantiated. While the saving of records off of the DHS OIG network drive appeared to have occurred, [redacted]. Moreover, DHS OIG did not provide Mr. De Mello's laptop to the IC investigative team despite numerous requests. As such, the IC investigative team could not verify what occurred or which documents were involved. The investigation did not substantiate that Mr. De Mello demanded employees destroy records. (a) The investigation **did not substantiate** that Mr. De Mello asked employees not to discuss matters with their managers or supervisors.

(b) The investigation **partially substantiated** that Mr. De Mello advised IG Cuffari on policy changes that were focused on one individual. Although Mr. De Mello was involved in the policy revisions, it was ultimately IG Cuffari's decision.
(c) The investigation **did not substantiate** that Mr. De Mello encouraged employees to file complaints against senior leaders.
(d) The investigation **did not substantiate** that Mr. De Mello demanded employees sign an NDA and refused to provide them a copy. Mr. De Mello was involved in two NDAs that were signed at the request of IG Cuffari. The employees did not recall requesting a copy.
(e) The investigation **did not substantiate** that Mr. De Mello was attempting to surreptitiously monitor protected employee communications.

Detailed Description of Investigative Conclusions

Based on the investigation, the allegations concerning Mr. De Mello were unsubstantiated, with the exception of two areas where his actions [redacted].

[redacted]

Overall, the IC investigative team noted that Mr. De Mello provided information that at times contradicted his own personal interests. In cases in which information provided by Mr. De Mello ran contrary to statements made by IG Cuffari, it seemed reasonable to consider Mr. De Mello's account to be more plausible, especially given that Mr. De Mello's account was supported, at least in part, by documentation. This includes the situation concerning saving materials off the DHS OIG network.

C. CONCLUSION

During the course of this investigation, the IC investigative team reviewed a letter by IG Cuffari written to CIGIE in November 2020. In the letter, IG Cuffari wrote:

> *When an individual seeks out and attains a high-level position in the Federal government, they cannot legitimately expect that any serious misconduct they commit will be unaddressed and kept hidden. The public's interest in knowing about serious misconduct by a high-level government official generally outweighs that official's privacy interest.*[518]

The IC investigative team thoroughly reviewed all allegations of misconduct made against the high-level government officials at DHS OIG. Based on the evidence, the team arrived at the following conclusions:

First, the allegations against Ms. Ouzts and Ms. Shaw were unsubstantiated.

Second, the allegations concerning Ms. Costello were unsubstantiated with the exception of her demeanor towards IG Cuffari. Ms. Costello and IG Cuffari had a troubled relationship from the start, and Ms. Costello's negative posture towards IG Cuffari appears to have become amplified as time went on.

Third, the allegations concerning Mr. De Mello were unsubstantiated. [redacted]. Additionally, since DHS OIG was not able to produce Mr. De Mello's laptop computer, the investigative team was unable to determine what materials were saved locally to the device. Additionally, Mr. De Mello was involved in changes made to DHS OIG's telework policy, which at the time was directed towards one individual's request; however, it was ultimately IG Cuffari's decision regarding this policy change. Moreover, IG Cuffari hand-wrote the change into DHS OIG's telework policy and also changed the grievance policy to prevent the affected employee from challenging the decision.

Finally, and notably, many aspects of the allegations concerning IG Cuffari were substantiated. As noted in this report, IG Cuffari's responses to questions regarding aspects of his conduct conflicted in numerous instances with evidence obtained during the course of the investigation. This gave the overall impression of a lack of candor and unwillingness to participate in the IC's investigation on the part of IG Cuffari. When asked about the allegations against him, IG Cuffari took the position that he would not have changed anything regarding the course of action he took, nor to any of his responses to Congress or CIGIE. In his written responses to his confirmation questionnaire to Congress, IG Cuffari wrote, "I do believe civil servants have a fiduciary responsibility to be good stewards of the American taxpayers' money."[519] Nonetheless, IG Cuffari's pursuit of the WilmerHale investigation into Ms. Costello, Ms. Ouzts, and Ms. Shaw cost more than $1.3 million.

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[518] From IG Cuffari's response to CIGIE, letter to CIGIE, dated November 3, 2020, Re: Integrity Committee Cases 20-056/059, 20-070, and 20-079.
[519] Ref. Ranking Member Gary C. Peters Post-Hearing Questions for the Record Submitted to Joseph Cuffari.

APPENDIX A: Index of Individuals Referenced in Report and/or Contacted/Interviewed

[redacted]

Jennifer Costello, former Deputy Inspector General, DHS OIG

Witness # [redacted]

Joseph Cuffari, Inspector General, DHS OIG

[redacted]

Andrew De Mello, former Special Counsel, DHS OIG

[redacted]

[redacted]

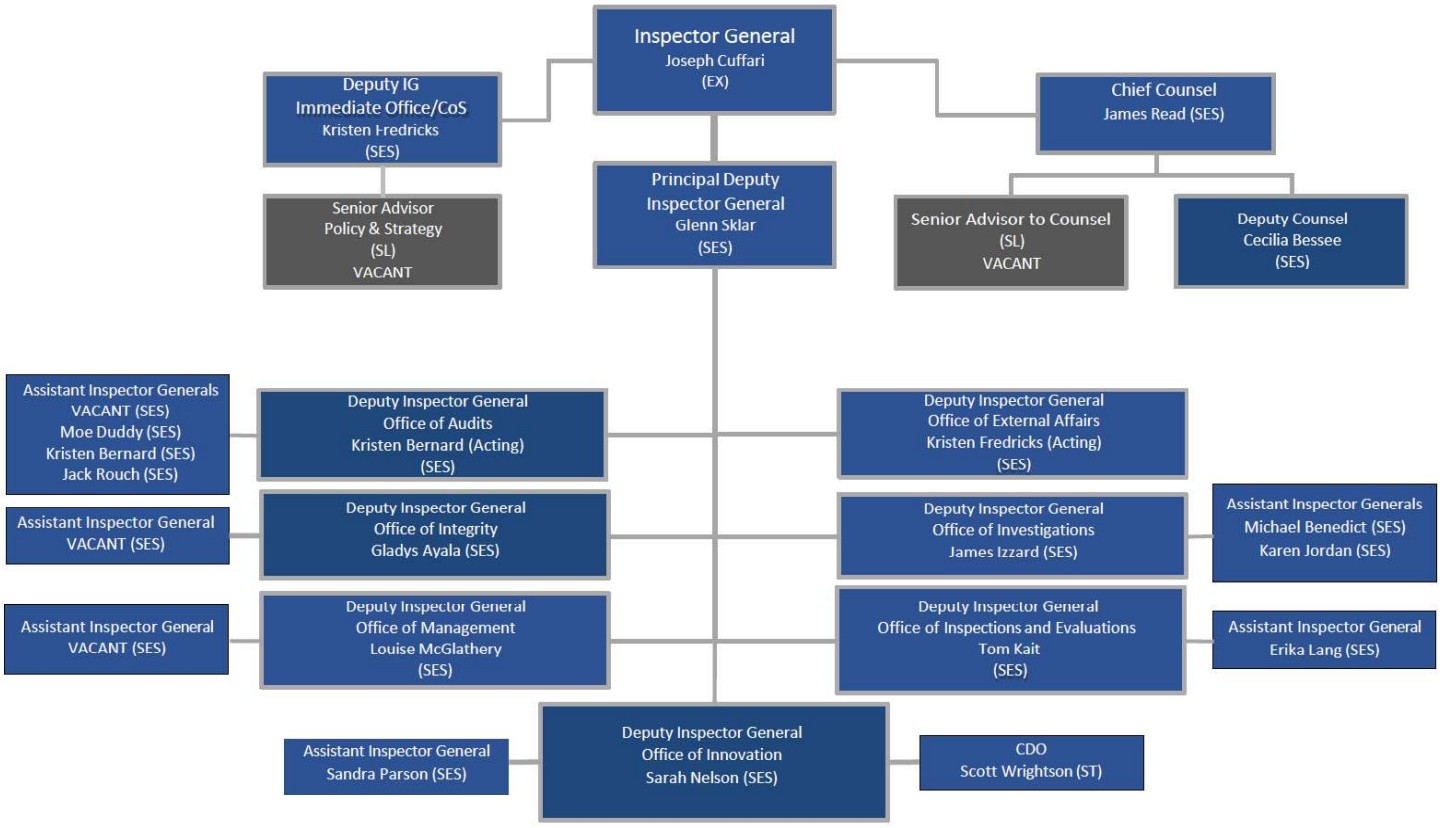
Karen Ouzts, former Deputy Counsel, DHS OIG

[redacted]

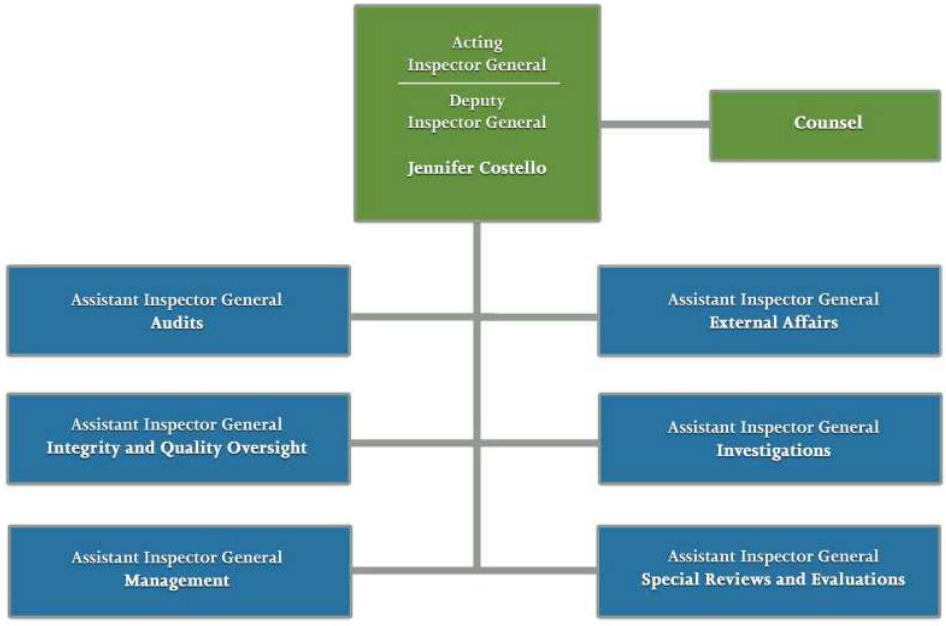
Diana Shaw, former Assistant Inspector General, DHS OIG

[redacted]

APPENDIX B: Sample DHS OIG Organizational Charts



DHS OIG Organization Chart – August 2023
https://www.oig.dhs.gov/about/organization_chart



DHS OIG Organization Chart – June 10, 2019
https://www.oig.dhs.gov/sites/default/files/Org%20Chart_June%2011%202019.pdf

APPENDIX C: Investigative Timeline

May 14, 2021	CIGIE IC notification sent to DOT OIG [redacted] regarding CIGIE IC request for investigation – assignment of IC 20-059.
May 14, 2021	CIGIE IC notifications sent to respondents – IG Cuffari; Mr. De Mello; Ms. Costello; and Ms. Shaw.
May 17, 2021	Preservation request issued and circulated within DHS OIG.
June 8, 2021	Microsoft Teams videoconference with Witness #2 regarding initiation of investigation.
June 11, 2021	Witness #2 delegated to [redacted] responsibility for coordinating records and evidence production associated with IC 20-059.
June 16, 2021	Document request number 1 sent to DHS OIG.
June 23, 2021	Conversation with Treasury OIG Special Agent.
June 25, 2021	Expansion of CIGIE IC 20-059 – additional allegation added to the scope of investigation regarding Ms. Shaw.
June 25, 2021	Interview of Witness #3
June 25, 2021	Conversation with [redacted]
June 29, 2021	Conversation with [redacted]
July 1, 2021	Conversation with [redacted]
July 2, 2021	Document Review – Review of Ms. Costello SF-50s.
July 6, 2021	Conversation with [redacted] – declined to be interviewed.
July 6, 2021	Interview of Witness #35
July 6, 2021	Conversation with [redacted]
July 8, 2021	Interview of Witness #37
July 8, 2021	[redacted]
July 15, 2021	Conversation with [redacted]
July 19, 2021	Interview of Witness #25
July 19, 2021	Conversation with Witness #10 [redacted]
July 19, 2021	Interview of Witness #37

July 23, 2021	Conversation with [redacted]
July 26, 2021	Conversation with [redacted]
July 27, 2021	Document request number 2 sent to DHS OIG, which included a request for email files in native format.
August 4, 2021	Interview of Witness #10 [redacted]
August 5, 2021	Conversation with Witness #7 [redacted]
August 9, 2021	Conversation with Witness #7 [redacted]
August 10, 2021	Conversation with Witness #42 [redacted]
August 11, 2021	Conversation with Witness #26 [redacted]
August 12, 2021	Interview of Witness #42 [redacted]
August 12, 2021	Interview of Witness #26 [redacted]
August 16, 2021	Conversation with Witness #1
August 19, 2021	Interview of Witness #1
August 23, 2021	Conversation with Witness #29
August 24, 2021	Interview of Witness #29
August 25, 2021	Conversation with Witness #7 [redacted]
August 30, 2021	Email from Witness #29 [DHS OGC] advising that the DIG position at DHS OIG was not one of the positions which the DHS Secretary or Deputy Secretary would need to approve.
August 30, 2021	Conversation with [redacted]
August 31, 2021	Interview and follow-up interview of Witness #7 [redacted]
September 1, 2021	Conversation with Witness #6
September 2, 2021	Interview of Witness #6
September 2, 2021	[redacted] advised that DHS OIG was copying out and individually reviewing all emails prior to providing the materials to the investigative team.
September 2, 2021	Conversation with Witness #27
September 3, 2021	Conversation with Witness #45
September 8, 2021	Interview of Witness #27

September 9, 2021	Interview of [redacted]
September 10, 2021	Conversation with [redacted]
September 13, 2021	Conversation with [redacted]
September 14, 2021	Conversation with [redacted] about the approach taken regarding the production of DHS OIG emails.
September 14, 2021	[redacted]
September 15, 2021	Letter sent via email from [redacted] requesting a meeting, particularly focusing on the topic of emails previously requested in DOT OIG's second document request, dated July 27, 2021.
September 15, 2021	Conversation with [redacted]
September 16, 2021	Interview of [redacted]
September 16, 2021	[redacted]
September 17, 2021	Interview of [redacted]
September 20, 2021	Conversation with [redacted]
September 27, 2021	Conversation with [redacted]
September 27, 2021	Letter from [redacted] regarding Letter regarding DOT OIG's request for emails, noting the request covers privileged information relevant to MSPB litigation, and DHS OIG will review all emails and convert those containing privileged information to PDF and mark them as privileged prior to production.
September 28, 2021	Interview of [redacted]
September 28, 2021	Conversation with [redacted]
September 30, 2021	DOT OIG letter to [redacted] regarding status of emails.
October 1, 2021	Expansion of CIGIE IC 20-059 – additional allegation added to the scope of the investigation regarding Ms. Costello and Ms. Ouzts.
October 1, 2021	Conversation with [redacted]
October 1, 2021	Interview of [redacted]

[redacted]

October 4, 2021	Microsoft Teams videoconference between DHS OIG and DOT OIG regarding production delays associated with emails.
October 6, 2021	Letter from [redacted] summarizing the videoconference. Despite causing a significant delay, DHS OIG continued to copy out and review emails prior to producing them. DHS OIG anticipated providing the requested emails by the end of 2021.
October 18, 2021	Conversation with [redacted]
October 18, 2021	Document request number 3 sent to DHS OIG.
October 20, 2021	[redacted]
October 21, 2021	[redacted]
October 22, 2021	Document review of materials revealed documents from a prior IC investigation (IC 20-042) included an email thread from De Mello, dated April 9, 2020, featuring a subject of "Document Production Request--Confidential Matter," which was not present in the materials provided in response to a document request for all email files from January 1, 2017 through present (or last active date), provided pursuant to IC 20-059.
October 25, 2021	[redacted]
October 25, 2021	Conversation with [redacted]
October 27, 2021	Conversation with [redacted]
October 28, 2021	[redacted]
November 1, 2021	Conversation with Witness #24
November 2, 2021	Conversation with [redacted]
November 2, 2021	Conversation with Witness #20
November 2, 2021	Conversation with Witness #40
November 2, 2021	Conversation with Witness #39
November 3, 2021	Interview of Witness #24
November 4, 2021	Interview of Witness #20
November 4, 2021	Conversation with Witness #33 [redacted]
November 5, 2021	Interview of Witness #40

November 15, 2021	Interview of [redacted]
November 17, 2021	Conversation with [redacted]
November 19, 2021	Conversation with [redacted]
November 30, 2021	Conversation with [redacted]
November 30, 2021	Conversation with [redacted]
December 1, 2021	Interview of [redacted]
December 2, 2021	Conversation with [redacted]
December 3, 2021	Interview of [redacted]
December 8, 2021	Conversation with [redacted]
December 9, 2021	Conversation with [redacted]
December 14, 2021	Conversation with [redacted]
December 16, 2021	Interview of [redacted]
December 17, 2021	Conversation with [redacted]
January 6, 2022	Conversation with [redacted]
January 7, 2022	Interview of [redacted]
January 7, 2022	Conversation with Ms. Ouzts.
January 7, 2022	Questions sent to OSC regarding interactions with DHS OIG regarding the Tecate report.
January 10, 2022	Conversation with [redacted]
January 10, 2022	Letter to [redacted] advising that DHS OIG had not provided the emails requested by the anticipated deadline DHS OIG established. Further, as of the date, DHS OIG had only provided email files associated with 3 custodians from the July 27, 2021 request.
January 12, 2022	Conversation with [redacted]
January 13, 2022	Conversation with [redacted]
January 13, 2022	Document request number 4 sent to DHS OIG.
January 13, 2022	Letter to [redacted] regarding status of responses to document requests, specifically emails related to document request number 2 [July 27, 2021] and setting production deadline of January 27, 2022.
January 18, 2022	Conversation with Ms. Ouzts.

January 19, 2022	Conversation with [redacted]
January 24, 2022	Conversation with Witness #10 [redacted]
January 25, 2022	Conversation with Witness #10 [redacted]
January 25, 2022	Conversation with [redacted]
January 25, 2022	IC letter to [redacted] requesting clarification of DHS OIG's use of NDAs.
January 25, 2022	Letter from [redacted] and corresponding memorandum to potential witnesses - Cooperation in Integrity Committee Investigation at DHS OIG.
January 25, 2022	Document request number 5 sent to DHS OIG.
January 27, 2022	Letter from [redacted] regarding production of documents.
January 28, 2022	Interview of Ms. Ouzts.
February 1, 2022	Conversation with WitneWitness #31
February 2, 2022	Conversation with [redacted]
February 4, 2022	Interview of WitneWitness #31
February 7, 2022	Conversation with Witness #10 [redacted]
February 7, 2022	Conversation with Witness #10 [redacted]
February 8, 2022	Conversation with Witness #11 [redacted]
February 9, 2022	Interview of Witness #11 [redacted]
February 9, 2022	Conversation with Witness #11 [redacted]
February 9, 2022	Conversation with [redacted]
February 9, 2022	Letter to [redacted] confirming receipt of the materials.
February 10, 2022	Conversation with Witness #11 [redacted]
February 10, 2022	Interview of Witness #39
February 17, 2022	Conversation with [redacted] regarding the whereabouts of Mr. De Mello's DHS OIG issued computer.
February 22, 2022	Interview of Witness #39
February 24, 2022	Information provided by OSC related to the Tecate report.
February 27, 2022	Letter from [redacted] responding to February 9, 2022 letter.
March 4, 2022	Conversation with [redacted] regarding the whereabouts and status of Mr. De Mello's computer.

March 8, 2022	Interview of [redacted]
March 10, 2022	Call with [redacted] regarding approximately 5,000 missing emails related to IG Cuffari and [redacted]
March 10, 2022	Letter from [redacted] to [redacted] regarding DHS OIG having an opportunity to assert privileges and recommend redactions to the report of investigation as consistent with IC's Policies and Procedures and CIGIE's SORN.
March 11, 2022	Conversation with [redacted]
March 15, 2022	Interview of [redacted]
March 15, 2022	Letter from Senator Josh Hawley expressing concerns regarding the CIGIE IC 20-059 investigation.
March 21, 2022	Interview of [redacted]
April 7, 2022	Conversation with former [redacted]
April 11, 2022	Interview of [redacted]
April 19, 2022	Interview of [redacted]
April 19, 2022	Conversation with [redacted]
April 20, 2022	Conversation with Ms. Shaw.
April 20, 2022	Conversation with [redacted]
April 22, 2022	Interview of [redacted]
April 28, 2022	Conversation with [redacted]
April 29, 2022	Interview of [redacted]
April 29, 2022	Conversation with [redacted]
May 12, 2022	Conversation with [redacted]
May 16, 2022	Microsoft Teams videoconference with [redacted] and [redacted] to understand DHS OIG's position on former employees cooperating with the CIGIE IC investigation and providing relevant information which might otherwise be privileged.
May 16, 2022	Interview of Ms. Shaw.
May 18, 2022	Interview of [redacted]
May 19, 2022	Interview of [redacted]
May 19, 2022	Conversation with [redacted]

May 20, 2022	Interview of [redacted]
May 24, 2022	Conversation with [redacted]
May 31, 2022	Conversation with IG Cuffari.
June 2, 2022	Contact made with Ms. Costello consisting of a short text message advising she was represented by counsel.
June 6, 2022	Conversation with [redacted]
June 7, 2022	Conversation with [redacted]
June 10, 2022	Conversation with [redacted]
June 13, 2022	Conversation with [redacted]
June 17, 2022	Interview of [redacted]
June 22, 2022	Interview of Mr. De Mello.
July 5, 2022	Conversation with [redacted]
July 6, 2022	Conversation with [redacted]
July 19, 2022	Conversation with [redacted]
July 19, 2022	Conference call with [redacted] and attorneys from the firm WilmerHale.
July 19, 2022	Conversation with [redacted]
July 20, 2022	Conversation with [redacted]
August 3, 2022	Conversation with [redacted]
August 4, 2022	Conversation with [redacted]
August 9, 2022	Conversation with [redacted]
August 10, 2022	Conversation with [redacted]
August 19, 2022	Conversation with [redacted]
August 19, 2022	Interview of [redacted]
August 22, 2022	Conversation with [redacted]
August 23, 2022	Interview of Mr. De Mello.
August 23, 2022	Conversation [redacted]
August 25, 2022	Correspondence from WilmerHale.
August 30, 2022	Interview of IG Cuffari.

September 1, 2022	Interview of [redacted]
September 9, 2022	Conversation with [redacted]
September 9, 2022	Expansion of CIGIE IC 20-059 – additional allegation added to the scope of the investigation regarding IG Cuffari.
September 15, 2022	Conversation with [redacted]
September 16, 2022	Document request number 6 sent to DHS OIG.
September 22, 2022	Interview of [redacted]
September 27, 2022	Conversation with [redacted]
September 28, 2022	Interview of [redacted]
September 29, 2022	Contact with [redacted]
September 29, 2022	Conversation with [redacted]
September 30, 2022	Records request sent to DOJ OIG regarding a prior internal investigation of IG Cuffari conducted by DOJ OIG when he was employed as an ASAC.
September 30, 2022	Interview of [redacted]
September 30, 2022	Conversation with [redacted]
October 4, 2022	Conversation with [redacted]
October 5, 2022	Interview of [redacted]
October 12, 2022	Conversation with [redacted]
October 12, 2022	Conversation with [redacted]
October 12, 2022	Documents received from DOJ OIG concerning internal investigation and management inquiry of IG Cuffari when he was employed as an ASAC by DOJ OIG.
October 13, 2022	Information obtained from GAO regarding prior testimonial reports associated with diploma mills in which California Coast University was identified. Testimonial report numbers GAO-04-1096T and GAO-04-0771T stood as written.
October 20, 2022	Interview of [redacted]
October 24, 2022	[redacted]
October 25, 2022	Interview of Ms. Ouzts.

October 28, 2022	Additional documents provided by DOJ OIG concerning a prior information request by [redacted] on behalf of IG Cuffari for copy of the DOJ OIG internal investigation and related materials associated with the prior internal investigation of IG Cuffari when he was employed as an ASAC by DOJ OIG.
October 28, 2022	Information from the FBI Security Division associated with a background investigation of IG Cuffari which occurred prior to his confirmation.
October 31, 2022	Conversation with [redacted]
October 31, 2022	Conversation with [redacted]
October 31, 2022	[redacted]
November 3, 2022	Letter to WilmerHale requesting a voluntary interview concerning matters related to IC20-059. The letter outlined general topic areas of interest.
November 9, 2022	DOT OIG received documents from DOJ OIG.
November 16, 2022	Letter from WilmerHale regarding a request for a voluntary interview.
November 18, 2022	Interview of [redacted]
November 22, 2022	Conversation with [redacted]
November 29, 2022	Letter sent to WilmerHale regarding a request for voluntary interview.
December 5, 2022	Conversation with [redacted]
December 7, 2022	Conversation with [redacted]
December 8, 2022	Interview of [redacted]
December 12, 2022	Conversation with [redacted]
December 13, 2022	Interview of [redacted]
December 15, 2022	Conversation with [redacted]
December 19, 2022	Interview of [redacted]
December 20, 2022	Email from [redacted] in which [redacted] provided relevant emails related to DOJ OIG's internal investigation and management inquiry associated with IG Cuffari when he was employed by DOJ OIG as an ASAC.
January 9, 2023	[redacted]

January 10, 2023	[redacted].
January 12, 2023	Interview of [redacted]
January 12, 2023	Letter to [redacted] regarding the whereabouts of Mr. De Mello's computer, requesting its current location be provided by January 20, 2023.
January 19, 2023	Interview of [redacted]
January 23, 2023	[redacted]
January 26, 2023	Interview of [redacted]
February 3, 2023	Letter from [redacted] indicating DHS OIG cannot account for Mr. De Mello's laptop and deflecting on what occurred to it.
February 9, 2023	Interview of [redacted]
February 10, 2023	Letter to [redacted] regarding DHS OIG not being able to account for Mr. De Mello's computer and related concerns.
February 10, 2023	Conversation with [redacted]
February 13, 2023	Conversation with [redacted]
February 15, 2023	Text message received from [redacted]
February 21, 2023	Interview of [redacted]
March 6, 2023	Interview of [redacted]
March 9, 2023	Conversation with Treasury OIG Special Agent.
May 5, 2023	Conversation with [redacted]
May 11, 2023	Interview of [redacted]
July 21, 2023	Interview of Ms. Costello

APPENDIX D: Documents Requested During the Investigation

On June 16, 2021, an initial document request was sent to DHS OIG requesting the following:

- An un-redacted copy of the WilmerHale final report, dated December 14, 2020, and copies of any drafts provided or marked-up versions exchanged in advance of the final report;
- The entire WilmerHale contract file, including all change orders and modifications; The identity and contact information of the WilmerHale supervising attorney and other staff that worked on the project;
- Directions provided to WilmerHale that address the scope of work and instructions provided, regardless of form; The final cost and payment records associated with the WilmerHale contract;
- The identity and contact information of the DHS OIG employees involved in the solicitation and award of the contract to WilmerHale, and their respective roles; A copy, in native email format, of the deleted emails recovered from former Senior Executive Diana R. Shaw, which were a topic of discussion in the WilmerHale report;
- SF-50s associated with former Senior Executive Jennifer Costello from January 1, 2017 to present, and any personnel record reflecting a change in official agency role or designation covering the aforementioned timeframe;
- Training records for IG Joseph Cuffari, and former Senior Executives Diana R. Shaw, Jennifer Costello, and Andrew De Mello associated with the topics of government records, and ethics, from January 1, 2018 to present; and
- DHS OIG final decision letter regarding the removal of former Senior Executive Jennifer Costello; and DHS OIG employee listing and work contact information for all current employees.[521]

On July 27, 2021, a second document request was sent to DHS OIG requesting the following:

- All sent and received emails from January 1, 2017 through present (or last active date) for IG Joseph Cuffari, Diana R. Shaw, Jennifer Costello, Andrew De Mello, Witness #2 Witness #29 Karen Ouzts, Witness #25 Witness #21 Witness #45 Witness #24 Witness #33 Witness #Witness #9 Witness #20 Witness #37 and WilmerHale personnel who were provided with DHS OIG email accounts, in native email format, such .pst files;
- SF-50s for former Deputy Inspector General Witness #1 from January 1, 2017, through his retirement; Identify all persons within DHS OIG Human Resources who entered SF-50s for Jennifer Costello in 2020;
- Analysis, justification, and advice in relation to actions taken by HR in 2020 to correct and/or cancel Jennifer Costello's appointment to the Deputy Inspector General position; Allegations or predications of internal investigations opened within DHS OIG involving Senior Executives from January 1, 2018 until present, featuring the date opened and

[521] DOT OIG document request to DHS OIG, dated June 16, 2021.

current status; Allegations received against Senior Executives whereby a decision was made not to investigate;

- Allegations received by DHS OIG concerning IG Cuffari's travel, and results of any follow-up investigation or determination not to investigate;
- A forensic copy of the laptop computer used by former Senior Executive Diana R. Shaw, when the deleted file allegations occurred;
- Proposal to remove former Senior Executive Jennifer Costello and the associated contents in support of the removal including Ms. Costello's responses to the proposal;
- All correspondence by and between DHS-OIG and WilmerHale, [redacted] and Andrew De Mello during his detail;
- Written questions sent by WilmerHale to Andrew De Mello on or about October 6, 2020; All communication between DHS-OIG and WilmerHale concerning the questions sent to Andrew De Mello on or about October 6, 2020;
- Written responses to the above-mentioned October 6, 2020, questions, provided by Andrew De Mello, [redacted], on or about December 9, 2020;
- Copies of interview transcripts and audio files created in the course of WilmerHale's investigation; Identify the [redacted] allegations provided to WilmerHale for investigation;
- Copies of SF-50s from January 1, 2018, to the present for all personnel actions (SF-50s) featuring 'cancellation' as the type of action being taken; and
- SF-50s, or other relevant documentation, reflecting the start and end dates associated with Andrew De Mello's detail to DHS OIG.[522]

On October 18, 2021, a third document request was sent to DHS OIG requesting the following:

- All sent and received emails from January 1, 2017 through present (or last active date) for [redacted] and Witness #46 [redacted] in native email format, such as .pst files;
- Records associated with the issuance of any typewriters or non-computer/network-based word processors to Andrew De Mello during his detail to DHS OIG;
- Any documents created by Andrew De Mello, or at his direction (e.g. 'typing project'), only existing in hard copy format or type written which pertain to Jennifer Costello, Diana Shaw, the WilmerHale investigation; and advice associated with filing complaints against senior management, and monitoring communications of OIG employees; and any such documents provided by Mr. De Mello to IG Cuffari or Witness #2 [redacted] and
- Any and all records related to procurements for IT services requested for the wiping or deletion of Diana Shaw's electronic records, including but not limited to the contract, purchase order, request for services, and payment information; and Any records showing formal or informal discipline of Ms. Costello, Ms. Shaw, and Ms. Ouzts.[523]

On January 13, 2022, a fourth document request was sent to DHS OIG requesting DHS OIG:

- Identify all employees in OIG Security during the timeframe of May and June 2018;

[522] DOT OIG document request to DHS OIG, dated July 27, 2021.
[523] DOT OIG document request to DHS OIG, dated October 18, 2021.

- Provide all [redacted] emails from May and June 2018.[524]

On January 25, 2022, a fifth document request was sent to DHS OIG requesting the following:

- All sent and received emails from January 1, 2017 through present for [redacted] and [redacted] in native email format, such .pst files; and
- Text messages from any agency issued mobile devices associated with [redacted] and [redacted] from January 1, 2017 through present.

DHS OIG was also asked in this request to ensure all material, data, and internal communication related to this investigation is and remains preserved.[525]

On September 16, 2022, a sixth document request was sent to DHS OIG requesting the Official Personnel File (OPF) for IG Cuffari.[526]

[524] DOT OIG document request to DHS OIG, dated January 13, 2022.
[525] DOT OIG document request and preservation notice to DHS OIG, dated January 25, 2022.
[526] DOT OIG document request to DHS OIG, dated September 16, 2022.

APPENDIX E: Additional Concerns Identified

During the course, and in furtherance of the 20-059 investigation, the IC investigative team became aware of several matters outside the scope of the allegations assigned to be investigated. Although the IC investigative team did not reach an investigative conclusion with respect to the matters below, these matters may warrant additional attention from appropriate entities.

Text Messages to and from IG Cuffari

During the 20-059 investigation, text messages were requested and received from some individuals, including [redacted] Witness #2 and [redacted] Witness #5 Specifically, on January 25, 2022, the IC investigative team requested items, which included, "[t]ext messages from any agency issued mobile devices associated with Witness #2 [redacted] and Witness #5 from January 1, 2017 through present." [527] A review of the materials reflected numerous text messages between various individuals, including text messages both to and from IG Joseph Cuffari.[528]

On June 6, 2023, IG Cuffari testified before the U.S. House of Representatives, Oversight and Accountability Subcommittee on National Security, the Border and Foreign Affairs. During his testimony he informed lawmakers that he routinely deletes text messages from his government cell phone; that he does not conduct official agency business on his government issued cell phone, but he does use it "to conduct business"; and that he did not consider his deleted text messages to be records as defined by the Federal Records Act.[529]

Upon learning of IG Cuffari's testimony, the IC investigative team became concerned that his recollection associated with the use of his device for text messages may be inaccurate and/or of concern based on materials the IC investigative team previously obtained and reviewed in the course of IC20-59. Having previously reviewed text messages, specifically for Witness #5 and Witness #2 the IC investigative team was aware that IG Cuffari did send, and receive, text messages related to his work. The Integrity Committee Policies and Procedures envisions that, during the course of an investigation, additional allegations may be received or surface that should be considered by the IC. (ICP&P at 9C). Therefore, while this matter was not investigated further by this investigative team, it was provided to the IC for its review and consideration.

Witness #2 *Participation in the Investigation*

As noted in the report, a June 11, 2021 DHS OIG memorandum stated that, in order to avoid the appearance of impropriety, Witness #2 should delegate the responsibility to coordinate production of evidence to the IC investigative team. Despite this memorandum and the potential appearance of impropriety noted by DHS OIG in the memo, Witness #2 chose not to recuse [redacted] and instead was involved in some of DHS OIG's responses to the IC investigative team. Witness #2 may have had differing personal interests than the organization [redacted] represents and may have been

[527] DOT OIG document request to DHS OIG, dated January 25, 2022.
[528] Highlights of text message tranches provided in response to IC20-059 for Witness #5 and Witness #2
[529] IG Cuffari's testimony, dated June 6, 2023, unofficial transcript – ref. page 67.

attempting to further the personal interests of IG Cuffari even where those interests diverged from DHS OIG, a situation that raises ethical questions.[530]

Mr. De Mello's DHS OIG Laptop

As explained in Allegation 5 (Cuffari) and Allegation 7 (De Mello), the IC investigative team identified the laptop used by Mr. De Mello as a relevant item of evidence in this investigation. So did DHS OIG: according to evidence provided to the IC investigative team, DHS OIG staff discussed that the laptop should be retained for investigative purposes, arranged to secure the laptop (and other items used by Mr. De Mello) and created a chain of custody document for the laptop. However, when the IC investigative team requested the laptop, DHS OIG did not provide it and as explained in the discussion of Allegation 7 (De Mello), could not account for the whereabouts of this piece of evidence.

Concerns of Retaliation

During the investigation, witnesses requested confidentiality and expressed concerns about retaliation at the hands of current DHS OIG leadership. It should be noted that this concern was expressed by many witnesses and may reflect a broad cultural challenge for DHS OIG. Employees expressed that IG Cuffari was a guarded leader who did not have trust in employees, much less the executive team, especially employees not directly hired by IG Cuffari. [531]

Data Security Concerns

During the investigation, concerns were identified involving the security of DHS information during WilmerHale's investigation. In one instance, a WilmerHale attorney was the victim of a residential burglary in which a DHS OIG laptop and PIV card were stolen. The theft was promptly reported to DHS OIG by WilmerHale.[532] In another incident, a WilmerHale attorney attempted to log into DHS OIG's network using a DHS OIG issued laptop while on overseas travel in Europe.[533] These security issues were confirmed by Witness #4 [534]

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[530] The District of Columbia Bar - A. Rules of Professional Conduct, Rule 1.13: Organization as Client, (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. Rule 1.7: Conflict of Interest: General Rule, (4) The lawyer's professional judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer's responsibilities to or interests in a third party or the lawyer's own financial, business, property, or personal interests.

[531] Interview of Witness #8 dated December 3, 2021; Interview of WitnessWitness #9 dated May 18, 2022; Interview of Witness #10 dated August 4, 2021; Interview of Witness #11 dated February 9, 2022.

[532] email, dated October 14, 2020.

[533] Interview of Witness #20 dated November 4, 2021.

[534] Interview of Witness #4 dated February 9, 2023.

APPENDIX F: List of Witnesses Interviewed

[redacted]

28. January 28, 2022 Interview of Ms. Ouzts

[redacted]

40. May 16, 2022 Interview of Ms. Shaw

[redacted]

[redacted]	[redacted]
45. June 22, 2022	Interview of Mr. De Mello
[redacted]	[redacted]
47. August 23, 2022	Interview of Mr. De Mello
48. August 30, 2022	Interview of IG Cuffari
[redacted]	[redacted]
55. October 25, 2022	Interview of Ms. Ouzts
[redacted]	[redacted]
67. July 21, 2023	Interview of Ms. Costello

[1] 5 U.S.C. App. § 11(d)(6)(A).
[2] COO Costello also used the titles Deputy IG and/or Acting IG during the relevant time period covered in this report. The matter of Ms. Costello's proper title relates to allegations addressed in the course of this IC investigation.
[3] Knowingly making or using a false writing or document in any matter within the jurisdiction of the executive, legislative, or judicial branch of the United States could be a violation of 18 U.S.C. §1001(a)(3).
[4] Conspiring to defraud an agency of the United States could be a violation of 18 U.S.C. §371.
[5] Deletion of files with intent to obstruct the internal investigation could be a violation of 18 U.S.C. §1505.
[6] Hearing before the Committee on Homeland Security and Governmental Affairs, Nomination of Joseph V. Cuffari to be Inspector General, U.S. Department of Homeland Security, March 5, 2019, Attachment entitled, "HSGAC Biographical Questions for Executive Nominees," questions 11(A) 11(B).
[7] See Interview, IG Joseph Cuffari (August 30, 2022) ("Cuffari Interview"); Andrew De Mello (June 22, 2022 and August 23, 2022) ("De Mello Interviews"); Diana Shaw (May 16, 2022) ("Shaw Interview"); Karen Ouzts (January 28, 2022 and November 25, 2022) ("Ouzts Interviews"); Jennifer Costello (July 21, 2023) ("Costello Interview"); November 30, 2022 email to IG Cuffari's counsel requesting a follow-up interview after the addition of allegation 8; and related email thread with IG Cuffari's counsel whereby IG Cuffari declines to sit for an interview regarding allegation 8 (January 23, 2023 email).
[8] Document requests dated June 16, 2021, July 27, 2021, October 18, 2021, January 13, 2022, January 25, 2022, and September 16, 2022.
[9] Memorandum of Activity, Record of Conversation, [redacted] dated February 17, 2022 and March 4, 2022; DOT OIG letter, dated January 12, 2023; DHS OIG letter dated February 3, 2023; DOT OIG letter dated February 10, 2023.
[10] 5 U.S.C. App. § 11(d)(6)(A).
[11] The Department of Homeland Security (DHS) has a vital mission: to secure the nation from the many threats we face. This requires the hard work of more than 260,000 employees in jobs that range from aviation and border security to emergency response, from cybersecurity analyst to chemical facility inspector. https://www.dhs.gov/about-dhs. The DHS OIG's mission statement is to provide independent oversight and promote excellence, integrity, and accountability within DHS. https://www.oig.dhs.gov/about
[12] COO Costello also used the titles Deputy IG and/or Acting IG during the relevant time period covered in this report.
[13] A relevant criminal statute is 18 U.S.C. § 1001(a)(3), which is knowingly making or using a false writing or document in any matter within the jurisdiction of the executive, legislative, or judicial branch of the United States.
[14] A relevant criminal statute is 18 U.S.C. § 371, which is the conspiring to defraud an agency of the United States.
[15] A relevant criminal statue is 18 U.S.C. § 1505, if there was deletion of files with the intent to obstruct the internal investigation.
[16] Hearing before the Committee on Homeland Security and Governmental Affairs, Nomination of Joseph V. Cuffari to be Inspector General, U.S. Department of Homeland Security, March 5,

2019, Attachment entitled, "HSGAC Biographical Questions for Executive Nominees," questions 11(A) 11(B).

[17] Letter from [redacted], "Request for Independent Inspector General Investigation into Case Number 20-059," (May 14, 2021); letters expanding the scope of IC Investigation 20-059, dated June 25, 2021, October 1, 2021, and September 9, 2022.

[18] IC Policies and Procedures (January 2018) (IC Policies).

[19] 5 U.S.C. App. § 11(d)(6)(A).

[20] 5 U.S.C. App. § 11(d)(7)(A).

[21] IC Policies at 10, (January 2018).

[22] Council of the Inspectors General on Integrity and Efficiency's Quality Standards for Investigations, at 8 (Nov. 15, 2011).

[23] See Interview, IG Joseph Cuffari (August 30, 2022) ("Cuffari Interview"); Andrew De Mello (June 22, 2022 and August 23, 2022) ("De Mello Interviews"); Diana Shaw (May 16, 2022) ("Shaw Interview"); Karen Ouzts (January 28, 2022 and November 25, 2022) ("Ouzts Interviews"); Costello (July 21, 2023) ("Costello Interview); November 30, 2022 email to IG Cuffari's counsel requesting a follow-up interview after the addition of allegation 8; and related email thread with IG Cuffari's counsel whereby IG Cuffari declines to sit for an interview regarding allegation 8 (January 23, 2023 email).

[24] Document requests were sent to DHS OIG on June 16, 2021, July 27, 2021, October 18, 2021, January 13, 2022, January 25, 2022, September 16, 2022. See Appendix D.

[25] In regard to interview evidence, for convenience, interview transcripts are included as attachments to this report, but the IC investigative team's findings are based on reviews of the audio recordings for accuracy.

[26] IC investigative team document request to DOJ OIG, dated September 30, 2022; and October 17, 2022.

[27] IC investigative team document request to the FBI Security Division, dated October 7, 2022; FBI response, dated October 27, 2022, and related materials.

[28] Memorandum of Activity, Record of Conversation, [redacted] August 30, 2021; [redacted] letter, dated September 15, 2021.

[29] ICP&P Access Addendum (March 2021) (ICP&PAccessAddendum-March2021.pdf (ignet.gov))

[30] Interview of Witness #4 [redacted] dated February 9, 2023.

[31] Document request, dated June 16, 2021; Production letter from [redacted] dated July 9, 2021.

[32] Spreadsheet of text messages associated with Witness #2 [redacted] row 207.

[33] [redacted] letter, dated September 15, 2021.

[34] Memorandum of Activity, Record of Conversation, [redacted] March 10, 2022.

[35] Witness #2 [redacted] email, Memo regarding production of e-mails to DoT OIG, dated September 11, 2021; Witness #2 [redacted] draft memo attachment, dated September 11, 2021.

[36] [redacted] email, dated October 5, 2021, RE: Concerns re 10/4 Meeting with DOT OIG

[37] Interview of Witness #4 [redacted] dated February 9, 2023.

[redacted]

[redacted].

[40] [redacted] letter, dated January 13, 2022.

[41] [redacted] letter, dated January 27, 2022.

[42] WilmerHale Report of Independent Investigation: Allegations of Misconduct by Jennifer Costello, Karen Ouzts, and Diana Shaw, dated December 14, 2020.
[43] Interview of Witness #6 dated September 2, 2021; Interview of Witness #7 dated April 29, 2022.
[44] Addendum A was adopted by majority vote of CIGIE's membership.
[45] Memorandum of Activity, Record of Conversation, Witness #2 dated June 13, 2021.
[46] Memorandum from Witness #2 to Delegation and instruction in IC 20-059, dated June 11, 2021.
[47] Witness #2 email, August 5, 2021, Possible revocation of delegation; email and draft letter to DOT OIG; Witness #2 email, dated September 11, 2021, Memo regarding production of e-mails to DOT OIG and attached DRAFT memo to
[48] The District of Columbia Bar - A. Rules of Professional Conduct, Rule 1.13: Organization as Client, (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. Rule 1.7: Conflict of Interest: General Rule, (4) The lawyer's professional judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer's responsibilities to or interests in a third party or the lawyer's own financial, business, property, or personal interests.
[49] Interview of Andrew De Mello, dated June 22, 2022 and August 23, 2023; unsigned letter for Joseph Cuffari's signature outlining aspects of De Mello's detail to DHS OIG.
[50] Letter from dated February 3, 2023; Letter from DOT OIG, dated February 10, 2023.
[51] Interview of Witness #8 dated December 3, 2021; Interview of Witness #Witness #9 dated May 18, 2022; Interview of Witness #10 dated August 4, 2021; Interview of Witness #11 dated February 9, 2022.
[52] Hearing before the Committee on Homeland Security and Governmental Affairs, Nomination of Joseph V. Cuffari to be Inspector General, U.S. Department of Homeland Security, March 5, 2019, Attachment entitled, "HSGAC Biographical Questions for Executive Nominees," questions 11(A) 11(B).
[53] Hearing before the Committee on Homeland Security and Governmental Affairs, Nomination of Joseph V. Cuffari to be Inspector General, U.S. Department of Homeland Security, March 5, 2019, Attachment entitled, "HSGAC Biographical Questions for Executive Nominees," question 10.
[54] DOJ OIG Memorandum for Witness #12 dated April 19, 2013.
[55] Interview of Witness #14 dated September 30, 2022.
[56] Witness #13 email, dated May 3, 2013, with exhibits.
[57] Witness #13 email, dated May 15, 2013.
[58] Witness #13 email, dated May 20, 2013.
[59] email, dated May 21, 2013.
[60] Witness #13 email, dated May 24, 2013 and subsequent email response by
[61] Interview of Witness #13 dated December 8, 2022.
[62] Joseph Cuffari interview transcript from DOJ OIG O&R, dated January 29, 2013; Kalkines form signed by Joseph Cuffari.
[63] Interview of Witness #15 dated December 19, 2022.
[64] Interview of Witness #15 dated December 19, 2022.
[65] FBI Security Division - Response to October 7, 2022 IC Request.

[66] Interview of [redacted] dated December 19, 2022; Interview of [redacted] dated January 26, 2023.
[67] Interview of [redacted] dated December 19, 2022; Interview of [redacted] dated January 26, 2023.
[68] Interview of [redacted] dated November 18, 2022.
[69] Interview of [redacted] dated December 19, 2022.
[70] GPO – Nomination of Joseph Cuffari, Hearing before Congress – Committee on Homeland Security and Governmental Affairs – U.S. Senate – Pre-hearing Questionnaire - Question 10
[71] Interview of [redacted] dated December 19, 2022.
[72] Interview of [redacted] dated January 26, 2023.
[73] Interview of [redacted] dated January 26, 2023.
[74] Interview of [redacted] dated January 26, 2023.
[75] Pursuant to Giglio, the Government must disclose in certain proceedings potential impeachment information relating to witnesses, including law enforcement officers. Giglio information includes any finding of misconduct that reflects upon the truthfulness of an employee and information that reflects that the agency employee's ability to perceive and recall truth is impaired. (Justice Manual, Department of Justice, Section 9-5.001.) If there is potential impeachment information such that the witness testimony would be of little value, it is referred to as a Giglio-impairment. (Hathaway v. Department of Justice, 384 F.3d 1342, 1349 [Fed.Cir.2004].
[76] [redacted] email, dated September 9, 2020.
[77] Interview of [redacted] dated January 26, 2023.
[78] [redacted] email – RE: Cuffari request for records, dated September 29, 2020.
[79] [redacted] email, dated October 1, 2020.
[80] Interview of [redacted] dated October 20, 2022.
[81] Interview of [redacted] dated October 20, 2022.
[82] Interview of [redacted] dated October 20, 2022.
[83] Interview of [redacted] dated October 20, 2022.
[84] [redacted] email, touching base, dated August 4, 2022; [redacted] email, RE: Re: Please give me a call, dated August 8, 2022; Interview of [redacted] dated October 20, 2022.
[85] Interview of [redacted] dated March 6, 2023.
[86] Interview of [redacted] dated March 6, 2023.
[87] Interview of [redacted] dated March 6, 2023.
[88] Interview of [redacted] dated March 6, 2023.
[89] [redacted] email, dated November 30, 2022.
[90] [redacted] email, dated January 23, 2023.
[91] [redacted] email, dated January 23, 2023.
[92] [redacted] email, dated February 1, 2023.
[93] [redacted] email, dated February 2, 2023.
[94] Interview of [redacted] dated February 22, 2023; Memorandum of Activity, Record of Conversation, [redacted] dated July 23, 2021.
[redacted]

[96] Memorandum from [redacted] dated May 8, 2020, Placement on Administrative Leave; Memorandum from [redacted] dated May 21, 2020, Investigative Leave Notice.
[97] WilmerHale Report of Investigation, dated December 14, 2020.
[98] Interviews of [redacted]
[99] WilmerHale contract and modifications, Contract No. 70VT1520C00003.
[100] Interview of Jennifer Costello, dated July 21, 2023; Settlement Agreement, dated July 17, 2023.
[101] Letter from IG Cuffari to [redacted] dated February 6, 2020.
[102] Notice of Proposed Removal of Ms. Costello, dated February 28, 2020
[103] IG Cuffari email, dated April 29, 2020.
[104] Contract 70VT1520C00003 awarded to WilmerHale, May 4, 2020.
[105] Amended Notice of Proposed Removal of Ms. Costello, dated May 8, 2020.
[106] Memorandum from [redacted] dated May 21, 2020, placing Ms. Ouzts on Investigative Leave effective May 22, 2020.
[107] Ms. Costello notice of removal, dated June 11, 2020.
[108] [redacted]
[109] Contract 70VT1520C0000, Modification P00002, dated September 30, 2020.
[110] WilmerHale final Report, dated December 14, 2020.
[111] Notice of Proposed Removal of Ms. Ouzts, dated December 28, 2020.
[112] Interview of Karen Ouzts, January 28, 2022.
[113] DOT OIG investigators did not attempt to validate or invalidate WilmerHale's report. Rather, it was considered, along with other evidence relevant to IC20-059.
[114] Interview of Karen Ouzts, dated January 28, 2022.
[115] Interview of Diana Shaw, dated May 16, 2022.
[116] IG Cuffari email, dated November 18, 2019, forwarding Ms. Costello's email.
[117] Memorandum of Activity, Record of Conversation, [redacted] dated July 23, 2021; Interview of [redacted] dated February 22, 2023; Correspondence with CIGIE, dated August 10, 2020.
[118] October 21, 2019 Complaint to the IC – ref. IC 20-006 Complaint
[119] October 23, 2019 Complaint to the IC – ref. IC 20-007 Complaint
[120] October 22, 2019 Complaint to the IC – ref. IC 20-009 Complaint
[121] November 14, 2019 Complaint to the IC – ref. IC 20-012 Complaint
[122] November 24, 2019 Complaint to the IC – ref. IC 20-015 Complaint
[123] December 2, 2019 Complaint to the IC – ref. IC 20-016 Complaint
[124] CIGIE IC letter, dated October 30, 2019.
[125] Interview of [redacted] dated February 21, 2023.
[126] [redacted] email, dated January 29, 2020.
[127] DHS OIG letter to IG [redacted] dated February 6, 2020.
[128] Interview of [redacted] dated September 1, 2022.
[129] Interview of [redacted] dated September 1, 2022.
[130] Interview of IG [redacted] dated February 21, 2023.
[131] Interview of IG [redacted] dated February 21, 2023.
[132] Andrew De Mello email, dated April 7, 2020, and corresponding attachment.

[133] RFP 70VT1520R00004.
[134] Interview of Witness #4 dated February 9, 2023.
[redacted]
[136] Contract No. 70VT1520C00003, Modification, dated September 2, 2020.
[137] The IC investigative team reviewed the WilmerHale report as one piece of evidence in IC 20-059 and in relation to all other evidence gathered during the IC20-059 investigation. The investigative team did not attempt to evaluate WilmerHale's investigation or go behind its findings. However, where evidence developed by the investigative team supported, differed from, or informed, WilmerHale's findings and was relevant to 1C20-059, we have included it in this report.
[138] The allegation that WilmerHale listed as substantiated pertained to Ms. Shaw's failing to follow IG Cuffari's direct order regarding telework and out stationing a supervisor.
[139] [redacted] email, dated November 18, 2020, Allegations Chart Revisions.
[redacted]
[141] Interview of IG Cuffari, dated August 30, 2022.
[142] Witness #1 interviews, dated August 19, 2021 and August 19, 2022.
[143] Interview of Witness #7 [redacted] dated April 29, 2022; Interview of Witness #Witness #9 [redacted] dated May 18, 2022.
[144] Interview of Witness #Witness #9 [redacted] dated May 18, 2022.
[145] [redacted] email, FW: OIG Succession, February 19, 2019; Memorandum of Activity, Record of Conversation, [redacted] dated January 19, 2022.
[146] Jennifer Costello, Notice of Personnel Action, SF-50, dated November 11, 2018.
[147] Witness #19 email, dated June 12, 2019.
[148] IG Cuffari email to all DHS OIG employees, dated June 11, 2020; IG Cuffari letter to Congressional Oversight Committees, dated June 11, 2020.
[149] Interview of IG Cuffari, dated August 30, 2022.
[redacted]
[152] [redacted] email, dated August 4, 2020.
[153] Witness #2 email, dated August 6, 2020.
[154] Witness #Witness #9 email, dated August 6, 2020.
[155] Witness #2 email, dated August 6, 2020.
[156] [redacted] email, dated August 19, 2020.
[157] [redacted] email, Allegation Chart Revisions, dated November 18, 2020.
[158] [redacted] email, dated October 12, 2020, and related Draft Report.
[159] [redacted] email, dated October 23, 2020; related email attachment, WH Draft Report.
[160] [redacted] email, dated October 23, 2020; related email attachment, WH Draft Report.
[161] [redacted] email, dated October 23, 2020; related email attachment, WH Draft Report.
[162] WilmerHale report, dated December 14, 2020.
[163] WilmerHale report, Appendix A, dated December 14, 2020.
[164] Interview of IG Cuffari, dated August 30, 2022; Interview of Witness #2 [redacted] dated September 1, 2022.
[165] Interview of IG Cuffari, dated August 30, 2022.

[166] During the interview, it took IG Cuffari approximately 1 minute and 38 seconds to point to where he believed [redacted] was referenced in WilmerHale's 108-page investigative report – including appendices.
[167] Interview of [redacted] dated September 1, 2022.
[168] Interview of Andrew De Mello, dated August 23, 2022.
[169] Interview of Andrew De Mello, dated August 23, 2022.
[170] Interview of Andrew De Mello, dated August 23, 2022.
[171] Interview of Andrew De Mello, dated August 23, 2022.
[172] Interview of [redacted] dated September 1, 2022, transcript part 2.
[173] Interview of [redacted] dated September 1, 2022, transcript part 2.
[174] Interview of [redacted] dated November 4, 2021 and October 5, 2022; Interview of [redacted] dated September 22, 2022; Interview of [redacted] dated September 28, 2022; Interview of [redacted] dated September 1, 2022.
[175] Joseph Cuffari, QFRs, dated June 4, 2021 and Joseph Cuffari letter to the IC, dated August 10, 2020.
[176] Interview of IG Cuffari, dated August 30, 2022.
[177] IG Cuffari letter of recommendation, dated June 5, 2020.
[178] Interview of Andrew De Mello, dated August 23, 2022.
[179] Interview of Andrew De Mello, dated August 23, 2022.
[180] Joseph Cuffari, QFRs, dated June 4, 2021.
[181] IG Cuffari email, dated July 12, 2020.
[182] [redacted] email, dated July 13, 2020.
[183] [redacted] email, dated August 19, 2020.
[184] [redacted] email, dated August 27, 2020.
[185] [redacted] email, dated September 18, 2020.
[186] Interview of [redacted] dated May 18, 2022.
[187] [redacted] email, dated August 4, 2020.
[188] Joseph Cuffari email, dated August 5, 2020.
[189] Interview of [redacted] dated June 25, 2021.
[190] Interview of IG Cuffari, dated August 30, 2022.
[191] [redacted] email, IG Telecom w/ [redacted] dated October 5, 2020.
[192] [redacted] email, RE: Shaw call, dated September 4, 2020.
[193] Interview of [redacted] dated February 9, 2023.
[194] Interview of [redacted] dated February 9, 2023.
[195] Interview of [redacted] dated February 9, 2023.
[196] [redacted] email, dated June 8, 2020.
[197] Contract No. 70VT1520C00003, Modification 1, dated June 17, 2020.
[198] [redacted] email, dated June 14, 2020.
[199] [redacted] email, dated July 30, 2020.
[200] [redacted] email, July 31, 2020.
[201] [redacted] email, dated August 20, 2020.
[redacted]
[203] Andrew De Mello email, dated April 1, 2020, Updated SOW.
[204] Interview of Andrew De Mello, dated August 23, 2022.
[205] Undated draft letter from Andrew De Mello email.

[206] Interview of IG Cuffari, dated August 30, 2022.
[207] Interview of IG Cuffari, dated August 30, 2022.
[208] DOT OIG document request, dated July 27, 2021; Memorandum of Activity, Record of Conversation, [redacted] dated February 17, 2022; DOT OIG letter, dated January 12, 2023.
[209] Interview of IG Cuffari, dated August 30, 2022; Interview of Witness #2 [redacted] dated September 1, 2022; Interview of Witness #23 [redacted] dated March 15, 2022 and April 11, 2022; DHS OIG letter, dated February 3, 2023; DOT OIG letter, dated February 10, 2023.
[210] [redacted] email, dated October 14, 2020.
[211] Interview of Witness #20 [redacted] dated November 4, 2021.
[212] Interview of Witness #4 [redacted] dated February 9, 2023.
[213] Interview of IG Cuffari, dated August 30, 2022.
[214] Interview of IG Cuffari, dated August 30, 2022.
[215] Interview of IG Cuffari, dated August 30, 2022.
[216] CCU school transcript of Joseph Cuffari from OPF, page 60.
[217] Interview of IG Cuffari, dated August 30, 2022.
[218] US Dept. of Education, Office of Postsecondary Education, institutional accreditation information for CCU; Memorandum of Activity, dated October 13, 2022, regarding GAO reports GAO-04-771T and GAO-04-1096T.
[219] IG Cuffari letter to CIGIE, dated November 3, 2020, Re: Integrity Committee Cases 20-056/059, 20-070, and 20-079.
[220] IG Cuffari deposition transcript, dated June 29, 2023.
[221] DHS OIG MSPB Settlement Agreement with Ms. Costello, dated July 17, 2023.
[222] IG Cuffari deposition transcript, dated June 29, 2023.
[223] Jennifer Costello, Notice of Proposed Removal, dated February 28, 2020.
[224] Diana Shaw email thread, dated April 28, 2020.
[225] Technical Evaluation Report, from Response 2 – Contract Award and Supporting Docs – ref. pages 499-504.
[226] Jennifer Costello, Amended Notice of Proposed Removal, dated May 8, 2020.
[227] Memorandum from [redacted] dated May 8, 2020, Placement on Administrative Leave; Memorandum from Witness #2 [redacted] dated May 21, 2020, Investigative Leave Notice.
[228] Jennifer Costello, Amended Notice of Proposed Removal, dated May 8, 2020.
[229] Interview of Witness #2 [redacted] dated September 1, 2022, transcript part 2.
[230] Andrew De Mello email, dated March 31, 2020.
[231] DHS OIG Market Research Questionnaire.
[232] Witness #2 [redacted] email, dated April 7, 2020.
[233] Witness #24 [redacted] email, dated April 7, 2020.
[234] Email exchange between Witness #24 [redacted] and Witness #25 [redacted] dated April 13, 2020.
[235] Technical Evaluation Report, from Response 2 – Contract Award and Supporting Docs – ref. pages 499-504; Witness #24 [redacted] email, dated July 9, 2020, RE: IC inquiry on WH contract, from Response 2 – Contract Award and Supporting Docs, ref. page 762.
[236] Contract Award to WilmerHale, dated May 4, 2020.
[redacted]
[238] Interview of Witness #Witness #9 [redacted] dated May 18, 2022.
[239] Memorandum from WilmerHale to Witness #25 [redacted] Re Contract Award No. 70VT1520C00003, dated September 2, 2020.

[240] Memorandum from WilmerHale to [redacted] Re Contract Award No. 70VT1520C00003, dated September 2, 2020.
[241] Amendment of Solicitation/Modification of Contract, Amendment/Modification No P00002, signed by [redacted] on September 30, 2020.
[242] Interview of [redacted] dated May 18, 2022.
[243] Interview of [redacted] dated May 18, 2022; and interview of [redacted] dated April 29, 2022.
[244] [redacted]
[245] Interview of IG Cuffari, dated August 30, 2022.
[246] Letter from IG Cuffari to the IC, dated August 10, 2020, Re: Integrity Committee Case 20-056/20-059.
[247] [redacted]
[248] Letter from IG Cuffari to IG [redacted] dated February 6, 2020.
[249] [redacted]
[250] Joseph Cuffari, QFRs, dated June 4, 2021.
[251] [redacted] email, dated August 4, 2020.
[252] Joseph Cuffari email, dated August 5, 2020.
[253] Interview of [redacted] dated June 25, 2021.
[254] Interview of IG Cuffari, dated August 30, 2022.
[255] [redacted]
[256] American Bar Association - Model Rules of Professional Conduct - Rule 4.2: Communication with Person Represented by Counsel
[redacted]
[258] Interview of [redacted] dated May 18, 2022.
[259] Interview of [redacted] dated May 18, 2022.
[260] Interview of [redacted] dated May 18, 2022.
[261] Interview of [redacted] dated April 29, 2022.
[262] Interview of IG Cuffari, dated August 30, 2022.
[263] Interview of IG Cuffari, dated August 30, 2022.
[264] Interview of IG Cuffari, dated August 30, 2022.
[265] Interview of IG Cuffari, dated August 30, 2022.
[266] Interview of IG Cuffari, dated August 30, 2022.
[267] Interview of IG Cuffari, dated August 30, 2022.
[268] Interview of IG Cuffari, dated August 30, 2022.
[269] [redacted] email, dated August 6, 2020.
[270] Interview of [redacted] dated June 25, 2021.
[271] COO Costello's title is in dispute. The facts indicate she, at least for part of this time, held herself out as the Deputy IG or Acting IG. It remains unclear whether this was appropriate.
[272] 5 U.S.C. § 3345
[273] GAO, FAQs on the Vacancies Act.
[274] [redacted] email, dated May 17, 2018.
[275] Interview of [redacted] dated August 19, 2021.
[276] [redacted] email, dated November 5, 2018.
[277] [redacted] email, dated November 7, 2018.

[278] Witness #1 letter, dated November 9, 2018.
[279] email, dated November 16, 2018.
[280] email, dated November 28, 2018.
[281] email, dated February 8, 2019.
[282] Witness #1 email, dated February 19, 2019.
[283] email, dated February 19, 2019
[284] Witness #1 interview, dated August 19, 2021.
[285] Witness #1 email, dated February 15, 2019 [ref. IC 1015].
[286] SF-50, featuring an effective date of November 11, 2018.
[287] and Costello SF-50s, featuring an effective date of November 11, 2018; Memorandum of Activity, dated July 2, 2021, Review of Costello SF-50s. The appointment of Ms. Costello to the position of DIG featured identification information associated with the action of "HS OG0100000000000000 PP 23 2018." The reference to "PP 23 2018" indicates that the entry was made in the 23rd pay period (PP) of 2018. This conforms to the date occurring in November, as there are normally 26 pay-periods in a year in the Federal payroll system.
[288] Interview of Witness #1 dated August 19, 2021.
[289] Interview of Witness #1 dated August 19, 2021.
[290] Interview of Witness #29 dated August 24, 2021.
[291] Interview of Karen Ouzts, dated January 28, 2022.
[292] Interview of Karen Ouzts, dated January 28, 2022.
[293] Witness #1 SF-50, personnel action, Cancellation and Reassignment, dated March 31, 2019.
[294] Witness #1 SF-50, personnel action, Retirement, dated June 10, 2019.
[295] Karen Ouzts email, dated June 25, 2019.
[296] PD 19Q103.
[297] Karen Ouzts email, dated June 25, 2019.
[298] Karen Ouzts email, dated June 25, 2019.
[299] Interview of Karen Ouzts, dated January 28, 2022 and October 25, 2022.
[300] Witness #19 email, dated June 12, 2019; Interview of Witness #19 dated September 17, 2021.
[301] Interview of Karen Ouzts, dated January 28, 2022 and October 25, 2022.
[302] DHS OIG succession plan.
[303] Memorandum of Activity, Record of Conversation, dated January 12, 2022; Memorandum of Activity, Record of Conversation, dated January 19, 2022.
[304] Interview of Jennifer Costello, dated July 21, 2023.
[305] Interview of Witness #2 dated September 1, 2022; Amended NOPR, Jennifer Costello, dated May 8, 2020.
[306] IG Cuffari letter to Congress/HSGAC, dated June 11, 2020.
[307] Interview of Witness #1 dated August 19, 2021.
[308] IG Cuffari letter to Congress, dated June 11, 2020.
[309] Witness #1 SF-50 personnel actions.
[310] Interview of IG Cuffari, dated August 30, 2022.
[311] Witness #5 email, dated April 22, 2020, Re: OIG Succession Plan.
[312]

[redacted]

317 Email from Witness #9 RE: Allegation re Costello, August 6, 2020
318 Email from Witness #2 FW: Omit allegation, August 6, 2020
319 Interview of Witness #1 dated August 19, 2021.
320 Interview of Witness #30 [redacted] dated March 21, 2022.
321 Interview of Witness #1 dated August 19, 2021.
322 Jennifer Costello email, dated April 30, 2019.
323 Interview of Jennifer Costello, dated July 21, 2023.
324 Interview of Jennifer Costello, dated July 21, 2023.
325 Interview of Jennifer Costello, dated July 21, 2023.
326 Interview of Jennifer Costello, dated July 21, 2023.
327 Interview of Jennifer Costello, dated July 21, 2023.
328 Interview of Jennifer Costello, dated July 21, 2023.
329 Interview of Witness #18 dated April 22, 2022.
330 Interview of Witness #18 dated April 22, 2022.
331 Interview of WitnessWitness #31 dated February 4, 2022.
332 Interview of Witness #16 dated May 19, 2022.
333 Interview of Jennifer Costello, July 21, 2023.
334 Witness #28 email, dated February 28, 2017.
335 Witness #28 email, dated March 21, 2017.
336 Witness #1 email, dated April 3, 2017.
337 Interview of Witness #28 dated January 12, 2023.
338 Interview of Witness #1 dated August 19, 2022.
339 Witness #1 email, dated April 29, 2019 [ref IC 1015].
340 Interview of Witness #1 dated August 19, 2022.
341 Interview of Karen Ouzts, dated October 25, 2022.
342 Memorandum of Activity, Record of Conversation, [redacted] dated December 15, 2022.
343 Interview of Witness #32 dated January 19, 2023.
344 Karen Ouzts email, dated April 29, 2019.
345 Jennifer Costello email, dated April 29, 2019.
346 Jennifer Costello email, dated April 30, 2019.
347 Karen Ouzts email, dated April 30, 2019.
348 Interview of Karen Ouzts, dated January 28, 2022.
349 Interview of Diana Shaw, dated May 16, 2022.
350 Interview of Karen Ouzts, dated October 25, 2022.
351 Jennifer Costello email, dated December 19, 2018.
352 [redacted] email, dated December 19, 2018.
353 Jennifer Costello email, dated December 20, 2018.
354 Interview of WitnessWitness #31 dated February 4, 2022.
355 Interview of Witness #28 dated December 13, 2022.
356 Interview of Diana Shaw, dated May 16, 2022.
357 Interview of Karen Ouzts, dated October 25, 2022.
358 Interview of Jennifer Costello, dated July 21, 2023.
359 Interview of Jennifer Costello, dated July 21, 2023.
360 Interview of Jennifer Costello, dated July 21, 2023.

[361] Interview of Jennifer Costello, dated July 21, 2023.
[362] Interview of Jennifer Costello, dated July 21, 2023.
[363] Interview of Jennifer Costello, dated July 21, 2023.
[364] Interview of Diana Shaw, dated May 16, 2022; Interview of Karen Ouzts, dated October 25, 2022.
[365] WilmerHale report, dated December 14, 2020.
[366] GAO testimonial reports on Diploma Mills – GAO-04-771T, dated May 11, 2004; and GAO-04-1096T, dated September 23, 2004.
[367] DHS OIG website information, Meet the IG, November 15, 2022.
[368] US Dept. of Education, Office of Postsecondary Education, institutional accreditation information for CCU.
[369] Interview of Jennifer Costello, dated July 21, 2023.
[370] Interview of Karen Ouzts, dated January 28, 2022.
[371] Interview of Diana Shaw, dated May 16, 2022.
[372] Interviews of Witness #1 dated August 19, 2021 and August 19, 2022.
[373] Interview of Witness #34 dated June 17, 2022.
[374] Interview of Witness #8 dated December 3, 2021.
[375] Interview of Witness #28 dated December 13, 2022.
[376] Interview of Diana Shaw, dated May 16, 2022.
[377] Interview of Witness #8 dated December 3, 2021.
[378] Interview of dated August 12, 2021.
[379] Interview of dated August 12, 2021.
[380] Interview of dated August 12, 2021.
[381] Interview of IG Cuffari, dated August 30, 2022.
[382] Interview of Witness #28 dated December 13, 2022.
[383] Interview of dated August 12, 2021.
[384] Interview of Witness #34 dated June 17, 2022,
[385] Interview of Witness #34 dated June 17, 2022.
[386] Interview of Witness #34 dated June 17, 2022.
[387] Interview of Witness #34 dated June 17, 2022.
[388] Interview of Witness #8 dated December 3, 2021; Sheldon Cooper is a fictional character in the television series The Big Bang Theory and its spinoff series Young Sheldon.
[389] Jennifer Costello email, dated October 17, 2019, Re: Memorandum from Inspector General Cuffari, Dated October 17, 2019.
[390] email, dated October 27, 2020, RE: Noteworthy Document Summary.
[391] Interview of Ms. Costello, dated July 21 ,2023.
[392] CIGIE IC, referral no. IC 20-007.
[393] Interview of Witness #34 dated June 17, 2022.
[394] Interview of Witness #34 dated June 17, 2022.
[395] Interview of Jennifer Costello, dated July 21, 2023.
[396] Knowingly making or using a false writing or document in any matter within the jurisdiction of the executive, legislative, or judicial branch of the United States could be a violation of 18 U.S.C. § 1001(a)(3).
[397] Conspiring to defraud an agency of the United States could be a violation of 18 U.S.C. § 371.
[398] Jennifer Costello, SF-50, personnel action, dated November 11, 2018.

[399] Witness #1 SF-50, personnel action, dated November 11, 2018.
[400] Karen Ouzts email, dated June 13, 2019 [included in the email thread].
[401] Interview of Witness #1 dated August 19, 2021.
[402] Jennifer Costello SF-50, personnel action, dated November 11, 2018.
[403] Interview of Witness #1 dated August 19, 2021.
[404] Memorandum of Activity, Document Review, dated July 2, 2021; Interview of Witness #35 dated July 6, 2021.
[405] Witness #1 SF-50, personnel action, dated November 11, 2018.
[406] Jennifer Costello SF-50, personnel action, dated November 11, 2018, featuring PP23 2018 in box 22; Witness #1 SF-50, personnel action, dated November 11, 2018, featuring PP23 2018 in box 22.
[407] NFC-1217, revised 7/15, for pay period calendar 2019.
[408] Witness #1 SF-50, personnel action, dated March 27, 2019, featuring PP07 2019 in box 22.
[409] Witness #1 SF-50, personnel action, Retirement Voluntary, dated June 10, 2019, featuring PP12 2019 in box 22.
[410] Karen Ouzts email thread, dated June 25, 2019, re Status Update.
[411] Witness #1 SF-50, personnel action, Correction, dated June 10, 2019, featuring PP14 2019 in box 22.
[412] Jennifer Costello, SF-50, personnel action, Cancellation, featuring PP12 2020 in box 22.
[413] Jennifer Costello, SF-50, personnel action, Cancellation, featuring PP12 2020 in box 22; Interview of Witness #35 dated July 6, 2021, ref. coding within box 22 of SF-50s.
[414] Interview of Karen Ouzts, dated January 28, 2022.
[415] Interview of Karen Ouzts, dated January 28, 2022.
[416] Interview of Jennifer Costello, dated July 21, 2023.
[418] Witness #1 email, dated November 5, 2018; Jennifer Costello SF-50, personnel action, dated November 11, 2018.
[419] Conspiring to defraud an agency of the United States could be a violation of 18 U.S.C. §371.
[420] Interview of Karen Ouzts, dated January 28, 2022.
[422] Witness #1 email, dated November 5, 2018; Jennifer Costello SF-50, personnel action, dated November 11, 2018.
[423] GAO, FAQs on the Vacancies Act.
[424] Interview of Witness #1 dated August 19, 2021.
[425] Interview of Witness #30 dated March 21, 2022.
[426] Interview of Witness #1 dated August 19, 2021.
[427] Email thread between Jennifer Costello and Diana Shaw, dated April 30, 2019, RE: I think we need to do a public report/letter.
[428] Interview of Diana Shaw, dated May 16, 2022.
[429] Interview of Diana Shaw, dated May 16, 2022.
[430] Witness #1 email, dated April 29, 2019, A Slight Delay in My Retirement.
[431] Interview of Diana Shaw, dated May 16, 2022.
[432] Witness #30 email, dated June 28, 2019.
[433] Witness #30 email, dated July 1, 2019.
[434] Witness #30 email, dated July 3, 2019.

[435] Diana Shaw email, dated September 5, 2019, Report on Office of Special Counsel Referral, and email response from IG Cuffari.
[436] Diana Shaw email, dated September 5, 2019, Report on Office of Special Counsel Referral, and email response from IG Cuffari.
[437] Diana Shaw email, dated September 5, 2019, Report on Office of Special Counsel Referral, and email response from IG Cuffari.
[438] Interview of Diana Shaw, dated May 16, 2022.
[439] Interview of IG Cuffari, dated August 30, 2022.
[440] Interview of IG Cuffari, dated August 30, 2022.
[441] Interview of Witness #36 dated January 7, 2022.
[442] Interview of Witness #30 dated March 21, 2022.
[443] Witness #30 email, dated October 28, 2019.
[444] Interview of Witness #30 dated March 21, 2022.
[445] Information provided by OSC, dated February 24, 2022, regarding file number DI-18-5034.
[446] Information provided by OSC, dated February 24, 2022, regarding file number DI-18-5034.
[447] Ms. Shaw email, dated October 24, 2019.
[448] Interview of Witness #2 dated September 1, 2022.
[449] Letter from Diana Shaw to the Integrity Committee Working Group, "Integrity Committee Case 20-059: Request for Response" (May 28, 2021).
[450] Interview of Diana Shaw, dated May 16, 2022.
[451] Interview of Diana Shaw, dated May 16, 2022.
[452] Interview of Diana Shaw, dated May 16, 2022.
[453] Interview of Diana Shaw, dated May 16, 2022.
[454] email thread, dated May 1, 2020, regarding Off-Boarding Process.
[455] WilmerHale Report, dated December 14, 2020.
[456] DOT OIG document request, dated June 16, 2021; DOT OIG document request, dated July 27, 2021
[457] Interview of Witness #37 dated July 8, 2021.
[458] Interview of Witness #37 dated July 8, 2021.
[459] Interview of Witness #37 dated July 8, 2021.
[460] Interview of Witness #37 dated July 19, 2021.
[461] Interview of Witness #38 dated September 28, 2021.
[462] Interview of Witness #38 dated September 28, 2021.
[463] Interview of Diana Shaw, dated May 16, 2022.
[464] Memorandum of Understanding, dated September 19, 2019; Interview of Andrew De Mello, dated June 22, 2022, part 1.
[465] Memorandum of Activity, Record of Conversation, dated February 17, 2022 and March 4, 2022; DOT OIG letter, dated January 12, 2023; DHS OIG letter dated February 3, 2023; DOT OIG letter dated February 10, 2023.
[466] Interview of Andrew De Mello, dated August 23, 2022.
[467] Interview of Andrew De Mello, dated August 23, 2022, transcript part 4, page 39.
[468] Andrew De Mello email thread, dated January 16-17, 2020, Re: Computer Data Preservation.
[469] Andrew De Mello email thread, dated January 16-17, 2020, Re: Computer Data Preservation.
[470] Interview of Witness #39 dated December 16, 2021.
[471] letter, dated February 3, 2023; Interview of Witness #2 dated March 6, 2023.
[472] Interviews of Witness #23 dated March 15, 2022 and April 11, 2022.

[473] Interview of [redacted] dated May 18, 2022.
[474] Interview of [redacted] dated January 12, 2023.
[475] [redacted] email, dated July 2, 2020.
[476] Interview of IG Cuffari, dated August 30, 2022.
[477] Interview of [redacted] dated September 1, 2022.
[478] Letter to [redacted] dated January 12, 2023.
[479] Letter from [redacted] to the IC investigative team, dated February 3, 2023.
[480] Memorandum of Activity, Record of Conversation, [redacted] dated February 10, 2023.
[481] Memorandum of Activity, text message from [redacted] dated February 15, 2023.
[482] Interview of [redacted] dated March 6, 2023.
[483] Memorandum of Activity, Record of Conversation, Treasury OIG Special Agent, dated March 9, 2023.
[484] Diana Shaw email, dated October 15, 2019.
[485] Diana Shaw email, dated October 15, 2019.
[486] Memo for Diana Shaw from IG Cuffari, with a subject of Telework Policy Matter, dated October 17, 2019.
[487] Jennifer Costello email, dated October 21, 2019.
[488] Andrew De Mello email, dated October 22, 2019.
[489] Andrew De Mello email, dated November 5, 2019.
[490] IG Cuffari email, dated November 7, 2019.
[491] Memo from IG Cuffari to Diana Shaw, dated November 6, 2019.
[492] DHS OIG Grievance Handbook, dated April 2007.
[493] Karen Ouzts email, dated November 7, 2019.
[494] Interview of Karen Ouzts, dated January 28, 2022.
[495] Interview of Andrew De Mello, dated June 22, 2022.
[496] Interview of Andrew De Mello, dated June 22, 2022.
[497] Interview of [redacted] dated September 1, 2022.
[498] Interview of [redacted] dated May 18, 2022.
[499] Interview of [redacted] dated May 18, 2022.
[500] Interview of [redacted] dated May 18, 2022.
[501] Interview of Diana Shaw, dated May 16, 2022.
[502] Interview of Diana Shaw, dated May 16, 2022.
[503] Interview of Diana Shaw, dated May 16, 2022.
[504] Interview of [redacted] dated December 3, 2021.
[505] Interview of [redacted] dated December 16, 2021.
[506] Interview of [redacted] dated December 16, 2021.
[507] Interview of [redacted] dated February 10, 2022.
[508] Interview of [redacted] dated November 5, 2021.
[509] Interview of Andrew De Mello, dated June 22, 2022.
[510] Interview of IG Cuffari, dated August 30, 2022.
[511] Interview of Andrew De Mello, dated June 22, 2022.
[512] Interview of [redacted] dated June 17, 2022.
[513] Interview of [redacted] dated February 10, 2022.
[514] CIGIE IC Notification Letter - IC20-042, dated April 29, 2020.
[515] Undated letter for IG Cuffari's signature.
[516] Interview of IG Cuffari, dated August 30, 2022.

[517] Interview of Andrew De Mello, dated August 23, 2022.
[518] From IG Cuffari's response to CIGIE, letter to CIGIE, dated November 3, 2020, Re: Integrity Committee Cases 20-056/059, 20-070, and 20-079.
[519] Ref. Ranking Member Gary C. Peters Post-Hearing Questions for the Record Submitted to Joseph Cuffari.
[521] DOT OIG document request to DHS OIG, dated June 16, 2021.
[522] DOT OIG document request to DHS OIG, dated July 27, 2021.
[523] DOT OIG document request to DHS OIG, dated October 18, 2021.
[524] DOT OIG document request to DHS OIG, dated January 13, 2022.
[525] DOT OIG document request and preservation notice to DHS OIG, dated January 25, 2022.
[526] DOT OIG document request to DHS OIG, dated September 16, 2022.
[527] DOT OIG document request to DHS OIG, dated January 25, 2022.
[528] Highlights of text message tranches provided in response to IC20-059 for Witness #5 and Witness #2
[529] IG Cuffari's testimony, dated June 6, 2023, unofficial transcript – ref. page 67.
[530] The District of Columbia Bar - A. Rules of Professional Conduct, Rule 1.13: Organization as Client, (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. Rule 1.7: Conflict of Interest: General Rule, (4) The lawyer's professional judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer's responsibilities to or interests in a third party or the lawyer's own financial, business, property, or personal interests.
[531] Interview of Witness #8 dated December 3, 2021; Interview of Witness #Witness #9 dated May 18, 2022; Interview of Witness #10 dated August 4, 2021; Interview of Witness #11 dated February 9, 2022.
[532] email, dated October 14, 2020.
[533] Interview of Witness #20 dated November 4, 2021.
[534] Interview of Witness #4 dated February 9, 2023.

Enclosure 2

IG Cuffari's Response to the DOT OIG Report

[redacted]

[redacted]

August 16, 2024

VIA EMAIL

Kimberly A. Howell | Corporation for Public Broadcasting Inspector General
Integrity Committee (IC) Chairperson
Council of the Inspectors General on Integrity and Efficiency (CIGIE)
integrity-wg@cigie.gov

RE: Correspondence on Behalf of Inspector General Joseph Cuffari
CIGIE Integrity Committee Complaint Number 20-059

Dear Chairperson Howell:

On behalf of our client, Department of Homeland Security (DHS) Inspector General (IG) Joseph Cuffari, thank you for the opportunity to review and comment on the Integrity Committee's Draft Report on Complaint Number 20-059 dated February 12, 2024 and transmitted to the undersigned counsel on June 6, 2024.[1] IG Cuffari appreciates the opportunity to submit this correspondence to document his position with respect to the allegations addressed in the Draft Report to ensure that the IC finalizes its Report on Complaint 20-059 based on complete and accurate information.[2]

In its Draft Report, the IC makes a number of allegations against IG Cuffari that it improperly claims are substantiated in part or fully substantiated:

1. IG Cuffari abused his authority by authorizing a contract between DHS OIG and the law firm of Wilmer Hale.
2. IG Cuffari lacked candor in his explanations concerning his decision to engage Wilmer Hale.
3. IG Cuffari asked Diana Shaw's supervisors to pressure her to cooperate with Wilmer Hale's investigation.
4. IG Cuffari provided inaccurate answers to questions during his confirmation process.

The Draft Report also makes gratuitous and erroneous insinuations concerning IG Cuffari. For the reasons that follow, each and every allegation or finding of misconduct in the Draft Report

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[1] The IC transmitted the Draft Report to the undersigned counsel shortly after the House Judiciary Committee staff requested a briefing from CIGIE on the IC investigatory process. Much of the Draft Report is redacted. The IC has represented that the redacted sections of the Draft Report "generally" do not relate to IC Cuffari. However, IG Cuffari cannot respond to any redacted information or allegation. Accordingly, IG Cuffari reserves his right to submit a supplemental response addressing any information that was redacted from the Draft Report to the extent the IC relies on such redacted information to support any conclusion or recommendation with respect to IG Cuffari.

[2] On August 30, 2022, IG Cuffari participated in a voluntary interview during which agents from the Department of Transportation Office of Inspector General interviewed him on behalf of the IC about various allegations for approximately five hours. During that interview, IG Cuffari responded truthfully to the best of his knowledge and recollection about the allegations in Complaint 20-059 and various other matters. When the IC sought to re-interview IG Cuffari, he offered to provide written answers to any additional questions. The IC did not provide any written questions. Therefore, IG Cuffari disputes the Draft Report's suggestion that he has refused to cooperate in the investigation.

[redacted]

is wrong and undermined by the full factual record. Accordingly, IG Cuffari asks that the Draft Report be amended to conclude that all of the aforementioned allegations are unsubstantiated.

Background of IG Cuffari

IG Cuffari has dedicated his life and career to public service. He served with distinction in the United States Air Force in both active duty and reserve capacities more than 40 years.[3] He also worked the United States Department of Justice (DOJ) Office of Inspector General (OIG) for more than 20 years before retiring in May 2013. Upon learning of Mr. Cuffari's retirement, the [redacted] Witness #12 emailed Mr. Cuffari to thank him for "all of [his] outstanding contributions to the OIG." Witness #12 noted that Mr. Cuffari would be "missed by all of [his] colleagues" and leave "some very big shoes to fill." [4] IG Cuffari also sent Mr. Cuffari a letter to thank him for "31 years of dedicated service to the federal government." Witness #12 noted that "[t]he American people are fortunate to have had someone with your talent and ability serve them so ably." Witness #12 commended Mr. Cuffari for his "outstanding work" and noted that Mr. Cuffari had helped the DOJ OIG reach an "unparalleled" level of "excellence and respect" within DOJ and the IG community.[5]

Based on his exemplary history of service, Mr. Cuffari was vetted and nominated to become the Inspector General of the Department of Homeland Security in 2018. Throughout his nomination and confirmation process, Mr. Cuffari pledged to hold the DHS OIG to the highest standards by promoting stable leadership, accountability, transparency, and civility. Throughout his tenure, IG Cuffari has consistently sought to improve the quality and utility of the inspections, investigations, and reports generated by the DHS OIG. Specifically, IG Cuffari is dedicated to ensuring that the DHS OIG provides "rigorous, independent, and objective oversight" and promotes "excellence, integrity, and accountability" throughout DHS.[6] As a result, DHS OIG's scores in the Federal Employee Viewpoint Survey and the Partnership for Public Service scores have increased, reflecting an increase in employee morale and productivity.

Malfeasance by DHS OIG Senior Executives

As discussed below, IG Cuffari's efforts to revitalize DHS OIG were met with resistance. He soon learned of misconduct and mismanagement by three DHS OIG senior executives. IG Cuffari has reviewed the IC's Draft Report and, as detailed below, vehemently refutes its erroneous findings. In short, IG Cuffari at all times acted with the utmost level of professionalism and integrity while confronting frivolous allegations by the same three senior executives.

When former President Trump nominated Mr. Cuffari to become the DHS IG, three senior

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[3] Mr. Cuffari earned the Air Force Office of Special Investigations Officer of the Year Award in approximately 1989.
[4] Exhibit A, May 31, 2013 Email from Michael Horowitz to Joseph Cuffari. The IC's Draft Report references emails from Mr. Cuffari's DOJ OIG email account, suggesting that the IC accessed at least some emails from this account. The Draft Report fails to mention or address the laudatory email from IG Horowitz, which was sent to Mr. Cuffari's DOJ OIG email address.
[5] Exhibit B, May 31, 2013 Letter from Michael Horowitz to Joseph Cuffari.
[6] DHS OIG Semiannual Report to Congress, April 1, 2023 – September 30, 2023 (available on the DHS OIG website at https://www.oig.dhs.gov/sites/default/files/assets/SAR/2024/oig-sar-apr23-sept23.pdf).

DHS OIG executives – Jennifer Costello, Diana Shaw, and Karen Ouzts – misused their official positions to attempt to derail Mr. Cuffari's nomination through communications sent from their government email addresses to Witness #18 who was [redacted] at the time.[7] Then, shortly after IG Cuffari took office, he learned that Ms. Costello, as the purported Acting IG, had improperly approved the hiring of up to 40 additional employees even though the office had accrued a projected budget shortfall of between $7,000,000 and $12,000,000.[8]

IG Cuffari's concerns were reinforced when, in December 2019, the Chairmen and Ranking Members of the Senate Homeland Security and Governmental Affairs Committee (HSGAC) and the House Homeland Security Committee wrote to IG Cuffari to "express serious concern about the cumulative effect of ***longstanding mismanagement and operational challenges***" within DHS OIG that threatened to undermine its ability to "provide independent oversight and promote integrity and accountability within [DHS.]"[9] Congress viewed DHS OIG as "plagued by ongoing bureaucratic infighting and competing allegations of misconduct."[10] Congress also noted that employee morale within DHS OIG was low and that the office had accrued a "multi-million dollar budget shortfall."[11]

IG Cuffari Seeks Advice from Other Inspectors General

IG Cuffari promptly sought advice on how to address the conduct of the three senior executives from trusted and experienced Inspectors General from various federal agencies, including Witness #12 who was the [redacted] at the time. He also met with HSGAC staff in late August 2019 and made protected disclosures about his concerns about significant misconduct by the same three senior executives.

Following additional discussions with Witness #12 and others, IG Cuffari reported his concerns to the CIGIE Integrity Committee. Unbeknownst to IG Cuffari at that time, several other DHS OIG career civil service employees had also filed complaints to the IC about the same three senior employees. However, the IC refused to investigate any of these significant and credible complaints.[12]

Based on the IC's inexplicable inaction, IG Cuffari sought advice from Witness #12 and other current and former Inspectors General. Based on their advice, IG Cuffari contacted other Inspectors General to conduct an independent review of the complaints. One such IG initially

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[7] Exhibit C, Redacted Report of Investigation by Wilmer Hale at Page 27.
[8] One of the most reputable international law firms conducted an independent investigation and found that those same three senior executives "engaged in an assortment of unprofessional behavior that was designed to undermine and contravene" IG Cuffari and his predecessor. Exhibit C, Redacted Report of Investigation by Wilmer Hale at Page 1.
[9] Exhibit D (December 6, 2019 Letter from HSGAC to IG Cuffari) (emphasis added).
[10] *Id.*
[11] *Id.* Although the Draft Report reflects that the IC obtained access to IG Cuffari's official email account, the IC fails to include or address this mandate from Congress to IG Cuffari in its analysis.
[12] The Draft Report reflects that the IC obtained access to IG Cuffari's official email account along with the official email accounts of other DHS OIG employees. IG Cuffari's complaints and the complaints submitted by others would be reflected in these email accounts. However, the Draft Report fails to include or address the IC's repeated decision not to investigate these complaints.

agreed to perform this investigation, before concluding that her office did not have the resources to investigate the matter. After a second independent body failed to assist IG Cuffari, he spoke with another IG who told him he could consider engaging an outside entity to conduct the investigation.

Competitive Bidding Process

IG Cuffari prudently discussed the matter internally with counsel. Contracting officials commenced a competitive bidding process to seek applicants to conduct the investigation that two other federal entities refused to undertake. After that process, DHS OIG engaged Wilmer Hale to undertake an independent investigation of various allegations of misconduct within DHS OIG. As IG Cuffari testified at his August 30, 2022 interview, he recused himself from this process and the DHS OIG contracting staff oversaw selecting Wilmer Hale and facilitating the investigation. IG Cuffari did not participate in selecting Wilmer Hale, defining the scope of the investigation, or directing the investigation.[13]

IG Cuffari also did not ask Diana Shaw's supervisors to compel her to submit to an interview with Wilmer Hale. He asked her supervisors to remind her of her obligation as a federal employee to cooperate in an investigation conducted on behalf of an IG. There was no pressure or anything untoward about this request. It is common practice for Inspectors General to request such assistance. In fact, Ms. Costello and Ms. Shaw did so in an unrelated matter when they were DHS OIG senior executives.

Wilmer Hale's Findings

Wilmer Hale interviewed 70 individuals, reviewed more than 42,000 documents and completed its investigation and issued a report within approximately six months.[14]

Wilmer Hale made a number of significant findings that the IC's Draft Report improperly ignores. First, Wilmer Hale found that the same three senior executives fostered "an atmosphere of mistrust and unprofessionalism to the detriment of the agency and its mission." Second, Wilmer Hale found that those same three individuals "retaliated against anyone whom they believed stood in their way." Third, Wilmer Hale found that those individuals sought to undermine Mr. Cuffari's nomination to be IG. Fourth, Wilmer Hale found that some of the individuals improperly retroactively backdated official personnel records to incorrectly suggest that Ms. Costello had been properly appointed as the Acting Deputy DHS IG.[15] These findings speak volumes about the

[13] As the IC's Draft Report acknowledges, "[t]here is no direct evidence of IG Cuffari's intent to retaliate against Ms. Costello, Ms. Shaw, and Ms. Ouzts." *See* IC Draft Report at Page 62. IG Cuffari began making protected disclosures to Congress and CIGIE about Jennifer Costello, Diana Shaw, and Karen Ouzts' misconduct and their mismanagement within DHS OIG in approximately August 2019. He did not learn until November 2019 that Jennifer Costello had filed a complaint against him to the IC. He never received any information to suggest that Diana Shaw or Karen Ouzts made any protected disclosures against him and the Draft Report does not provide such evidence. Contrary to the Draft Report's speculative conclusions, IG Cuffari did not take any action or make any decision out of retaliation.

[14] Exhibit C, Draft Report of Investigation by Wilmer Hale at Page 1. In contrast, the investigation of IC Complaint Number 20-059 has been ongoing for more than four years.

[15] Exhibit C, Redacted Report of Investigation by Wilmer Hale at Pages 1-2, 24-29, 72-74.

culture that predated IG Cuffari's arrival as the agency head. Had either the IC or another OIG conducted a thorough and proper investigation they would have reached the same conclusions. Instead, the IC's Draft Report does nothing more than criticize IG Cuffari for navigating his office through an untenable situation.

Indeed, because the IC failed to investigate many of the allegations that Wilmer Hale ultimately investigated, it has a vested interest in undermining the credibility of Wilmer Hale's inquiry and its findings. Wilmer Hale found that approximately 76% of the allegations originally submitted to it for investigation were supported by the available evidence.[16] Specifically, Wilmer Hale concluded that the three DHS OIG senior executives engaged in "unprofessional conduct" that "elevated [their] own interests above those of the public."[17] It is unfounded and disingenuous for the IC to retroactively investigate IG Cuffari in connection with the Wilmer Hale investigation when that investigation would have been unnecessary had the IC investigated the three senior executives' alleged misconduct in the first place. It is an inherent conflict of interest for the IC to oversee an investigation into Wilmer Hale inquiry and report,[18] especially when the allegations against Mr. Cuffari have been fueled at least in part by the same three former DHS OIG senior executives who sought to undermine his nomination and disrupt the operation of the office.

The Record Illustrates the Wilmer Hale Investigation was Proper

The Draft Report's conclusion that the Wilmer Hale investigation was a misuse or waste of funds is wrong and not supported by the facts. Indeed, the United States Code specifically gives an Inspector General authority to "enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this Act." *See* 5 U.S.C. § 406(a)(9). Critically, the cost of the Wilmer Hale investigation would not have been incurred at all had the IC investigated the underlying allegations.[19] As IG Cuffari testified during his August 30, 2022 interview, the DHS OIG contracting staff oversaw the administration and budgeting of the Wilmer Hale investigation. Once the DHS OIG contracting staff engaged Wilmer Hale, IG Cuffari met with members of the House of Representatives and Senate oversight and appropriations committees, and with the Office of Management and Budget (OMB) and advised them that Wilmer Hale was investigating allegations of misconduct within DHS OIG.[20] Thus, IG Cuffari did not

[16] Exhibit C, Redacted Report of Investigation by Wilmer Hale. Wilmer Hale also independently discovered other misconduct and developed additional lines of inquiry during its investigation.
[17] *Id.* at Page 2.
[18] IG Cuffari was told by two agents conducting an unrelated investigation on behalf of the IC that IG Cuffari had been threatened by a third party. When IG Cuffari and the DHS OIG Chief Counsel sought information about the threat, the IC Chairperson refused to provide information and represented in writing that the IC might investigate them for their inquiry. These communications would be reflected in the IC's own records.
[19] Upon information and belief, the IC has incurred costs and expenses that substantially exceed the total cost of the Wilmer Hale inquiry and report during its four-year investigation of IC Complaint Number 20-059.
[20] The Senate and House appropriations committees and the OMB, not CIGIE or the IC, have the authority to oversee the allocation and use of DHS OIG's budget. Since 2019, the appropriations committees and OMB have reviewed DHS OIG's annual budget submissions and approved a total 48% increase in DHS OIG's budget since fiscal year 2019, including increasing the budget each year after Wilmer Haler completed and sought payment for its investigation. Additionally, since fiscal year 2019, DHS OIG has generated a return of nearly $15 for every appropriated dollar invested in the agency.

waste or misuse any funds in delegating this investigation to Wilmer Hale.

IG Cuffari Provided Accurate and Complete Information to the White House, Senate, and IC to the Best of his Knowledge and Understanding

IG Cuffari provided accurate and complete information throughout his nomination and confirmation process, including to the White House and the Senate Homeland Security and Governmental Affairs Committee, to the best of his knowledge and understanding.[21]

Likewise, IG Cuffari's office did not withhold information from the IC and was cooperative during the course of the IC's four-year investigation. Ironically, the IC's Draft Report fails to mention the significant resources it expended and frankly wasted in pursuing this matter.[22] Wilmer Hale conducted a much more sophisticated, cost-effective, and timely investigation.

First, the Draft Report suggests that unidentified employees within DHS OIG withheld from the IC a laptop used by Andrew DeMello, who was formerly detailed to DHS OIG from DOJ. To the best of IG Cuffari's knowledge and understanding, by the time the IC requested Mr. DiMello's electronic equipment more than two years after Mr. DeMello returned to the DOJ, the laptop had already been refurbished and reissued according to DHS OIG's standard operating procedures.[23]

Second, the Draft Report suggests that unidentified employees within DHS OIG delayed in producing documents and emails in response to a request from the IC. IC Cuffari recused himself from the DHS OIG's response to the IC and did not direct anyone to delay production of documents and emails to the IC. Accordingly, this allegation cannot be substantiated with respect to IG Cuffari. IG Cuffari is aware that DHS OIG organized and produced approximately four terabytes of data, dating as far back as 2017 (more than two years *before* IG Cuffari was confirmed), to the IC over the course of six months. The IC's voluminous request encompassed protected communications with Congress, attorney-client privileged communications, deliberative

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[21] Contrary to the Draft Report's erroneous insinuations, IG Cuffari provided complete and accurate information throughout his nomination process to the best of his knowledge and understanding about his professional background, a DOJ OIG inquiry into a matter that IG Cuffari investigated, and his educational background. To the best of IG Cuffari's knowledge and recollection, the DOJ OIG did not contemporaneously provide its report to IG Cuffari or his counsel. When IG Cuffari voluntarily retired from the DOJ OIG to pursue other career opportunities, he had no knowledge of any pending or proposed disciplinary action against him. The Draft Report fails to mention or address contemporaneous emails from Mr. Cuffari's DOJ OIG email account demonstrating that IG Cuffari began seeking other employment opportunities more than one year before he retired. Additionally, the Draft Report fails to mention or address documentary evidence that confirms that California Coast University was authorized by the state of California to award graduate degrees, including the Ph.D. that Mr. Cuffari earned in 2002. Additionally, the Draft Report fails to address that Mr. Cuffari's official federal personnel record reflects that the Office of Personnel Management and the United States Air Force recognized that he earned a Ph.D. in 2002.

[22] Although the Draft Report is directed to IG Cuffari individually, the Draft Report includes allegations that unidentified employees within the DHS OIG office withheld information requested by the IC. The Draft Report suggests that IG Cuffari directed the responses. However, IG Cuffari recused himself from the DHS OIG's response to the IC, so these allegations are not properly included in a draft investigatory report about allegations against IG Cuffari individually.

[23] As IG Cuffari testified during his August 30, 2022 interview, he did not direct Mr. DeMello to save any information to the local hard drive of his DHS OIG computer.

communications, pre-decisional opinions, protected personal identifying information, sensitive national security information, grand jury information, drafts of final reports, correspondence about draft reports, and materials DHS OIG received from DHS in the performance of its official duties.[24] Therefore, the process of responding to the IC's request for documents and correspondence was labor intensive and time consuming because it required DHS OIG to review, organize, appropriately mark, and then produce that data.[25]

Third, the Draft Report suggests that DHS OIG withheld text messages from IG Cuffari's official cell phone.[26] That conclusion is wrong. IG Cuffari maintains a government iPhone for official DHS business. It is not IG Cuffari's routine practice to conduct substantive official government business through text messages on his government cell phone. To the best of IG Cuffari's knowledge and understanding, any text messages previously deleted from his phone were not federal records subject to retention because they were administrative and not used to facilitate or document agency business.[27]

The IC's Investigatory Procedures Lack Transparency and Due Process

Since July 2020, the IC has asked IG Cuffari to respond to approximately 65 allegations, an average of more than one allegation each month for the past four years. The IC has closed the majority - approximately 56 - of those allegations. IG Cuffari has remained dedicated to improving the DHS OIG despite facing frequent investigatory requests that lack fundamental due process.

Unlike a criminal prosecution or civil lawsuit, the IC places the burden on the subject of an allegation to "fully refute the allegations so that there is no need to investigate" by showing that "no reasonable person, after reading the complaint and your response, would conclude that further factual development would demonstrate that you committed misconduct."[28] CIGIE Chair and Department of the Interior IG Mark Greenblatt recently testified before the House Committee on Oversight and Accountability (HCOA) that allowing an accused individual to respond to an allegation is a gratuitous "courtesy" and an unnecessary "extra step to help the subject [of the

[24] IG Cuffari informed the IC in writing that its investigation encompassed matters that were in active litigation before the Merit Systems Protection Board (MSPB) and that the MSPB had exclusive jurisdiction to adjudicate the matter. The IC proceeded to seek documents from DHS OIG. Without notice or explanation, certain documents that DHS OIG produced in response to the IC's demand were later relied upon by an attorney for Jennifer Costello in the MSPB litigation.

[25] The Draft Report improperly contrasts this production to the documents review conducted by Wilmer Hale during its investigation. However, Wilmer Hale was under legal contract with DHS OIG and was its authorized agent. As such, the Wilmer Hale investigative team received required security clearances from DHS and used DHS OIG computers to directly connect to information maintained on the DHS OIG network. This process did not require DHS OIG to organize, review, and produce data for Wilmer Hale.

[26] The IC originally included these allegations about IG Cuffari's text messages in IC Complaints 22-046 and 22-069 and IG Cuffari addressed these allegations in a letter to the IC dated May 22, 2023. Nonetheless, the IC has merged these allegations into its Draft Report on Complaint 20-059.

[27] *See* 36 CFR § 1220.18 (reflecting that files or papers that are not used to conduct agency business are excluded from the definition of federal records); National Archives Publication - Identification of Records, Nonrecord Materials, and Personal Papers (www.archives.gov/records-mgmt/scheduling/id?_ga=2.49446118.1573395362.1683037861-1183475209.1683037861).

[28] CIGIE IC Guidance and FAQs, "What should I do when contacted by the IC for a response to allegations of wrongdoing?" (available online at https://www.ignet.gov/content/guidance-and-faqs).

investigation]."[29]

IG Greenblatt also testified that when the IC investigates allegations of wrongdoing[30] by an IG, it directs the allegations to the IG individually not his office as an institution. However, the IC also prohibits the respondent from conferring with staff from his agency who may have relevant and/or exculpatory information. The IC specifically warns individuals responding to an IC inquiry that "seeking assistance from fact-witnesses in your response to the IC, or during an IC investigation, may raise questions about the intent or effect of such contacts, which may complicate any investigation and lead to an expansion of allegations."[31] Additionally, the accused must either respond to the IC on his own or retain private counsel, sometimes at his own personal expense, because "attorneys working for the Federal government cannot provide representation of a Subject for purposes of an IC matter."[32]

Finally, the current Chairperson of the CIGIE Integrity Committee, charged with leading the IC's oversight of Inspectors General, is the Corporation for Public Broadcasting (CPB) Inspector General. The CPB is a private corporation, not a federal agency.[33] CPB's Board of Directors, rather than the President or the Senate, selects its own IG.[34] Currently, the IC Chair is a private citizen, not a federal employee, federal official, or Presidential nominee. However, she exercises unrestrained authority to recommend that the President remove Inspectors General who were vetted and confirmed by the United States Senate.[35]

[29] Testimony of CIGIE Chair Mark Lee Greenblatt July 23, 2024 House Committee on Oversight and Accountability Hearing, "Oversight of the Council of the Inspectors General on Integrity and Efficiency" (available online at https://oversight.house.gov/hearing/oversight-of-the-council-of-the-inspectors-general-on-integrity-and-efficiency/).

[30] During his testimony before HCOA, IG Greenblatt represented that the IC is required to ensure fairness and consistency and that the IC does not withhold exculpatory evidence, but he conceded that there are no "bright lines" to define what the IC considers to be "wrongdoing" and the standards that it applies in an IC investigation.

[31] CIGIE IC Guidance and FAQs, "What should I avoid as the Subject of an allegation of wrongdoing made to the IC?" (available online at https://www.ignet.gov/content/guidance-and-faqs).

[32] CIGIE IC Guidance and FAQs, "Can I communicate with the IC through my personal attorney?" (available online at https://www.ignet.gov/content/guidance-and-faqs).

[33] *See* Corporation for Public Broadcasting Office of Inspector General Frequently Asked Questions (https://cpboig.oversight.gov/faqs).

[34] *Id.*

[35] Indeed, the IC Chair recently recommended that the President take "appropriate disciplinary action, up to and including removal" with respect to the Inspector General of the Social Security Administration. *See* IC Report of Investigation 22-048 (available on the CIGIE IC website at https://www.ignet.gov/sites/default/files/files/Integrity%20Committee%20ROI%2022-048.pdf). CIGIE leadership has represented to Congress that the IC is purposely insulated and that CIGIE leadership does not intrude on the IC's investigatory process and decisions, leaving the IC Chair's authority unrestrained.

Thank you in advance for your consideration and the opportunity to submit this letter to ensure that the Integrity Committee's Report for Investigation Number 20-059 is based on accurate information. For all the foregoing reasons, IG Cuffari respectfully requests that the IC amend its Draft Report to reflect that the underlying allegations are unsubstantiated. We are available at your convenience to discuss this matter further.

Sincerely,

[redacted]

Counsel for Inspector General Joseph Cuffari

Exhibit A

Cuffari, Joseph V. (OIG)

From: Cuffari, Joseph V. (OIG)
Sent: Friday, May 31, 2013 8:29 AM
To: Witness #12
Cc: (OIG); Witness #13 (OIG)
Subject: RE:

Sir,

Thank you for your kind words and for the opportunity to serve. It has been a wonderful journey and has well prepared me to enjoy my next chapters. Thanks again and have a wonderful weekend.

Joe

From: Witness #12
Sent: Friday, May 31, 2013 6:57 AM
To: Cuffari, Joseph V. (OIG)
Cc: (OIG); Witness #13 (OIG)
Subject:

Joe,

I understand from that you are retiring today. I'm sorry we didn't get a chance to work more closely together, but I was very glad we had a chance to meet and chat during my visit to Denver. Thank you for all of your outstanding contributions to the OIG and to the Denver Field Office. I know you will be missed by all of your colleagues and that we have some very big shoes to fill!

I wish you all the best in your upcoming endeavors and please keep in touch with your many friends and admirers in the OIG.

Witness #12

Exhibit B

U.S. Departm of Justice

Office of the Inspector General

May 31, 2013

Joseph V. Cuffari

[redacted]

Dear Joe,

On behalf of the Office of the Inspector General (OIG), I thank you for your 31 years of dedicated service to the federal government. The American people are fortunate to have had someone with your talent and ability serve them so ably during that time.

I especially want to commend you for your outstanding work during your 20 years with the OIG and the Investigations Division. With your help, the OIG has achieved a level of excellence and respect both within the Department of Justice and the Inspector General community that is unparalleled. For this, I extend my sincere appreciation.

I congratulate you on your federal career, and I join your friends and colleagues in wishing you all the best in your retirement. We all look forward to hearing about your new endeavors in the years ahead.

Best Wishes,

Witness #12

[redacted]

Exhibit C

All redactions in this document made pursuant to FOIA Exemption 3(b) are also subject to redaction pursuant to FOIA Exemption 6.

Report of Independent Investigation:
Allegations of Misconduct by (b) (6), (b) (6) and (b) (6)

December 14, 2020

Submitted by:

(b) (6)



WILMER CUTLER PICKERING HALE AND DORR LLP ®

~~**Privileged & Confidential: Attorney Work Product**~~

All redactions in this document made pursuant to FOIA Exemption 3(b) are also subject to redaction pursuant to FOIA Exemption 6.

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I. EXECUTIVE SUMMARY

On May 4, 2020, the U.S. Department of Homeland Security Office of the Inspector General ("DHS OIG" or "the agency") engaged WilmerHale to undertake an independent investigation into allegations regarding three senior DHS OIG employees—(b) (6), (b) (6), and (b) (6).[1] These employees allegedly engaged in an assortment of unprofessional behavior that was designed to undermine and contravene the authority of the two Inspectors General ("IGs") to whom they reported at DHS OIG from late 2017 to 2020.

WilmerHale investigated eighty-eight allegations pertaining to (b) (6), (b) (6), and (b) (6). (b) (6). As part of our inquiry, we conducted over 70 interviews with current and former DHS OIG employees and other individuals, including (b) (6) and (b) (6). (b) (6) declined to speak with us. We also reviewed over 42,000 documents, including emails, text messages, memoranda, and DHS OIG policies.

Although our investigation did not substantiate all of the allegations, it revealed that (b) (6) behavior exacerbated an atmosphere of mistrust and unprofessionalism to the detriment of the agency and its mission. The agency was beset by employees' accusations of misconduct and retaliation, frequent internal investigations of OIG personnel, and complaints and counter-complaints filed with the Integrity Committee ("IC") of the Council of the Inspectors General on Integrity and Efficiency ("CIGIE"), the Office of Special Counsel ("OSC"), and Congress.

(b) (6) motive for her actions appears to have been a desire to further her own professional ambitions and those of her allies—(b) (6) and (b) (6) —while diminishing the professional opportunities of those whom she disliked and/or viewed as disloyal. (b) (6) and (b) (6) assisted (b) (6) in her endeavors. Indeed, current and former employees reported that (b) (6). (b) (6), (b) (6), and (b) (6) retaliated against anyone whom they believed stood in their way or was perceived as disloyal.

Our inquiry revealed that soon after (b) (6) was appointed to the (b) (6) position by former (b) (6) (b) (6), she expressed a strong desire to take over the top position at the agency. Although she initially got along with (b) (6), who supported her goal of leading the agency, she began to criticize him and pressure him to leave the agency when he postponed his retirement.

By early 2019, the relationship between (b) (6) and (b) (6) had so deteriorated that (b) (6). (b) (6) was openly hostile to (b) (6) in meetings with other senior OIG staff members. Current and former DHS OIG employees described (b) (6) as plainly disrespectful to (b) (6) (b) (6), frequently turning her back toward him during meetings and rolling her eyes while he spoke. The evidence also shows that (b) (6) pressured (b) (6) to retire so that she could take over as the (b) (6) repeatedly called into question his fitness to lead the agency, and lobbied the OIG senior staff to join her efforts to push him out. In May 2019, (b) (6) and (b) (6) used an internal inquiry to put public and political pressure on (b) (6) to retire. (b) (6) ultimately did retire following the publication of (b) (6) on the inquiry.

[1] Memorandum from DHS OIG Counsel to WilmerHale (May 7, 2020) (on file with author). The allegations identified in that memorandum provided the foundation for WilmerHale's investigation.

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Following his retirement, (b) (6) and others retroactively changed (b) (6) personnel file to secure (b) (6) position as his successor. (b) (6) approved these retroactive changes, which purportedly justified her ability to serve in the position as the (b) (6) until a new IG could be confirmed.

In November 2018, the President of the United States announced the nomination of Joseph Cuffari for the IG position. (b) (6) soon began publicly expressing her lack of confidence in Dr. Cuffari's fitness for the role. Among other things, (b) (6) and (b) (6) expressed concerns that Dr. Cuffari's Ph.D. was from a "diploma mill" and that he lacked sufficient leadership experience. Multiple DHS OIG current and former employees confirmed that (b) (6) openly disparaged Dr. Cuffari at work. (b) (6) strenuously opposed Dr. Cuffari's nomination and shared her views freely within the agency, with DHS, with CIGIE, and with Congress. She often referred to DHS OIG as "[her] agency" and said that she needed to protect "her people" from Dr. Cuffari. Similarly, (b) (6) called into question Dr. Cuffari's qualifications to serve as IG and expressed her concerns to DHS, CIGIE, and the (b) (6).

For several months prior to Dr. Cuffari's confirmation, (b) (6) worked with others to try to maintain control over the key leadership positions in the agency while simultaneously limiting IG Cuffari's ability to hire Senior Executive Service ("SES") employees. (b) (6) and (b) (6) had also effectuated an undocumented move of the human resources department to the legal department in August 2018 prior to Dr. Cuffari's nomination. This unusual move allowed (b) (6) (b) (6) and (b) (6) greater control over internal investigations and personnel actions.

Once Dr. Cuffari arrived at DHS OIG in July 2019, (b) (6) actions soon led him to distrust her. (b) (6), as she had done previously with (b) (6), soon displayed overt hostility toward him. For instance, she, along with (b) (6), tried to launch an investigation into IG Cuffari on the grounds that an OIG-funded trip he planned to the Southwest Border was, in fact, personal in nature. (b) (6) and (b) (6) also instructed colleagues to withhold information from IG Cuffari and sought to isolate IG Cuffari from other agency leaders. The work environment became so bitterly hostile that employees who left the agency during this period cited dissension and tension as contributing factors for their departures. Employees described the working environment as extremely challenging and noted that (b) (6) and IG Cuffari had a "uniquely cold" relationship that made it difficult for them to work together, much less collaborate on key functions of the office. Indeed, both IG Cuffari and (b) (6) filed multiple allegations of misconduct against each other to CIGIE during IG Cuffari's first four months on the job.

In sum, our investigation revealed that (b) (6), with the assistance of (b) (6) and (b) (6) (b) (6), engaged in unprofessional conduct that elevated her own interests above those of the public. Nevertheless, our investigation did not reveal evidence substantiating many of the other allegations, including any allegation that (b) (6), (b) (6), or (b) (6) engaged in illegal conduct.

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This report presents the key findings and observations of our investigation.[2]

II. BACKGROUND

In the aftermath of the September 11th terrorist attacks, the Department of Homeland Security ("DHS") was created by merging twenty-two separate federal agencies into a single Cabinet department.[3] DHS is the third largest executive department in the federal government and has approximately 229,000 employees.[4] Along with the creation of DHS, DHS OIG was established "to provide independent oversight and promote excellence, integrity, and accountability within DHS."[5] DHS OIG conducts independent audits, investigations, and inspections of the programs and operations within DHS, and makes recommendations for how DHS can operate more effectively and efficiently.[6] In 2005, Richard Skinner was confirmed as the first DHS IG.[7] After his retirement in 2011, DHS OIG was led by Acting IG Charles Edwards.[8] John Roth was confirmed as the second DHS IG in 2014 and served until 2017.[9] (b) (6) served as (b) (6) from then until he retired on June 10, 2019.[10] (b) (6) served as the (b) (6) (b) (6) from June 10, 2019 until the confirmation by the U.S. Senate of Dr. Joseph Cuffari as the third DHS IG on July 25, 2019.[11]

(b) (6)

[redacted]

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[2] Our investigative findings and conclusions are based upon the over 42,000 documents we reviewed and the over 70 witnesses interviews we conducted during the course of our investigation. The discovery of additional relevant documents or identification of new witnesses could materially affect our findings and conclusions. Most notably, (b) (6) refused to speak with us, so we lack her perspective on some key events.

[3] History, The Dep't. of Homeland Sec., (June 15, 2018), https://www.dhs.gov/history.

[4] Secretary of Homeland Security, The Dep't. of Homeland Sec., (July 5, 2019) https://www.dhs.gov/secretary.

[5] About Us, The Off. of the Inspector Gen., https://www.oig.dhs.gov/about (last visited Dec. 11, 2020).

[6] *Id.*

[7] Richard Skinner, GTS Coal., (2020), https://www.gtscoalition.com/about-us/strategic-advisors/skinner-richard-l/.

[8] *Id.* (b) (6) (6)

[redacted]

[9] Jim Roth, The Dep't of Homeland Sec., (Aug. 25, 2015) https://www.dhs.gov/person/john-roth; Ta(b) (6)

[redacted]

[10] (b) (6)

[redacted]

[11] (b) (6)

[redacted]

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(b) (6) [redacted]

(b) (6) [redacted]

(b) (6) [redacted]

(b) (6) [redacted]

Dr. Joseph Cuffari served in the Air Force and in the Arizona Air National Guard, where he filled a variety of leadership positions with the Air Force Office of Special Investigations and the Department of Defense Office of the Inspector General. He worked at the Department of Justice ("DOJ") from 1993 until 2013, serving in a variety of roles, the last of which was Assistant Special Agent in Charge of the DOJ's Office of Inspector General field office in Tucson, Arizona. Following his tenure at DOJ, Dr. Cuffari served as a policy advisor to the Governor of Arizona. He was confirmed as the DHS IG on July 25, 2019.[13]

(b) (6) [redacted]

[13] Meet the IG, The Off. Of the Inspector Gen., https://www.oig.dhs.gov/about/MeetTheIG (last visited Dec. 11, 2020).

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III. THE CAMPAIGN TO UNDERMINE ACTING (b) (6)

A. (b) (6) Retirement and Succession Planning

In June 2016, former IG John Roth appointed (b) (6) as the (b) (6).[14] While (b) (6) had been planning on retiring that year, he decided he would remain as the (b) (6) until a new IG was confirmed, which he hoped would happen by the end of 2018.[15] (b) (6) began his tenure as (b) (6) in late 2017 when Mr. Roth retired.[16]

In 2018, (b) (6) elevated (b) (6) to the (b) (6) role to help ensure a smooth transition to a new IG.[17] (b) (6) intended for (b) (6) to take over in the event that (b) (6) retired prior to the confirmation of a new IG.[18] On November 1, 2018, the White House announced the nomination of Dr. Joseph Cuffari for the IG role.[19] Following the announcement, (b) (6) set a retirement date of April 2019.[20]

In November 2018, (b) (6) decided to assume the role of (b) (6) and to appoint (b) (6) to the (b) (6) position he had previously held.[21] The corresponding SF-50 Personnel Action document shows that (b) (6) position description was changed to (b) (6) effective November 11, 2018.[22] During his interview, (b) (6) could not specifically recall his reason for appointing (b) (6) to the (b) (6) role, but he explained that he wanted to ensure that there would be an orderly transition between his retirement and the start of the new IG.[23] (b) (6) told us that he did not intend for the change in (b) (6) (b) (6) position description to (b) (6) to mean that she was actually taking over as (b) (6).[24] Rather, he expected that she would be serving as the "de facto" (b) (6).[25]

(b) (6) announced his plan in an agency-wide email, including his decision to appoint (b) (6) (b) (6) to the (b) (6) position.[26] (b) (6) also wrote to (b) (6) (b) (6), and asked her to change his official position description to (b) (6) and to assign (b) (6) to the (b) (6) position description.[27] (b) (6) made these changes in November 2018.[28] (b) (6) believed he needed to change his position description to (b) (6) because,

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[14] Interview with (b) (6) (Aug. 7, 2020).
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *See* President Donald J. Trump Announces Intent to Nominate Personnel to Key Administration Posts, The White House, (Nov. 1, 2018), https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-personnel-key-administration-posts-68/.
[20] Interview with (b) (6) (Aug. 7, 2020).
[21] *Id.*
[22] WHDHS-00000786.
[23] Interview with (b) (6) (Aug. 7, 2020).
[24] *Id.*
[25] *Id.*
[26] *See* WHDHS-00000033.
[27] WHDHS-00000034.
[28] WHDHS-00000656.

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under the Federal Vacancies Reform Act ("FVRA"), he could only hold the (b) (6) title for a certain period of time—generally 210 days from when the vacancy occurred following IG Roth's retirement.[29] While the FVRA does limit the length of time (b) (6) could hold the title of (b) (6) it did not expressly require (b) (6) to formally change his position description.[30] Thus, (b) (6) (b) (6) belief that he needed to change his official position description from (b) (6) to (b) (6) after Dr. Cuffari's nomination was (b) (5)

At the time that (b) (6) appointed (b) (6) to the (b) (6) position, multiple witnesses described the two as having a positive relationship.[32] (b) (6) had previously worked with (b) (6) (b) (6) at (b) (6) and was impressed with her work.[33] When (b) (6) called him to inquire about joining DHS OIG in the (b) (6) role, (b) (6) was supportive.[34] He noted, however, that soon after she was appointed to the (b) (6) role it became clear to him that (b) (6) was interested in "taking over" the agency, and she occasionally told him so directly.[35]

B. (b) (6) Pressures (b) (6) to Retire

Witnesses reported that, as 2019 approached, the relationship between (b) (6) and (b) (6) began to deteriorate.[36] To (b) (6) recollection, the relationship with (b) (6) did not fall apart until the spring of 2019.[37] He noted that (b) (6) often became curt and aggressive with him.[38] After their relationship soured, he noticed that she began having separate meetings with the AIGs and Deputy AIGs without informing him.[39] (b) (3) (B), (b) (6), the (b) (3) (B), (b) (6), described these as "off-calendar" meetings.[40] (b) (3) (B), (b) (6), the (b) (3) (B), (b) (6) (b) (3) (B), (b) (6), said it appeared that (b) (6) was not making decisions and that (b) (6) was "essentially running" the agency.[41] (b) (6) believed (b) (6) conduct was odd, but he did not want to take their falling out personally or let it bother him.[42] His hope was that the staff would

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[29] Interview with (b) (6) (Aug. 7, 2020). The FVRA limits the length of time a person may serve as acting officer to 210 days, absent tolling or statutory exception. 5 U.S.C. § 3345, et seq. The 210-day period is tolled, however, while a nomination is pending. *Id.* At the time of IG Roth's retirement, Dr. Cuffari had not yet been nominated. (b) (5)

[30] 5 U.S.C. § 3346(a)-(b).

[31] *See generally* 5 U.S.C. § 3345, et seq. (containing no such written requirement). (b) (3) (B), (b) (6), (b) (6) at DHS, explained that (b) (5)

[32] *See e.g.* Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).

[33] Interview with (b) (6) (Aug. 7, 2020).

[34] *Id.*

[35] *Id.* Follow-Up Interview with (b) (6) (Dec. 2, 2020).

[36] *See e.g.* Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).

[37] Interview with (b) (6) (Aug. 7, 2020).

[38] *Id.*

[39] *Id.*

[40] Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).

[41] Interview with (b) (3) (B), (b) (6) (July 27, 2020).

[42] Interview with (b) (6) (Aug. 7, 2020).

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not become aware of any acrimony among the senior leadership.[43] According to (b) (6), (b) (6). (b) (6) had a "Machiavellian" and dictatorial leadership style that involved "trash[ing]" people who did not support her.[44]

Other witnesses, including (b) (3) (B), (b) (6), (b) (3) (B), (b) (6) (b) (6), noticed the strained relationship between (b) (6) and (b) (6).[45] (b) (3) (B), (b) (6) stated the relationship started to sour during the government shutdown in December 2018.[46] (b) (3) (B), (b) (6) explained that (b) (6) and (b) (6) thought that DHS OIG should essentially shut down all of its work, while (b) (6) thought certain high-impact audit work should continue.[47] (b) (3) (B), (b) (6) also thought (b) (6) was upset that (b) (6) believed (b) (3) (B), (b) (6) should be categorized as an essential employee and report to work during the shutdown.[48] According to (b) (3) (B), (b) (6), (b) (6) ultimately deferred to (b) (6) and (b) (6) by agreeing to shut down audit work and furloughing (b) (3) (B), (b) (6).[49] However, from that point forward, (b) (3) (B), (b) (6) observed that the relationship between (b) (6) and (b) (6) continued to deteriorate.[50] (b) (3) (B), (b) (6) described (b) (6) as a "bull in the china shop."[51]

Several other witnesses noticed the deteriorating relationship between (b) (6) and (b) (6) as well. For example, (b) (3) (B), (b) (6), the (b) (6), explained that the situation in the office devolved to the point where staff felt they had to choose between "Team (b) (6)" or "Team (b) (6)."[52] (b) (3) (B), (b) (6) recalled numerous meetings where (b) (6) disrespected (b) (6), rolled her eyes at him, made snarky remarks, and moved her seat to sit sideways instead of facing him directly.[53] (b) (3) (B), (b) (6), (b) (6), (b) (3) (B), and (b) (3) (B), (b) (6) both detailed the significant tension between (b) (6) and (b) (6).[54] (b) (3) (B), (b) (6) noted that (b) (6) was rude to (b) (6), frequently turning her back to him during meetings and rolling her eyes while he spoke.[55] (b) (6), (b) (3) (B) also observed (b) (6) sitting in meetings with almost her back to (b) (6).[56] She described the situation as "awkward," "childish," and "frustrating."[57]

(b) (3) (B), (b) (6) stated that (b) (6) would often call her venting about (b) (6) leadership, saying that he was "losing it" and needed to retire.[58] According to (b) (3) (B), (b) (6), (b) (6) told

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[43] *Id.*
[44] *Id.*
[45] Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).
[53] *Id.*
[54] Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020); Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).
[55] Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).
[56] Interview with (b) (6), (b) (3) (B) (Sept. 15, 2020).
[57] *Id.*
[58] Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).

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her that (b) (6) and (b) (6) asked (b) (6) to retire, but that he was being stubborn.[59] (b) (6) told (b) (3) (B), (b) (6) that she did not believe that other DHS OIG employees would respect her while (b) (6) remained the (b) (6).[60] (b) (3) (B), (b) (6) reported that she refused (b) (6) invitation to try to convince (b) (6) to retire.[61] (b) (6), (b) (3) (B) stated that she recalled (b) (6) telling (b) (6), "you were supposed to retire; you need to retire."[62]

In her interview, (b) (3) (B), (b) (6) acknowledged that there were personal issues between (b) (6) and (b) (6), but she attributed the friction to the fact that (b) (6) has a forceful and direct personality.[63] (b) (3) (B), (b) (6) said that (b) (6) and (b) (6) clashed on issues, but claimed she could not recall whether (b) (6) expressed a desire to become the (b) (6).[64] She explained that she and (b) (6) did have concerns about (b) (6) judgment as a result of some of the actions he took as (b) (6).[65] For example, (b) (3) (B), (b) (6) explained that she and (b) (6) believed (b) (6) repeated extensions of his retirement date created uncertainties for the agency.[66]

(b) (3) (B), (b) (6) also acknowledged that (b) (6) and (b) (6), (b) (3) (B) relationship became tense leading up to (b) (6) retirement.[67] (b) (3) (B), (b) (6) recalled that (b) (6) disagreed with some of (b) (6) decisions and became "frustrated" when (b) (6) pushed off his retirement because it hindered their ability to plan for a transition.[68]

C. (b) (6) Demands (b) (6) Retire

On March 21, 2019, (b) (6) called a meeting with (b) (6) and several of the AIGs to discuss "Transition Planning."[69] The real purpose of the meeting was to pressure (b) (6) to retire.[70] (b) (6) and (b) (3) (B), (b) (6) later referred to this meeting as the "coup meeting."[71]

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[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).
[63] Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).
[68] *Id.*
[69] WHDHS-00000061. (b) (6), (b) (3) (B) invited (b) (6) and the following individuals: (b) (6) (AIG for (b) (6)), (b) (6) (AIG for (b) (6)), (b) (6) (former AIG for (b) (6)), (b) (6) (AIG for (b) (6)), (b) (6) (AIG for (b) (6)), and (b) (6). *Id.*
[70] *See* Interview with (b) (6) (Aug. 7, 2020).
[71] *Id.* Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020). (b) (3) (B), (b) (6) also believed (b) (6) had a series of meetings with AIGs (without (b) (6) leading up to this "coup meeting." *Id.* We found no documentary evidence corroborating this statement. However, (b) (6), (b) (3) (B) stated that, prior to the "coup meeting," (b) (6) approached senior staff, including (b) (3) (B), (b) (6), to garner supporters to oppose (b) (6) and force him to retire. Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).

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(b) (3) (B), (b) (6) accompanied (b) (6) to the meeting, but (b) (6) insisted that she leave.[72] (b) (6) explained that once the meeting started, (b) (6) "badgered" him to resign and claimed that the other AIGs in the meeting supported her position.[73] (b) (6) rebuffed her demand.[74] (b) (6) stated that he told (b) (6) that he would not relinquish his position and that he was committed to performing his duties so long as he was in the role.[75] (b) (3) (B), (b) (6), who was also present at the meeting, recalled that (b) (6) gave (b) (6) an ultimatum—if (b) (6) did not leave, (b) (6) would leave the agency.[76] According to (b) (3) (B), (b) (6), (b) (6) said that she needed to take over as (b) (6) to ensure a smooth transition for when the new IG joined the agency.[77] (b) (3) (B), (b) (6) said that she got so uncomfortable with (b) (6). (b) (6) actions that she responded in the meeting, "this seems to be a situation where you and (b) (6) need to have a conversation. I don't think you should be having it with us."[78]

(b) (3) (B), (b) (6) explained that she was not present for the meeting but heard from (b) (6) that (b) (6) (b) (6) became very upset because he believed that (b) (6) and the AIGs were "trying to force him out . . . to retire."[79]

(b) (3) (B), (b) (6), who did attend the meeting, provided a different account. In her interview, she said that the intent of the meeting was to discuss transition planning with (b) (6), and that she, along with (b) (6), sought input from other SES employees on "decision points" to cover at the meeting.[80] (b) (3) (B), (b) (6) recalled feeling tension in the room during the meeting, although not specifically between (b) (6) and (b) (6), and (b) (3) (B), (b) (6) recalled that the meeting went "off course."[81] She did not provide any further detail.

D. (b) (6) Extends His Retirement Date

After the government shutdown, (b) (6) indicated he was planning to retire in May 2019.[82] However, in April 2019 (b) (6) and (b) (6) (b) (6) called (b) (6) and asked him to extend his retirement date until the new IG was confirmed.[83] (b) (6) explained that (b) (6) and (b) (6) (b) (6) were concerned with the recent leadership changes at DHS, and they trusted (b) (6) and were concerned that the other leaders in DHS OIG lacked his experience.[84]

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[72] Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020). (b) (3) (B), (b) (6) also confirmed that (b) (6) excluded (b) (6) (b) (6) from the meeting. Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).
[73] Interview with (b) (6) (Aug. 7, 2020).
[74] *Id.*
[75] *Id.*
[76] Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).
[77] *Id.*
[78] Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).
[79] Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).
[80] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).
[81] *Id.*
[82] Interview with (b) (6) (Aug. 7, 2020).
[83] *Id.*
[84] *Id.* With respect to the leadership changes at DHS, on April 7, 2019, DHS Secretary Kirstjen Nielsen resigned. Resignation Letter of Secretary of Homeland Security Kirstjen M. Nielson, Dep't. of Homeland Sec., (Apr. 7, 2019), https://www.dhs.gov/publication/resignation-letter-secretary-nielsen. Two days later, on April 9, 2019, the Acting

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(b) (3) (B), (b) (6) confirmed that he and (b) (6) asked (b) (6) to delay his retirement, but emphasized that the request was rooted in a desire for stability at the agency during a time of upheaval rather than a reflection on (b) (6) specifically.[85]

On April 26, 2019, (b) (6) agreed to delay his retirement for several months.[86] (b) (6) told (b) (6) about his decision before he announced it to the full agency.[87] He believes he went to (b) (6) office on Friday, April 26, right after the call from DHS leadership.[88] (b) (6) observed that (b) (6) was very upset by his decision to delay his retirement based on her facial expressions; she also told (b) (6) : "You could have said no."[89] (b) (6) believes (b) (6) (b) (6) stormed out of her office after this discussion.[90] On April 29, 2019, (b) (6) sent an agency-wide email and explained that "[a]t the request of both (b) (6) and (b) (6) , on April 26, [he] agreed to delay [his] pending retirement until the Senate confirms Joseph Cuffari, or July 31, 2019; whichever occurs first."[91] In his email, (b) (6) (b) (6) further explained that he declined their first request that he delay his retirement because he "consider[s] succession planning to be an important leadership responsibility" and that he believed (b) (6) and "the Assistant Inspectors General were well suited to move forward, and OIG is in good hands."[92] He noted, however, that DHS leadership believed "that the Department would benefit from the Office of Inspector General having more experienced leadership during this time of unprecedented Departmental turnover."[93] (b) (6) forwarded (b) (6) email to another DHS OIG employee and wrote, "Shoot me now."[94]

Less than two hours later, (b) (6) wrote to (b) (6) and (b) (6) stating, "One way to mitigate the risk that he stays after July 31 would be to not have any SES slots for him to remain in…Was (b) (6) slot slated to be used for anything?"[95] In her interview, (b) (3) (B), (b) (6) assumed she was referring to (b) (6) staying after July 31st, and she explained there was a limited number of SES positions and the plan was to advertise and begin the interview process for (b) (6)

Deputy Secretary Claire Grady submitted her resignation. Message from Secretary Kirstjen M. Nielson on Acting Deputy Secretary Claire Grady, Dep't. of Homeland Sec., (Apr. 7, 2019), https://www.dhs.gov/news/2019/04/09/message-secretary-nielsen-acting-deputy-secretary-grady. On April 10, 2019, Kevin McAleenan, Director of the Customs and Border Patrol, became the Acting Secretary of DHS. Message from Acting Secretary Kevin K. McAleenan, Dep't. of Homeland Sec., (Apr. 10, 2019), https://www.dhs.gov/news/2019/04/10/message-acting-secretary-kevin-k-mcaleenan. On April 11, 2019, Acting DHS Secretary McAleenan named David Pekoske, the Administrator of the Transportation Security Administration, as the Acting Deputy Secretary of DHS. Acting Secretary McAlennan Statement on the Designation of Administrator Pekoske to Serve as Senior Official Performing the Duties of the Deputy Secretary, Dep't. of Homeland Sec., (Apr. 11, 2019), https://www.dhs.gov/news/2019/04/11/acting-secretary-mcaleenan-statement-designation-administrator-pekoske-serve-senior.

[85] Interview with (b) (3) (B), (b) (6) (Sept. 16, 2020).
[86] Follow-Up Interview with (b) (6) (Dec. 2, 2020).
[87] *Id.*
[88] *Id.*
[89] Interview with (b) (6) (Aug. 7, 2020); Follow-Up Interview with (b) (6) (Dec. 2, 2020).
[90] *Id.*
[91] WHDHS-00000072.
[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] WHDHS-00000074.

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SES spot to fill with someone else at the time of his scheduled retirement.[96] The effect of such a move would leave (b) (6) without a position after July 31. About ten minutes after (b) (6) email, (b) (6) sent an email to (b) (6), (b) (6), and others confirming that they would begin interviewing to fill (b) (6) SES slot.[97] Specifically, (b) (6) wrote, (b) (6) we were planning to fill INV's current vacancy with your SES slot and post the last slot on May 6 . . . . Applications are being reviewed now and we will start interviews for the current vacancy in the next few weeks."[98]

Later that night, on April 29, 2019, (b) (6) sent an email to (b) (6) and (b) (6), with the subject line "Very stressful and now I can't sleep."[99] Referencing the television show Game of Thrones, (b) (6) wrote, "Perhaps Arya would consider taking care of some business here? The DHS OIG throne isn't as glam but we do have a night king that just. won't. die."[100] (b) (3) (B), (b) (6) confirmed that this email referenced the television show Game of Thrones, and that it was reasonable to assume that the "night king" was a reference to (b) (6).[101]

The next day, April 30th, (b) (6) wrote to (b) (6): "Do you think he will reach out directly to (b) (6) to discuss and cut you out of the discussion? I just don't want her to be so helpful and responsive to him that she gives him info/advice that would be hard to walk back."[102] In her interview, (b) (6) explained she did not want (b) (6) to advise (b) (6) on a course of action that made it difficult to follow the plan that was already in place to fill his SES spot with a new hire.[103]

For her part, (b) (3) (B), (b) (6) stated that she was concerned there was an "appearance of a lack of independence" because the request to (b) (6) to stay on as (b) (6) could be perceived as "a quid pro quo" for DHS OIG to "be less critical of [DHS] in [DHS OIG's] oversight work."[104] (b) (3) (B), (b) (6) stated that she expressed this concern to both (b) (6) and (b) (6).[105] In his interview, however, (b) (6), (b) (3) (B) stated that he did not view his request to (b) (6) as improper or an attempt to improperly influence (b) (6).[106]

Other witnesses corroborated (b) (6) negative reaction to the news of (b) (6) delayed retirement. (b) (3) (B), (b) (6) stated that (b) (6) claimed that DHS's senior leadership had

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[96] Follow-Up Interview with (b) (3) (B), (b) (6) (Dec. 11, 2020).
[97] WHDHS-00000075.
[98] *Id.*
[99] WHDHS-00000849.
[100] *Id.* The television show Game of Thrones is a fantasy drama about the fight for the Iron Throne of the Seven Kingdoms of Westeros. *See Game of Thrones* (HBO television broadcast Apr. 28, 2019). The character of Arya Stark is a trained assassin. *See id.* In Episode three of Season eight, the character kills the Night King, the leader of zombie-like ice creatures known as the White Walkers, who are marching on the Seven Kingdoms to eliminate humankind. *Id.*
[101] Follow-Up Interview with (b) (3) (B), (b) (6) (Dec. 11, 2020).
[102] WHDHS-00000075.
[103] Follow-Up Interview with (b) (3) (B), (b) (6) (Dec. 11, 2020).
[104] Interview with (b) (3) (B), (b) (6) (Aug. 12, 2020).
[105] *Id.*
[106] Interview with (b) (3) (B), (b) (6) (Sept. 16, 2020).

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(b) (6) in their "back pocket."[107] (b) (6) also told her that (b) (6) would never willingly retire, and that (b) (6) therefore needed to ensure that he did.[108] (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), recalled that (b) (6) and (b) (6) made comments regarding (b) (6) (b) (6) in staff meetings such as "he's got to go" and "we have to get rid of him."[109]

E. (b) (6) is Publicly Criticized

In July 2017 and March 2018, DHS OIG retracted a total of 13 Emergency Management Oversight Team ("EMOT") reports regarding the Federal Emergency Management Agency ("FEMA") response to disasters.[110] The EMOT reports were withdrawn in light of concerns that the reports were overly positive in their analysis of FEMA's performance.[111] At a meeting with the House Oversight and Government Reform committee in March 2018, (b) (6) (b) (6) DHS OIG thereafter undertook the internal investigation.[113] (b) (6) recused himself from the review of the reports because in his previous role as the (b) (6) he had approved the reports, and he did not want to be perceived as attempting to influence the investigation.[114] (b) (6) assigned the review to (b) (6).[115] A few months later, in June 2018, (b) (6) appointed (b) (6) to serve as (b) (6), reporting directly to her and not (b) (6).[116] (b) (6) explained that (b) (6) worked with (b) (6) on the review.[117]

(b) (6) led the internal review team, which consisted of lawyers and analysts from the (b) (6).[118] (b) (6) Finally, the review team hired an auditing firm to perform an external review of the EMOT reports and provide guidance on best practices (b) (6)

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[107] Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).
[108] *Id.*
[109] Interview with (b) (3) (B), (b) (6) (July 28, 2020).
[110] (b) (6)
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] Interview with (b) (6) (Aug. 7, 2020); Follow-Up Interview with (b) (6) (Dec. 2, 2020); (b) (6)
[115] Interview with (b) (6) (Aug. 7, 2020).
[116] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).
[117] Interview with (b) (6) (Aug. 7, 2020).
[118] (b) (6)
[119] *Id.*
[120] *Id.*

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[redacted] was interviewed twice as part of the investigation.[122]

The fact-finding aspect of the internal investigation was completed in October 2018.[123] On December 11, 2018, [redacted] responded to a November 20, 2018 letter from the Senate Homeland Security and Governmental Affairs Committee ("HSGAC") outlining the corrective actions taken by the team in response to the internal review of the EMOT reports.[124] In the letter, [redacted] wrote, "My goal is to promote a culture of continuous improvement here at DHS OIG. With [redacted] having recently announced his retirement and my transition to the role of [redacted], I can assure you that I will play an active role in driving and delivering necessary change."[125]

In his interview, [redacted] stated that he believed [redacted] letter to Congress completed the EMOT investigation.[126] [redacted]

As explained above, on April 29, 2019, [redacted] sent an agency-wide email announcing that he was putting off his retirement date at the request of DHS leadership.[129] Later that night, [redacted] sent her Game of Thrones email writing that on the "DHS OIG throne," there was "a night king that just. won't. die."[130] Early the next morning, on April 30, 2019, [redacted] sent an email to [redacted] about publicly releasing the findings of the EMOT investigation.[131] In the email, which had the subject line, "I think we need to do a public report/letter," [redacted] wrote:

> Cc all the oversight committees and the department and cigie. In the letter as part of corrective action note that we are making concurrent notification to ic for whatever action they deem appropriate. We try to do a bipartisan call with Hsgac today to update them about [redacted] and program office/staff briefings an d [sic] tell them we have to kill more emot reports in the pipeline. We ask them what

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[121] WHDHS-00000365. [redacted], the former [redacted] in DHS OIG, recalled that the outside auditing firm, Williams Adley, was hired to conduct a review of the EMOT reports. Interview with [redacted] (Aug. 20, 2020). [redacted] questioned what [redacted] and [redacted] were trying to achieve with the outside firm and whether their goal was to make [redacted] look worse. *Id.* [redacted] said she never spoke to anyone at the auditing firm, but she provided all of her notes to the firm. *Id.*

[122] Interview with [redacted] (Aug. 7, 2020).

[123] [redacted]

[124] WHDHS-00000879.

[125] *Id.*

[126] Follow Up Interview with [redacted] (Dec. 2, 2020).

[127] WHDHS-00000062.

[128] *Id.*

[129] WHDHS-00000072

[130] WHDHS-00000849.

[131] *See* WHDHS-00000077.

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> they are planning to do if anything and let them know what our current thinking is.[132]

The clear import of the email was that (b) (6) intended to publicize the results of the EMOT investigation and (b) (6) role to Congressional oversight committees, DHS, and CIGIE in an effort to prompt them to take action against him. Minutes later, (b) (6) responded, "And would we tell (b) (6) in advance or just drop the bomb[ ]and deal with the aftermath? Just to be clear, this is the nuclear option, yes?"[133]

(b) (6) responded to (b) (6), writing:

> Yes we would be just as transparent as we have been so far. We tell him before we hit send. If hsgac says they have plans to do something else with the materials we sent we can reassess. The more I think about it I don't see how we do anything else. He has put us both in an untenable position and it [sic] you are right will appear to some as if we are in on it. Also we need to go on official record now. He's already told me he doesn't support the findings and now he will clearly be here when Cuffari arrives. I don't think he will be truthful. Private communications to IC could be just seen as disgruntled complaints. A public report looks like a public report[.][134]

(b) (6) responded, "Ok. Here we go."[135]

Despite their decision to publicize the findings of the EMOT investigation and (b) (6) role, (b) (6) and (b) (6) discussed the issue with others as well.[136] On Friday May 3, (b) (6) circulated a draft report to a group of DHS OIG employees, requesting a close hold, and seeking "technical comments" and "proposed revisions" by close of business on Monday, May 6.[137] She followed up with another email 12 minutes later to a smaller subset of people from her original email, thanking the group for the "candid discussion earlier this week about the available reporting mechanisms for this work" and explained why she thought a public report was important for "transparency and accountability."[138] On Monday, May 6, (b) (6) an employee who worked on the internal review, circulated a draft with a note that the report "could use a little more in the post October 2018 chronology" since "we think it isn't clear enough why we are issuing this report now, even though we finished our review and began reporting out to Congress in October."[139]

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[132] *Id.*
[133] *Id.*
[134] *Id.*
[135] *Id.* We attempted to ask (b) (6) what she meant by this exchange with (b) (6), including by the phrase "drop the bomb" and the term "nuclear option." However, this email was discovered after our October 30, 2020 interview of (b) (3) (B), (b) (6), and she declined our request for a follow up interview.
[136] WHDHS-00000327; WHDHS-00000277; Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).
[137] WHDHS-00000327.
[138] *Id.*
[139] *Id.*

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In her interview, (b) (3) (B), (b) (6) said that she believed (b) (5) , was involved in these discussions, and she recalled that (b) (6) agreed with (b) (6) that DHS should publish the findings in order to hold itself accountable.[141] (b) (3) (B), (b) (6) disagreed, noting that publication was unnecessary because Congress and other relevant stakeholders had already been briefed on the matter and the EMOT reports at issue had already been retracted.[142] Furthermore, (b) (3) (B), (b) (6) noted that (b) (6) had already issued an apology to DHS OIG.[143]

On May 23, 2019, DHS OIG published the report on the investigation, titled "Special Report: Review Regarding DHS OIG's Retraction of Thirteen Reports Evaluating FEMA's Initial Response to Disasters" ("Special Report").[144] Much of the Special Report focused on (b) (6) role as then (b) (6) and the factors that led to the publication of "feel-good" reports that portrayed FEMA emergency responders positively.[145] (b) (6) adamantly denied that he directed the auditors to sanitize their disaster reports.[146] The Management Response from (b) (6). (b) (6), on which (b) (6) collaborated, was appended to the Special Report.[147] (b) (6) (b) (6) (b) (6) (b) (6) [148]

The publication of the Special Report received little attention at first. (b) (6)

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[140] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).
[141] Interview with (b) (3) (B), (b) (6) (July 23, 2020).
[142] *Id.*
[143] *Id.*
[144] Special Report: Review Regarding DHS OIG's Retraction of Thirteen Reports Evaluating FEMA's Initial Response to Disasters, *supra* note 110.
[145] *See id.*
[146] Follow-Up Interview with (b) (6) (Dec. 2, 2020).
[147] WHDHS-00000078; (b) (6)
[148] WHDHS-00000660.
[149] (b) (6)
[150] (b) (6)

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(b) (6)

On June 6, 2019, (b) (6) (b) (6) received an email from a friend outside DHS OIG, which stated, "Sounds like you guys are going through some tough stuff right now. I'm thinking of you and wishing everything resolves well."[153] (b) (6). (b) (6) replied, "It's just awful. Partly because (b) (6) has had his head stuck in the sand. He was supposed to be retired by now and this wouldn't have been a story."[154] In response, the friend wrote, "So, does this mean you'll be (b) (6)? Does (b) (6) have a date?"[155] In response, (b) (6) responded that (b) (6) is "hard hitting but he's a terrible leader and communicator."[156] Referring to (b) (6) retirement, (b) (6) wrote, "It was May 3 then July 31 now I think July 3, backing off over the next few weeks. Yes, I'm (b) (6) (unless the WH decides otherwise)."[157]

(b) (6) was displeased with the Special Report, and belived it was intended to force him out of the office.[158] During his interview, he stated that the Special Report left out exculpatory information, such as the fact that, as (b) (6), he had raised objections about the EMOT reports when first drafted and asked that the findings be reevaluated on several occasions.[159] (b) (6). (b) (6) also noted (b) (6) efforts to draw attention to the report, pointing out that she had published the report after she had already sent a letter to Congress with the investigation's findings.[160] Finally, he speculated that (b) (6) may have planted stories about the Special Report with (b) (6) embarrass him.[161]

(b) (3) (B), (b) (6) recalled that (b) (6), (b) (3) (B) became frustrated that (b) (6), (b) (3) (B) did not take more accountability for the EMOT investigation findings and that (b) (6) lost confidence in (b) (6) (b) (6).[162] (b) (3) (B), (b) (6) recalled meeting with (b) (6) at the time (b) (6) articles were published.[163] At the meeting, (b) (3) (B), (b) (6) advised (b) (6) that the most "effective way to mitigate the damage [to OIG] was . . . to not wait to retire until [Dr. Cuffari] was confirmed."[164] (b) (6)

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[151] *Id.*
[152] *Id.*
[153] WHDHS-00000080.
[154] *Id.*
[155] *Id.*
[156] *Id.*
[157] *Id.*
[158] Follow-Up Interview with (b) (6) (Dec. 2, 2020).
[159] Interview with (b) (6) (Aug. 7, 2020).
[160] *Id. See also* Follow-Up Interview with (b) (6) (Dec. 2, 2020). Our investigation revealed a letter from (b) (6) (b) (6) to Senators Johnson and Peters dated December 11, 2018. WHDHS-00000879. The letter provided information on the findings of the EMOT investigation. *Id.*
[161] Interview with (b) (6) (Aug. 7, 2020). As (b) (6) declined to be interviewed, we were unable to ask her whether she was responsible for encouraging (b) (6) to report on the findings of the internal review.
[162] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).
[163] Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020). (b) (3) (B), (b) (6) did not say whether anyone else was present for this meeting.
[164] *Id.*

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retired on Monday, June 10, 2019, just days after the publication of (b) (6) .[165] (b) (6) stated that he did so because he felt it was the best decision for the agency.[166]

F. (b) (6) and (b) (6) Refer (b) (6) to CIGIE

CIGIE is an independent entity of the executive branch established by Section 11 of the Inspector General Act.[167] CIGIE is comprised of multiple IG offices and is responsible for addressing issues of efficiency and professionalism across the IG community.[168] Michael Horowitz, IG for DOJ, is the current Chair of CIGIE, and Allison Lerner, IG for the National Science Foundation, is the Vice Chair.[169] The IC is the CIGIE committee responsible for receiving and reviewing allegations of wrongdoing made against "Covered Persons," which include IGs, staff members designated by each IG, and anyone serving in an Acting or Interim capacity within one of those positions.[170] Designated staff members include all direct reports to the IGs and any other staff members for whom an IG determines there would be a risk that an internal investigation of them would lack objectivity.[171]

(b) (3) (B), (b) (6) stated that, while leading the EMOT investigation, she did not consider referring the matter to the CIGIE IC.[172] (b) (3) (B), (b) (6) stated that she did not believe (b) (5) However, (b) (3) (B), (b) (6) statement is inconsistent with (b) (6) April 30th email to (b) (3) (B), (b) (6) in which (b) (6) wrote that they should "mak[e] a concurrent notification to [CIGIE] ic for whatever action they deem appropriate."[175] To implement the plan, in early June 2019, prior to his retirement, (b) (6) (b) (6) and (b) (6) drafted a referral to the CIGIE IC about (b) (6) , including his performance related to the EMOT reports.[176] (b) (6) wrote in an email to (b) (6) , "Here's a draft of the CIGIE referral. I think I've included enough info to trigger the IC's jurisdiction."[177]

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[165] (b) (6)

[166] Follow-Up Interview with (b) (6) (Dec. 2, 2020).

[167] 5 U.S.C. § 11.

[168] Council of the Inspectors Gen. on Integrity and Efficiency, Resources, available at https://www.ignet.gov/content/cigie-governing-documents.

[169] *Id.*

[170] Integrity Committee Policies and Procedures 2018, Council of the Inspectors Gen. on Integrity and Efficiency, p.1, (January 2018).

[171] *Id.* at pg. 4.

[172] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

[173] *Id.*

[174] *Id.*

[175] WHDHS-00000077.

[176] WHDHS-00000079.

[177] *Id.* WHDHS-00000844.

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In light of (b) (6) abrupt retirement, however, (b) (6) and (b) (6) did not send the referral.[178]

On June 25, 2019, (b) (6), the CIGIE IC sent a letter to (b) (6) inquiring why she had not referred the matter to it.[179] Specifically, the letter stated, "[t]o date, the IC has not received a referral from DHS OIG regarding the allegations against (b) (6), as described in the … Special Report…."[180] The IC noted (b) (6) The letter concluded, "the IC has determined to review these allegations sua sponte and trusts that, in the future, DHS OIG will promptly refer to the IC any allegations of wrongdoing against the IG or designated staff member[s] in DHS OIG."[182]

The next day, (b) (6) replied to the IC and copied (b) (6) and (b) (6) on the email.[183] (b) (6) (b) (6) noted that she was a "little perplexed by both the tone and substance of the letter."[184] further wrote:

> The team recommended that I refer the report to CIGIE but did not specify the Integrity Committee (IC). Per my discussions with the team, I notified Michael Horowitz, CIGIE Chairman, in advance of issuance about the nature of the findings and forwarded a link to the report the day it was published. Mr. Horowitz acknowledged receipt. Additionally, a few days prior to publishing the report, we began preparing a referral of allegations to the IC concerning our former (b) (6) (b) (6). Along with the issues raised in the report, (b) (5), (b) (6) We finalized the referral and planned to transmit it on Monday, June 10, 2019. Before we could send the email, however, (b) (6) announced his retirement, effective immediately on June 10.[185]

(b) (6) also provided a number of explanations for why she did not previously refer the allegations to the IC, including that "[w]hen we initiated the internal review…we had no idea that the review would eventually implicate (b) (6)."[186] For her part, (b) (3) (B), (b) (6) did not provide a clear answer as to why DHS OIG did not refer the EMOT investigation to the IC once it became apparent that the report would implicate (b) (6).[187] (b) (3) (B), (b) (6) claimed that she was unaware of whether the allegations fell within the IC's jurisdiction—an answer inconsistent with both (b) (6) April 30th email and (b) (6) (b) (5)

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[178] WHDHS-00000088.
[179] WHDHS-00000084.
[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] WHDHS-00000088.
[184] *Id.*
[185] *Id.*
[186] *Id.*
[187] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

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(b) (5) . Despite (b) (3) (B), (b) (6) statements, the documentary evidence demonstrates that (b) (6) and (b) (6) planned to refer (b) (6) to the CIGIE IC for investigation and would have done so had (b) (6) not retired.

On June 27, 2019, (b) (6) emailed the IC the referral of allegations related to (b) (6), including supporting documentation, and copied (b) (6) and (b) (6) on the email.[188] The referral letter contained additional allegations beyond the issues with the EMOT reports.[189] (b) (3) (B), (b) (6) stated in her interview that she and (b) (6) wanted to include everything they had about (b) (6) that could be of interest to the IC.[190]

G. DHS OIG Employees' View of the Special Report

Multiple current and former DHS OIG employees stated their belief that (b) (6) and (b) (6) used the Special Report to expedite (b) (6) departure so (b) (6) could accede to the position of (b) (6)

- (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), stated her view that (b) (6) and (b) (6) used the investigation as a vehicle to push (b) (6) to retire.[191] (b) (3) (B), (b) (6) speculated that (b) (6) and (b) (6) thought that (b) (6) would retire after the Special Report was published.[192] According to (b) (3) (B), (b) (6), while there were some Congressional requests for briefings, (b) (6), (b) (6), and later (b) (6) also proactively reached out to the Congressional committees to brief them on the Special Report.[193] (b) (3) (B), (b) (6) also speculated that (b) (6) was the source for the (b) (6).[194]

- (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), stated her belief that (b) (6) and (b) (6) published the Special Report to publicly humiliate (b) (6) and to force his retirement.[195] She also heard rumors that the information regarding the Special Report was leaked to the press, but she did not have any personal knowledge of it.[196]

- (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), thought that (b) (6) and (b) (6) publicized the Special Report because they wanted to push (b) (6) into retirement.[197] (b) (3) (B), (b) (6) specifically recalled that (b) (6) and (b) (6) wanted to do a "roadshow" about the Special

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[188] WHDHS-00000862.
[189] WHDHS-00000863.
[190] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).
[191] Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).
[192] *Id.*
[193] *Id.*
[194] *Id.* (b) (3) (B), (b) (6) stated that she did not know if (b) (6) leaked (b) (6), (b) (6) (b) (6) and interacted with (b) (6) when (b) (6) worked there. *Id.* We reviewed allegations that (b) (6) selectively leaked or otherwise provided information to the press in an improper fashion for personal gain. We found no direct evidence that (b) (6), or anyone else, leaked information to the Washington Post.
[195] Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).
[196] *Id.*
[197] Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).

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Report throughout DHS OIG.[198] (b) (3) (B), (b) (6) thought that (b) (6) was driven by an "insatiable thirst" to take over as IG.[199] (b) (3) (B), (b) (6) said that she, along with others, were appalled by (b) (6) behavior.[200]

- (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), described the investigation and subsequent report as a "setup" and a "hit job" by (b) (6) and (b) (6).[201] (b) (3) (B), (b) (6) told us that (b) (6) convinced (b) (6) to take responsibility for the EMOT reports and then used his email taking responsibility to show to the Congressional committees that the EMOT reports were (b) (6) fault.[202]

- (b) (3) (B), (b) (6), the (b) (3) (B), (b) (6), speculated that (b) (6) (b) (6) directed (b) (6) to write the report in a way that would push out (b) (6) although he acknowledged he had no personal knowledge that occurred.[203] (b) (3) (B), (b) (6) recalled numerous closed-door meetings between (b) (6) and (b) (6) prior to the report being released.[204] He also observed intense conversations and felt that something did not seem right.[205] (b) (3) (B), (b) (6) also found it suspicious that as a result of (b) (6) retirement, (b) (6) became (b) (6).[206] He believed the review should have been done externally to avoid such appearances of a conflict of interest.[207]

Other DHS OIG employees detailed suspicions underlying the purpose of publishing the report. For example, (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), commented on the curious timing of (b) (6) announcement that he was postponing his retirement and the (b) (6).[208] (b) (3) (B), (b) (6) said she heard that on the day that one of the (b) (6) was published (b) (6) and (b) (6) came into the office laughing and rejoicing.[209]

On the other hand, (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), believed it was performed objectively.[210] (b) (3) (B), (b) (6) said (b) (6) was not involved in the investigation, but after completion, she was briefed on the findings and participated in the congressional briefings.[211] (b) (3) (B), (b) (6) recalled extensive discussions with (b) (6) and (b) (6) (b) (6) about whether OIG should publish the report, given the sensitivities and criticism related to (b) (6).[212] He relayed that (b) (6) and (b) (6) ultimately decided the report should

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[198] *Id.*
[199] *Id.*
[200] *Id.*
[201] Interview with (b) (3) (B), (b) (6) (July 28, 2020).
[202] *Id.*
[203] Interview with (b) (3) (B), (b) (6) (July 27, 2020).
[204] *Id.*
[205] *Id.*
[206] *Id.*
[207] *Id.*
[208] Interview with (b) (3) (B), (b) (6) (July 28, 2020).
[209] *Id.*
[210] Interview with (b) (3) (B), (b) (6) (July 16, 2020).
[211] *Id.*
[212] *Id.*

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be published because OIG would have published the report had it investigated any other organization.[213]

H. (b) (6) Retroactively Changes (b) (6) Position Description

On June 12, 2019, two days after (b) (6) retirement, (b) (6) (b) (6), emailed (b) (6) and copied (b) (6) (b) (6) raised the issue of whether (b) (6) (b) (5) .[214] (b) (6)

DHS OIG's order of succession at that time was listed as follows: IG, DIG, Counsel, AIG for Audits.[216] (b) (6) wrote:

(b) (5), (b) (6)

(b) (3) (B), (b) (6) recalled that (b) (6) was concerned that (b) (6) (b) (5)

The day after receiving the email from (b) (6), (b) (6) emailed (b) (6), (b) (6), and (b) (6), the (b) (5), with the subject line, "(b) (6) eOPF HIGH IMPORTANCE PERSONNEL SENSITIVE DO NOT SHARE."[219] (b) (6) wrote, "Ladies, (b) (2), (b) (5), (b) (6) .[220] She asked whether (b) (6) (b) (5), (b) (6), (b) (2) (b) (6) (b) (2), (b) (6) (b) (2), (b) (6) .[222] (b) (6) replied:

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[213] *Id.*
[214] WHDHS-00000398.
[215] *Id.*
[216] DHS Orders of Succession and Orders for Delegations of Authorities, Dep't. of Homeland Sec., Off. Of Inspector Gen., (Sept. 14, 2016).
[217] WHDHS-00000398.
[218] Interview with (b) (3) (B), (b) (6) (Sept. 16, 2020).
[219] WHDHS-00000403.
[220] *Id.*
[221] *Id.*
[222] *Id.*

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(b) (2), (b) (5)

[223]

(b) (6) noted that (b) (6) was actually placed on a "DIG PD before he retired."[224] (b) (6). (b) (6) responded that (b) (6) (b) (5)

However, by creating a new DIG PD for (b) (6), (b) (6) established two DIG positions at DHS OIG: one held by (b) (6) and one held by (b) (6). (b) (6) asked (b) (6) to (b) (2), (b) (5) ."[227] (b) (6) documented in an email what transpired based on her understanding with respect to (b) (6) position changes.[228] (b) (6) then listed the required action necessary (b) (2), (b) (6)

[229] She also requested that (b) (6) (b) (2), (b) (6)

[230] Finally, (b) (6) indicated that she would inform (b) (6) about these retroactive changes.[231]

Our review did not uncover any evidence that (b) (6) in fact ever did inform (b) (6) about these retroactive changes. (b) (6) noted that he had not spoken to (b) (6) since his retirement and had not received any correspondence from her.[232] He also did not recall anyone informing him that his position description was changed after his retirement; (b) (6) stated that in his view, any retroactive changes to his position description would be "nefarious."[233]

In her interview, (b) (3) (B), (b) (6) explained that (b) (6) called her after (b) (6) retired to inform her that (b) (6) position description of (b) (6) was not listed in OIG's order of succession, (b) (5) .[234] Upon speaking to (b) (6), (b) (6), (b) (3) (B) notified (b) (6)

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[223] *Id.*
[224] *Id.*
[225] *Id.*
[226] Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).
[227] WHDHS-00000403.
[228] *Id.*
[229] *Id.*
[230] *Id.*
[231] *Id.*
[232] Follow-Up Interview with (b) (6) (Nov. 16, 2020).
[233] *Id.*
[234] Interview with (b) (6), (b) (3) (B) (Aug. 27, 2020).

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(b) (6).[235] (b) (3) (B), (b) (6) indicated that she and (b) (6) were (b) (5), (b) (6) [redacted] [237]

Notably, (b) (6) did not simply cancel the November 2018 position changes for both (b) (6) and (b) (6) because that would have reverted (b) (6) back to the (b) (6) position and (b) (6). (b) (6) back to the (b) (6) position. (b) (3) (B), (b) (6) (b) (5) [redacted] [238] If (b) (6) was (b) (6) rather than (b) (6), AIG for Audits (b) (6) (b) (6) would have become Acting IG under the order of succession when (b) (6) retired.[239] Therefore, (b) (3) (B), (b) (6) said her (b) (5) [redacted] [240] (b) (3) (B), (b) (6) further noted that nothing prohibited DHS OIG from having two DIGs and that she was not aware of any law that would prevent her from making retroactive changes to position descriptions.[241] (b) (3) (B), (b) (6) acknowledged that she instructed (b) (6) to add a sentence to one of the position descriptions noting that if there are two DIGs, the most senior one serves as Acting IG.[242] (b) (3) (B), (b) (6) explained that she wanted (b) (5) [redacted].[243] (b) (3) (B), (b) (6) denied however that by doing so, she was unilaterally changing the order of succession for the agency.[244] (b) (6) approved these retroactive changes,[245] which had the effect of purportedly validating her ability to continue to serve in the position of (b) (6).[246]

We asked (b) (3) (B), (b) (6) whether he was aware that (b) (6) position description was changed retroactively after he retired. (b) (3) (B), (b) (6) said he was not aware, and that he does not recall him or anyone else in his office advising (b) (6) to do so.[247] Furthermore, (b) (3) (B), (b) (6) (b) (5) [redacted]

We spoke to (b) (3) (B), (b) (6) about this incident as well. (b) (3) (B), (b) (6) could not recall exactly why (b) (6) requested the retroactive changes.[249] She commented that it did not make sense to her why (b) (6) could not have been on the (b) (6) DIG position description, since her research

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[235] *Id.*
[236] *Id.*
[237] *Id.*
[238] *Id.*
[239] DHS Orders of Succession and Orders For Delegations Of Authorities, *supra* note 216.
[240] Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).
[241] *Id.*
[242] *Id.*
[243] *Id.*
[244] *Id.*
[245] WHDHS-00000840.
[246] Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020)
[247] Interview with (b) (3) (B), (b) (6) (Sept. 16, 2020).
[248] *Id.*
[249] Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).

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indicated that it was a bona fide position and DHS OIG was allowed to have two DIGs at once.[250] (b) (6), (b) (3) (B) also recalled arguing with (b) (6) about making these changes.[251] (b) (3) (B), (b) (6) had never been asked to change someone's files after they retired and felt very uncomfortable doing so.[252] (b) (3) (B), (b) (6) approached her supervisor, (b) (6), and explained that she was not comfortable working on the request from (b) (6).[253] According to (b) (3) (B), (b) (6), (b) (6) then "went off on her" and told her to backdate the changes.[254] (b) (3) (B), (b) (6) ultimately complied, but explained that this incident was the "straw that broke the camel's back" and that she knew that she had to leave the organization immediately.[255] (b) (3) (B), (b) (6) also stated that (b) (6) yelled at her for conducting research about whether it was appropriate to retroactively change (b) (6) position description, rather than simply following (b) (6) orders.[256]

IV. ATTEMPTS TO DERAIL THE NOMINATION OF DR. CUFFARI AS THE NEW IG

At the outset, we note that while any citizen has the right to question a presidential nomination in their personal capacity, our investigation focused on the statements and actions of (b) (6), (b) (6), and (b) (6) while in their roles as senior employees at DHS OIG. Federal employees, in their capacity as private citizens, have a First Amendment right to express their political opinions and may contact lawmakers to do so.[257] However, it is a misuse of authority for a federal employee to use his or her public office to interfere with a Presidential nomination or the Senate confirmation process for personal gain or any other improper purpose.[258] Additionally, federal employees should not use their government resources, including the email system or access to lawmakers or other government officials, for personal gain or for any other unauthorized purposes.[259]

On November 1, 2018, the White House announced its intention to nominate Dr. Cuffari to serve as the IG of DHS.[260] Dr. Cuffari was formally nominated by the President on November 14, 2018.[261] Documentary evidence and witness interviews indicate that immediately following the

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[250] *Id.*
[251] *Id.*
[252] *Id.*
[253] *Id.*
[254] *Id.*
[255] *Id.*
[256] Interview with (b) (3) (B), (b) (6) (July 23, 2020).
[257] *See* Garcetti v. Ceballos, 126 S. Ct. 1951, 1953 (2006) (noting that "a citizen who works for the government is nonetheless still a citizen. The First Amendment limits a public employer's ability to leverage the employment relationship to restrict, incidentally or intentionally, the liberties employees enjoy in their capacities as private citizens."). However, "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." *Id.* at 1960.
[258] *See* 5 C.F.R. § 2635.702 ("An employee shall not use his public office for his own private gain . . . or for the private gain of friends.").
[259] *See* 5 CFR § 2635.704 (noting that government property shall not be used for unauthorized purposes, and the term "government property" includes "office supplies, telephone and other telecommunications equipment and services, the Government mails," etc.).
[260] President Donald J. Trump Announces Intent to Nominate Personnel to Key Administration Posts, *supra* note 19.
[261] 164 Cong. Rec. S6968 (daily ed. Nov. 14, 2018) (nomination of Joseph V. Cuffari), https://www.govinfo.gov/content/pkg/CREC-2018-11-14/pdf/CREC-2018-11-14.pdf.

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White House's announcement, and continuing throughout Dr. Cuffari's confirmation process, (b) (6) (b) (6), (b) (6) and (b) (6) engaged in disparaging discussions at work regarding Dr. Cuffari's qualifications, primarily regarding the validity of Dr. Cuffari's doctoral degree.

Specifically, the same day that the White House announced its intent to nominate Dr. Cuffari, (b) (6) (b) (6) sent an email to DHS OIG announcing the nomination.[262] (b) (6) forwarded that email on her work e-mail account to several people, including (b) (6) and the former general counsel of DHS OIG.[263] (b) (6) wrote to (b) (6), "Google California coast university."[264] (b) (6) (b) (6) wrote to the former general counsel: "His PhD is from California Coast University. Google it."[265] The former general counsel responded that they should continue the discussion on (b) (6) personal email account.[266] (b) (6) forwarded her exchange to (b) (6) on her DHS OIG e-mail account, and wrote, "This sums it up!" (b) (6) replied from her work e-mail account, "Hahahahaha."[267]

(b) (6) also responded directly to (b) (6), questioning the university from which Dr. Cuffari received his degree.[268] (b) (6) wrote to (b) (6): "if you dig around you'll see that the PhD is from California coast university and the masters is from Webster. Probably why they are not listed."[269] During his interview, (b) (6) recalled generally that (b) (6) openly sought to undermine Dr. Cuffari within DHS OIG and questioned his intelligence, noting that (b) (6) (b) (6) said Dr. Cuffari was "dumber than a box of rocks."[270] (b) (3) (B), (b) (6) also recalled (b) (6) (b) (6) saying that Dr. Cuffari is "a nice guy but dumber than a box of rocks."[271]

In addition, (b) (3) (B), (b) (6) stated that (b) (6) had instructed (b) (6), to run a query regarding where Dr. Cuffari obtained his Ph.D.[272] (b) (3) (B), (b) (6) also heard (b) (6) respond, "I was right, he got it from a paper mill."[273]

When asked about his interactions with (b) (6), (b) (3) (B), (b) (6) did not recall a specific request by (b) (6) to investigate Dr. Cuffari before his confirmation.[274] However, (b) (3) (B), (b) (6) recalled that (b) (6) talked about Dr. Cuffari's lack of qualifications and his Ph.D. in work meetings before Dr. Cuffari was confirmed.[275] (b) (3) (B), (b) (6) similarly stated that (b) (6) tried to

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[262] WHDHS-00000024.
[263] WHDHS-00000024; WHDHS-00000028; WHDHS-00000030.
[264] WHDHS-00000024.
[265] WHDHS-00000030.
[266] *Id.* As we did not have access to (b) (6) personal email account, we do not know what further discussions occurred on this subject.
[267] *Id.*
[268] WHDHS-00000026.
[269] *Id.*
[270] Interview with (b) (6) (Aug. 7, 2020).
[271] Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).
[272] *Id.*
[273] *Id.*
[274] Interview with (b) (3) (B), (b) (6) (Sept. 17, 2020).
[275] *Id.*

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garner support for herself in senior meetings in anticipation of Dr. Cuffari's arrival.[276] She said that these efforts intensified following Dr. Cuffari's confirmation hearing.[277]

A number of current and former DHS OIG employees corroborated that (b) (6) openly criticized Dr. Cuffari's qualifications to become the IG, and recruited others to do the same. For example, (b) (3) (B), (b) (6) stated that (b) (6) made it very clear that she thought Dr. Cuffari was not qualified and that she was not impressed with him.[278] She said (b) (6) was constantly trying to undermine Dr. Cuffari, and trying to recruit (b) (6) to do so as well.[279] (b) (3) (B) also recalled that (b) (6) made a comment that she was talking to people in Congress about Dr. Cuffari.[280] (b) (3) (B), (b) (6) stated that she had heard that (b) (6) was talking to Senate staffers about Dr. Cuffari's nomination.[281] (b) (3) (B), (b) (6) likewise had heard that (b) (6) was talking to Congressional committees about Dr. Cuffari's nomination.[282] (b) (3) (B), (b) (6) also recalled (b) (6) speaking about (b) (6) efforts to undermine Dr. Cuffari's confirmation process.[283] He recalled (b) (6) saying something to the effect of (b) (6) recent trip to the Hill" will "hopefully . . . have an impact on this confirmation."[284]

(b) (3) (B), (b) (6), who was (b) (3) (B), (b) (6) while Dr. Cuffari's nomination was pending, stated that (b) (6) contacted him directly to express her concerns about Dr. Cuffari as well.[285] (b) (3) (B), (b) (6) explained to (b) (6) that it is not the (b) (6) role to get involved in vetting of presidential appointees and that she should go to the White House liaison with any concerns.[286] (b) (3) (B), (b) (6), who has served at DHS since 2003, stated that it was the first time he could recall a federal employee raising concerns about a presidential nominee.[287]

(b) (3) (B), (b) (6) stated that (b) (6) questioned Dr. Cuffari's qualifications and encouraged employees to write letters contesting his nomination.[288] According to (b) (3) (B), (b) (6), (b) (6) also criticized Dr. Cuffari's nomination to other DHS OIG employees.[289] (b) (3) (B), (b) (6) also reported that (b) (6) said that Dr. Cuffari had "no business becoming IG," that his education was a fraud, and that he was only a GS-14.[290] Similarly, (b) (3) (B), (b) (6) reported that (b) (6) told her Dr. Cuffari was "just a GS-14," so (b) (3) (B), (b) (6) should not have high expectations about

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[276] Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).
[277] *Id.*
[278] *Id.*
[279] *Id.*
[280] *Id.*
[281] Interview with (b) (3) (B), (b) (6) (Aug. 10, 2020).
[282] Interview with (b) (3) (B), (b) (6) (July 28, 2020).
[283] *Id.*
[284] *Id.*
[285] Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).
[286] *Id.*
[287] *Id.*
[288] Interview with (b) (3) (B), (b) (6) (July 28, 2020).
[289] *Id.*
[290] *Id.*

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his qualifications.[291] (b) (3) (B), (b) (6) also recalled that (b) (6) questioned Dr. Cuffari's management experience.[292]

In addition to conversations with employees within DHS OIG, (b) (6), in her position as (b) (6), also emailed CIGIE regarding her concerns with Dr. Cuffari's nomination. In a June 26, 2019 email, (b) (6) wrote to CIGIE: "we are currently struggling with a significant concern related to the nominee to be DHS Inspector General and we are unsure as to what we should do to address the issue. Right now (as well as at various points over the last year) we would be very grateful for a CIGIE ombudsperson to whom we could raise our concerns and seek advice about how to proceed."[293] Our review did not uncover a response from CIGIE on this issue.[294]

In addition to (b) (6), (b) (6) also raised doubts about Dr. Cuffari's nomination in her capacity as (b) (6) for DHS OIG. Specifically, in June 2019, (b) (6) and (b) (6) contacted (b) (6), (b) (6), to discuss Dr. Cuffari's nomination.[295] (b) (6), in her capacity as (b) (6) wrote to (b) (6) that she had "a sensitive matter related to the DHS IG nominee" to discuss.[296] They agreed to speak on the phone and, following that conversation, (b) (6) sent (b) (6) the link to a report regarding California Coast University.[297] During her interview, (b) (3) (B), (b) (6) acknowledged that she and (b) (6) spoke to (b) (6) about Dr. Cuffari's nomination, and stated that they were doing so because it was in the best interests of the agency.[298] According to (b) (3) (B), (b) (6), (b) (6) agreed that (b) (6) and (b) (6) had an obligation to protect the organization and figure out whether others knew that Dr. Cuffari's degree was issued by "a diploma mill."[299] (b) (6) declined our request for an interview.

(b) (6) next reached out to (b) (6). Documentary evidence indicates that (b) (6) called (b) (6) several times to speak about Dr. Cuffari's nomination but was unable to reach him initially.[300] (b) (6) eventually reached him on June 27, 2019.[301] At that point, Dr. Cuffari's nomination was awaiting

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[291] Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).
[292] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).
[293] WHDHS-00000088.
[294] After he was confirmed, IG Cuffari requested to see (b) (6) referral letter to CIGIE with respect to (b) (6) and the EMOT reports. WHDHS-00000339. As noted above, (b) (6) cover email for the referral included the request to CIGIE about Dr. Cuffari's nomination. WHDHS-00000088. After IG Cuffari's request for the referral letter, (b) (6) conferred with (b) (6) and expressed her concern that Dr. Cuffari would be "unhappy" or "angry" if he saw (b) (6) reference to "a significant concern related to the nominee to be DHS Inspector General" in the cover email. WHDHS-00000339. (b) (6) replied, "Again, I really don't care if he's angry at me—I did the work at (b) (6) and it is what it is. It's also still a problem for our organization." *Id.* However, (b) (6) eventually suggested providing the CIGIE referral letter but not the cover email to IG Cuffari. *Id.* In response, (b) (6) expressed her concern that (b) (6) should not "hide the ball." *Id.* Nevertheless, it does not appear that (b) (6) or (b) (6) ever provided the cover email to IG Cuffari.
[295] WHDHS-00000090.
[296] *Id.*
[297] *Id.*
[298] Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).
[299] *Id.*
[300] WHDHS-00000401.
[301] Interview with (b) (3) (B), (b) (6) (July 22, 2020).

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a vote of the full Senate.[302] When (b) (6) initially reached out to (b) (6) via email to discuss this issue, her DHS signature block identified her as the (b) (6) " for DHS OIG.[303] During the call, (b) (6) raised concerns regarding Dr. Cuffari's doctoral degree, claiming it was issued by "a diploma mill."[304] Similar to (b) (6) , (b) (6) also claimed that she had previously investigated this university when she worked in Congress years prior.[305] (b) (3) (B), (b) (6) told (b) (6) that the issue had already been investigated.[306] During his interview, (b) (3) (B), (b) (6) explained that as part of the vetting process, (b) (3) (B), (b) (6) had already requested transcripts from California Coast University to verify Dr. Cuffari's doctoral degree.[307] (b) (3) (B), (b) (6) told us that he was surprised and "displeased" that (b) (6) called him because they had never spoken prior to this phone call, and it was uncommon for someone to contact him to raise concerns regarding presidential appointees given the extensive vetting process they undergo by the FBI.[308] (b) (3) (B), (b) (6) stated that he did not believe (b) (6) was calling to "help [Dr. Cuffari] with the Senate confirmation."[309]

That same month, on June 13, 2019, (b) (6) wrote to (b) (6) , an (b) (6) that (b) (6) (b) (6) supervised in the (b) (6) , asking for "a data dump/folder with all (b) (6) communications with Dr. Cuffari, the Dept., etc., on his nomination, conflicts, etc.?"[310] (b) (6) (b) (6) provided all of these documents later that day and (b) (6) forwarded them to another employee at DHS OIG, (b) (6) .[311]

During her interview, (b) (3) (B), (b) (6) could not recall exactly why she requested these files from (b) (6) (b) (6), but explained that she may have been seeking information regarding Dr. Cuffari's doctoral degree.[312] (b) (3) (B), (b) (6) also could not recall why she sent the files to (b) (6) , but she believed she may have done so in order for (b) (6) to include the files in an ethics database he was creating.[313] (b) (3) (B), (b) (6) explained that (b) (6) was tasked with creating a central database related (b) (6) [314] At the time that (b) (6) sent the information to (b) (6) , however, Dr. Cuffari had not been yet confirmed by the Senate as the IG.

Both (b) (3) (B), (b) (6) and (b) (3) (B), (b) (6) were asked about (b) (6) "data dump" request. (b) (3) (B), (b) (6) recalled (b) (6) request for information.[315] (b) (3) (B), (b) (6) thought that, in her role as (b) (6) (b) (6), (b) (6) wanted to review all relevant information regarding the nominee and that she may have also been influenced by (b) (6) questions regarding Dr. Cuffari's qualifications

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[302] *Id.*
[303] WHDHS-00000401.
[304] Interview with (b) (3) (B), (b) (6) (July 22, 2020); Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).
[305] Interview with (b) (3) (B), (b) (6) (July 22, 2020).
[306] *Id.*
[307] *Id.*
[308] *Id.*
[309] *Id.*
[310] WHDHS-00000396.
[311] WHDHS-00000400.
[312] Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).
[313] *Id.*
[314] *Id.*
[315] Interview with (b) (3) (B), (b) (6) (July 31, 2020).

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to be IG.[316] (b) (3) (B), (b) (6) did not consider the request improper though, given (b) (6) role as the (b) (6) .[317] Although (b) (3) (B), (b) (6) did not recall the "data dump" email specifically, he said the purpose of collecting these emails was to prepare for Dr. Cuffari's arrival and to review the files for potential conflicts or ethics issues.[318] (b) (3) (B), (b) (6) said he believed it was appropriate for (b) (6) to ask for this information because she needed to be able to provide (b) (6) —IG Cuffari—once he was confirmed.[319] Similarly, (b) (3) (B), (b) (6), (b) (3) (B), (b) (6) , (b) (6), (b) (3) (B) , stated that (b) (6) may have needed to review the files to assess conflicts.[320] Our investigation did not reveal why (b) (6) specifically requested all of the emails and documents regarding Dr. Cuffari's nomination process, or what (b) (6) did with them.

In her interview, (b) (3) (B), (b) (6) acknowledged that she and (b) (6) had concerns about Dr. Cuffari's qualifications.[321] (b) (3) (B), (b) (6) claimed she had concerns that Dr. Cuffari received his doctoral degree from a "diploma mill," which might damage OIG's reputation.[322] (b) (3) (B), (b) (6) said that she expressed these concerns to several DHS OIG senior staff, including (b) (6) , (b) (6) and (b) (6) .[323] (b) (3) (B), (b) (6) acknowledged that she also spoke to (b) (6) ;(b) (6) ,(b) (6) ; and (b) (6) (b) (6), (b) (6) , about her concerns about Dr. Cuffari's qualifications.[324] During her interview, (b) (3) (B), (b) (6) confirmed that she was making these calls in her capacity as the (b) (3) (B), (b) (6) , and was doing so out of her concern that the vetting process may not have properly scrutinized Dr. Cuffari's educational background.[325] (b) (3) (B), (b) (6) stated that she was only acting in the best interest of the agency and not to benefit (b) (6) , then serving as the (b) (6) .[326] (b) (3) (B), (b) (6) said that once she spoke to (b) (6) , she "considered the matter resolved."[327] The evidence demonstrates, however, that the efforts to undermine IG Cuffari continued.

V. UNDERMINING THE NEW IG

A. (b) (6) Filled Vacancies to Limit the New IG

On July 25, 2019, the United States Senate confirmed Dr. Cuffari as the new IG.[328] With the confirmation of IG Cuffari, (b) (6) purportedly reverted back to the (b) (6) role. As she had

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[316] *Id.*
[317] *Id.*
[318] Interview with (b) (3) (B), (b) (6) (Sept. 16, 2020).
[319] *Id.*
[320] Interview with (b) (3) (B), (b) (6) (Sept. 14, 2020).
[321] Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).
[322] *Id.*
[323] *Id.*
[324] *Id.*
[325] *Id.*
[326] *Id.*
[327] *Id.*
[328] Meet the IG, *supra* note 13.

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done with (b) (6), however, (b) (6), with the assistance of (b) (6), once again orchestrated a campaign to undermine the new IG. In fact, as explained below, (b) (6) efforts to limit the new IG had begun months earlier, shortly after he was nominated for the post. Specifically, multiple current and former DHS OIG employees reported that (b) (6) engaged in a concerted effort to fill open positions, in particular Senior Executive Service ("SES") positions, at the agency.

Multiple employees called the hiring unusual because SES positions typically remain vacant for the incoming IG to fill. (b) (3) (B), (b) (6), a (b) (3) (B), (b) (6) (b) (3) (B), (b) (6), described it as a contravention of the normal practice for (b) (6) to rapidly fill SES positions in the period between IG Cuffari's nomination and his confirmation.[329] Both (b) (3) (B), (b) (6) and (b) (3) (B), (b) (6), the (b) (3) (B), (b) (6), explained that there is a general understanding in the government that those positions should be left open for the incoming presidential appointee to fill.[330]

Documentary evidence confirmed that (b) (6) was filling these roles in the agency in order to inhibit IG Cuffari's ability to hire his own senior staff and to secure her own position as (b) (6). In December 2018, (b) (6), (b) (6) responsible for SES employees, emailed (b) (6) regarding the process for requesting additional SES positions at DHS OIG.[331] (b) (6) appeared hesitant to request additional slots because IG Cuffari would be able to fill these slots once confirmed.[332] Specifically, (b) (6) explained in her email to (b) (6), "I don't think we should ask for any SES so new IG is limited."[333] Later in the discussion, (b) (6). (b) (6) and (b) (6) discussed the 120-day moratorium during which a new IG cannot move employees in SES positions. After the moratorium is over, however, the new IG would be able to move SES employees into other SES positions.[334] (b) (6) wrote, "We had discussed this a couple of times and this is one of the reasons why we needed the SES positions filled so after the moratorium there is no where to move."[335] (b) (6) wrote to (b) (6), "Please let me know if you need more information. I know how important this is."[336] (b) (6) confirmed that she would not ask for additional SES positions.[337]

During her interview, (b) (3) (B), (b) (6) confirmed that (b) (6) intended to fill the existing SES positions for two reasons: (1) to limit IG Cuffari's ability to fill the positions with his own selections, and (2) to constrain IG Cuffari's ability to move (b) (6) from the (b) (6) position to an open SES slot after the 120-day moratorium.[338] (b) (3) (B), (b) (6) explained that, as a result, there was rapid hiring in the run up to IG Cuffari's confirmation.[339] She noted that she worked around

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[329] Interview with (b) (3) (B), (b) (6) (July 24, 2020).
[330] *Id.* Interview with (b) (3) (B), (b) (6) (July 27, 2020).
[331] WHDHS-00000035.
[332] *Id.*
[333] *Id.*
[334] *See id.*
[335] *Id.*
[336] *Id.*
[337] *Id.*
[338] Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).
[339] *Id.*

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the clock for (b) (6) on hiring issues and that they filled seven SES positions in her last eight months in the office.[340] By contrast, she explained that agencies typically fill two to three SES positions in an entire year.[341] (b) (3) (B), (b) (6) thought that (b) (6) plan to hamstring IG Cuffari's ability to select executives was in "poor taste."[342]

As noted above, (b) (3) (B), (b) (6) also recalled that (b) (6) was very concerned that IG Cuffari would reassign her from the (b) (6) position after the 120-day moratorium was over.[343] Under Office of Personnel Management ("OPM") guidelines, SES employees can be transferred (even against their will) to other available SES positions for which they are qualified, and therefore (b) (6) did not want to leave open any SES roles.[344] She explained that (b) (6) would often refer to DHS OIG as "my agency" and that she needed to protect "her people" since IG Cuffari could replace her at any time.[345]

A review of DHS OIG employee records confirms that in the months following that exchange with (b) (6) about the need to "limit" the new IG, (b) (6) filled several SES positions. Specifically, we identified six SES positions that were filled during the time-period between IG Cuffari's nomination and confirmation, although for two of these positions, the initial request to OPM preceded IG Cuffari's nomination.[346] Additionally, one of those two requests was submitted prior to (b) (6) arrival at DHS OIG.[347]

The OPM SES Desk Guide provides guidance related to the timing of filling SES positions when a nominee is pending. Specifically, the Desk Guide states:

> When an agency head leaves or announces the intention to leave, or if the President nominates a new agency head, OPM suspends [Qualifications Review Board ("QRB")] case processing for SES career appointments until a successor is appointed at the agency. OPM takes this action as a courtesy to the new agency head to afford him/her the greatest flexibility in making executive resources

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[340] *Id.* However, as explained further below, our investigation confirmed that six SES positions were filled during the time-period between IG Cuffari's nomination and his confirmation. (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), confirmed that (b) (3) (B), (b) (6) was working overtime to process (b) (6) new hires prior to IG Cuffari's confirmation. Interview with (b) (3) (B), (b) (6) (July 23, 2020). (b) (3) (B), (b) (6) explained that she believed (b) (6) was hiring staff to build support for herself within the agency prior to IG Cuffari's arrival. *Id.*

[341] Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).

[342] *Id.*

[343] *Id.*

[344] *Id.* *See also* Guide to Senior Executive Service, U.S. Off. Of Pers. Mgmt., p. 10 (noting that "An agency may reassign a noncareer appointee to another General SES position for which he/she qualifies after obtaining approval from OPM and the Office of Presidential Personnel. The agency is not required to give the appointee advance written notice of the reassignment.").

[345] Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).

[346] For two of these SES slots, the request to OPM was made prior to IG Cuffari's nomination, but was not approved until after his nomination had been announced.

[347] OPM SES Documents – (b) (6) Documents.

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decisions. However, if an agency has a selection it considers urgent, OPM may consider whether to make an exception.[348]

The six employees that received SES assignments during the time-period between Dr. Cuffari's nomination (November 14, 2018) and confirmation (July 25, 2019) were:

- On January 18, 2017, OPM approved the appointment of (b) (6) to the Senior Executive Service.[349] On December 9, 2018, (b) (6) was promoted to an SES career appointment as (b) (6) [350] While (b) (6) was promoted during the relevant period, OPM approved his appointment to the SES well before IG Cuffari's nomination, and before (b) (6) arrival at DHS OIG in September 2017.

- On August 29, 2018, (b) (6) requested an exception of the QRB moratorium for (b) (6) to be appointed as (b) (6) .[351] OPM approved the request. On November 25, 2018, (b) (6) was appointed as Deputy AIG (b) (6) .[352]

- On November 27, 2018, (b) (6) requested an exception of the QRB moratorium to appoint (b) (6) as AIG (b) (6) .[353] On March 31, 2019, (b) (6) was converted to a career SES appointment.[354]

- On December 14, 2018, (b) (6) requested an exception to appoint (b) (6) as Deputy AIG (b) (6) .[355] On April 28, 2019, (b) (6) was converted to a career SES appointment.

- On March 28, 2019, (b) (6) requested an exception to appoint (b) (6) as Deputy AIG (b) (6) .[356] On June 23, 2019, (b) (6) was appointed to an SES career position.

- On February 17, 2019, (b) (6) transferred to DHS OIG as a career SES employee into the role of (b) (6) .[357]

(b) (3) (B), (b) (6) explained that while the QRB hiring process was followed for these hirings, she thought that (b) (6) engaged in "shady" behavior by moving forward with hiring decisions after Dr. Cuffari was nominated.[358] (b) (3) (B), (b) (6) also indicated that in her opinion, certain

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[348] Guide To The Senior Executive Service, US Off. Of Pers. Mgmt., (March 2017), https://www.opm.gov/policy-data-oversight/senior-executive-service/reference-materials/guidesesservices.pdf.
[349] OPM SES Documents – (b) (6) Documents.
[350] SES Appointments DHS OIG 10232020 v.1.
[351] OPM SES Documents - (b) (6) Documents.
[352] *Id.*
[353] *Id.*
[354] SES Appointments DHS OIG 10232020 v.1.
[355] OPM SES Documents - (b) (6) Documents.
[356] OPM SES Documents - (b) (6) Documents.
[357] SES Appointments DHS OIG 10232020 v.1.
[358] Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).

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executives were hired not because they were the best or most qualified person for the position, but because they would fit in and were friends with those that were doing the hiring.[359] (b) (3) (B), (b) (6) explained that (b) (6) served as the Executive Resources Board ("ERB") chair for all SES hiring.[360] (b) (3) (B), (b) (6) explained that in her experience, the ERB chair rotated among executives, and she thought it was odd that the chair role did not rotate at DHS OIG.[361] (b) (3) (B), (b) (6) also recalled that (b) (6) was hired as (b) (6) in large part due to her prior relationship with (b) (6) at the (b) (6).[362]

(b) (6), who was the (b) (6) at the time of many of these hirings, told us that he worked with (b) (6) to fill SES positions throughout the organization.[363] He said he disagreed with some of (b) (6) SES hiring choices and, in retrospect, thought he should have pushed back harder, but he said that he acquiesced to her wishes at the time because of his imminent retirement.[364]

(b) (6) hiring efforts intensified in the days leading up to IG Cuffari's confirmation in July 2019. On July 17, 2019, just days before IG Cuffari's confirmation, (b) (6) asked (b) (6) (b) (6) an employee in human resources, "to permanently reassign (b) (6) to the (b) (6) Position and post for a (b) (6) (using her current PD) as soon as we can."[365] In response, (b) (6) informed (b) (6) that DHS OIG had already committed to OPM to leave the position open for the new IG to fill. Nevertheless, (b) (6) asked him to push it through anyway.[366] Ultimately, (b) (6) was not promoted to (b) (6).

(b) (3) (B), (b) (6) could not recall why (b) (6) was not promoted to (b) (6), and he could not recall any other conversations about this issue.[367] Several employees, including (b) (3) (B), (b) (6), stated that the agency was required to keep the (b) (6) position open for the new IG to fill.[368] (b) (3) (B), (b) (6) stated that she believed (b) (6) was seeking to fill the (b) (6) position with an ally who would follow (b) (3) (B), (b) (6) direction.[369]

During her interview, (b) (6) stated she was aware that (b) (6) attempted to assign her to the (b) (6) position.[370] However, (b) (3) (B), (b) (6) claimed she told (b) (6) that she was uncomfortable moving forward with the promotion given IG Cuffari's imminent confirmation.[371]

Around the time of IG Cuffari's confirmation, (b) (6) and (b) (6) also sought to hire (b) (6), who worked at the (b) (6), to serve as AIG (b) (6), following the

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[359] *Id.*
[360] *Id.*
[361] *Id.*
[362] *Id.*
[363] Interview with (b) (3) (B), (b) (6) (Aug. 7, 2020).
[364] *Id.*
[365] WHDHS-00000161.
[366] *Id.*
[367] Interview with (b) (3) (B), (b) (6) (Aug. 21, 2020).
[368] Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).
[369] Interview with (b) (3) (B), (b) (6) (July 31, 2020).
[370] Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).
[371] *Id.*

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retirement of (b) (6). On July 23, 2019, just two days before IG Cuffari was confirmed by the Senate, (b) (6) and (b) (6) exchanged emails with the human resources staff regarding (b) (6) job offer.[372] (b) (6) wrote, "Sorry for the mad rush but we're hoping we can get him here so that there's not too much of a gap after (b) (6) departure."[373] (b) (3) (B), (b) (6) stated that (b) (6) and (b) (6) appeared to be in a hurry to hire (b) (6).[374] There was even a discussion of swearing in (b) (6) into the position remotely because he was on vacation and away from Washington D.C. until August.[375] (b) (3) (B), (b) (6) stated that could not recall that ever happening during his experience in government service.[376] (b) (3) (B), (b) (6) also noted that there was a rush to hire (b) (6) and other (b) (6) personnel before IG Cuffari joined the agency.[377] On July 26, 2019, one day after the Senate confirmed IG Cuffari, (b) (6) sent an agency-wide email announcing that (b) (6) had been appointed as AIG for (b) (6).[378]

During his interview, (b) (6) explained that (b) (6) and (b) (6) reached out to him unsolicited in early July 2019 and asked if he was interested in joining DHS OIG as AIG for (b) (6).[379] After he applied, he received a tentative offer and made plans to leave the (b) (6) (b) (6).[380] At some point after IG Cuffari's confirmation, however, (b) (6) heard that hiring at DHS OIG was on hold.[381] (b) (6) had not received his final offer and IG Cuffari called to inform him that he would not be receiving one.[382] (b) (6) acknowledged IG Cuffari's right to rescind the offer and said he respected the decision.[383]

On July 25, 2019, the same day that IG Cuffari was confirmed, OPM granted approval for DHS OIG to appoint (b) (6) as Deputy AIG (b) (6).[384] In an email about the appointment on August 5, 2019, (b) (6) wrote, "Though we received a waiver to the QRB moratorium, I'm reviewing all applicable guidance to determine the extent to which IG Cuffari's confirmation impacts new SES appointments."[385] IG Cuffari ultimately approved of (b) (6) appointment.[386]

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[372] WHDHS-00000172.
[373] *Id.*
[374] Interview with (b) (3) (B), (b) (6) (Aug. 21, 2020).
[375] *Id.*
[376] *Id.*
[377] Interview with (b) (3) (B), (b) (6) (July 24, 2020).
[378] WHDHS-00000162.
[379] Interview with (b) (6) (Aug. 5, 2020).
[380] *Id.*
[381] *Id.*
[382] *Id.*
[383] *Id.*
[384] WHDHS-00000169.
[385] *Id.*
[386] Interview with (b) (3) (B), (b) (6) (Aug. 21, 2020).

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On July 29, 2019, days after his confirmation, IG Cuffari attended a senior staff meeting at which he learned that the office was intending to hire additional employees despite anticipating a significant budget shortfall.[387] IG Cuffari announced a hiring freeze effective immediately.[388]

IG Cuffari's hiring freeze announcement disappointed some employees who were trying to fill positions on their teams. (b) (3) (B), (b) (6) noted that (b) (6), (b) (6) and (b) (6) were upset by the hiring freeze because they had hires in the pipeline.[389] He recalled that (b) (6) was visibly irritated and upset at the meeting.[390] (b) (3) (B), (b) (6) recalled that once IG Cuffari left the meeting, (b) (6) stated that IG Cuffari "doesn't know what he's talking about" and that "this is my meeting."[391] (b) (3) (B), (b) (6) noted that he did not initially understand the reason for the hiring freeze.[392] However, once he became more involved in (b) (3) (B), (b) (6) role, (b) (3) (B), (b) (6) learned that Dr. Cuffari was attempting to "right size" the organization and ensure that the right personnel were in office.[393]

B. Unprofessional Behavior Directed at IG Cuffari

Several current and former DHS OIG employees described (b) (6) behavior in the office as unprofessional, both generally and particularly towards IG Cuffari. For example, (b) (6) (b) (6) described (b) (6) as "self-centered," and said she would "trash" those who did not support her.[394] (b) (3) (B), (b) (6), described (b) (6) as unprofessional, noting that (b) (6) manner of communicating was particularly informal and inappropriate for someone in senior leadership.[395] (b) (3) (B), (b) (6) similarly stated that (b) (6) complaints against Dr. Cuffari were inappropriate considering that she was (b) (3) (B), (b) (6) superior, and (b) (3) (B), (b) (6) was a newly-appointed SES in a probationary period with the agency.[396] (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), noted (b) (6) lack of professionalism, stating that she would "get in people's space" and say "inappropriate things."[397] (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), also noted (b) (6) general unprofessional demeanor, and described her as a "capricious leader."[398] (b) (6), (b) (6), described (b) (6) as scary, intimidating, not a team player, and dismissive.[399] She stated that (b) (6) would often ignore her and other lower-level employees.[400] (b) (3) (B), (b) (6), the (b) (3) (B), (b) (6), stated that (b) (6) would often speak critically of other employees during meetings, and she

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[387] Interview with Joseph Cuffari (June 5, 2020).
[388] *Id.*
[389] Interview with (b) (3) (B), (b) (6) (July 28, 2020).
[390] *Id.*
[391] Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).
[392] Interview with (b) (3) (B), (b) (6) (July 24, 2020).
[393] *Id.*
[394] Interview with (b) (6) (Aug. 7, 2020).
[395] Interview with (b) (3) (B), (b) (6) (July 31, 2020).
[396] Interview with (b) (3) (B), (b) (6) (July 24, 2020).
[397] Interview with (b) (3) (B), (b) (6) (Aug. 20, 2020).
[398] Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).
[399] Interview with (b) (6) (Aug. 24, 2020).
[400] *Id.*

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created a culture of "us versus them" between the SES employees and the non-SES employees.[401] (b) (3) (B), (b) (6) described (b) (6) as aggressive and self-centered.[402]

According to DHS OIG employees, (b) (6) was especially unprofessional towards IG Cuffari. (b) (6), (b) (3) (B), (b) (6) stated that (b) (6) relationship with IG Cuffari was very unprofessional.[403] She said that (b) (6) and IG Cuffari seemingly never spoke to each other and that the environment in the office deteriorated, which in part drove (b) (3) (B), (b) (6) to look for a new job.[404] (b) (3) (B), (b) (6), (b) (3) (B), (b) (6) (b) (3) (B), said (b) (6) and IG Cuffari had a "uniquely cold" relationship.[405]

(b) (3) (B), (b) (6), (b) (3) (B), (b) (6), stated that in September or October 2019, (b) (6) complained to (b) (3) (B), (b) (6) that IG Cuffari was not qualified for his role, citing that he had a degree from a "degree mill university."[406] He said that (b) (6) had a number of discussions with DHS OIG personnel concerning IG Cuffari's inability to appropriately lead DHS OIG.[407] (b) (3) (B), (b) (3) (B), (b) (6) recalled that (b) (6) asked (b) (3) (B), (b) (6) and others to contribute to a memo to IG Cuffari about his leadership capabilities.[408] According to (b) (3) (B), (b) (6), toward the end of (b) (6). (b) (6) tenure, she became highly emotional and fixated on IG Cuffari's actions because she wanted to be the IG.[409] (b) (3) (B), (b) (6) said that (b) (6) even complained that IG Cuffari would not meet with her or respond to her calls or emails.[410] (b) (3) (B), (b) (6) believed (b) (6) sent emails to IG Cuffari simply to antagonize him.[411] (b) (3) (B), (b) (6) said that during senior staff meetings, (b) (6) appeared disconnected, did not pay attention to IG Cuffari while he was speaking, and often times made unpleasant faces.[412]

(b) (3) (B), (b) (6) stated that (b) (6) asked him and (b) (3) (B), (b) (6) to write letters to CIGIE informing them that the OIG was in shambles and that IG Cuffari was not capable of running the agency.[413] (b) (3) (B), (b) (6) said he and (b) (3) (B), (b) (6) refused.[414] (b) (3) (B), (b) (6) told us that he did not recall this request, but he did recall (b) (6) asking the AIGs to provide her with information about how IG Cuffari's actions were negatively impacting their programs.[415]

(b) (3) (B), (b) (6), (b) (3) (B), (b) (6), recalled that (b) (6) called him a couple of times in the fall of 2019 to complain about IG Cuffari.[416] In the calls, (b) (6) said she thought

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[401] Interview with (b) (3) (B), (b) (6) (Aug. 20, 2020).
[402] Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).
[403] Interview with (b) (3) (B), (b) (6) (July 23, 2020).
[404] *Id.*
[405] Interview with (b) (3) (B), (b) (6) (July 8, 2020).
[406] Interview with (b) (3) (B), (b) (6) (July 24, 2020).
[407] *Id.*
[408] *Id.*
[409] *Id.*
[410] *Id.*.
[411] *Id.*
[412] *Id.*
[413] Interview with (b) (3) (B), (b) (6) (July 28, 2020).
[414] *Id.*
[415] Interview with (b) (3) (B), (b) (6) (July 24, 2020); Interview with (b) (3) (B), (b) (6) (Sept. 14, 2020).
[416] Interview with (b) (3) (B), (b) (6) (Sept. 17, 2020).

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IG Cuffari was doing "illegal things."[417] [redacted] stated that [redacted] made several comments disparaging IG Cuffari's background and lack of experience, and said he was not qualified to be IG.[418] [redacted] also said that [redacted] would undermine IG Cuffari by sending emails to staff immediately after IG Cuffari's emails undercutting him, or not copying him on certain emails.[419] Similarly, [redacted], explained that [redacted] tried to undermine everything that IG Cuffari tried to do through her comments and body language.[420] [redacted] did not recall specific examples, but said she heard [redacted] ranting about what the IG was doing.[421]

In addition to [redacted], text messages between [redacted] and [redacted] on DHS OIG cellphones contained additional disparaging comments about IG Cuffari. For example, on November 7, 2019, [redacted] wrote a text message to [redacted] about IG Cuffari, to which [redacted] responded, "Can't do anything but laugh. He is an idiot."[422]

C. [redacted] and [redacted] Attempt to Investigate IG Cuffari

On August 23, 2019, approximately a month after his confirmation, IG Cuffari—who is from Arizona—announced that he was going to travel to Tucson in late October 2019.[423] IG Cuffari planned to meet the Tucson Sector Chief, the Arizona National Guard Colonel, and other Arizona officials on the trip, and to tour a detention facility.[424] [redacted] forwarded the email from IG Cuffari to [redacted], writing, "Tucson sector chief? National guard? FBI?"[425]

That same day, [redacted] called [redacted], who was on vacation, to tell her about the trip.[426] According to [redacted], [redacted] told her that IG Cuffari was planning a trip to the Southwest border and that [redacted] was concerned that the trip would be perceived as "pretextual" because IG Cuffari was visiting the city where his family lived.[427] [redacted] said [redacted] was responsible for approving IG Cuffari's travel.[428]

After speaking with [redacted], [redacted] called [redacted], [redacted].[429] [redacted] reported that [redacted] asked him to investigate IG Cuffari's travel because [redacted] believed the travel was illegitimate and for personal reasons.[430] [redacted] further noted that [redacted] told him that [redacted] had no confidence in IG

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[417] *Id.*
[418] *Id.*
[419] *Id.*
[420] Interview with [redacted] (Sept. 17, 2020).
[421] *Id.*
[422] Text message between [redacted] and [redacted].
[423] WHDHS-00000187.
[424] *Id.*
[425] WHDHS-00000188
[426] [redacted] Memorandum to File (Aug. 26, 2019); Interview with [redacted] (Aug. 28, 2020).
[427] Interview with [redacted] (Aug. 28, 2020).
[428] *Id.*
[429] *Id.*
[430] Interview with [redacted] (July 28, 2020).

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Cuffari and was looking for reasons to question him.[431] (b) (3) (B), (b) (6) refused (b) (6) request to investigate and stated that it was inappropriate for (b) (6) to be investigating the IG.[432]

For her part, (b) (3) (B), (b) (6) admitted that she called (b) (3) (B), (b) (6) about the Southwest border trip, but claimed she only asked (b) (3) (B), (b) (6) for details about IG Cuffari's trip because he was helping plan the itinerary; she denied ever asking him to investigate IG Cuffari.[433] (b) (3) (B), (b) (6) acknowledged, however, that (b) (3) (B), (b) (6) responded that it was inappropriate to raise such concerns about IG Cuffari's travel to him.[434] (b) (3) (B), (b) (6) disagreed, believing it was (b) (3) (B), (b) (6) responsibility to alert IG Cuffari that the trip could be perceived as inappropriate.[435] Nevertheless, (b) (3) (B), (b) (6) claimed that after speaking to (b) (3) (B), (b) (6), she came away satisfied that the trip was appropriate for the IG to take.[436]

Immediately after speaking with (b) (6) (b) (3) (B), (b) (6) called IG Cuffari and relayed to him what had happened.[437] IG Cuffari described (b) (3) (B), (b) (6) as very upset on the call.[438] Three days later, (b) (3) (B), (b) (6) wrote a memorandum to file memorializing his conversation with (b) (6) (b) (6).[439] The memorandum stated, in part, as follows:

> (b) (6) said that she had spoken with (b) (6) and that she (b) (6) was concerned that the IG was travelling to Tucson for personal reasons and not for legitimate OIG business. I explained that reviewing the IG's travel was outside the bounds of what was appropriate. I further explained that I did not question or review (b) (6) or (b) (6) travel because it wouldn't be appropriate, therefore, reviewing the IG's travel was completely ridiculous. (b) (6) said that (b) (6) had no confidence in the IG and that she (b) (6) was obviously looking for reasons to question him. (b) (6) said that (b) (6) believed Dr. Cuffari was only travelling under the auspices of official work, but that he was actually visiting family.[440]

During his interview, (b) (3) (B), (b) (6) explained that he wrote the memorandum because he was concerned about the propriety of (b) (6) request to investigate the IG.[441] He also rejected (b) (6) claim that she was merely seeking information about IG Cuffari's travel.[442]

After receiving (b) (3) (B), (b) (6) call, IG Cuffari emailed (b) (6) about her request.[443] He wrote to (b) (6), "I understand you have expressed concerns about my planned travel and visit

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[431] (b) (3) (B), (b) (6) Memorandum to File.
[432] *Id. See also* Interview with (b) (3) (B), (b) (6) (July 28, 2020).
[433] Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).
[434] *Id. See also* (b) (3) (B), (b) (6) August 26, 2019 Memorandum to File.
[435] Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).
[436] *Id.*
[437] Interview with (b) (3) (B), (b) (6) (July 28, 2020).
[438] Interview with Joseph Cuffari (June 5, 2020).
[439] (b) (3) (B), (b) (6) August 26, 2019 Memorandum to File.
[440] *Id.*
[441] Interview with (b) (3) (B), (b) (6) (July 28, 2020).
[442] *Id.*
[443] WHDHS-00000189.

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to Arizona in October 2019," and he explained the reasons for the trip.[444] IG Cuffari asked (b) (6) (b) (6) to "identify the specific facts and circumstances that caused [her] to be concerned about [his] travel activity."[445]

On August 26, 2019, at 6:41 a.m., (b) (6) forwarded IG Cuffari's message to (b) (6) with multiple question marks in the body of her message.[446] Later that same day, at 8:19 a.m., (b) (6) (b) (6) responded to IG Cuffari's email, writing:

(b) (5)

(b) (6) followed up later that afternoon with more information on official travel.[448] With regard to the Southwest border trip, she wrote that IG Cuffari's (b) (5)

[450]

In her interview, (b) (3) (B), (b) (6) denied that she was trying to "set up" IG Cuffari regarding his travel or requesting that (b) (3) (B), (b) (6) investigate the matter.[451] Instead, she insisted that she was looking out for IG Cuffari and the agency.[452] She stated that she was just trying "to protect [her] client."[453] When asked why she did not go directly to her client to discuss her concerns, (b) (3) (B), (b) (6) said (b) (3) (B), (b) (6) knew the details about IG Cuffari's itinerary.[454] (b) (3) (B), (b) (6) also pointed out that she later provided advice to IG Cuffari about the travel situation, albeit only after (b) (3) (B), (b) (6) refused her request and notified IG Cuffari of their conversation.[455] (b) (6) claims that she was acting solely to protect IG Cuffari are implausible given her earlier efforts to scuttle IG Cuffari's confirmation and undermine him once he had arrived.[456]

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[444] *Id.*
[445] *Id.*
[446] *Id.*
[447] WHDHS-00000452.
[448] *Id.*
[449] *Id.*
[450] *Id.*
[451] Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).
[452] *Id.*
[453] *Id.*
[454] *Id.*
[455] *Id.*
[456] We also reviewed multiple allegations related to (b) (6), (b) (6) and (b) (6) obtaining IG Cuffari's email and the email of other DHS OIG employees without legitimate need or authority. We found no evidence indicating that (b) (6), (b) (6), or (b) (6) accessed IG Cuffari's emails, improperly or otherwise. (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), stated he was not aware of any such conduct. Interview with (b) (3) (B), (b) (6) (Sept. 21, 2020). In their interviews, (b) (3) (B), (b) (6) and (b) (3) (B), (b) (6) denied trying to access IG Cuffari's

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D. (b) (6) Accuses IG Cuffari of Unethical Conduct

Less than one week after the travel incident with (b) (6), IG Cuffari confronted another accusation from (b) (6) that he was acting inappropriately. During IG Roth's tenure, DHS OIG had accepted a request from the IG for the Intelligence Community to review a complaint filed by a former Central Intelligence Agency ("CIA") employee.[457] IG Cuffari recused himself from the investigation because it involved former CIA IG David Buckley, who was Dr. Cuffari's friend.[458] Although there was some confusion about how to effectuate IG Cuffari's recusal, (b) (6). (b) (6) ultimately handled the matter on behalf of the agency.[459] But when IG Cuffari inadvertently joined a meeting about the matter, (b) (6) came to his office shortly after the meeting and told him that she was going to report him to Michael Horowitz, the Chair of CIGIE.[460]

The investigation involved a CIA employee who alleged that CIA IG officials, including CIA IG Buckley, retaliated against him by suspending his security clearance and putting him on administrative leave.[461] DHS OIG investigated and partially substantiated the allegations.[462] On April 25, 2019, DHS OIG completed its investigation and (b) (6) signed the Report on Investigation ("ROI").[463]

Emails show that the ROI underwent additional reviews and revisions after (b) (6) retirement and was not ready for distribution until August 2019.[464] On August 7, 2019, (b) (6) emailed herself talking points for a meeting with IG Cuffari that laid out the background of the investigation, high-level findings, and the next steps regarding closing out the matter.[465] The talking points included the following bullets:

> (1) "Potential conflict of interest - The ROI substantiates the retaliation allegations against former CIA IG David Buckley, who was present at Dr. Cuffari's HSGAC hearing and supported his nomination. [Buckley may have overlapped/worked with Dr. Cuffari during his time at the DOD IG, but I have not confirmed this.]"; and
>
> (2) "[s]ince this investigation was completed prior to your confirmation, and given your relationship with CIA IG Buckley, I would recommend that you be recused from the

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emails or the emails of other OIG employees. *See* Interview with (b) (3) (B), (b) (5) (Aug. 28, 2020); *see also* Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

[457] DHS OIG Investigative Summary, Unclassified Summary, CIA OIG Employee Whistleblower Retaliation Complaint (Aug. 8, 2019), available at https://www.oig.dhs.gov/sites/default/files/assets/2019/I16-NON-DHS-SID-18500.pdf.

[458] Interview with Joseph Cuffari (June 5, 2020); DHS OIG Timeline (06/08/2020).

[459] *See* Interview with Joseph Cuffari (June 5, 2020).

[460] *Id.*

[461] DHS OIG Investigative Summary, Unclassified Summary, CIA OIG Employee Whistleblower Retaliation Complaint (Aug. 8, 2019), available at https://www.oig.dhs.gov/sites/default/files/assets/2019/I16-NON-DHS-SID-18500.pdf.

[462] *Id.*

[463] WHDHS-00000336.

[464] WHDHS-00000329.

[465] WHDHS-00000336.

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matter. If you concur, I will handle any requests we may receive about the matter. If any such requests come to you directly, you can just refer them to me."[466]

IG Cuffari met with (b) (6) and (b) (6) on August 9, 2019.[467] According to IG Cuffari, they provided an overview of the investigation, and explained that the unclassified version of the report was ready for his review.[468] IG Cuffari explained to (b) (6) and (b) (6) that he had recused himself from participation in the matter.[469]

On August 28, 2019, IG Cuffari's assistant received a call from the (b) (6) , (b) (6) (b) (6), requesting an in-person meeting with him to discuss the investigation.[470] IG Cuffari stated that he instructed his assistant to inform (b) (6) that he was recused from the matter.[471]

(b) (6) came to DHS OIG to discuss the matter the following day, August 29, 2019.[472] (b) (6) sent an invitation for the meeting listing (b) (6) and (b) (6) as the required attendees and containing a note that read "Report issued – Retaliation WPU that occurred at CIA."[473] Despite the location of the meeting being the "IG's office," IG Cuffari was not included on the invitation.[474] Nevertheless, IG Cuffari ended up in the meeting and was apparently caught off-guard when the subject of the investigation arose.[475] IG Cuffari reiterated that he was recused from the matter and excused himself from the meeting.[476]

According to IG Cuffari, (b) (6) came to him after the meeting, stating that the investigation was discussed in his presence and that she planned to inform Mr. Horowitz about the matter.[477] We uncovered no evidence that (b) (6) actually followed through on her statement by notifying IG Horowitz or anyone else at CIGIE about the incident, and both (b) (6) and (b) (6) (b) (6) declined our requests for interviews. Although it does not appear that (b) (6) or (b) (6) intentionally sought to include IG Cuffari in the meeting about a matter from which he was recused, (b) (6) appears to have taken advantage of the mix-up to suggest that IG Cuffari engaged in unethical behavior and to further challenge his authority.

E. (b) (6) and (b) (6) Allege that IG Cuffari Violated the IG Act

In November 2019, (b) (6) and (b) (6) sparred with IG Cuffari over the publication of an investigative report arising from a whistleblower complaint that had been referred to DHS OIG

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[466] *Id.*
[467] Interview with Joseph Cuffari (June 5, 2020). We also confirmed the date of this meeting through an email review of calendar invitations. Our review uncovered a calendar invitation for a meeting on August 9, 2019 with required attendees, IG Cuffari and (b) (6), and titled, "Meeting – (b) (6)." WHDHS-00000338.
[468] Interview with Joseph Cuffari (June 5, 2020).
[469] *Id.*
[470] *Id.*
[471] *Id.*
[472] *See* WHDHS-00000184.
[473] *Id.*
[474] *Id.*
[475] Interview with Joseph Cuffari (June 5, 2020).
[476] *Id.*
[477] *Id.*

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from the OSC.[478] The OSC complained that the report, herein referred to as the "Tecate Report," had been published before the OSC could finish its own review, but (b) (6) and (b) (6) insisted that the law required its publication and dismissed contrary views.[479] After conducting research on the question, (b) (3) (B), (b) (6) (b) (5) but by that point, publication had already led to unnecessary conflict with the OSC and with IG Cuffari.

Specifically, in 2018, the OSC referred allegations concerning possible violations of immigration law at the Tecate, California Port of Entry to DHS OIG for investigation.[481] (b) (6) directed the investigation and drafted the Tecate Report.[482] Emails show that (b) (6) sent (b) (6) and (b) (6) the draft report on June 28, 2019, noting that (b) (6), had already reviewed and approved it.[483] (b) (6) (b) (6) warned (b) (6) that the OSC would be "unhappy" if DHS OIG posted the report before the OSC completed its review process, but that the IG Act may require it to be published before then.[484] (b) (6) told (b) (6) she believed the report should be published.[485]

On September 5, 2019, (b) (6) emailed IG Cuffari to inform him that DHS OIG planned to publish the Tecate Report, but (b) (6) did not flag the potential for the OSC to take issue with the publication of the report.[486] Approximately three weeks later, DHS OIG published the report on its website.[487] The OSC had not yet concluded its review process at the time.[488] To make matters worse, the report contained the name of the whistleblower, who had agreed to disclose his name to Congress and DHS OIG, but did not consent to have his or her name included in the public report.[489]

The OSC notified the DHS Assistant General Counsel—who subsequently informed (b) (3) (B), (b) (6)—that the whistleblower raised concerns about being named in the report.[490] In his interview, (b) (3) (B), (b) (6) explained that DHS OIG's report initially disclosed the whistleblower's name due to a misunderstanding over the whistleblower's consent.[491] (b) (6) emailed the

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[478] WHDHS-00000315; WHDHS-00000299.
[479] WHDHS-00000195; WHDHS-00000347; WHDHS-00000303; WHDHS-00000351.
[480] Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).
[481] WHDHS-00000858.
[482] Interview with (b) (3) (B), (b) (6) (July 16, 2020).
[483] WHDHS-00000413.
[484] *Id.*
[485] *Id.*
[486] WHDHS-00000342.
[487] Investigation of Alleged Violations of Immigration Laws at the Tecate, California, Port of Entry by U.S. Customs and Border Protection Personnel, Dep't. of Homeland Sec., Off. Of the Inspector Gen., (Sept. 26, 2019), (b) (3) (B), (b) (6), (b) (7)(C)
[488] *See* WHDHS-00000195.
[489] WHDHS-00000858.
[490] Interview with (b) (3) (B), (b) (6) (July 16, 2020); WHDHS-00000858.
[491] Interview with (b) (3) (B), (b) (6) (July 16, 2020); WHDHS-00000858.

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whistleblower to apologize for the disclosure.[492] On October 28, 2019, a redacted version of the Tecate Report was re-published on DHS OIG's website.[493]

Also in October 2019, (b) (6) and (b) (6) discussed publishing the Tecate report with (b) (6) [494] (b) (6) said that the report was required to be published under the IG Act.[495] In her email memorializing the conversation with (b) (6), (b) (6) noted that (b) (6) expressed frustration with DHS OIG's decision to post the Tecate Report prior to the OSC's completion of its review process and asked for advance notice in the future.[496]

On November 8, 2019, IG Cuffari spoke to (b) (6), about the Tecate Report.[497] In a follow up letter to IG Cuffari on November 14, 2019, (b) (6) expressed his concerns about DHS OIG's report and requested that DHS OIG "refrain from publishing its report publicly until the OSC review process was complete."[498]

On November 26, 2019, IG Cuffari directed (b) (6) to remove the Tecate Report from OIG's website.[499] IG Cuffari's memorandum stated:

> I recently learned that on September 26, 2019, our office published on our external website, OSC File Number DI-18-58035 (OIG-19-65). This publication was unredacted, disclosed the whistleblower's name, and published before the Office of Special Counsel had completed its inquiry.
>
> I am directing you to immedeiately [sic] take all appropriate action to remove OSC File Number DI-18-58035 from public view and remediate the disclosure by close of business today.[500]

That same day, (b) (6) replied to IG Cuffari explaining that the report had already been replaced with a redacted version, rectifying the whistleblower's concerns.[501] The following day, IG Cuffari emailed (b) (6) again directing her to comply with his instructions to remove the Tecate Report from OIG's website.[502] (b) (6) replied, "Joe, it's already been removed and redacted. Per my email below, we took prompt action when we first learned of the issue weeks ago. (b) (6) sent you a copy of the redacted version that is now on our website. Do you still want it removed even though the issue you identified has already been addressed? If so please confirm and I will have (b) (6) remove it."[503] IG Cuffari directed that the redacted version be

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[492] WHDHS-00000349.
[493] WHDHS-00000317.
[494] WHDHS-00000195.
[495] WHDHS-00000347.
[496] WHDHS-00000195.
[497] WHDHS-00000858.
[498] *Id.*
[499] WHDHS-00000315.
[500] *Id.*
[501] WHDHS-00000299.
[502] *Id.*
[503] *Id.*

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removed from the website.[504] Per IG Cuffari's instructions, (b) (3) (B), (b) (6) arranged for the Tecate Report to be removed from the website.[505]

On December 4, 2019, (b) (6) drafted and sent a memorandum to IG Cuffari addressing the concerns that the Tecate Report disclosed the whistleblower's name.[506] The memorandum explained that "the disclosure of the complainant's name was an inadvertent error" and was "remediated immediately."[507]

On January 15, 2020, (b) (6) , emailed (b) (6) , (b) (6) , (b) (6) and (b) (6) asking (b) (5) .[508] (b) (6) (b) (6) forwarded the email to (b) (6) , (b) (6) , and (b) (6) writing dismissively, "I can't even."[509] The following day, (b) (6) sent (b) (6) talking points which included the reasons why she believed removing the Tecate Report would contravene the IG Act.[510]

Later, (b) (3) (B), (b) (6) researched the issue of whether the IG Act required the Tecate Report to be published.[511] (b) (3) (B), (b) (6) concluded that (b) (6) (b) (5) As (b) (3) (B), (b) (6) explained in her interview, (b) (5)

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[504] *Id.*
[505] Interview with (b) (3) (B), (b) (6) (July 27, 2020).
[506] WHDHS-00000316; WHDHS-00000317.
[507] WHDHS-00000317.
[508] WHDHS-00000303.
[509] *Id.*
[510] WHDHS-00000351.
[511] Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).
[512] *See id.*
[513] *Id.* Section 4(e)(1) of the Inspector General Act ("IG Act") provides that "whenever an Inspector General *issues a recommendation* for corrective action to the agency," the Inspector General must, among other things, (a) "submit the document making a recommendation for corrective action to the head of the establishment" and (b) "not later than 3 days after the recommendation for corrective action is submitted in final form to the head of the establishment, post the document making a recommendation for corrective action on the website of the Office of Inspector General." 5a U.S.C. § 4(e)(1) (emphasis added). The Tecate Report expressly states it "contains no recommendations." The Tecate Report, *supra* note 488. (b) (5) Additionally, Section 8M(b)(1)(A) of the IG Act provides, in part that: "The Inspector General of each Federal agency and designated Federal entity shall . . . not later than 3 days after any audit report, inspection report, or evaluation report (or portion of any such report) is submitted in final form to the head of the Federal agency or the head of the designated Federal entity, as applicable, post that report (or portion of that report) on the website of the Office of Inspector General." 5a U.S.C. § 8M(b)(1)(A). Audits, inspections, and evaluations are different from investigations. *See* Congressional Research Service, Statutory Inspectors General in the Federal Government: A Primer (Jan. 3, 2019) available at https://www.everycrsreport.com/files/20190103_R45450_b79ea6a64860e857714e961814cc0c206ad135ef.pdf (explaining that "IG audits and inspections or evaluations include programmatic analysis, which may involve analyses related to the compliance, internal control, or efficiency and effectiveness of agency programs and operations. . . . IG investigations, by contrast, typically include nonprogrammatic analysis and instead focus primarily on alleged misuse or mismanagement of an agency's programs, operations, or resources . . . ."). (b) (5)

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(b) (6) and (b) (6) (b) (5) The facts do not establish that (b) (6) or (b) (6) (b) (6) were intentionally untruthful about the obligations of the IG Act, but nevertheless provided incorrect information on multiple occasions to IG Cuffari and the OSC and were obstinate when others questioned their position.

F. (b) (6) and (b) (6) Seek to Withhold Information from IG Cuffari

Current and former DHS OIG employees raised concerns that (b) (6) and (b) (6) had sought to withhold information from IG Cuffari, and that (b) (6) insisted that the agency's business run through her.

(b) (6) at the time, reported that in mid-September 2019, (b) (6) (b) (6) called him and asked why he had not provided the draft reports on a child migrant death investigation to her and (b) (6) [514] (b) (6) responded that he had provided the draft reports to IG Cuffari.[515] (b) (3) (B), (b) (6) recalled that (b) (6) became angry and demanded to know why he had done that, to which (b) (3) (B), (b) (6) responded that IG Cuffari had requested them.[516] According to (b) (3) (B), (b) (6), (b) (6) stated that draft reports should not be given to IG Cuffari.[517] (b) (6) also reminded (b) (6) that she was his "rating official."[518] (b) (3) (B), (b) (6) stated that (b) (6) gave him that same reminder several more times over the next few weeks.[519]

At the time, (b) (3) (B), (b) (6) was a new SES employee and still in the one-year probationary period during which the agency evaluates a new SES employee's performance.[520] As a result, a bad performance review from (b) (6) could lead to (b) (3) (B), (b) (6) removal from an SES position.[521] (b) (6), (b) (3) (B) viewed (b) (6) statements that she was his "rating official" as implicit threats that she could jeopardize his employment status if he did not accede to her demands.[522]

On or around September 23, 2019, (b) (6) summoned (b) (3) (B), (b) (6) to her office for a meeting.[523] According to (b) (3) (B), (b) (6), (b) (6) stated that she wanted to wait for (b) (6)

(b) (5)

[514] Memo from (b) (3) (B), (b) (6) (Nov. 21, 2019).
[515] *Id.*
[516] Interview with (b) (3) (B), (b) (6) (July 28, 2020).
[517] *Id.*
[518] *Id.*
[519] *Id.*
[520] *Id.*
[521] Addressing Poor Performance, Sr. Exec. Service,https://www.opm.gov/policy-data-oversight/senior-executive-service/adverse-actions/ses-addressing-poor-performance-fact-sheet.pdf (last visited 12/12/2020) (noting that "the agency may remove" an employee "from the SES based upon unacceptable performance" during the probationary period).
[522] Interview with (b) (3) (B), (b) (6) (July 28, 2020).
[523] Memo from (b) (3) (B), (b) (6) (Nov. 21, 2019).
[523] *Id.*

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(b) (6) before beginning the meeting, but eventually began when (b) (6) did not arrive.[524] In the meeting, (b) (6) again expressed her anger that (b) (3) (B), (b) (6) had provided IG Cuffari with the draft reports, and stated that IG Cuffari was not capable of running the agency.[525] (b) (6) (b) (6) once again reminded (b) (3) (B), (b) (6) that she was his "rating official."[526] (b) (3) (B), (b) (6) explained that he felt "extremely threatened and intimidated."[527] At that time, (b) (3) (B), (b) (6) announced to (b) (6) that he was immediately stepping down as (b) (3) (B), (b) (6) and returning to his role as (b) (3) (B), (b) (6) for personal reasons.[528]

(b) (3) (B), (b) (6), the (b) (3) (B), (b) (6), stated that (b) (6), like (b) (6), also made a concerted effort to prevent information from reaching IG Cuffari, including information about disciplinary matters.[529] (b) (3) (B), (b) (6) conclusion was based on his own interactions with (b) (6) and what he had heard from at least three other people.[530] (b) (3) (B), (b) (6) said (b) (6) eventually insisted that (b) (3) (B), (b) (6) stop meeting directly with IG Cuffari.[531]

(b) (3) (B), (b) (6) also believed that (b) (6), (b) (6) and (b) (6) kept important information from IG Cuffari.[532] After being removed from the (b) (3) (B), (b) (6) and being detailed to the (b) (6), (b) (3) (B), (b) (6) continued to (b) (3) (B), (b) (6).[533] When she attempted to send that information to IG Cuffari directly (rather than to (b) (6), who had replaced (b) (3) (B), (b) (6) as (b) (3) (B), (b) (6)), (b) (6) admonished (b) (3) (B), (b) (6), writing "was there anything unclear in my earlier email (attached) that any communications you received as a result of your former job duties you must forward only to (b) (6)"[534] When (b) (3) (B), (b) (6) noted that she had heard through "rumors in the building" that IG Cuffari wanted to see everything that was addressed to his attention, (b) (6) scolded her, writing, "You're a GS-15, and you ignored my instructions based on 'rumors in the building'?"[535]

G. (b) (6) and (b) (6) Charge IG Cuffari with Abusing his Authority Regarding the Telework Policy

Early in IG Cuffari's tenure, a decision about whether to permit a DHS OIG employee to telework from across the country—and broader discussions about the agency's telework policy—escalated from a respectful disagreement to bitter conflict that created further animosity and distrust among

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[524] Interview with (b) (3) (B), (b) (6) (July 28, 2020).
[525] *Id.*
[526] Memo from (b) (3) (B), (b) (6) (Nov. 21, 2019).
[527] *Id.*
[528] *Id.*
[529] Interview with (b) (3) (B), (b) (6) (July 27, 2020).
[530] *Id.* (b) (3) (B), (b) (6) did not provide the names of the other three people he mentioned.
[531] *Id.* (b) (3) (B), (b) (6) also believed (b) (6), informed (b) (6) of all Dr. Cuffari's meetings and calls. *Id.* However, he we found no documentary evidence of this practice.
[532] Interview with (b) (3) (B), (b) (6) (Aug. 10, 2020).
[533] *Id.*
[534] WHDHS-00000454.
[535] *Id.*

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the agency's leadership. As with previous episodes, (b) (6) and (b) (6) challenged IG Cuffari, claiming that he was acting inappropriately and abusing his authority.

In October 2019, (b) (6), (b) (3) (B), (b) (6), notified his supervisors, including (b) (6), that he planned to move to (b) (6) in November 2019 (b) (6).[536] (b) (6) asked to expand his telework agreement to the maximum extent permitted by law and DHS OIG policy so that he could work from his new home in (b) (6).[537] By all accounts, (b) (6) was an excellent employee, and his request raised difficult questions about the wisdom of permitting telework so far from DHS OIG's headquarters.[538] Under DHS OIG's policy at the time, employees could telework if they received written approval from their supervisors and physically reported to their duty station at least two days per pay period.[539] The policy was silent on the issue of long-distance telework, but it made clear that telework was a management prerogative rather than an employee right.[540]

(b) (6) flagged the telework request for IG Cuffari and sought his feedback on her plan to approve the request.[541] On October 15, 2019, (b) (6) emailed IG Cuffari to ask whether he had any input given that (b) (6) would be departing for (b) (6) in three weeks.[542] She wrote that the arrangement "would merely require a modification to [(b) (6)] telework agreement, permitting him to telework to the full extent allowable (i.e., reporting to HQ twice per pay period), like many other OIG employees currently do."[543] (b) (6) argued that the telework arrangement would be "cost neutral from the agency's perspective" because (b) (6) would personally pay for his periodic travel to the office.[544]

IG Cuffari was concerned about the financial and operational risks that a long-distance telework arrangement posed to the agency.[545] After meeting with (b) (6) to discuss the issue, IG Cuffari asked for information about the specific request and the agency's telework practices more broadly.[546] He directed (b) (6) to draft a memo detailing whether (b) (6) request complied with agency policy.[547] IG Cuffari specifically asked that (b) (6) explain why she was "concerned that denying the request would give rise to claims that we were treating similarly situated employees differently," including by identifying the employees she believed were similarly situated.[548]

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[536] Interview with (b) (3) (B), (b) (6) (July 16, 2020).
[537] *Id. See also* WHDHS-00000257.
[538] WHDHS-00000224.
[539] WHDHS-00000200.
[540] *See id.*
[541] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).
[542] WHDHS-00000344.
[543] *Id.*
[544] *Id.*
[545] WHDHS-00000225; WHDHS-00000485.
[546] WHDHS-00000256.
[547] *Id.*
[548] *Id.*

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Following the receipt of IG Cuffari's request, (b) (6) directed (b) (6) that she not respond to IG Cuffari's request without first consulting with (b) (6) and (b) (6) .[549] (b) (6) did not respond directly to IG Cuffari and did not provide the list of employees that IG Cuffari requested.[550] Instead, she drafted a memo and sent it to (b) (6) , who submitted it on her behalf.[551] The memo explained why (b) (6) believed (b) (3) (B), (b) (6) telework request complied with DHS OIG's policy and federal law.[552] Though IG Cuffari had asked for additional time to consider the request, (b) (6) told him that she would temporarily approve it:[553]

> Per DHS OIG's telework directive, I, as (b) (6) manager, am responsible for approving or disapproving his proposed telework arrangement. … I fully support his request and believe that a denial of his request would jeopardize the [(b) (6)] mission. As you know, he and his family are scheduled to move in early November. (b) (3) (B), (b) (6) will continue his employment under a modified telework arrangement while you consider this matter, and pending any official changes to DHS OIG's telework policy.[554]

When transmitting (b) (6) memo to IG Cuffari, (b) (6) did not provide IG Cuffari with the information he requested about other agency employees who supposedly had similar telework arrangements.[555] (b) (6) claimed that it would be "inappropriate" for (b) (6) to provide that information.[556] (b) (6) did not explain why it would be inappropriate to provide the head of the agency with information about which employees, if any, were teleworking from a long distance.[557] Without explanation, (b) (6) opined that there was "no basis" to deny (b) (3) (B), (b) (6) request under the current policy.[558]

Several weeks later, after fully considering the issue, IG Cuffari denied (b) (6) request to telework from (b) (6) in a memorandum explaining the basis for his decision.[559] He expressed concern that approving the arrangement would impair DHS OIG's ability to require (b) (6) (b) (2), (b) (6), (b) (5)

[549] WHDHS-00000659.
[550] WHDHS-00000198.
[551] WHDHS-00000197.
[552] WHDHS-00000198.
[553] *Id.*
[554] *Id.*
[555] *See* WHDHS-00000197.
[556] *Id.*
[557] WHDHS-00000198.
[558] WHDHS-00000197.
[559] WHDHS-00000224.
[560] WHDHS-00000225.
[561] *Id.*

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(b) (2), (b) (6), (b) (5)

At the same time that he denied the request, IG Cuffari also suggested edits to DHS OIG's Grievance Handbook to add telework decisions to the list of decisions exempted from the grievance process.[563] IG Cuffari explained that the telework program, "when effectively administered, is a valuable way to increase productivity," and that any "disputes or other concerns" about the program could be brought directly to the Inspector General rather than handled through the formal grievance process.[564]

(b) (6) responded to the denial with a direct and forceful memo asking IG Cuffari to reconsider his decision.[565] The memorandum challenged IG Cuffari's legal and factual positions, insisting that (b) (3) (B), (b) (6) request was permitted by DHS OIG policy.[566] In addition, the memo challenged not only IG Cuffari's judgment, but also his motives.[567] (b) (6) wrote that she was "frankly shocked and dismayed" that IG Cuffari had characterized the telework discussions as an "administrative burden" given that she viewed them as "relat[ing] to the career and livelihood of a committed, high-performing OIG employee."[568] She further argued that IG Cuffari, "in [her] humble opinion," had committed "an abuse of authority" by modifying the Grievance Handbook, in her view, "purely to deprive an individual employee of the ability to raise concerns about one of [his] decisions."[569]

(b) (6) and (b) (6) pressed IG Cuffari to reconsider as well.[570] (b) (6) emailed IG Cuffari to emphasize that she agreed with (b) (6), stating, "Modifying our grievance and telework policies to target one employee is a clear abuse of your authority as IG."[571] (b) (6) told IG Cuffari that she believed his actions created (b) (5)
[572] She explained, (b) (5)
[573] IG Cuffari rejected the notion that he had changed the grievance policy to target (b) (3) (B), (b) (6), noting that "I am the head of this agency and decisions I make are often final."[574]

(b) (3) (B), (b) (6) determined that he would not move back to D.C., and on November 15, 2019 asked for a (b) (6) transition period to "smoothly transfer [his] responsibilities."[575] To accommodate

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[562] *Id.*
[563] *See* WHDHS-00000235.
[564] WHDHS-00000224.
[565] WHDHS-00000215; WHDHS-00000216.
[566] WHDHS-00000216.
[567] *Id.*
[568] *Id.*
[569] *Id.*
[570] WHDHS-00000221; WHDHS-00000485.
[571] WHDHS-00000221.
[572] WHDHS-00000485.
[573] *Id.*
[574] *Id.*
[575] WHDHS-00000223.

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this request, IG Cuffari proposed a "situational telework" arrangement that would expire (b) (6) Under this arrangement, IG Cuffari stated that (b) (6) would not be required to travel to Washington, D.C. two days per pay period.[577] IG Cuffari expressed the view that his proposal, rather than the arrangement proposed by (b) (6), would better protect the agency from financial exposure.[578]

(b) (6) intervened in the discussion to question not only IG Cuffari's decision, but also his leadership.[579] She responded to IG Cuffari's proposal by accusing him of "unwillingness to follow established OIG policies or to even engage in discussions on these issues with [his] executive team" in a way she found "baffling," "extraordinarily confusing," and "concerning on many levels."[580] She claimed that IG Cuffari's actions had left OIG's policies in "complete disarray."[581] (b) (6) made the "strong recommendation" that IG Cuffari "hold [himself] to the same standards" to which OIG holds senior leaders in DHS who fail to follow DHS policies.[582]

Around this time, as discussed further below, (b) (6) and (b) (6) sent a referral letter to the CIGIE IC charging IG Cuffari with "gross mismanagement" of the agency.[583] Among the allegations contained in the letter, they charged that IG Cuffari had "abused his authority by attempting to modify DHS OIG's existing policies and procedures to target a particular employee."[584] (b) (6) notified IG Cuffari that she had referred him to CIGIE.[585]

On November 22, 2019, IG Cuffari emailed (b) (6) to request paperwork to approve the (b) (6) situational telework arrangement.[586] In the email, IG Cuffari outlined the conditions for (b) (6), specifically, that (b) (6) provide IG Cuffari with weekly proposals and certifications of his work and that he not travel without IG Cuffari's approval.[587] IG Cuffari emphasized that (b) (6) initial telework request "was not within our policy and any manager lacked authority to approve it."[588]

In late January 2020, IG Cuffari's (b) (6), (b) (6), told (b) (6) that after (b) (6), (b) (6) (b) (5).[589] (b) (6) continued to resist the decision, arguing that (b) (6) was being treated unfairly because there were other OIG employees who had been permitted to telework from hundreds of miles away.[590] She argued that (b) (6) request should be granted absent a policy change to

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[576] WHDHS-00000259.
[577] *Id.*
[578] *Id.*
[579] WHDHS-00000261.
[580] *Id.*
[581] *Id.*
[582] *Id.*
[583] WHDHS-00000305; WHDHS-00000255.
[584] WHDHS-00000305.
[585] WHDHS-00000314.
[586] WHDHS-00000294.
[587] *Id.*
[588] *Id.*
[589] WHDHS-00000354.
[590] *Id.*

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require that employees live within a certain proximity of their duty location, which she claimed would affect many other employees.[591] Again, (b) (6) did not provide IG Cuffari with a list of other employees who were supposedly teleworking from across the country.[592]

On February 27, 2020, IG Cuffari brought this dispute to a close by instructing (b) (6) to notify (b) (6) that his telework agreement would terminate on (b) (6) IG Cuffari explained that the telework agreement he approved for (b) (6) was "always intended to be temporary" and that the arrangement (b) (6) originally approved was "inconsistent" with DHS OIG's telework directive.[594] IG Cuffari told (b) (6) that the "telework arrangement you approved for (b) (6) subordinated the legitimate mission-related needs of OIG to the personal preferences of an employee who chose to relocate to (b) (6) Thus, IG Cuffari concluded that he "overruled" (b) (6) "exercise of discretion with regard to (b) (6) telework privileges."[596]

Consistent with IG Cuffari's direction, (b) (6) communicated to (b) (6) that his telework agreement was being terminated.[597] She reiterated to (b) (6) that she had been "overruled."[598] After doing so, she informed (b) (6) that she "respectfully disagree[d] with this decision," but had notified (b) (6) as instructed.[599]

This debate over whether a single employee should be permitted to telework from (b) (6), against the backdrop of attempts to undermine IG Cuffari's authority, escalated this issue from a basic policy disagreement to accusations of personal misconduct that further limited the ability of the leadership team to operate effectively. While the communications began for the most part respectful and constructive, (b) (6) escalated the rhetoric by questioning IG Cuffari's motives and claiming he had abused his authority to punish a particular employee. (b) (6) intervention in the discussion at key points added little substance but added accusations of violations and abuses. The discourse was worsened by repeated assertions—not supported with evidence—that many other OIG employees were long-distance teleworking. The refusal or inability to provide evidence to back their claims created further distrust among the parties. Rather than reaching a constructive resolution of this matter, (b) (6) and (b) (6) charged IG Cuffari with abusing his authority and referred the matter to CIGIE.[600]

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[591] *Id.*
[592] *Id.* Over the course of these discussions, it appears that IG Cuffari was provided with the name of one OIG employee who was teleworking from North Dakota. WHDHS-00000485.
[593] WHDHS-00000323.
[594] *Id.*
[595] *Id.*
[596] *Id.*
[597] WHDHS-00000322.
[598] *Id.*
[599] *Id.*
[600] WHDHS-00000305; WHDHS-00000255. Following the denial of (b) (6) telework request, IG Cuffari asked (b) (6) to set up a telework committee to review DHS OIG's telework policy and propose possible revisions for his review. WHDHS-00000485. We reviewed an allegation that (b) (6) engaged in professional misconduct and insubordination when she drafted the proposed telework procedures that directly contradicted what IG Cuffari requested. On December 6, 2019, (b) (6) sent IG Cuffari a memorandum on behalf of the telework

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H. (b) (6) Failure to Follow IG Cuffari's Directive

We reviewed an allegation that (b) (6) failed to timely report allegations of improprieties against (b) (6) and (b) (6) after being directed to do so by IG Cuffari.

On September 24, 2019, IG Cuffari had a meeting with (b) (6) about a complaint from (b) (6), (b) (3) (B), a (b) (3) (B), (b) (6) in the (b) (3) (B), (b) (6).[601] (b) (6) informed IG Cuffari that (b) (6), (b) (3) (B) had made a complaint to the Senate HSGAC and potentially to CIGIE alleging disparate treatment by (b) (6) and (b) (6).[602] (b) (3) (B), (b) (6) and (b) (3) (B), (b) (3) (B), (b) (6), had previously filed complaints against each other, and (b) (3) (B), (b) (6) alleged that (b) (6) and (b) (6) only investigated (b) (3) (B), (b) (6) complaint and not his because they were her friends with (b) (3) (B), (b) (6).[603] IG Cuffari said that during a meeting, (b) (6) suggested that (b) (3) (B), (b) (6) complaint should be referred to the CIGIE IC since (b) (6) (b) (6), as the (b) (6), was a "covered person."[604] IG Cuffari agreed, and instructed (b) (3) (B), (b) (6) to draft a referral letter to the CIGIE IC regarding (b) (3) (B), (b) (6) allegations against (b) (6).[605]

After several weeks, (b) (6) had not provided the draft referral letter to IG Cuffari as he had requested.[606] A month later, on October 16, 2019, IG Cuffari met with (b) (6) and (b) (6) (b) (6) then (b) (6) Cuffari, to follow up about the draft referral letter.[607] During the meeting, (b) (6) denied ever telling IG Cuffari that the matter should be referred to the CIGIE IC, claiming that the issue did not rise to the level of requiring a referral to the CIGIE IC and that the (b) (6), could internally handle the matter despite the fact that (b) (6) was a "covered person."[608] After (b) (6) left the meeting with IG Cuffari, IG Cuffari showed (b) (6) a handwritten note about the prior meeting and stated that (b) (6) was not being truthful about his request to draft a referral to CIGIE.[609]

We reviewed IG Cuffari's contemporaneous handwritten notes of his meeting with (b) (6), which corroborate that (b) (6) recommended sending the "allegations about (b) (6) and (b) (6)

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committee, outlining their proposed recommendations for the DHS OIG telework policy. WHDHS-00000594. The telework committee (b) (2), (b) (5). *Id.* We found no evidence that (b) (6) engaged in professional misconduct or insubordination or directly contradicted IG Cuffari's request. Rather, our investigation found that (b) (6), along with the other members of the telework committee, followed IG Cuffari's instructions in proposing possible revisions to the telework policy. While the committee did not strictly adhere to the 10-page limit IG Cuffari suggested, (WHDHS-00000600) this failure was de minimis.

[601] DHS OIG Timeline (06/08/2020).

[602] Interview with Joseph Cuffari (June 8, 2020).

[603] *Id.*

[604] *Id.*

[605] Dr. Cuffari took contemporaneous notes dated September 24, 2019 memorializing his conversation with (b) (6) (b) (6). IG Cuffari's Notes of his September 24, 2019 Conversation with (b) (6). We reviewed these notes, which largely corroborate Dr. Cuffari's account.

[606] Interview with Joseph Cuffari (June 8, 2020).

[607] *Id.*

[608] *Id.*

[609] Response to WilmerHale Investigation from (b) (3) (B), (b) (6) (Dec. 8, 2020).

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to CIGIE," and that IG Cuffari directed (b) (6) to "prepare a memo with supporting documents."[610]

In her interview, (b) (3) (B), (b) (6) said she did not recall IG Cuffari asking her to draft a referral letter to the CIGIE IC about the allegations related to (b) (3) (B), (b) (6).[611] (b) (3) (B), (b) (6) also said she did not recall meeting with IG Cuffari and (b) (6) to discuss the referral to CIGIE.[612]

IG Cuffari's contemporaneous notes of his meeting with (b) (6) corroborate his statement that (b) (6) recommended sending the allegations to the CIGIE IC and that he asked her to prepare a memo on the issue with supporting documentation. In his written responses to questions, (b) (3) (B), (b) (6) largely confirmed IG Cuffari's account. Given (b) (6) friendship with (b) (6) and (b) (6), it is plausible that (b) (6) would have been reluctant to draft a referral letter to the CIGIE IC regarding potential misconduct on their part.

I. Confusion Over a Meeting with Foreign Nationals at DHS OIG Leads to Further Suspicion

Like the telework dispute, a mundane decision about whether to host an hour-long meeting with an international delegation led IG Cuffari to further distrust (b) (6)

On October 17, 2019, (b) (6), (b) (6), emailed (b) (6) and (b) (6) to inquire whether IG Cuffari was interested in attending a meeting with a foreign delegation.[613] According to (b) (6), the DOJ Overseas Prosecutorial Development and Training ("OPDAT"), along with the State Department Resident Legal Advisor at the U.S. Embassy in Myanmar, was planning to bring a delegation of foreign officials to DHS OIG's office on November 6 or 7 for about an hour.[614] (b) (6) asked (b) (6) to let her know if IG Cuffari was interested in doing a meet-and-greet or presentation at the meeting.[615]

On November 2, 2019, (b) (6) emailed IG Cuffari, copying (b) (6), asking if he was interested in attending the OPDAT meeting with the Myanmar delegation.[616] (b) (6) explained that the delegation wanted to learn about DHS OIG and that the meeting was scheduled to take place the following week."[617] Finally, (b) (6) stated that (b) (6) could attend the meeting as an alternative if IG Cuffari could not attend.[618] Two days before the meeting, on November 4, 2019, IG Cuffari emailed (b) (6) and (b) (6) informing them that he planned to attend.[619]

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[610] Joseph Cuffari's handwritten notes of meeting with (b) (6).
[611] Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).
[612] *Id.*
[613] WHDHS-00000465.
[614] *Id.*
[615] *Id.*
[616] WHDHS-00000480.
[617] *Id.*
[618] *Id.*
[619] *Id.*

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Later that day, IG Cuffari emailed (b) (6) stating that he recalled from previous government experience that he had to obtain foreign access clearance from the DOJ Security and Emergency Planning Division to participate in "foreign visits."[620] He asked (b) (6) to confirm whether DHS "has a similar clearance requirement and if so whether the Chief Security Officer has conducted the required security checks and granted such approval."[621]

(b) (6) responded that she knew about his "previous involvement which is partly why (b) (6) (b) (6) thought [IG Cuffari would] be interested in this visit" and "assume[ed] all the security checks etc. were done but will confirm."[622] Following IG Cuffari's email, (b) (6) emailed (b) (6) (b) (6) noting that IG Cuffari would attend the meeting and asked whether she had information on the security clearances.[623] (b) (6) forwarded (b) (6) email to (b) (6) , (b) (6) to the IG, who looked into the issue.[624]

On November 5, 2019, (b) (6) emailed IG Cuffari stating:

> The security check is still in process apparently. DHS requires 30 days notice, they didn't get the names soon enough, but DOJ apparently has cleared. Question as to why we can't rely on reciprocity using DOJ's clearance, but they're trying to work through it. It may mean the meeting has to be at DOJ instead of here, but we'll keep you posted.[625]

The following day, (b) (6) told IG Cuffari that she "finally got to the bottom of the clearance question" and confirmed that the meeting had to be held at DOJ.[626]

(b) (6) had extended the invitation to IG Cuffari to attend the OPDAT meeting without first determining whether the appropriate clearances were in place for the attendees to enter the DHS OIG facility, and ultimately was unable to secure those clearances in time to hold the meeting.[627] It is unclear whether this security issue would have been identified had IG Cuffari himself not asked (b) (6) to check on it. Although we found no evidence that the failure to obtain these clearances was more than an innocent mistake, this error—in the context of the contemporaneous efforts of (b) (6) and her allies to undermine IG Cuffari's work—led IG Cuffari to suspect that (b) (6) or (b) (6) might have been trying to lure him into a meeting with foreign nationals that violated DHS OIG's security protocols.[628]

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[620] *Id.*
[621] *Id.*
[622] WHDHS-00000475.
[623] WHDHS-00000477.
[624] *Id.*
[625] WHDHS-00000475.
[626] WHDHS-00000483.
[627] *Id.*
[628] *See* Interview with Joseph Cuffari (June 8, 2020).

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J. Another Dispute Leads (b) (6) and (b) (6) to Send Complaints about IG Cuffari to CIGIE IC and Congress

In the fall of 2019, DHS OIG was preparing an audit report on undocumented immigrant families separated after crossing the border (the "Separated Families Report"). (b) (3) (B), (b) (6), the (b) (3) (B), (b) (6), provided a draft of the Separated Families Report to IG Cuffari for his comments in September 2019, at the end of fiscal year.[629] She said the team had also provided IG Cuffari an advance copy in August 2019.[630] (b) (3) (B), (b) (6) recalled following up with IG Cuffari several times about the report, but found that he was still reviewing it.[631]

On November 12, 2019, IG Cuffari received a letter from the Chairwoman of the House Committee on Oversight and Reform, Representative Carolyn Maloney, inquiring about the status of the Separated Families Report.[632] IG Cuffari explained that Chairwoman Maloney had the erroneous idea that he had "parked the report" and that he was sitting on it for political purposes.[633]

Two days later, on November 14, 2019, (b) (6) sent a referral letter to the CIGIE IC alleging that Dr. Cuffari had engaged in "gross mismanagement" of the organization, "abused [his] authority" as Inspector General, and demonstrated "impaired independence."[634] The letter was signed by (b) (6), but listed both (b) (6) and (b) (6) as contacts to contact about the issues.[635] (b) (6) was also copied on the email submitting the referral.[636] The first allegation related to IG Cuffari's supposed withholding of OIG reports, including the Separated Families Report.[637] (b) (6) and (b) (6) had testified before Congress that the Separated Families Report would be published by the end of September.[638] In the referral letter, (b) (6) wrote, "IG Cuffari's withholding of reports constitutes management action (or inaction) creating a substantial risk of significant adverse impact upon DHS OIG's ability to accomplish its mission."[639] The referral also included the allegation by (b) (6) and (b) (6) that IG Cuffari "abused his authority" with respect to the (b) (6) telework issue."[640]

After submitting the letter to CIGIE, (b) (6) emailed IG Cuffari, "Today I submitted a formal complaint to the CIGIE Integrity Committee alleging that you have grossly mismanaged the

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[629] Interview with (b) (3) (B), (b) (6) (Aug. 7, 2020).
[630] *Id.*
[631] *Id.*
[632] WHDHS-00000207.
[633] Interview with Joseph Cuffari (June 8, 2020).
[634] WHDHS-00000305. On November 20, 2019, Dr. Cuffari also self-reported to CIGIE allegations from (b) (6) (b) (6) about his leadership with respect to the Separated Families Report. Cuffari Referrals to CIGIE, p. 21. We have not identified any response from CIGIE.
[635] *Id.*
[636] WHDHS-00000869.
[637] WHDHS-00000305.
[638] *Id.*
[639] *Id.*
[640] WHDHS-00000870.

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organization, abused your authority as Inspector General, and demonstrated independence impairments."[641]

Five days later, on November 19, 2019, IG Cuffari responded to Chairwoman Maloney's letter, writing that the Separated Families Report needed some edits and would be published as soon as it was ready.[642] IG Cuffari denied the report was being "withheld for any partisan or political reasons."[643] To avoid the appearance of partisanship with the report, IG Cuffari delegated authority to (b) (6) to sign the report since the audit work was done prior to his confirmation.[644]

The next morning, on November 20, 2019, (b) (6) refused.[645] In a strongly worded response to IG Cuffari, (b) (6) charged that his letter to Chairwoman Maloney was "not truthful" because the report was finished.[646] She wrote that IG Cuffari had the report since September 23, 2019, and suggested that he had intentionally delayed his review.[647] She further claimed that since his memo to her delegating authority "was prepared less than a day after you sent your letter to Chairwoman Maloney, your actions are deceitful."[648] She ended her email by noting, "I have already sent this information to the Integrity Committee and will take any other actions I deem appropriate to protect the integrity of DHS OIG."[649]

That same morning, (b) (6) sent a follow up email to the CIGIE IC alleging that IG Cuffari's response to Chairwoman Maloney was not truthful.[650] She wrote, "Contrary to his claim, no additional 'editing, reviewing, and evaluation' of the report is taking place."[651] She concluded her email by writing, "It appears IG Cuffari simply is unwilling to affix his name to a report with findings with which he is 'uncomfortable' for reasons that appear to relate to his relationship/position vis-à-vis the Administration/White House."[652]

In addition to the CIGIE IC, (b) (6) and (b) (6) reached out to Congressional staffers, briefing both the majority and minority staffs of the House Committee on Oversight and Reform. (b) (6) wrote that she "wanted to alert [them] to some inaccuracies in the letter" that IG Cuffari sent.[653] They also provided the staffers with a copy of their CIGIE referral letter.[654]

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[641] WHDHS-00000857.
[642] WHDHS-00000282.
[643] *Id.*
[644] Interview with Joseph Cuffari (June 8, 2020); *see also* WHDHS-00000281.
[645] Interview with Joseph Cuffari (June 8, 2020); *see also* WHDHS-00000850; WHDHS-00000281.
[646] WHDHS-00000281.
[647] *Id.*
[648] *Id.*
[649] *Id.*
[650] WHDHS-00000264.
[651] *Id.*
[652] *Id.*
[653] WHDHS-00000267.
[654] *Id.* We reviewed allegations that (b) (6) engaged in a pattern of selectively having meetings with members of Congress and/or legislative staff of only one political party. Two witnesses stated that (b) (6) communicated with Senator Schumer's office in an effort to derail IG Cuffari's nomination. With respect to the

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On November 25, 2019, DHS OIG published the Separated Families Report, signed by IG Cuffari.[655] The report contained a footnote which read, "The IG signed this report to ensure its timely completion and submission to Congress and the public, but did not participate in the investigative phases of the project."[656] (b) (6), (b) (3) (B), said she found the footnote odd, noting she has never seen such a footnote included in a report signed by an IG.[657] (b) (3) (B), (b) (6) thought IG Cuffari was trying to separate himself from the work.[658]

For his part, IG Cuffari explained that he added the footnote at the recommendation of (b) (6), (b) (6), to demonstrate that IG Cuffari was not involved in the underlying investigation nor had he made substantive changes to the report.[659] The footnote was to refute the allegation made by (b) (6) and (b) (6) to Congress and CIGIE that he had interfered in the report for political reasons.[660]

On December 11, 2019, the CIGIE IC sent (b) (6) a letter notifying her that they declined to investigate her complaint.[661]

VI. MISTREATMENT OF OTHER DHS OIG EMPLOYEES

A. An Atmosphere of Mistrust and Retaliation

In addition to their efforts to undermine (b) (6) and IG Cuffari outlined above, current and former DHS OIG employees detailed what they believed to be a pattern of mistreatment by (b) (6), (b) (6) and to a lesser extent (b) (6), of any employees deemed insufficiently loyal or standing in the way of their agenda.[662] (b) (3) (B), (b) (6), explained that (b) (6), (b) (6) and (b) (6) operated together and (b) (3) (B), (b) (6) suggested that they would retaliate against anyone who crossed them.[663] (b) (6), (b) (3) (B) (b) (6) said (b) (6), (b) (6), and (b) (6) had a target on the backs of certain DHS OIG personnel, and she believed their goal was to get certain people out of the way.[664] As a result,

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Separated Families Report, our investigation uncovered that (b) (6) emailed Congressional staff members of both the Majority and Minority committee staff. In another instance, (b) (6) emailed a member of the Democratic staff of the House Oversight and Reform Committee regarding her concerns that IG Cuffari was retaliating against her and suggested a bipartisan hearing. While we found (b) (6) had multiple interactions with Congress, we did not find evidence to substantiate the allegation that she engaged in a pattern of selectively having meetings with just one political party.

[655] DHS Lacked Technology Needed to Successfully Account for Separated Migrant Families, The Dep't. of Homeland Sec., Off. Of the Inspector General, https://www.oig.dhs.gov/sites/default/files/assets/2019-11/OIG-20-06-Nov19.pdf (Nov. 29, 2019).

[656] *Id.*

[657] Interview with (b) (3) (B), (b) (6) (Aug. 7, 2020).

[658] *Id.*

[659] Interview with Joseph Cuffari (June 8, 2020).

[660] *Id.*

[661] WHDHS-00000298.

[662] Interview with (b) (3) (B), (b) (6) (July 22, 2020); Interview with (b) (3) (B), (b) (6) (July 23, 2020).

[663] Interview with (b) (3) (B), (b) (6) (July 22, 2020).

[664] Interview with (b) (3) (B), (b) (6) (July 23, 2020).

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some employees referred to them collectively as the "Mean Girls."[665] (b) (3) (B), (b) (6) similarly described them as "the Trio," who would target individuals they did not like.[666]

In interviews, current and former DHS OIG employees described a challenging working environment where employees often faced verbal abuse and threats of poor performance evaluations.[667] For example, as noted above, (b) (6) explained that (b) (6) would "trash" those who did not support her.[668] (b) (3) (B), (b) (6), (b) (3) (B), (b) (6) stated that (b) (6) would often speak critically of other employees during meetings.[669] (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), described (b) (6) as "belittling and demeaning to the entire core of chief inspectors" and GS-15s, including (b) (3) (B), (b) (6).[670] (b) (3) (B), (b) (6) left her former position as (b) (3) (B), (b) (6) —(b) (3) (B), (b) (6) —due to (b) (6) mistreatment.[671]

(b) (3) (B), (b) (6), (b) (3) (B), (b) (6), described her as "cutting" and "mean" to (b) (6) and recalled that she caused one (b) (6) to cry in the workplace.[672] (b) (6), (b) (6), (b) (3) (B), (b) (6), described her as "mean" and "abusive."[673] (b) (3) (B), (b) (6) alleged that (b) (6) attempted to force (b) (3) (B), (b) (6) to resign from her role as (b) (3) (B), (b) (6), and threatened her with poor performance evaluations if she did not.[674] (b) (3) (B), (b) (6) believed (b) (6) tried to get her to resign simply because she would not bend to (b) (6) requests.[675] Other employees, such as (b) (3) (B), (b) (6) and (b) (3) (B), (b) (6), described (b) (6) as a "bully" and "disrespectful."[676] (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), (b) (6), stated that (b) (6) became "aggressive" when she was displeased with employees.[677]

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[665] Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020); Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020). The term "Mean Girls" is a reference to the 2004 movie of the same name about high school social cliques and the interactions between them. *See* Mean Girls (Paramount Pictures Film Released Apr. 19, 2004).
[666] Interview with (b) (3) (B), (b) (6) (July 28, 2020).
[667] *See* Interview with (b) (3) (B), (b) (6) (July 23, 2020); Interview with (b) (6) (Aug. 7, 2020); Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020); Interview with (b) (3) (B), (b) (6) (July 31, 2020).
[668] Interview with (b) (3) (B), (b) (6) (Aug. 7, 2020).
[669] Interview with (b) (3) (B), (b) (6) (Aug. 20, 2020).
[670] Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).
[671] *Id.*
[672] Interview with (b) (3) (B), (b) (6) (July 31, 2020).
[673] Interview with (b) (3) (B), (b) (6) (July 23, 2020).
[674] *Id.*
[675] *Id.*
[676] Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020); Interview with (b) (3) (B), (b) (6) (July 24, 2020).
[677] Interview with (b) (3) (B), (b) (6) (Oct. 28, 2020). We reviewed an allegation that (b) (6) created a hostile work environment and permitted a subordinate to create a hostile work environment. While there was evidence, as described above, of (b) (6) unprofessional behavior to subordinates, we did not find any evidence that (b) (6) conduct was motivated by a discriminatory intent. *See, e.g.*, Ashraf-Hassan v. Embassy of France in United States, 999 F. Supp. 2d 106, 113 (D.D.C. 2013) ("To prevail on a hostile-work-environment claim, a plaintiff must show that his employer subjected him to discriminatory intimidation, ridicule, and insult…") (internal quotation marks and citation omitted).

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By contrast, (b) (3) (B), (b) (6) said she liked (b) (6) and felt badly that (b) (6) got caught up in the "Mean Girl club."[678] (b) (3) (B), (b) (6) described (b) (6) as "smart" and "a bright (b) (6)"[679] (b) (3) (B), (b) (6) also had a favorable impression of (b) (6), recalling that (b) (6) hosted a team-building event at her home.[680] For the most part, few witnesses had negative things to say about (b) (6) treatment of DHS OIG employees.

B. Accumulation of Power Through the Consolidation of Human Resources Management Division under the Office of Counsel

In August 2018, (b) (6) and (b) (6) transferred 17 members of the Human Relations and Management Division ("HRMD") from the Office of Management ("OM") to the OC.[681] At the time, (b) (6), while (b) (6). The employees were moved following allegations by several employees, including (b) (3) (B), (b) (6), the (b) (3) (B), (b) (6), that (b) (6) had (b) (6) The move was purportedly designed to (b) (6) during the pendency of the investigation of those allegations.[683]

When an employee has made a claim of (b) (6), it is unusual for management to move the complainant (not to mention an entire department) as opposed to the alleged transgressor. The movement of the complainant as opposed to the transgressor could create a perception of (b) (6). Thus, in these situations, the typical practice is to remove the alleged transgressor from the situation rather than the complainant.[684]

During her interview, (b) (3) (B), (b) (6) stated that (b) (6) and (b) (6) told her that HRMD would be moved from OM to the OC because of complaints filed against her.[685] (b) (6) told (b) (3) (B), (b) (6) that they were worried about (b) (6) but that it would be too disruptive to place (b) (3) (B), (b) (6) on administrative leave, which (b) (3) (B), (b) (6) said would have been the normal process.[686] (b) (3) (B), (b) (6) described the approach as "very unusual."[687]

In her interview, (b) (3) (B), (b) (6) explained that as (b) (6), (b) (6) oversaw (b) (6).[688] She stated that since the allegations of wrongdoing were limited to HRMD, she and (b) (6) decided that HRMD should be moved rather than (b) (6)

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[678] Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020). We also reviewed an allegation that (b) (6) permitted a (b) (6). We were not able to find any evidence to support this allegation.
[679] Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).
[680] Interview with (b) (3) (B), (b) (6) (Aug. 7, 2020).
[681] Interview with (b) (3) (B), (b) (6) (July 23, 2020); DHS OIG Timeline (06/08/2020).
[682] Interview with (b) (3) (B), (b) (6) (July 23, 2020).
[683] *Id.*
[684] (b) (6)
[685] Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).
[686] *Id.*
[687] *Id.*
[688] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

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(b) (6) .[689] As a result of the move, (b) (6) became (b) (6) (b) (6) and all HRMD personnel from August 2018 to February 2019.[690] In February 2019, when (b) (6) (b) (6) joined DHS OIG, she (b) (6) .[691]

(b) (3) (B), (b) (6) said (b) (6) and (b) (6) told her that they would not announce the move publicly, but would say that it was part of an end-to-end review of HRMD's processes if they had to discuss it.[692] When the reorganization was announced to the affected employees, (b) (6) communicated to (b) (3) (B), (b) (6) that the move would occur as part of a 30-day trial.[693] In fact, HRMD remained under OC for more than a year until it was moved back at IG Cuffari's direction.[694]

Shortly after his confirmation, IG Cuffari asked why HRMD was under the OC and expressed his intention that HRMD be returned to OM.[695] On August 13, 2019, (b) (6) , (b) (6) told (b) (6) that "Dr. Cuffari requested yesterday that we start the process of transferring HR[MD] back to OM."[696]

In November 2019, IG Cuffari requested additional information from (b) (6) and (b) (6) on the reasons underlying the 2018 decision to move HRMD.[697] Our investigation uncovered internal communications between (b) (6) , (b) (6) and (b) (6) about a possible response.[698] In one email exchange among the three individuals, (b) (6) wrote that HRMD was moved from under OM because DHS OIG had received complaints about (b) (6) and others.[699] (b) (6) also prepared a timeline of the (b) (6) investigation.[700] The timeline noted that, in August 2018, "(b) (6) and then-(b) (6) (b) (6) evaluated the situation and determined that, while the inquiry was ongoing, the HR function should be removed from (b) (6) direct supervision" both to "shield the complainants from further direct contact with their alleged (b) (6) " and "to protect (b) (6) from further claims of (b) (6) "[1]

On November 14, 2019, (b) (6) provided a memorandum to IG Cuffari regarding the (b) (6) investigation.[702] The memorandum stated that, (b) (5)

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[689] *Id.*
[690] DHS OIG Timeline (06/08/2020).
[691] *Id.*
[692] Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).
[693] Interview with (b) (3) (B), (b) (6) (July 23, 2020).
[694] *Id.*
[695] WHDHS-00000273.
[696] *Id.*
[697] WHDHS-00000210.
[698] WHDHS-00000269.
[699] *Id.*
[700] *Id.*
[701] *Id.*
[702] WHDHS-00000811.

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(b) (5) [redacted] [703]

In January 2020, in response to additional questions from (b) (6) [redacted], about the move of HRMD, (b) (6) [redacted] wrote in an email that the HRMD move "was not officially documented."[704] (b) (3) (B), (b) (6) [redacted] also stated her belief that there was no formal/official paperwork to reassign the employees from OM to the OC.[705] During her interview, (b) (3) (B), (b) (6) [redacted] stated that the HRMD move was not documented with new SF-50s or other paperwork.[706] However, she disputed that the lack of SF-50s meant that the move was improper or that she was overseeing HR in an unofficial capacity.[707] (b) (3) (B), (b) (6) [redacted] similarly stated that "we didn't cut personnel actions" for the move, meaning that no formal personnel documentation was completed.[708]

Consistent with the witnesses' statements, our investigation did not identify any documentation from the Fall of 2018 formalizing the move of HRMD from OM to the OC. However, we found no OPM or DHS guidelines requiring SF-50s to effectuate the employees' moves.[709]

Internal emails and documents corroborate the stated rationale for moving HRMD under the OC, albeit after the fact—namely, that HRMD was moved from OM after DHS OIG received complaints from HRMD employees concerning executives in that office.[710] While moving HRMD to the OC enabled (b) (6) [redacted], (b) (6) [redacted], and (b) (6) [redacted] to have greater control over personnel actions and investigations, we did not find evidence to conclude that this was the primary motivation for the reorganization.

Nevertheless, the effect of reassigning HRMD under the OC was that it consolidated personnel decisions and employee misconduct investigations under the auspices of first (b) (6) [redacted] and later, (b) (6) [redacted]. Multiple current and former DHS OIG employees shared the general belief that (b) (6) [redacted] (b) (6), (b) (6) [redacted] and (b) (6) [redacted] initiated improper investigations or took personnel actions against employees deemed to be insufficiently loyal.[711]

Following the move of HRMD to the OC, a number of administrative investigations into employees were conducted by the OC (b) (6) [redacted] (b) (6) [redacted] and later (b) (6) [redacted][712]

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[703] *Id.*
[704] WHDHS-00000633.
[705] Interview with (b) (3) (B), (b) (6) [redacted] (Aug. 6, 2020).
[706] Interview with (b) (3) (B), (b) (6) [redacted] (Aug. 27, 2020).
[707] *Id.*
[708] Interview with (b) (3) (B), (b) (6) [redacted] (Oct. 30, 2020).
[709] Chapter 21: Realignment and Mass Transfer, Off. Of Pers. Mgmt, https://www.opm.gov/policy-data-oversight/data-analysis-documentation/personnel-documentation/processing-personnel-actions/gppa21.pdf ("Agencies may use any method that meets the conditions in Chapter 4, section 6, to notify employees of realignment actions. This is an additional agency option *in lieu of* the individual Standard Form 50, Notification of Personnel Action, or the list form of notice.").
[710] WHDHS-00000213.
[711] *See* Interview with (b) (3) (B), (b) (6) [redacted] (Aug. 6, 2020); Interview with (b) (3) (B), (b) (6) [redacted] (July 22, 2020); Interview with (b) (3) (B), (b) (6) [redacted] (July 24, 2020).
[712] *See* Interview with (b) (3) (B), (b) (6) [redacted] (Aug. 20, 2020).

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When asked about the number of internal investigations of DHS OIG employees, (b) (3) (B), (b) (6), the (b) (3) (B), (b) (6), stated that it was because employees kept filing complaints against one another, and (b) (6) was holding employees accountable for any misconduct.[713]

Our review found no clear standard applied before launching an internal investigation of a DHS OIG employee. In February 2020, (b) (6), (b) (6), asked (b) (6) and (b) (6) about the standard they applied when opening an internal investigation.[714] (b) (6) (b) (6) forwarded the request to (b) (6), and (b) (6) later included (b) (6) in the discussion, and they discussed how to craft a coordinated response.[715] After exchanging several drafts internally, (b) (6) responded to (b) (6) with a lengthy description, which stated (in relevant part) that:

> OC does not have a written policy governing when to open a management inquiry in response to allegations. (b) (6)
>
> (b) (2), (b) (5)
>
> [718]

In her interview, (b) (3) (B), (b) (6) acknowledged that there were no written criteria for determining whether to open a management inquiry.[719] However, (b) (3) (B), (b) (6) said that typically she and (b) (6) (b) (6), (b) (2), (b) (5) .[720] (b) (3) (B), (b) (6) said that (b) (6) was sometimes involved in the decision.[721] (b) (3) (B), (b) (6) confirmed that there was no standard practice for opening an internal investigation.[722] (b) (3) (B), (b) (6) attributed this to the culture of DHS OIG,

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[713] We reviewed allegations that (b) (6), (b) (6), and (b) (6) made anonymous calls to the DHS OIG complaint hotline to justify initiating unwarranted investigations of employees. Our review identified evidence of investigations initiated in response to complaints filed by individuals other than (b) (6), (b) (6), and (b) (6) (b) (6) Despite reviewing numerous hotline complaints from the relevant time-period however, we did not identify any evidence that (b) (6), (b) (6) or (b) (6) made anonymous calls to the hotline.
[714] WHDHS-00000325.
[715] *Id.*
[716] WHDHS-00000320.
[717] WHDHS-00000320.
[718] WHDHS-00000325.
[719] Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).
[720] *Id.*
[721] *Id.*
[722] Interview with (b) (3) (B), (b) (6) (Oct. 20, 2020).

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where she claimed there were no clear-cut, structured guidance or policies in place.[723] As a result, (b) (3) (B), (b) (6) described it more as an ad-hoc approach.[724] (b) (3) (B), (b) (6) insisted that in crafting a response to (b) (6), she and (b) (6) were not creating a post-hoc written criteria.[725] Instead, she believed they were putting "pen to paper" on the approach already used to determine whether to open management inquiries.[726] For her part, (b) (3) (B), (b) (6) stated that they "would often do, you know, some pressure testing to see, you know, can – can we gauge the credibility of it."[727] She explained that "basically we were doing kind of a threshold analysis to see if these were credible allegations of – of something that rose to the level of requiring a review."[728]

C. Reassignment of (b) (6), (b) (7)(C) and Initiation of a Criminal Investigation for Use of a Parking Pass

(b) (6), (b) (7)(C) served as the (b) (6) at DHS OIG from 2009 to 2019—a time-period that encompassed service to IGs (b) (6), John Roth, and (b) (6) (b) (6).[729] (b) (6) strongly disliked (b) (6), (b) (7)(C), a sentiment seemingly shared by (b) (6), (b) (7)(C) and (b) (6). (b) (6) made it known repeatedly that she intended to remove (b) (6), (b) (7)(C) from the DHS OIG (b) (6) position as soon as she became (b) (6)

(b) (6), (b) (6), and (b) (6) raised various complaints about (b) (6), (b) (7)(C). For one, (b) (6) believed that (b) (6) had improperly promoted (b) (6), (b) (7)(C) to a GS-15.[730] (b) (6) openly complained within DHS OIG that (b) (6), (b) (7)(C) was not doing work sufficient to justify her GS-15 salary.[731] According to (b) (3) (B), (b) (6), (b) (7)(C), (b) (6) and (b) (6) also did not like (b) (6), (b) (7)(C) sitting in to take notes during meetings with (b) (6).[732] (b) (3) (B), (b) (6) confirmed that she was "uncomfortable" with (b) (6) attending meetings and taking notes during sensitive personnel meetings.[733] (b) (3) (B), (b) (6) believed that (b) (6) had improperly restored (b) (6), (b) (7)(C) hours of leave, thereby allowing her to rollover excessive leave to the following year.[734] (b) (6) and (b) (6) also had questioned (b) (6), (b) (7)(C) purchase of a nameplate for IG Cuffari's door in June 2019, a month before he was confirmed by the Senate.[735] While (b) (6) had approved of (b) (6), (b) (7)(C) purchase of the nameplate, (b) (3) (B), (b) (6) explained that it represented "poor judgment" and (b) (6), (b) (7)(C) was counseled about the proper use of her government purchase card.[736] (b) (6) included the nameplate issue in her referral to CIGIE

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[723] *Id.*
[724] *Id.*
[725] Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).
[726] *Id.*
[727] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).
[728] *Id.*
[729] Interview with (b) (3) (B), (b) (6), (b) (7)(C) (Aug. 6, 2020); Interview with (b) (6), (b) (7)(C) (Aug. 10, 2020).
[730] WHDHS-00000863.
[731] Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).
[732] Interview with (b) (3) (B), (b) (6), (b) (7)(C) (Aug. 6, 2020).
[733] Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).
[734] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).
[735] Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).
[736] *Id.*

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about (b) (6), claiming that it "put Dr. Cuffari in a dangerous situation vis-à-vis Congress, which has been known to look unfavorably on nominees whose actions presuppose confirmation."[737]

(b) (6), (b) (6) and (b) (6) spoke disparagingly of (b) (6), (b) (7)(C) role in the DHS OIG (b) (6). In her interview, (b) (6), (b) (7)(C) described (b) (6), (b) (7)(C) as "(b) (6) and she let you know it and nobody got access (b) (6) unless they went through" (b) (6), (b) (7)(C)[738] A number of witnesses commented that on repeated occasions, (b) (6) stated her intention to remove (b) (6), (b) (7)(C) from her (b) (6) position as soon as (b) (6) had retired. For example, (b) (3) (B), (b) (6) said (b) (6) told her that she would do whatever it took to get (b) (6), (b) (7)(C) out of the (b) (6).[739] (b) (3) (B), (b) (6) corroborated this as well, noting that (b) (6) (b) (6) did not plan to keep (b) (6), (b) (7)(C) in her (b) (6) position once (b) (6) retired.[740] (b) (3) (B), (b) (6) stated that (b) (6) said in an open senior staff meeting that "(b) (6), (b) (7)(C) is out as soon as possible."[741] (b) (6), (b) (7)(C) confirmed that (b) (6) did not intend to keep (b) (6), (b) (7)(C) in her (b) (6) positon once (b) (6) retired, but (b) (3) (B), (b) (6) did not know whether (b) (6), (b) (7)(C) would be reassigned to another position at that time.[742]

(b) (6) told DHS OIG investigators that there was "friction" between (b) (6), (b) (7)(C), (b) (6), (b) (6), and (b) (6), and that he heard all three make "disparaging comments" about (b) (6). (b) (6), (b) (7)(C).[743] (b) (6) thought that the source of the friction had to do with (b) (6) loyalty to him in the face of (b) (6), (b) (6), and (b) (6) trying to force him into retirement.[744] In an email from April 26, 2019 referring to (b) (6), (b) (7)(C), (b) (6) wrote to (b) (6) and (b) (6) that "Cinderella will be back in rags on May 3. But I'll keep the glass slippers...."[745] In her interview, (b) (3) (B), (b) (6) presumed that (b) (6) reference to May 3rd was the date when (b) (6) was expected to retire.[746] (b) (3) (B), (b) (6) explained that in this email, (b) (6) was stating that (b) (6), (b) (7)(C) would "not be on a high horse and in charge of the (b) (6) in the way that she has been when (b) (6) retires because (b) (6) was, you know, the person who really promoted her and gave her vast authority as his (b) (6)."[747] However, (b) (3) (B), (b) (6) said she did not remember having any conversations with (b) (6) about moving (b) (6), (b) (7)(C) out of her (b) (6) position.[748] (b) (3) (B), (b) (6) also pushed back on the idea that there was any tension between (b) (6) and (b) (6), (b) (7)(C) a statement inconsistent with the evidence and witnesses' statements.[749] The same day (b) (6) sent her email to (b) (6) and (b) (6),

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[737] WHDHS-00000862.
[738] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).
[739] Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).
[740] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).
[741] Interview with (b) (3) (B), (b) (6) (July 28, 2020).
[742] Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).
[743] I19-OIG-SIU-18975 MOA, 10-21-19 (b) (6), (b) (3) (B) Interview.
[744] *Id.*
[745] WHDHS-00000067.
[746] Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).
[747] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).
[748] *Id.*
[749] *Id.*

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April 26, 2019, she also sent a separate email to [redacted] and [redacted], inquiring about where in the agency [redacted] could be transferred.[750]

On June 13, 2019, just three days after [redacted] retirement, [redacted] and [redacted] removed [redacted] from her [redacted].[751] [redacted] and [redacted] told [redacted] that they wanted to make changes to the [redacted] and that she was being reassigned.[752] Initially, they did not have a new position for [redacted], so she was placed on a detail to the [redacted], effective June 24, 2019, until she received a new position description.[753] Later, [redacted] and [redacted] informed [redacted] that she was going to be moved to the [redacted] permanently.[754] [redacted] explained in her interview that she had last worked in the [redacted] prior to becoming an [redacted] eleven years before.[755] When [redacted] was reassigned to [redacted], [redacted] was a GS-15 and did not understand what her role in the [redacted] would be or her expectations.[756] She was concerned that she would not know how to do the job since it had been a decade since she had done it.[757]

[redacted] was also moved from her cubicle in the [redacted] to a cubicle in the [redacted] seating area.[758] [redacted] asked [redacted] about her seating arrangement because all GS-15 employees in the [redacted] had offices. In response, [redacted] explained that only GS-15 attorneys were assigned to offices.[759] [redacted] noted that there were empty offices and asked [redacted] if she could use one until more attorneys were hired.[760] [redacted] refused.[761]

Despite being removed from the [redacted], [redacted] [redacted] [redacted] IG Cuffari. When she attempted to [redacted], [redacted] severely admonished her. In one email, on July 9, 2019, [redacted] wrote, "I believe [redacted] was clear when you were reassigned from the [redacted] that [redacted] was handling all [redacted] matters. Any communications you receive from anyone concerning OIG matters that come to you because [redacted] immediately upon receiving them."[762] In her interview, [redacted] explained:

> A GS-15 should be able to follow very simple instructions, like she's no longer in the position and [redacted] was acting as [redacted]. I expect my instructions to be followed….I mean, it just – that passive aggressiveness as I

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[750] WHDHS-00000851.
[751] *See* Interview with [redacted] (Aug. 10, 2020).
[752] Interview with [redacted] (Aug. 10, 2020).
[753] *Id.*
[754] *Id.*
[755] Interview with [redacted] (Aug. 6, 2020).
[756] Interview with [redacted] (Aug. 10, 2020).
[757] *Id.*
[758] Follow-Up Interview with [redacted] (Dec. 2, 2020) (noting that [redacted] occupied a cubicle when she served as [redacted]); WHDHS-00000653.
[759] *Id.*
[760] *Id.*
[761] *Id.*
[762] WHDHS-00000457.

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> characterize it was inappropriate and I can't tolerate that. I don't have time for that.[763]

Six days later after (b) (6) email, on July 15, 2019, a criminal investigation was initiated into (b) (6), (b) (7)(C) use of a parking pass.[764] According to the report of the investigation, it was initiated "based on information from (b) (6) ." [765] (b) (6) alleged that (b) (6) "may have misused a government funded parking card that had been created for Dr. Joseph Cuffari . . . ."[766] In her interview, (b) (3) (B), (b) (6) stated that (b) (6) provided her with documentation showing activity on a parking pass assigned to IG Cuffari, whose nomination at that time was pending confirmation.[767] According to (b) (3) (B), (b) (6), (b) (6) had directed the agency to revoke parking passes for anyone who was not an "SES, executive, or had a reasonable accommodation" in an attempt to cut costs.[768] Prior to his retirement, (b) (6) had raised the issue of (b) (6) (b) (6) continued use of the parking pass with (b) (6) , and he stated that he would discuss it with her.[769]

An employee in OM reviewed parking pass usage and informed (b) (3) (B), (b) (6) that (b) (6), (b) (7)(C) had a parking pass that had been assigned to IG Cuffari.[770] (b) (3) (B), (b) (6) asked (b) (6) for advice about how to proceed and (b) (6) said she would handle it.[771] (b) (3) (B), (b) (6) later learned that an inquiry was opened to investigate this issue.[772] (b) (3) (B), (b) (6) believes the use of the parking pass was a legitimate question to pursue, but was skeptical that it warranted a full investigation.[773]

In her interview, (b) (3) (B), (b) (6) stated that she felt some investigation needed to occur, and notified (b) (6) , and (b) (6) , of the activity on the parking pass.[774] (b) (3) (B), (b) (6) said they told her that INV would investigate the issue because there could be potential fraud.[775] On July 23, 2019, (b) (6) notified the FBI that DHS OIG initiated a criminal investigation concerning allegations that (b) (6) violated 18 U.S.C. § 641 (theft of government property).[776] Also on July 23, 2019, (b) (6) , contacted (b) (6) of the Public Integrity Section at the DOJ, and briefed him

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[763] Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).
[764] WHDHS-00000285.
[765] *Id.*
[766] *Id.*
[767] *See* Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020); Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).
[768] Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).
[769] Interview with (b) (6) (Oct. 30, 2020).
[770] Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).
[771] *Id.*
[772] *Id.*
[773] *Id.*
[774] Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).
[775] *Id.*
[776] FBI Notification, July 23, 2019.

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on the allegation related to [redacted].[777] [redacted] declined to open a criminal matter.[778] On July 27, 2019, [redacted] was notified that she was under investigation.[779]

In her interview, [redacted] told us that she decided that INV should handle the [redacted] investigation because she felt [redacted] would not be treated fairly if the investigation were conducted by [redacted] and the OC.[780] [redacted] pointed to the fact that [redacted] had already been removed from the [redacted] and treated poorly by [redacted] and [redacted].[781] She said that [redacted] had already made it clear that she did not trust [redacted] because of her loyalty to [redacted].[782] Because of her concerns, [redacted] decided INV would handle the investigation on the basis that the allegation related to potential criminal activity and INV could run an efficient and straightforward investigation of that charge.[783]

In his interview, [redacted] stated that he told [redacted] that INV was not the appropriate vehicle to investigate this issue.[784] [redacted] responded that INV would investigate it "for the benefit of the agency."[785] [redacted] recalled that during the course of the [redacted] investigation, [redacted] and [redacted] showed great interest in the outcome of the investigation.[786] [redacted] found it odd that [redacted] was interested in [redacted] parking pass investigation, particularly because [redacted] did not express interest in other more serious cases INV was handling.[787]

The report of the investigation into [redacted] was completed by INV on November 25, 2019, and provided to [redacted].[788] The report concluded that, "[t]he Special Investigations Unit (SIU) did not substantiate the allegation that [redacted] misused the government funded parking card."[789] The report found that [redacted] "had given [redacted] permission to use the parking card on an ad-hoc basis to use for official DHS OIG business" and "found no evidence that [redacted] or any other member of DHS OIG, to include management, instructed [redacted] to discontinue using the parking card."[790]

For her part, [redacted] explained that she was a "covered employee" and as such her investigation should have been handled by the CIGIE IC and not DHS OIG.[791] [redacted] and [redacted] confirmed that the [redacted] investigation should have been referred to the

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[777] MOA_2 - Other - DOJ Public Integrity Section Declination.
[778] *Id.*
[779] Interview with [redacted] (Aug. 10, 2020).
[780] MOA_2 - Other - DOJ Public Integrity Section Declination.
[781] Interview with [redacted] (Sept. 15, 2020).
[782] *Id.*
[783] *Id.*
[784] Interview with [redacted] (July 24, 2020).
[785] *Id.*
[786] *Id.*
[787] *Id.*
[788] WHDHS-00000284; WHDHS-00000285.
[789] WHDHS-00000284.
[790] *Id.*
[791] Interview with [redacted] (Aug. 10, 2020).

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CIGIE IC.[792] A May 13, 2019, email from [redacted], on behalf of [redacted], to CIGIE includes her designation as a "covered position."[793] [redacted] and [redacted] acknowledged that the conduct that was investigated occurred when [redacted] was serving in a covered position, and [redacted] informed CIGIE about the investigation after it was initiated.[794] However, [redacted] wrote that the issue did not warrant a referral to the CIGIE IC.[795]

According to CIGIE's policies, the CIGIE IC "may consider wrongdoing alleged to have occurred while an individual served as a Covered Person, even if that individual is no longer a Covered Person or in government service when the IC receives the allegation."[796] [redacted] was still in her covered position when the investigation was initiated on July 15, 2019 even though she was detailed to [redacted][797]

[redacted] believes she was investigated for the parking pass due to her "association" with former IGs [redacted] and Roth.[798] [redacted] also thought that "she was being targeted" by [redacted] and [redacted].[799] [redacted] also claimed the investigation was retaliatory, although she could not specify precisely what actions for which she was being retaliated.[800]

Multiple current and former DHS OIG employees echoed [redacted] view that the parking pass investigation was vindictive in nature. [redacted], told us that she believed the investigation into [redacted] was retaliatory, and that [redacted], and [redacted] were behind it.[801] Similarly, [redacted], expressed his belief that [redacted] was investigated simply because [redacted] did not like [redacted].[802]

[redacted] last day was [redacted] She left voluntarily, but reported that she felt she had no choice.[804] [redacted] explained that she had a lot of annual leave stored up and she needed to use it before the end of the year.[805] [redacted] informed [redacted] that her leave

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[792] Interview with [redacted] (July 24, 2020); Interview with [redacted] (Sept. 15, 2020).
[793] WHDHS-00000651.
[794] WHDHS-00000183; WHDHS-00000179.
[795] WHDHS-00000183.
[796] Policies and Procedures of the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency, Counc of the Inspector Gen. of Integrity and Efficiency, (Jan. 2018), p.1-2, https://www.ignet.gov/sites/default/files/files/Integrity_Committee_Policies_and_Procedures_Revised_Jan-2018_Final.pdf.
[797] [redacted] was not permanently reassigned to her new position in the [redacted] unit until August 4, 2019. [redacted] - Updated Status Memo (EEO OSC matters).
[798] I19-OIG-SID-[redacted] MOA (10) 09-20-19 [redacted] Interview.
[799] I19-OIG-SID-[redacted] MOA (10) 09-20-19 [redacted] Interview.
[800] Interview with [redacted] (Aug. 6, 2020); Interview with [redacted] (Aug. 10, 2020). We reviewed an allegation that the parking pass investigation was initiated in retaliation for [redacted]. We did not find any evidence that [redacted] and [redacted] were aware of [redacted], or that they took actions against her as retaliation for those activities.
[801] Interview with [redacted] (July 24, 2020).
[802] Interview with [redacted] (July 24, 2020).
[803] Interview with [redacted] (Aug. 10, 2020).
[804] *Id.*
[805] *Id.*

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would not be restored that year, which would have resulted in a significant financial loss if [redacted]. [redacted] did not retire.[806] Accordingly, [redacted] felt as though she had no choice but to retire.

D. Reassignment of IG [redacted]

[redacted] served as [redacted] beginning in 2015 with IG Roth.[807] In her role as [redacted], [redacted] met weekly with [redacted] and reported to her.[808] On September 10, 2018, at one of their weekly meetings, [redacted] informed [redacted] that she was being reassigned to a position in [redacted] immediately.[809] [redacted] was not given any warning about the reassignment, nor did she ever receive a formal reassignment letter.[810] Instead, like [redacted], she was abruptly removed from the [redacted] and placed on a detail in a different section of the agency.[811] [redacted] position description remained for the role of [redacted].[812]

According to [redacted], [redacted] told her that the move was to protect her because a new IG, might want to select [redacted]. At the time of the reassignment in September 2018 however, no one had been nominated for the position yet. Accordingly, [redacted] did not credit that explanation.[813] Instead, [redacted] suspected that [redacted] did not like the idea of [redacted] (a GS-15) reporting to her, preferring instead to have only SES direct reports.[814] [redacted] also heard from [redacted], that [redacted] did not like that [redacted] had a bigger office than [redacted].[815]

[redacted] remained assigned to [redacted] as of December 2020. [redacted] believes that she was "on the receiving end of [redacted] inappropriate practices."[816] As a result, she believes that her "career got derailed to some degree because of this reassignment."[817] [redacted] stated that he was aware that [redacted] reassigned [redacted].[818] He stated that [redacted] had not been serving in a traditional [redacted], and he was not working closely with her.[819] [redacted] observed some tension between [redacted] and [redacted], but he did not know the source of the tension.[820]

VII. The Unconfirmed Remaining Allegations

In addition to the numerous events and allegations detailed above, WilmerHale also investigated a number of other allegations that could not be confirmed. Some involved allegations for which

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[806] *Id.*
[807] Interview with [redacted] (Aug. 20, 2020).
[808] *Id.*
[809] *Id.*
[810] *Id.*
[811] *Id.*
[812] *Id.*
[813] *Id.*
[814] *Id.*
[815] *Id.*
[816] Email from [redacted] to OIG Inquiries (June 12, 2020).
[817] *Id.*
[818] Follow-Up Interview with [redacted] (Dec. 2, 2020).
[819] *Id.*
[820] *Id.*

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we uncovered a substantial amount of corroborating evidence but nonetheless lacked a critical piece that prevented us from confirming the allegation. For other allegations, there was no supporting evidence or witnesses denied critical facts. These allegations related to (A) false testimony before Congress; (B) the preferential or unfavorable treatment of DHS OIG employees; and (C) purported instances of misconduct, malpractice or unprofessional behavior. We describe some of the more significant unconfirmed allegations below. A list summarizing the remaining unconfirmed allegations not addressed below is included in Appendix A.

A. False Testimony Before Congress

We reviewed the allegation that (b) (6) gave false testimony during a hearing before Congress. Specifically, (b) (3) (B), (b) (6), (b) (3) (B), (b) (6) and (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), both reported that (b) (6) had been less than forthcoming in her testimony to Congress.

(b) (6)

(b) (3) (B), (b) (6) told us that she watched the hearing live and subsequently read the transcript, and believed that (b) (6) responses were not truthful.[826] (b) (3) (B), (b) (6) (b) (6)

[821] Interview with (b) (3) (B) (July 24, 2020).
[822] WHDHS-00000097.
[823] *Id.*
[824] *Id.*
[825] *Id.*
[826] Interview with (b) (3) (B), (b) (6) (July 24, 2020).
[827] *Id.*
[828] *Id.*
[829] *Id.*
[830] *Id.*

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(b) (3) (B), (b) (6) also believed (b) (6) was not forthcoming with respect to her testimony (b) (6) [redacted] (b) (3) (B), (b) (6) believed the complaint was discussed again at a July 9, 2019 follow-up meeting, but she did not know for certain.[836]

We reviewed documentation from both staff meetings (b) (6) [redacted]

(b) (6) [redacted]

(b) (6) [redacted]

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[831] Interview with (b) (3) (B), (b) (6) (July 24, 2020).
[832] Interview with (b) (3) (B), (b) (6) (July 24, 2020); Interview with (b) (3) (B), (b) (6) (July 24, 2020).
[833] Interview with (b) (3) (B), (b) (6) (July 24, 2020).
[834] *Id.*
[835] *Id.*
[836] *Id.*
[837] WHDHS-00000634; WHDHS-00000637; Engagement Planning Agenda 07-09-2019 (1).
[838] WHDHS-00000637.
[839] Engagement Planning Agenda 07-09-2019 (1).
[840] (b) (6) [redacted]
[841] *Id.*
[842] WHDHS-00000853; *see also* Interview with (b) (3) (B), (b) (6) (July 24, 2020).
[843] WHDHS-00000853.
[844] *Id.*

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(b) (6) (b) (6)

Thus, as to the allegation that (b) (6) perjured herself before Congress, the evidence demonstrates that (b) (6) had discussed (b) (6) in preparation for testimony. The first known discussion occurred nearly a month before her testimony, while the second discussion occurred just three days prior to her testimony. However, it is possible that (b) (6) did not recall the complaints in that moment, which occurred during a lengthy Congressional hearing. The fact that (b) (6) promptly responded after the hearing in writing to Representative Tlaib's question, disclosing accurate and additional information, suggests that (b) (6) (b) (6) did not intend to conceal the information from Congress. (b) (6) declined to sit for an interview, so we could not assess her credibility on this point. Accordingly, we were not able to fully assess the allegation that (b) (6) lied to Congress.

B. Preferential or Unfavorable Treatment of DHS OIG Employees

1. Appointment of (b) (6)

Multiple allegations pertain to the propriety of (b) (6) appointment to an SES position as (b) (6) (b) (6). We reviewed allegations that (b) (6) took a number of actions to effectuate the appointment of (b) (6) to an SES position, including falsely claiming that there was no one available to run the (b) (6) and making public comments that undermined confidence in the impartiality of a search and interview process. We also reviewed allegations that (b) (6) conspired with (b) (6) to be appointed to the position.

Multiple witnesses interpreted (b) (6) appointment of (b) (6) to the (b) (6) (b) (6) position as an act of favoritism to benefit a close friend.[846] For example, (b) (3) (B), (b) (6), who oversaw the SES positions in HRMD, told us that while she respected (b) (6) and thought highly of her, she believed that (b) (6) lacked the experience for the (b) (6) role and that more experienced attorneys were passed over for the job.[847] (b) (3) (B), (b) (6) felt that (b) (6) was given the position because of (b) (6) close relationship with (b) (6).[848] (b) (6) called the appointment a "power play" by (b) (6) and (b) (6).[849] Similarly, (b) (3) (B) stated that (b) (6) and (b) (6) used "machinations" to avoid posting the position so that more qualified candidates would not apply for the role and she could acquire an SES position.[850] As part of our investigation, we reviewed administrative files related to this position.[851] We found no evidence that the (b) (6) was publicly posted or that

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[845] Interview with (b) (3) (B), (b) (6) (July 24, 2020).
[846] Interview with (b) (3) (B), (b) (6) (Aug. 20, 2020); Interview with (b) (3) (B), (b) (6) (July 22, 2020); *see also* Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).
[847] Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).
[848] *Id.*
[849] Interview with (b) (3) (B), (b) (6) (Aug. 20, 2020).
[850] Interview with (b) (3) (B), (b) (6) (July 22, 2020). However, we found no documentary evidence of any such "machinations."
[851] Hard Copy Personnel Files SHQ_707520092911350.

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anyone else applied for the role. Rather, a draft announcement in the file indicated that (b) (5) ."[852]

(b) (6) was instrumental in (b) (6) appointment. On June 7, 2018, (b) (6) provided (b) (6) a series of draft documents relating to the appointment of (b) (6) as (b) (6) (b) (6), including a Standard Form 52 Request for Personnel Action, a draft position description, a "Justification, Resume, and Organizational Chart For (b) (6)," and a draft resume for (b) (6).[853] The SF 52 Request for Personnel Action form sought authorization for (b) (6) to be converted to an SES limited term appointment from her "(b) (6) (b) (6) role at the time to (b) (6)[854] The metadata on the job description document also revealed that it was edited *after* the "request for personnel action" form for (b) (6) was drafted.[855] Because (b) (6) was already selected for the position, the edits to the job description may have been made to justify the requested personnel action.

After receiving the documents from (b) (6), (b) (6) wrote an email to (b) (6) and (b) (6) with the subject line, "good news."[856] (b) (6) wrote, "I can make that type of appointment and (b) (6) is moving on it now. Also, would it be better if technically you reported to me until everything has wrapped up? I believe (b) (6) should report to the agency head but maybe for now we should make a change?"[857] (b) (6) then revised the position description so that that the limited-term position would report to (b) (6) as (b) (6) (b) (6).[858] In her interview, (b) (3) (B), (b) (6) stated that this change was because she was involved in the (b) (6) and therefore, (b) (6) thought it best that (b) (6) report to her rather than (b) (6).[859]

Between June 20, 2018, and June 22, 2018, (b) (6), (b) (6), and (b) (6) exchanged emails about the announcement that (b) (6) would make about the new appointment.[860] On June 22, 2018, (b) (6) sent an agency-wide email to all DHS OIG employees announcing the appointment of (b) (6) as (b) (6).[861] The announcement from (b) (6) to all employees at DHS-OIG stated, "I am very pleased to announce that I have decided to appoint (b) (6) to the position of (b) (6). As (b) (6), (b) (6) will serve as DHS OIG's (b) (6) while the (b) (6) position remains vacant."[862] In his interview, (b) (6) stated he was not involved in the selection of (b) (6) (b) (6) for this role because he generally allowed (b) (6) to handle administrative matters such

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[852] *Id.*
[853] WHDHS-00000001; WHDHS-00000002; WHDHS-00000004; WHDHS-00000006; WHDHS-00000010; WHDHS-00000016.
[854] WHDHS-00000002.
[855] WHDHS-00000004; WHDHS-00000006.
[856] WHDHS-00000357.
[857] *Id.*
[858] *Id.*
[859] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).
[860] WHDHS-00000019; WHDHS-00000020.
[861] WHDHS-00000023.
[862] *Id.*

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as this one.[863] He further stated that he was not aware that (b) (6) reported to (b) (6), and insisted that, as the agency's (b) (6), (b) (6) should have been reporting to him.[864]

(b) (3) (B), (b) (6) also pointed out that the position of (b) (6) was described as crucial when it was created and filled by (b) (6) with (b) (6).[865] However, once (b) (6) moved on to become the (b) (6) the position was left vacant, undermining the argument that it was critical.[866] Our review confirmed that the position was left vacant after (b) (6) was appointed to the (b) (6) role. In an email on March 27, 2019, (b) (6) wrote to all of DHS OIG: "Now that (b) (6) will be helming (b) (6), (b) (6) will step into the role of (b) (6) and the (b) (6) position is no longer needed."[867]

Our investigation revealed evidence that the (b) (6) position was vacant at the time that (b) (6) was appointed by (b) (6) to serve as (b) (6) and that the position was specifically created for (b) (6). Documentary evidence shows that (b) (6) and (b) (6) worked together, along with (b) (6), to facilitate the appointment of (b) (6) to the new position. However, the investigation did not identify any false claims or certifications made by (b) (6) or (b) (6) in connection with (b) (6) appointment. We also did not identify any evidence that (b) (6) made public comments that undermined confidence in the impartiality of a search and interview process for the position, though it does appear that it was not publicly advertised and no other candidates were considered other than (b) (6). It is also apparent that DHS OIG employees believed that (b) (6) selection was an act of favoritism on (b) (6) part and the evidence supports this interpretation of events, given that (b) (6) played a critical role in securing the position for (b) (6) and it appears that they worked together to secure the appointment.

2. *Investigation of* (b) (6)

As explained above, in August 2018, (b) (6) and (b) (6) transferred 17 members of the HRMD from OM to the OC. The move was purportedly designed to shield HRMD personnel from further (b) (6) by (b) (6) during the investigation of the allegations against her.[868] The effect of this highly unusual move was to consolidate personnel decisions and employee misconduct investigations under the auspices of first (b) (6) and later, (b) (6). One of the allegations we investigated was whether the allegations against (b) (6) were frivolous, and used by (b) (6) and (b) (6) as a pretext to justify the move of HRMD from OM to the OC for their own ends.

Our investigation found that there were multiple complaints made about (b) (6) by her subordinates in HRMD. Between June 9, 2017 and April 9, 2018, at least six complaints were

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[863] Follow-Up Interview with (b) (6) (Dec. 2, 2020).
[864] *Id.*
[865] Interview with (b) (3) (B), (b) (6) (July 22, 2020).
[866] *Id.*
[867] (b) (6) (b) (2), (b) (6)
[868] Interview with (b) (3) (B), (b) (6) (July 23, 2020).

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filed through the DHS OIG hotline concerning (b) (6) .[869] While two of the complaints came from anonymous sources, four did not. The complaints alleged that (b) (6) (b) (6) . Below is a brief overview of the relevant allegations we identified.

- On June 9, 2017, an HR specialist alleged (b) (6)
- On April 6, 2018, an anonymous complainant alleged (b) (6) The complainant reported that (b) (6) directed him/her to submit the complaint.[876]
- Also on April 6, 2018, another anonymous complainant alleged (b) (6)

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[869] Complaint (b) (6), (b) (7)(C)

[870] The name of the HR specialist has been redacted to protect confidentiality. DHS OIG's Whistleblower Protection Unit (WPU) reviewed this complaint and determined that the complainant had alleged a (b) (6) by (b) (6) . WHDHS-00000274. (b) (6) WHDHS-00000274.

[871] WHDHS-00000274; WHDHS-00000491; Complaint (b) (6), (b) (7)(C) .

[872] Complaint (b) (6), (b) (7)(C) .

[873] *Id.*

[874] Anonymous Employee, DHS OIG Exit Interview Survey Responses.

[875] *Id.*

[876] Complaint (b) (6), (b) (7)(C) .

[877] Complaint (b) (6), (b) (7)(C) .

[878] *Id.*

[879] *Id.*

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(b) (6) The complainant alleged that (b) (6) directed him/her to submit the complaint.[881]

- On April 7 and April 9, 2018, (b) (3) (B), (b) (6) filed two complaints against (b) (6) (b) (6) .[882] She alleged (b) (6)

- On April 9, 2018, (b) (3) (B), (b) (6) filed a complaint against (b) (6) (b) (6) , (b) (6)

At least five of the six complaints were reviewed by the OC and IQO.[885] The (b) (6) investigation was the first investigation undertaken by the newly formed PLD that was created under (b) (6) direction.[886]

On November 4, 2019, the report was finalized.[887] The 103-page report detailed the allegations and the OC's findings.[888] The report found several allegations against (b) (6) (b) (6), (b) (5) (b) (6), (b) (5)

While WilmerHale did not conduct an independent review of the OC's investigation of (b) (6) (b) (6) , we did review the complaints and interview some of the complainants as part of our investigation. We found no evidence that the investigation of (b) (6) was frivolous or unwarranted. Likewise, we uncovered no evidence that the investigation of (b) (6) was used as a pretext in order to justify the move of HRMD to the OC.

3. *Reprisal against* (b) (3) (B), (b) (6)

We reviewed allegations that (b) (6) engaged in reprisals against (b) (3) (B), (b) (6) (b) (3) (B), (b) (6) , who she supervised as part of the move of HRMD under the OC. Between August and October 2019, (b) (3) (B), (b) (6) claimed that (b) (6) engaged in mean and demeaning behavior

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[880] *Id.*
[881] *Id.*
[882] Complaint (b) (6), (b) (7)(C).
[883] Complaint (b) (6), (b) (7)(C).
[884] Complaint (b) (6), (b) (7)(C).
[885] Complaints (b) (6), (b) (7)(C) .
[886] Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).
[887] WHDHS-00000768; WHDHS-00000665.
[888] *See* WHDHS-00000665.
[889] *See id.*
[890] *See id.*

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toward her.[891] For example, [redacted] explained that [redacted] reprimanded her for refusing to follow [redacted] orders without first researching the propriety of the requests.[892] [redacted] said [redacted] repeatedly spoke harshly to her and other staff and frequently criticized HRMD for its failures.[893] [redacted] also claimed that [redacted] made requests of HRMD staff, and then repeatedly "moved the ball" by changing her request when HRMD responded to her.[894] According to [redacted], [redacted] also told DHS OIG senior leadership and other SES employees that she did not trust the information HRMD provided to her and would tell others it was not valid.[895]

[redacted] believed [redacted] ultimate goal was to force her to resign as [redacted].[896] [redacted] attended weekly meetings with [redacted] and [redacted].[897] During one of these meetings, [redacted] stated that she was not going to be forced out of her position.[898] [redacted] said [redacted] then "gritted her teeth" and told [redacted] she would give [redacted] a failing performance rating.[899] [redacted] said [redacted], [redacted], and [redacted] targeted certain DHS OIG personnel they viewed as impediments to their agenda.[900] She stated that their goal was to ensure that employees follow their directions without question.[901]

In January 2020, [redacted] submitted a FY2019 end-of-year performance appraisal for [redacted] with a rating of "unsatisfactory."[902] [redacted] believed this poor rating was in retaliation for her not following [redacted] directives.[903] At the time, HRMD operated under the OC even though [redacted] remained [redacted] official supervisor.[904] [redacted] signed [redacted] performance rating in the DHS OIG system despite not being her official supervisor.[905]

However, we did not find any evidence that the poor performance rating was "reprisal" for [redacted] "refus[ing] to fabricate allegations against another employee that [redacted] wished to discipline or otherwise remove." Instead, the evidence suggested that [redacted] was extremely

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[891] Interview with [redacted] (Sept. 18, 2020).
[892] *Id.*
[893] *Id.*
[894] *Id.*
[895] *Id. See also* Interview with [redacted] (Sept. 17, 2020). [redacted] also told us that the HR function was poorly run; noting, for example, that HR would routinely pay employees the wrong amount. *Id.* He also said the HR Department routinely did a poor job of issuing certification lists for job positions. *Id.*
[896] Interview with [redacted] (Sept. 18, 2020).
[897] *Id.*
[898] *Id.*
[899] *Id.*
[900] *Id.*
[901] *Id.*
[902] WHDHS-00000620; WHDHS-00000621; WHDHS-00000628.
[903] Interview with [redacted] (Sept. 18, 2020).
[904] *Id.*
[905] *Id.*

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dissatisfied with [redacted] performance and her refusal to resign, which led to [redacted] failing performance rating.

4. Investigation of [redacted]

We reviewed an allegation that [redacted] was investigated in retaliation for refusing to investigate IG Cuffari. As detailed above, on August 23, 2019, [redacted] called [redacted], and asked him to investigate IG Cuffari's travel to the Southwest border because [redacted] believed the travel was illegitimate and for personal reasons.[906] [redacted] refused [redacted] request to investigate and stated that it was inappropriate for [redacted] to be investigating the IG.[907]

[redacted] stated that immediately thereafter, he felt a "sea change" in how [redacted] and [redacted] treated him.[908] He noticed a change in their everyday posture.[909] By way of example, he stated that when he was in the hallway, [redacted] would abruptly close her door, or [redacted] and [redacted] would not look at him or acknowledge his presence in senior staff meetings.[910]

Four days after [redacted] request to investigate IG Cuffari, on August 27, 2019, [redacted] was interviewed as the subject of an internal investigation by the OC.[911] Specifically, [redacted] was interviewed by [redacted], and [redacted], in connection with an investigation relating to the performance rating of the [redacted] Office.[912] The interview pertained to allegations from an anonymous complaint that [redacted] had asked the [redacted] Office to lower the [redacted] 2018 performance rating and threatened to retaliate against [redacted] if she did not.[913]

During the interview, [redacted] categorically denied the allegations.[914] Instead, [redacted] believed the investigation was in retaliation for his refusal to investigate IG Cuffari's travel based on the circumstantial evidence of the timing and the presence of [redacted] in the interview.[915] [redacted], who had previously worked with [redacted] and [redacted] at the [redacted], was then serving as [redacted].[916]

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[906] Interview with [redacted] (Sept. 15, 2020).
[907] *Id.*
[908] *Id.*
[909] *Id.*
[910] *Id.*
[911] Memo from [redacted] (Nov. 21, 2019).
[912] *Id.*
[914] *Id.* [redacted] Signed MOA; DHS OIG Hotline Complaint [redacted].
[914] [redacted] Signed MOA.
[915] [redacted] Interview (September 15, 2020).
[916] [redacted] Interview (September 15, 2020); Follow-Up Interview with [redacted] (Dec. 11, 2020).

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The documentary evidence revealed however that the investigation was triggered by an anonymous complaint that was originally filed in December 2018, and (b) (6) had been working on the investigation for months.[917] The evidence also revealed that (b) (6) initially reached out to schedule the interview with (b) (3) (B), (b) (6) on August 21, 2019, two days prior to (b) (6) request to investigate IG Cuffari.[918] On August 22, 2019, a day before (b) (6) request, (b) (6) and (b) (3) (B), (b) (6) agreed to do the interview on August 27, 2019.[919]

During her interview, (b) (3) (B), (b) (6) claimed that she was not aware of the management inquiry regarding (b) (3) (B), (b) (6) until sometime after February 28 2020.[920] She also claimed that she was not formally notified of, and did not approve, (b) (6) participation in the investigation.[921] But documentary evidence contradicts both of her statements.

In June 2019, soon after learning of a CIGIE IC complaint about failure to take action in the (b) (3) (B), (b) (6) investigation, (b) (6) emailed (b) (6) about the matter, copying (b) (6) [922] In the email, (b) (6) instructed (b) (6) to (b) (5) [923] (b) (6) replied to that email and requested a copy of the complaint against (b) (3) (B), (b) (6).[924] (b) (6) provided (b) (6) a copy of the original complaint, a summary of its allegations, and a report on her interview of (b) (3) (B), (b) (6), who had denied the allegations against (b) (3) (B), (b) (6).[925] In July 2019, (b) (6) suggested to (b) (6) that (b) (6) could help with the investigation to get the matter resolved quickly.[926]

Over the next seven months, (b) (6) was repeatedly informed of the status of the allegations against (b) (3) (B), (b) (6). For example, in November 2019, (b) (6) sent (b) (6) (b) (6) the final memorandum and recommendation on the (b) (3) (B), (b) (6) management inquiry, along with supporting documents for (b) (6) "review and finaliz[ation]."[927] In January 2020, (b) (6) (b) (6) also received and provided comments on a chart of DHS OIG investigations, which included this (b) (3) (B), (b) (6) management inquiry.[928]

In sum, the evidence does not support the allegation that (b) (3) (B), (b) (6) was investigated because of his refusal to investigate IG Cuffari on August 23rd. As explained above, the complaint against (b) (3) (B), (b) (6) was filed in December 2018, and on August 22, 2019, he and (b) (6) set

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[917] DHS OIG Hotline Complaint (b) (3) (B), (b) (6), (b) (6); WHDHS-00000657.
[918] WHDHS-00000657.
[919] *Id.*
[920] *See* Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020); (b) (6) (b) (6) (Feb. 28, 2020).
[921] Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).
[922] WHDHS-00000408.
[923] *Id.*
[924] *Id.*
[925] *Id.*
[926] WHDHS-00000841.
[927] WHDHS-00000808.
[928] WHDHS-00000617.

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the date of August 27th for the interview. Nevertheless, (b) (6) statement during her interview about her awareness of the investigation was inaccurate. Similarly, her statement about her knowledge of (b) (6) participation in the investigation was also inaccurate. Emails show that (b) (6) was briefed about the investigation on several occasions, and that she not only knew about (b) (6) participation in the (b) (6) investigation, she actually suggested it.[929]

5. Investigation of (b) (3) (B), (b) (6)

We also reviewed allegations that (b) (6) and (b) (6) initiated an adverse personnel action or removal action against then (b) (3) (B), (b) (6) for frivolous claims after trying to elicit a series of false misconduct allegations from other employees. In connection with this allegation, we reviewed allegations that (b) (6) and (b) (6) falsified his performance appraisals and that (b) (6) and (b) (6) falsified government documents and directed that false information be created to support a removal action of a SES employee. We also reviewed allegations that (b) (6), (b) (6), and (b) (6) provided false testimony before the Merit Systems Protection Board ("MSPB") about (b) (3) (B), (b) (6) and his performance, and that (b) (6). (b) (6) knowingly caused falsified government documents to be introduced into evidence and considered by a tribunal.

Separately, we reviewed allegations that (b) (6) threatened (b) (3) (B), (b) (6) by directing comments to him about her concealment of a handgun in her purse and her utilization of a concealed carry permit despite the fact that she is not permitted to bring a weapon into the workplace. In connection with this allegation, we were also asked to determine whether (b) (6) unlawfully brought a weapon into the office.

a) Investigation of (b) (3) (B), (b) (6)

The investigation into (b) (3) (B), (b) (6) was the result of several complaints made against him. (b) (3) (B), (b) (6) supervisor, (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), stated that employees in the (b) (3) (B), (b) (6) that (b) (3) (B), (b) (6) supervised reported that he made (b) (6), (b) (6) used (b) (6)

One of the complaints underlying the investigation into (b) (3) (B), (b) (6) is a complaint made by (b) (3) (B), (b) (6).[932] (b) (3) (B), (b) (6) and (b) (3) (B), (b) (6) had a tense email exchange on May 25, 2018 about the transfer of an employee.[933] After (b) (3) (B), (b) (6) wrote to (b) (3) (B), (b) (6) that he should "rethink [his] tact," (b) (3) (B), (b) (6) responded:

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[929] WHDHS-00000410.
[930] Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).
[931] DHS OIG Hotline Complaint (b) (3) (B), (b) (6), (b) (7).
[932] WHDHS-00000635.
[933] *Id.*

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> Really [redacted]? Rethink my tact with you, or what? There was not a single thing in my email that was out of line. Within the last three months, you have talked about sending agents to a [redacted]

In his interview, [redacted] stated that he had witnessed all the behavior he described in the email.[935] [redacted]

For his part, [redacted] stated that when he saw the allegations in [redacted] email, he was in complete shock, because the allegations were completely irrelevant to the issue.[939] When he saw that [redacted] and [redacted] were copied on the email, he had the sense the email was orchestrated.[940]

Around the same time, on June 14, 2018, an anonymous complaint was submitted to the DHS OIG hotline.[941] The complaint alleged that [redacted] The complaint concluded that [redacted] Upon receipt of the complaint, [redacted] wrote to [redacted]:

> Today INV received an anonymous complaint against [redacted] regarding the same or similar allegations made by [redacted]. The complaint was sent through the Hotline and was also sent to Congress. Given the seriousness of the allegations, [redacted] has decided to place [redacted] on Administrative Leave for the allowed 5-10 days while she reviews.[944]

[redacted] told us that she informed [redacted] of the complaints about [redacted].[945] [redacted] told [redacted] that the complaint needed to be investigated,

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[934] *Id.*
[935] Interview with [redacted] (September 15, 2020).
[936] *Id.*
[937] *Id.*
[938] Interview with [redacted] (July 28, 2020).
[939] Interview with [redacted] (Sept. 15, 2020).
[940] *Id.*
[941] WHDHS-00000359.
[942] FW: [redacted] Complaint and IQO review of [redacted]; Complaint dated June 14 2018.pdf.
[943] *Id.*
[944] WHDHS-00000359.
[945] Interview with [redacted] (Sept. 15, 2020).

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but that [redacted] should not be involved in the investigation because [redacted] was an employee in that division.[946] [redacted] said the complaint was sent to the OC, and she then had no input on how it was investigated.[947] [redacted] was then placed on administrative leave.[948]

WilmerHale reviewed two reports that were prepared about the [redacted] investigation—one dated June 10, 2018, from [redacted], to [redacted],[949] and one dated October 3, 2018, from [redacted], to [redacted] her supervisor.[950] [redacted]

Our investigation found no evidence that [redacted], [redacted], or [redacted] initiated an investigation against [redacted] for an improper purpose. Instead, the investigation into [redacted] was initiated as a result of several complaints against him and [redacted]

b) Performance Appraisals

We also investigated an allegation that [redacted] and [redacted] falsified [redacted] performance appraisals. While our investigation uncovered deficiencies with his performance appraisals, we found no evidence that the appraisals were falsified.

[redacted] received four versions of his FY 2018 performance appraisal.[956] In his interview, [redacted] identified a number of problems with the FY 2018 performance appraisals,

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[946] *Id.*
[947] *Id.*
[948] [redacted] AdminLeave6-19-2018.
[949] WHDHS-00000383.
[950] ROI [redacted].
[951] *See* WHDHS-00000383; ROI [redacted].
[952] WHDHS-00000383.
[953] *Id.*
[954] ROI [redacted], at 11-13.
[955] Interview with [redacted] (Sept. 15, 2020); Interview with [redacted] (Sept. 17, 2020). We also looked into whether [redacted] was investigated and/or removed from his position in retaliation for [redacted] We did not find any evidence to support this claim.
[956] FY 2018 Performance Appraisal Closeout; Exhibit B. -[redacted] ([redacted])_FY18 Executive Perf Reissued PII 060419; FY18 Final Performance Appraisal -[redacted]; FY18 Performance Appraisal -[redacted]_SIGNED (1) .

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including with respect to the dates on the appraisals, the signatures, and the allegations mentioned in them.[957] He stated that the appraisals contained a number of unsubstantiated allegations and falsely stated that he was failing in his job.[958]

(b) (3) (B), (b) (6) recalled that the appraisal was delayed because of the government shutdown, which is corroborated by email evidence we reviewed that show the appraisal was discussed after the shutdown.[959] We identified a number of communications in February 2019 about (b) (3) (B), (b) (6) performance appraisal. On February 6, 2019, (b) (6) sent (b) (6) write-up of the appraisal to (b) (6), (b) (6) and (b) (6) for review ahead of submission to the Performance Review Board ("PRB").[960] (b) (6) made substantial edits to the narrative[961] and (b) (6) recirculated a new draft on February 19, 2019.[962] On February 20, 2019, (b) (6) wrote, (b) (6) and I reworked the other three remaining elements a little. (b) (6): if you need assistance with identifying suitable examples to insert I am happy to assist."[963] (b) (6) then circulated a new draft, which (b) (6) and (b) (6) approved.[964] (b) (6) wrote that day, "I agree this strikes the exactly [sic] the right balance. (b) (6) has given the appropriate amount of credit for his contributions to the office while still being very firm on the areas where he has failed to perform at a satisfactory level."[965] (b) (3) (B), (b) (6) received this first FY 2018 performance appraisal on February 21, 2019.[966] In her interview, (b) (3) (B), (b) (6) explained that it was not outside the normal processes for (b) (6), as (b) (3) (B), (b) (6) second-line supervisor, to have been involved in the initial drafting of his performance appraisal.[967]

The appraisal provided to (b) (3) (B), (b) (6) was signed by (b) (6) and dated December 28, 2018.[968] (b) (3) (B), (b) (6) was rated "unsatisfactory" and the summary section included a number of allegations about (b) (3) (B), (b) (6), including that he used (b) (6) It stated that he "referred to (b) (6) The summary cited several specific instances of (b) (3) (B), (b) (6) making (b) (6)

A few days later, on February 25, 2019, (b) (3) (B), (b) (6) sent the two reports of the (b) (3) (B), (b) (6) management inquiry from June and October 2018 to (b) (6) and (b) (6),

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[957] Interview with (b) (3) (B), (b) (6) (July 24, 2020).
[958] *Id.*
[959] Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020); WHDHS-00000048.
[960] WHDHS-00000048.
[961] *Id.*
[962] WHDHS-00000050.
[963] WHDHS-00000053.
[964] *Id.*
[965] *Id.*
[966] FY 2018 Performance Appraisal Closeout; Annotated Timeline (August 10 2020).
[967] Interview with (b) (3) (B), (b) (6) (Oct. 23, 2020).
[968] FY 2018 Performance Appraisal Closeout.
[969] *Id.* at 7.
[970] *Id.* at 8.
[971] *Id.*

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copying [redacted].[972] [redacted] wrote, "I left [redacted] off of this email to prevent any possible 'taint' issue for her at this phase of the process."[973] [redacted] interview that since [redacted] would be serving as [redacted] "higher-level reviewer" should he decide to challenge the findings in his appraisal, [redacted] had told [redacted] that [redacted] should not be included in discussions about the appraisal.[974] However, [redacted] recalled [redacted] being in meetings related to [redacted] appraisal and emails demonstrate that [redacted] continued to be involved in discussions about his appraisal after this date.[975] In addition, information from the management inquiry was included in the FY2018 appraisal.[976]

In March 2019, [redacted] filed a complaint [redacted]

On April 22, 2019, [redacted] met with [redacted] in person to discuss his allegations.[982] [redacted] stated that the allegations against him were false and that he felt he was being treated differently from other SES employees.[983] [redacted] confirmed that other employees who had allegedly engaged in misconduct were not treated as harshly as [redacted].[984] Specifically, [redacted] recalled that little was done concerning alleged [redacted] lodged against a similarly situated SES official [redacted], but that [redacted] was "persecuted significantly" for allegedly making [redacted]

On May 2, 2019, [redacted] wrote to [redacted] and [redacted] that because the FY 2018 appraisal "cites incidents that could not have occurred in the appraisal period, there is reasonable cause to

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[972] WHDHS-00000380.
[973] *Id.*
[974] Interview with [redacted] (Sept. 15, 2020).
[975] Interview with [redacted] (Sept. 3, 2020); WHDHS-00000055.
[976] Exhibit B. - [redacted] ([redacted]) FY18 Executive Perf Reissued PII.
[977] Interview with [redacted] (Sept. 15, 2020).
[978] WHDHS-00000063.
[979] *Id.*
[980] *Id.*
[981] Interview with [redacted] (Aug. 27, 2020).
[982] Interview with [redacted] (July 24, 2020).
[983] *Id.* WHDHS-00000391.
[984] Interview with [redacted] (Aug. 7, 2020).
[985] *Id.*

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believe that the evaluation violates SES performance laws, a prohibited personnel practice under 5 U.S.C. § 2302(b)(12)."[986]

On June 4, 2019, (b) (6) sent (b) (3) (B), (b) (6) a revised performance appraisal.[987] In the letter accompanying the reissued appraisal, (b) (6) stated that DHS OIG was rescinding and reissuing the FY 2018 appraisal (b) (6) She indicated that "the only substantive revisions to the appraisal" were changes to the narrative section containing the allegations.[989]

A comparison of the February 21, 2019 version and the June 4, 2019 version of the appraisals confirmed that the only difference between the versions was that several of the older allegations pertaining to (b) (3) (B), (b) (6) were removed, (b) (3) (B), (b) (6) The June 4, 2019 appraisal included the same cover page as the one sent on February 21, 2019, with (b) (6) electronic signature dated December 28, 2018.[991] On June 5, 2019, (b) (3) (B), (b) (6) submitted a request for higher-level review of his June 4, 2019 performance appraisal.[992] (b) (6) did not sign the appraisals as the "higher level review" authority.[993] Rather, that field is left blank on each of the appraisals.[994] However, (b) (6) wrote a statement on June 20, 2019 stating that she performed the higher level review and approved the rating.[995] DHS OIG submitted the appraisal to the PRB on June 24, 2019.[996]

On July 2, 2019, the PRB wrote that it agreed with (b) (3) (B), (b) (6) rating but recommended changes to the narrative descriptions, which (b) (6) and (b) (6) then discussed.[997] On July 9, 2019, (b) (6) sent the performance appraisal to (b) (6), the PRB chair, for his "electronic signature."[998] After internal discussions following the PRB's recommendation, DHS OIG did not make any changes to the narrative.[999]

On July 16, 2019, (b) (6) sent the appraisal to (b) (3) (B), (b) (6) attorneys reflecting PRB review,[1000] but it was the wrong version of the appraisal. Instead of sending the June 4, 2019 appraisal with the PRB chair's signature, (b) (6) sent the rescinded February 21, 2019 appraisal with the PRB chair's signature.[1001] On July 18, 2019, (b) (6) notified (b) (6)

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[986] WHDHS-00000433.
[987] Exhibit B. -(b) (3) (B), (b) (6) ((b) (3) (B), (b) (6))_FY18 Executive Perf Reissued PII.
[988] WHDHS-00000394.
[989] *Id.*
[990] *Id.* Exhibit B. -(b) (3) (B), (b) (6) ((b) (3) (B), (b) (6))_FY18 Executive Perf Reissued PII 060419.
[991] *Id.*
[992] WHDHS-00000082; WHDHS-00000086.
[993] FY18 Performance Appraisal - (b) (3) (B), (b) (6) SIGNED.
[994] FY18 Final Performance Appraisal -(b) (3) (B), (b) (6); FY18 Performance Appraisal - (b) (3) _SIGNED.
[995] WHDHS-00000163.
[996] WHDHS-00000082; WHDHS-00000086.
[997] WHDHS-00000445.
[998] WHDHS-00000091.
[999] WHDHS-00000450; WHDHS-00000093.
[1000] WHDHS-00000432.
[1001] *Id.* FY18 Final Performance Appraisal -(b) (3) (B), (b) (6).

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(b) (6) that he had "sent the old, rescinded appraisal" to (b) (3) (B), (b) (6) lawyers and instructed him to "retract and send the new appraisal."[1002] On July 18, 2019, (b) (6) wrote to (b) (3) (B), (b) (6) lawyers, "Due to an administrative error, the wrong performance appraisal was sent to you. I need to rescind the removal notice and performance appraisal and will reissue shortly."[1003]

On July 23, 2019, (b) (6) wrote to (b) (6) that he received the correct signed performance appraisal from PRB chair (b) (6) .[1004] He then sent the revised performance appraisal to (b) (3) (B), (b) (6) lawyers, along with a notice for (b) (3) (B), (b) (6) dated July 23, 2019 removing him from his SES role and demoting him to a GS-15 position effective August 23, 2019.[1005] In the email, (b) (6) explained the administrative error to (b) (3) (B), (b) (6) lawyers, stating that he had "inadvertently sent the [PRB] Chair, (b) (6) , the rescinded appraisal to sign rather than requesting he sign and return to [him] the correct appraisal he already had."[1006]

On July 25, 2019, (b) (6) and (b) (6) testified in an MSPB hearing regarding (b) (3) (B) (b) (3) (B), (b) (6) performance appraisals.[1007] In her sworn testimony, (b) (6) testified that she was not aware of (b) (3) (B), (b) (6) As discussed above, emails demonstrate that (b) (6) had been aware of (b) (3) (B), (b) (6) and that she was not in favor of granting it.[1009] Two days after the MSPB hearing, DHS OIG filed a motion to correct the record accompanied by an affidavit from (b) (6) correcting the statements she made regarding (b) (3) (B), (b) (6) [1010] In the affidavit, she noted that contrary to her sworn testimony, (b) (3) (B), (b) (6) which DHS OIG denied.[1011] The MSPB judge denied DHS OIG's motion to correct the record.[1012]

With respect to the allegations that we investigated, we have not identified any evidence that (b) (6) (b) (6) (b) (6) , or (b) (6) falsified the appraisals in any way. While there were changes made between the first and second versions of the appraisal, those changes were made in response to issues identified by (b) (3) (B), (b) (6) and clearly communicated to (b) (3) (B), (b) (6) lawyers. With regard to the third and fourth versions of the appraisals, reflecting the PRB's final review, our review confirmed that the wrong, retracted appraisal was sent to (b) (3) (B), (b) (6) as the result of an administrative error. The mistake was explained to (b) (3) (B), (b) (6) lawyers and the correct appraisal was sent to (b) (3) (B), (b) (6) lawyers on July 23, 2019.

[1002] WHDHS-00000442.
[1003] WHDHS-00000443.
[1004] WHDHS-00000178.
[1005] WHDHS-00000447; (b) (6) (b) (6), (b) (2) (August 22 2019).
[1006] *Id.*
[1007] *See generally* July 24, 2019 Transcript of Proceeding Administrative Hearing of the Merit Systems Protection Board ("MSPB Hearing Tr.").
[1008] MSPB Hearing Tr. 168:1-6.
[1009] WHDHS-00000063.
[1010] (b) (2), (b) (6) -DocNum (b) (6) Affidavit.
[1011] *Id.*
[1012] Order Denying Motion to Amend Record.

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While (b) (3) (B), (b) (6) has alleged that the incorrect dates and different signatures for the PRB officer are evidence that the appraisals were falsified, we did not find evidence to support that claim. The same date of December 28, 2018 appears on all four appraisals as a result of (b) (6) (b) (6) electronic signature. The date is crossed out on the fourth appraisal and replaced with June 4, 2019 in handwriting. The different signature for the PRB chair appears to be the result of an electronic signature being included on the third appraisal, while a manual signature was included on the fourth one.

c) Removal from SES

On August 22, 2019, (b) (6) wrote a letter to (b) (3) (B), (b) (6) stating that his telework status would end on September 3, 2019, at which point he would receive more information about his duties.[1013] On September 17, 2019, (b) (3) (B), (b) (6) returned to work at DHS-OIG as a GS-15 employee in (b) (7)(A).[1014] We did not uncover any evidence that this action was pretextual or in retaliation for a protected disclosure or activity.

d) Concealed Weapon Incident

Shortly after returning to work at DHS OIG, on September 26, 2019, (b) (3) (B), (b) (6) wrote to IG Cuffari to report misconduct involving (b) (6).[1015] (b) (3) (B), (b) (6) conveyed that during an "icebreaker" in an (b) (6) meeting, (b) (6), (b) (7)(C) made comments about a concealed weapon.[1016] He did not specify the date of the meeting. In his letter to IG Cuffari, (b) (3) (B), (b) (6) wrote:

(b) (3) (B), (b) (6), (b) (7)(C)

In his interview, (b) (3) (B), (b) (6) described the meeting at which (b) (6), (b) (7)(C) made these comments and reiterated his sense that (b) (6), (b) (7)(C) was directing her comments to him in a threatening manner.[1018] Other witnesses, including (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), recalled (b) (6), (b) (7)(C) comments regarding a concealed weapon.[1019] However, no witnesses corroborated (b) (3) (B), (b) (6) view that (b) (6), (b) (7)(C) was directing the comment to him.

(b) (6), (b) (7)(C) statement was made before a large gathering of DHS OIG employees and, while it may have exhibited poor judgment on her part, we found no evidence that her comments were

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[1013] WHDHS-00000185.
[1014] (b) (3) (B), (b) (6) Annotated Timeline.
[1015] WHDHS-00000650.
[1016] Interview with (b) (3) (B), (b) (6) (July 24, 2020).
[1017] WHDHS-00000650.
[1018] Interview with (b) (3) (B), (b) (6) (July 24, 2020).
[1019] Interview with (b) (3) (B), (b) (6) (July 24, 2020).

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intended to be a threat to the group generally, or to (b) (3) (B), (b) (6) specifically, or that (b) (6), (b) (7)(C) in fact brought a concealed handgun into the DHS OIG building.

6. Disciplinary Action Taken Against (b) (3) (B), (b) (6)

We reviewed allegations that (b) (6) engaged in misconduct related to (b) (3) (B), (b) (6), (b) (3) (B), (b) (6) (b) (3) (B), (b) (6), including that she unjustifiably disciplined (b) (3) (B), (b) (6) when his conduct was underserving of serious punishment.

(b) (6)

Our investigation did not reveal sufficient evidence to substantiate the allegation that (b) (6) unjustifiably disciplined (b) (3) (B), (b) (6). While (b) (3) (B), (b) (6) did complain that (b) (6) inappropriately handled his suspension, and IG Cuffari subsequently reduced the punishment, we have not found any evidence to indicate that (b) (6) engaged in reprisal against him following his appeal, or that her initial discipline was unjustified.

C. Misconduct, Malpractice or Unprofessional Behavior

1. IG Cuffari Questions (b) (6) *Drafting of an Ethics Screening Agreement*

We reviewed an allegation that (b) (6) purposefully drafted a "defective and unworkable" ethics screening agreement. Against the backdrop of (b) (6) allegation that IG Cuffari had

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[1020] Interview with (b) (3) (B), (b) (6) (July 22, 2020).
[1021] WHDHS-00000389.
[1022] Interview with (b) (3) (B), (b) (6) (July 22, 2020).
[1023] *Id.*
[1024] *Id.*
[1025] *Id.*
[1026] *Id.*
[1027] *Id.*
[1028] *Id.*
[1029] *Id.*

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violated his recusal obligations regarding the CIA investigation and other efforts to keep information from IG Cuffari, he questioned the ethics screening agreement presented to him by (b) (6), which would have given (b) (6) authority to screen matters from IG Cuffari without his knowledge or involvement.[1030]

As a Presidential appointee requiring Senate confirmation, IG Cuffari had 90 days from the date of his confirmation, July 25, 2019, to comply with the terms of his ethics agreement, including by submitting a screening agreement.[1031] (b) (6) worked to prepare a draft agreement with (b) (6) (b) (6) (b) (6), and (b) (6) (b) (6).[1032]

On October 17, 2019, (b) (6) emailed (b) (6) and another attorney in the OC, attaching a draft screening agreement and other ethics forms for IG Cuffari's signature.[1033] On October 23, 2019, (b) (6) forwarded (b) (6) email to IG Cuffari with the documents attached.[1034] (b) (6) wrote that IG Cuffari had "previously signed a hard copy of the screening agreement that hadn't been updated." (b) (6) further noted that the documents were all due the next day on October 24, 2019 (three months after IG Cuffari's confirmation).[1035]

IG Cuffari forwarded (b) (6) email to (b) (6), for his review.[1036] (b) (6) replied by asking IG Cuffari if he had seen the following provision of the draft screening agreement:

> I have instructed the Counsel to the Inspector General ("Counsel") (or Deputy Counsel in the absence or unavailability of the Counsel) to screen all DHS matters directed to my attention that involve outside entities or that require my participation, to determine if they involve any of the individuals, entities, or organizations listed above, and if they do to direct these matters to the Deputy Inspector General (the Alternate Official) for action or assignment, without my knowledge or involvement.[1037]

(b) (3) (B), (b) (6) stated that he was concerned that the paragraph assigned responsibility for screening matters to (b) (6).[1038]

On the same day (b) (6) forwarded the documents to IG Cuffari, October 23, 2019, (b) (6) emailed (b) (6) to say, "He hasn't responded to any of my emails including the ethics

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[1030] WHDHS-00000855.
[1031] *See* 5 C.F.R. § 2634.802(b); WHDHS-00000461.
[1032] WHDHS-00000461.
[1033] WHDHS-00000467.
[1034] WHDHS-00000468
[1035] *Id.* In her email, (b) (6) indicated that she had sent (b) (6) email to IG Cuffari on October 17, 2019 but that due to a technology issue she suspected that the email did not get delivered. WHDHS-00000468.
[1036] WHDHS-00000855.
[1037] *Id.*
[1038] Response to WilmerHale Investigation from (b) (3) (B), (b) (6) (Dec. 8, 2020).

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agreement. Trying to figure out what to make of it."[1039] (b) (6) responded that IG Cuffari had replied to one email she sent earlier that day but "otherwise crickets."[1040]

Later that day, IG Cuffari replied to (b) (6), "I am disappointed that this was not brought to me at an earlier date, as even one week ago the importance of this matter was not identified among the countless e-mails I received. I intend to address this later with you."[1041] IG Cuffari then asked (b) (6) a series of questions about the screening agreement, including whether several paragraphs in the agreement, including the paragraph that (b) (6) had flagged, were part of a "template form used department wide"; whether the provisions of agreement were "substantially identical to what John Roth and (b) (6) and their predecessors signed"; and whether they were "substantially identical" to what other IGs sign.[1042] Finally, IG Cuffari noted that, "rather than the cumbersome and burdensome process outlined" in the draft agreement, he wondered whether a better approach would be for him to list the matters from which he is recused and that, if someone approached him about one of those matters, he would direct that person to the DIG or AIG for INV.[1043]

(b) (6) replied to IG Cuffari, noting that they had discussed the screening agreement two weeks earlier and that IG Cuffari had signed a prior draft that just needed to be updated.[1044] (b) (6) statement was incorrect, as IG Cuffari had not signed the previous agreement; (b) (6) informed (b) (6) of this fact after (b) (6) incorrectly advised IG Cuffari that he had already signed the agreement.[1045]

(b) (6) also answered some of IG Cuffari's questions. She explained that the paragraphs IG Cuffari asked about were from a template shared by DHS.[1046] She also answered that (b) (6) would not have signed a screening agreement since he was not a Senate-confirmed appointee and that Mr. Roth signed a screening agreement that came from DHS, so it would have likely had substantially similar language.[1047] (b) (6) also answered that she did not know whether other IGs had signed agreements with similar language.[1048]

After replying to IG Cuffari, (b) (6) wrote to (b) (6) from DHS and informed her that she answered IG Cuffari's "many questions about the agreement" but that she was "[d]oubtful that they allayed his concerns."[1049] (b) (6) continued, "I don't know what he's thinking but I suspect he doesn't want a formal process, that he wants to make decisions about what needs to be discussed for possible recusal without my active involvement/knowledge up-front."[1050] (b) (6).

[1039] WHDHS-00000190.
[1040] *Id.*
[1041] WHDHS-00000468.
[1042] *Id.*
[1043] *Id.*
[1044] WHDHS-00000191.
[1045] WHDHS-00000472.
[1046] WHDHS-00000191.
[1047] *Id.*
[1048] *Id.*
[1049] WHDHS-00000470.
[1050] *Id.*

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(b) (6) noted that she had previously gone into "great depth" with IG Cuffari on his ethics and pledge requirements.[1051] (b) (6) replied (erroneously) that IG Cuffari "signed the darn thing two weeks ago when the only difference was what he was subject to re[c]usal on. So these 11th hour issues make no sense. Unless he didn't read what he signed."[1052]

On October 24, 2019, IG Cuffari emailed (b) (6), and attached his revised screening agreement.[1053] When (b) (6) received a copy, she noted that IG Cuffari "opted to change the screening arrangement" and asked that (b) (6) send to her the list of matters from which IG Cuffari recused himself.[1054] (b) (6) was concerned that the revised screening agreement "might not cover prospective items" but that IG Cuffari had previously acknowledged his continued obligation to recuse himself from matters that "he knows or should know require[] his recusal."[1055] (b) (6) replied, "[f]ascinating changes."[1056] Notably, the finalized agreement did not authorize (b) (6) to screen matters on IG Cuffari's behalf.[1057]

In sum, our investigation did not reveal that (b) (6) drafted a "defective and unworkable" ethics agreement. It appears that (b) (6), and not (b) (6) drafted the agreement, and that it, including the paragraph that (b) (6) initially found concerning, appeared to be modeled after a standard Office of Government Ethics form.[1058] But the evidence did demonstrate that (b) (6) (b) (6) erred by claiming that IG Cuffari had signed a previous version of the agreement when in fact he had not. Moreover, given (b) (6) efforts to undermine IG Cuffari and the atmosphere of distrust within the leadership of the agency, it is unsurprising that IG Cuffari objected to the ethics screening agreement as originally drafted entrusting her to screen his matters.

VIII. CONCLUSION

In sum, our investigation revealed that (b) (6), with the assistance of (b) (6) and (b) (6) (b) (6), engaged in a systematic effort to undermine (b) (6) in order to advance her goal of leading the agency. This effort included, among other things, insubordination and disrespect towards (b) (6) in front of the agency's senior staff, badgering (b) (6) to retire, lobbying senior staff to convince him to leave, and overseeing the EMOT investigation that directly implicated him and publicizing its results. Current and former DHS OIG employees described (b) (6)

[1051] *Id.*
[1052] *Id.*
[1053] WHDHS-00000473.
[1054] *Id.*
[1055] *Id.*
[1056] *Id.*
[1057] WHDHS-00000809.
[1058] Flexibility in Ensuring and Documenting Compliance with Ethics Agreements, Off. Of Govt. Ethics, (Nov. 4, 2014), available at https://www.oge.gov/Web/OGE.nsf/0/E527228F98093F59852585BA005BEC70/$FILE/eecbe744513c40b7a3c049def23f2fdd3.pdf; Effective Screening Arrangements for Recusal Obligations, Off. Of Govt. Ethics (Jun. 1, 2004), available at https://www2.oge.gov/web/oge.nsf/All%20Advisories/1E1D99C40A8CC70E85257E96005FBDBA/$FILE/DO-04-012.pdf?open.

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insubordination and disrespect towards (b) (6) as "uncomfortable," "awkward," "childish," and "frustrating."

With respect to IG Cuffari, (b) (6), with the assistance of (b) (6) and to a lesser degree (b) (6), publicly disparaged him to other DHS OIG employees. For example, (b) (6) and (b) (6) made statements that his degree came from a "diploma mill." (b) (6) also made statements that he was "dumber than a box of rocks" and "only a GS-14." (b) (6), (b) (6), and (b) (6) reached outside the agency to try and scuttle IG Cuffari's nomination as well, contacting individuals in DHS, CIGIE, Congress, and the (b) (6). In the months leading up to his confirmation, (b) (6) manipulated the hiring process "so [the] new IG is limited." (b) (6) repeatedly referred to DHS OIG as "my agency" and that she needed to protect "her people" from IG Cuffari. Once he was confirmed, (b) (6) and (b) (6) made concerted efforts to prevent information from reaching IG Cuffari, and even threatened DHS OIG employees who directly provided IG Cuffari with reports and documents that he requested. (b) (6) (b) (6) and (b) (6) attempted to persuade the (b) (6) to investigate IG Cuffari's official travel.

Their efforts created a culture of fear and retribution within the agency directed at employees deemed insufficiently loyal. (b) (6) described (b) (6) as having a "Machiavellian" leadership style and stated that she would "trash" people who did not support her. (b) (6) was described by employees as "cutting," "mean," and "abusive" to anyone who disagreed with her. Disfavored employees found themselves threatened with poor performance reviews or reassigned to different positions.

While we could not substantiate other allegations, based on the documents reviewed and the witnesses available to us, we found that the evidence demonstrated that (b) (6) —with the assistance of (b) (6) and (b) (6) often planted and then cultivated seeds of divisiveness, disorder, and dissension to the detriment of DHS OIG and its mission.

Submitted By (b) (6)

Appendix A:

Remaining Unconfirmed Allegations

Allegations	Findings
(b) (6) allegedly approved reports that she knew to be materially false or misleading.	We did not find any evidence of materially false or misleading information in reports.
(b) (6) allegedly engaged in prohibited personnel practices, including intentionally failing to provide performance plans and evaluations.	We did not find any evidence that (b) (6) engaged in prohibited personnel practices. Although we found evidence that (b) (3) (B), (b) (6) did not receive a performance plan, (b) (6) was not responsible for providing a performance plan to (b) (3) (B), (b) (6)
(b) (6) and (b) (6) allegedly failed to take particular workplace actions based on favoritism, and (b) (6) allegedly failed to implement or comply with appropriate procedures for recusal.	As detailed in the report, our review found that there was no clear standard applied for the initiation of an investigation against a DHS OIG employee following a complaint, but we did not find evidence that (b) (6) or (b) (6) (b) (6) failed to take particular workplace actions on the basis of favoritism or that (b) (6) failed to comply with recusal procedures.
(b) (6) (b) (6)	Our investigation identified a number of emails in which (b) (6) (b) (6) Because this allegation forms the basis of (b) (6) (b) (6) we did not reach a conclusion on this allegation.

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Allegations	Findings
(b) (6) allegedly failed to adequately maintain records, including of key matters such as settlements and settlement agreements.	In her interview, (b) (3) (B), (b) (6) said she was not aware of having violated recordkeeping requirements. We did not find any evidence that she did.
(b) (6), (b) (6), and (b) (6) allegedly failed to comply with recordkeeping requirements and agency procedures regarding electronic communications.	In her interview, (b) (3) (B), (b) (6) said she was not aware of having violated recordkeeping requirements. We did not find any evidence that (b) (6), (b) (6), or (b) (6) violated recordkeeping requirements.
(b) (6), (b) (6) and (b) (6) allegedly failed to comply with OIG policies regarding text messages and cell phone use (e.g., limiting personal use and prohibiting inappropriate use to view explicit material or engage in otherwise prohibited activity).	In her interview, (b) (3) (B), (b) (6) said she was not aware of having violated OIG policies regarding text messages and cell phone use. We did not find any evidence that she did. In her interview, (b) (3) (B), (b) (6) said she was not aware of having violated OIG policies regarding text messages and cell phone use. We did not find evidence that she did. Although at least one person told us that (b) (6) (b) (6) sent text messages during meetings, we did not find evidence that (b) (6) (b) (6) violated OIG policies regarding text messages and cell phone use.

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Allegations	Findings
(b) (6) allegedly failed to recuse herself despite a conflict of interest and also failed to preserve relevant data.	DHS OIG has indicated that this allegation refers to actions by (b) (6) relating to DHS official (b) (6) and a letter to Congress accusing her of not cooperating with a Department of State OIG investigation. We did not find any evidence confirming this allegation in our investigation.
(b) (6) and (b) (6) allegedly failed to follow telework procedures.	In her interview, (b) (3) (B), (b) (6) said she was not aware of having violated telework procedures. We did not find any evidence that (b) (6) or (b) (6) violated telework procedures.
(b) (6) allegedly improperly selected reviewing officials who would provide ratings for SES personnel, including herself, at DHS OIG.	We were not able to interview (b) (6), who we understand to be the person with knowledge of this issue. We did not find any other evidence to substantiate this allegation.
(b) (6) allegedly abused the FOIA response process and improperly accessed the Relativity database.	In her interview, (b) (3) (B) said she was not aware of any allegations related to abuse of the FOIA response process or Relativity databases. We did not find any evidence that she abused the FOIA response process or improperly accessed the Relativity database.
(b) (6) allegedly caused false information to be transmitted to the Office of Special Counsel.	It is alleged that (b) (6) withheld responsive documents from the DHS OIG response to OSC counsel regarding the complaint by (b) (3) (B), (b) (6) We did not find any evidence that this occurred.

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Allegations	Findings
(b) (6) allegedly permitted her personal political preferences to guide or otherwise manipulate official agency actions.	We did not find any evidence that (b) (6) permitted her personal preferences to influence her work.

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All redactions in this document made pursuant to FOIA Exemption 3(b) are also subject to redaction pursuant to FOIA Exemption 6.

Appendix B

I. INTERVIEW METHODOLOGY

In light of the global COVID-19 pandemic, all interviews were conducted by videoconference. Most interviews were conducted over the Microsoft Teams platform, with a few exceptions.[1059]

All interviewees were informed that they were being asked to provide information as part of an investigation being conducted by DHS OIG into alleged misconduct and/or improper performance of official duties.

The interviewers explained that they were WilmerHale attorneys who had been retained by DHS OIG, and that they did not represent the interviewee or any other individual at DHS in a personal capacity. Interviewers stated that the discussion was covered by the attorney-client privilege and that the privilege belonged to DHS OIG, and not to the interviewee personally. The interviewers further explained that DHS OIG could decide whether, and to what extent, to waive the privilege and share the contents of the interviews with third parties, including other government agencies or Congress, without notifying the interviewee.

All interviewees were asked not to discuss the nature of the interview with any other persons, except any private legal counsel retained by the interviewee related to this investigation.

WilmerHale interviewed 53 individuals, many of whom are current or former DHS OIG personnel. Some individuals were interviewed on multiple occasions.

In total, WilmerHale conducted approximately 71 interviews of the following 53 individuals:

- (b) (3) (B), (b) (6) ((b) (3) (B), (b) (6));
- (b) (3) (B), (b) (6));
- (b) (3) (B), (b) (6) ((b) (3) (B), (b) (6));
- (b) (3) (B), (b) (6)
- (b) (3) (B), (b) (6) ((b) (3) (B), (b) (6));
- (b) (3) (B), (b) (6) ((b) (3) (B), (b) (6) ;
- (b) (6)
- (b) (3) (B), (b) (6) ((b) (3) (B), (b) (6)
- Joseph Cuffari (Inspector General);
- (b) (6)
- (b) (3) (B), (b) (6) ((b) (3) (B), (b) (6));
- (b) (6)

[1059] (b) (3) (B), (b) (6) interview was conducted over Adobe Connect (b) (3) (B), (b) (6) (b) (3) (B), (b) (6) (b) (3) (B), (b) (6) , and a few other individuals were interviewed by teleconference.

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(b) (3) (B), (b) (6)

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II. DOCUMENT REVIEW METHODOLOGY

A. Document Review

Overall, we reviewed over 42,000 documents. In conducting this investigation, WilmerHale collected and reviewed a broad range of materials, including:

Emails: WilmerHale collected over 1.3 million email communications from a dozen former and current DHS OIG employees. The emails spanned a period of nearly three years, and we applied targeted search terms and parameters to identify relevant emails for the investigation.[1060] These search terms were designed to target emails relating to the allegations of misconduct against (b) (6) (b) (6) (b) (6), and (b) (6) at issue in our investigation. Overall, we reviewed over 34,000 emails and attachments.

Computer Review: Additionally, WilmerHale obtained over 13,500 documents that DHS OIG IT remotely collected in February 2020 from DHS computer devices issued to (b) (6), (b) (6) (b) (6), and (b) (6).[1061] Through a targeted analysis, WilmerHale identified and reviewed over 1,900 potentially relevant documents. WilmerHale also retained forensic experts who imaged all six DHS-issued laptops used by (b) (6), (b) (6), and (b) (6) (two laptops per employee). The forensic experts were able to extract content from all six laptops. Through a targeted analysis, WilmerHale identified and reviewed over 4,500 files for previously unidentified relevant content.

Cell Phone Materials: The forensic experts also analyzed data stored on the DHS OIG cell phones issued to (b) (6), (b) (6), and (b) (6). The forensic experts were able to extract some information from all three cell phones. The data they were able to extract included, but was not limited to, text messages, voicemails, chats, emails and documents. WilmerHale reviewed all potentially relevant content.

Deleted Materials: WilmerHale learned that prior to her departure, (b) (6) deleted approximately 6,000 files from her laptop. DHS OIG was able to restore approximately 3,500 of these files for review. WilmerHale performed an analysis of the metadata for these files to identify only files that were reviewable and could potentially be business related. This yielded a document population of approximately 2,100 files, all of which were reviewed.

Transfer of Electronic Files: We reviewed an allegation that on May 2, 2020, (b) (6) transferred a "massive batch" of electronic files to (b) (6) shortly before (b) (6) separation from DHS OIG. In her interview, (b) (3) (B), (b) (6) confirmed that she had transferred files related to her work as (b) (6) to a shared drive for (b) (6) Our investigation confirmed that

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[1060] For most of our custodians, we were given full access to the data set and were able to review any files that hit on our search terms. However, we were not given full access to the data set for IG Dr. Cuffari. Instead, we provided a list of search terms and a date restriction to the counsel's office of DHS OIG, who applied those terms to the data set and then reviewed the resulting search hits before providing access to us. We understand that certain documents may have been withheld from our review set on the basis of irrelevancy, privilege, or other sensitivity.

[1061] However, this collection was not a complete inventory of documents stored on these devices, as DHS OIG IT was not able to retrieve all documents due to technical limitations.

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(b) (6) accessed files from a DHS OIG shared drive folder called F:\Groups\OIG-wide\Transition (b) (6)\." WilmerHale was unable to review the files located in this folder because this folder was not backed up on DHS OIG's server. Nevertheless, we did review the names of the files in the folder, which suggest that (b) (6) transferred these files to the (b) (6) shared drive for legitimate work-related purposes.

Personnel Files: WilmerHale obtained and reviewed personnel files for a number of current and former DHS OIG employees, including (b) (6), (b) (6) and (b) (6).

Other Documents: WilmerHale obtained and reviewed several hundred additional relevant files from DHS OIG. These files included administrative documents, documents excerpted from hard-copy personnel files, policies and procedures, standards of conduct and codes of ethics, organizational charts, and DHS OIG hotline complaints, among others.

B. Limitations on the Investigation

1. Key witnesses refused to be interviewed

WilmerHale requested interviews of a number of additional witnesses, but some were unwilling to participate in an interview. Of those witnesses, some were compelled to participate in the interview by his/her employer.[1062] However, some key witnesses refused to be interviewed and could not otherwise be compelled to participate:

- (b) (6): (b) (6) is one of the three subjects of this investigation, and is thus a primary person of interest. She would likely have been able to share information related to her intentions, as well as her observations and recollections of key events. On August 6, 2020, WilmerHale contacted (b) (6) to inquire as to whether (b) (6) would make herself available for an interview. That same day, (b) (6) informed WilmerHale that (b) (6) would not make herself available for an interview.

- (b) (6): (b) (6) served as (b) (6) of the CIGIE Integrity Committee during the relevant time period, and he would likely have information concerning the CIGIE IC's investigations process generally, as well as the investigations of (b) (6), IG Cuffari, and (b) (6). (b) (6) would likely also be able to discuss whether certain investigations were referred to the CIGIE IC and explain why the committee declined to investigate in some instances. On September 18, 2020, WilmerHale contacted (b) (6) to inquire as to whether he would agree to be interviewed. After receiving no response, WilmerHale contacted (b) (6) again on September 21, 2020. That same day, (b) (6) noted that he would not agree to be interviewed.

- (b) (6): (b) (6), (b) (3) (B) is the former (b) (6), (b) (3) (B) to IG Cuffari. (b) (6), (b) (3) (B) would likely have information concerning the misconduct that allegedly took place during his tenure at DHS OIG, and efforts to undermine IG Cuffari. In July 2020, WilmerHale contacted (b) (6), (b) (3) (B) to inquire as to whether (b) (6), (b) (3) (B) would make

[1062] These witnesses included (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), and (b) (3) (B), (b) (6).

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himself available for an interview. In September 2020, (b) (6), (b) (3) (B) counsel, (b) (6) (b) (6) . spoke with WilmerHale to discuss the nature of the interview. Thereafter, (b) (6) represented that (b) (6), (b) (3) (B) was unable to sit for an interview due to (b) (6), (b) (3) (B), but he would answer written questions. WilmerHale sent written questions to (b) (6), (b) (3) (B) on October 6, 2020. On December 9, 2020, (b) (6), (b) (3) (B) provided responses to the written questions. With the exception of these written responses, we were not able to interview (b) (6), (b) (3) (B) or show him any relevant documents.[1063]

- (b) (6) : As the (b) (6) , (b) (6) would likely be familiar with CIGIE's interactions with DHS OIG during the relevant time-period as well as his interactions with IG Cuffari and (b) (6) . In September 2020, WilmerHale contacted (b) (6) to inquire as to whether he would make himself available for an interview. On September 15, 2020, (b) (6) notified WilmerHale that (b) (6) was "not in a position to" sit for an interview related to this investigation.

- (b) (6) : (b) (6) is the (b) (6) , and she is the (b) (6) . (b) (6) and (b) (6) contacted (b) (6) to discuss IG Cuffari's nomination before he was confirmed. (b) (6) would likely have information about these discussions, and in particular, whether she recommended (b) (6) . (b) (6) contact the DHS White House liaison. In July 2020, WilmerHale contacted (b) (6) (b) (6) to inquire as to whether she would agree to an interview. On September 15, 2020, (b) (6) notified WilmerHale that (b) (6) was "not in a position to" sit for an interview related to this investigation.

- (b) (6) : As (b) (6) , (b) (6) would likely be familiar with complaints filed with OSC, including allegations of reprisal filed by (b) (3) (B), (b) (6) in November 2019. In July 2020, WilmerHale contacted (b) (6) to inquire as to whether he would make himself available for an interview. On July 30, 2020, (b) (6) notified WilmerHale that the General Counsel of OSC contacted her to convey that (b) (6) declined to be interviewed.

- (b) (6) : (b) (6) (b) (6) was allegedly selected by (b) (6) to serve on the Performance Review Board (PRB). The PRB approves all performance evaluations of SES employees in the DHS OIG. (b) (6) allegedly recused himself when (b) (6) (b) (6), (b) (2) from IG Cuffari, an action DHS OIG asked WilmerHale to investigate. (b) (6) would likely have spoken to his selection process for the PRB, his relationship with (b) (6) , and the reason he recused himself from (b) (6) review. In August 2020, WilmerHale contacted (b) (6) to inquire as to whether he would agree to an interview. On August 26, 2020, (b) (6) responded to our inquiry noting that he believed participating in the interview would be "problematic." He did not provide any additional detail as to why. On September 11, 2020, WilmerHale contacted (b) (6) to confirm his position about attending the interview. WilmerHale received no response. On September 25, 2020, (b) (6)

[1063] (b) (3) (B), (b) (6) Response to WilmerHale Investigation 12-8-20.

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notified WilmerHale that (b) (6) was "uncomfortable" proceeding with an interview and his employer did not want to compel him to sit for the interview.

- (b) (6) (b) (6) (b) (6) (b) (6) likely would have had information concerning the Tecate Report; DHS OIG's telework policy; and various other allegations of misconduct and mismanagement. In September 2020, WilmerHale contacted (b) (6) to inquire as to whether he would make himself available for an interview. On September 23, 2020, (b) (6) (b) (6) responded noting that he is on military orders and is therefore not available for the interview. (b) (6) is on active military duty until March 1, 2021.

Some other potential witnesses were unreachable.[1064]

[1064] Those witnesses included (b) (6) (b) (6) (b) (6)

(b) (6); (b) (3) (B)
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(b) (6); (b) (3) (B)
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(b) (6); (b) (3) (B)
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Exhibit D

RON JOHNSON, WISCONSIN, CHAIRMAN

ROB PORTMAN, OHIO
RAND PAUL, KENTUCKY
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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510–6250

December 6, 2019

Joseph Cuffari
Inspector General
Department of Homeland Security
Office of the Inspector General
245 Murray Lane S.W.
Washington, D.C. 20528-0305

Dear Inspector General Cuffari:

As the Chairmen and Ranking Members of the undersigned committees, we want to congratulate you on your unanimous Senate confirmation in July. You have our collective commitment to ensuring that you have the resources and authorities you need to provide independent oversight and promote integrity and accountability within the Department of Homeland Security (DHS). We write today to express serious concern about the cumulative effect of longstanding management and operational challenges within the Office of the Inspector General (OIG) that threaten to undermine that critical mission.

DHS's OIG is responsible for the oversight of an agency with a budget of more than $70 billion divided across dozens of components tasked with securing the homeland, including border security, cybersecurity, terrorism prevention, and emergency response preparedness. Allegations have come to our attention that the office has been plagued by ongoing bureaucratic infighting and competing allegations of misconduct that threaten OIG's ability to conduct effective oversight.

We have been concerned for some time about DHS OIG's ability to perform its statutory mission.[1] In April 2014, a bipartisan congressional investigation found allegations of misconduct by the then-Acting Inspector General that "contributed to an office environment characterized by low morale, fear, and general dissatisfaction with [] leadership."[2] In September

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[1] Pub. L. 113-126.

[2] Letter and Report on Investigation Into Allegations of Misconduct by the Former Acting and Deputy Inspector General of the Department of Homeland Security from Claire McCaskill, Chairman, and Ron Johnson, Ranking Member of the Subcommittee on Financial and Contracting Oversight, Senate Committee on Homeland Security & Governmental Affairs, to The Honorable Phyllis K. Fong, Chair, Council of the Inspectors General on Integrity and Efficiency (Apr. 23, 2014), *available at* https://www.hsgac.senate.gov/imo/media/doc/2014-04-24%20FCO%20Letter%20and%20Investigation%20Report%20into%20Allegations%20of%20Misconduct%20by%20the%20Former%20Acting%20and%20Deputy%20Inspector%20General%20of%20the%20Department%20of%20Homeland.pdf.

2014, the Government Accountability Office issued a report recommending changes to address organizational, management, and independence issues within the OIG.[3]

Unfortunately, problems have apparently persisted and in some cases worsened. Over the past year, we have received numerous complaints from whistleblowers of alleged misconduct within DHS OIG that leave us concerned about the office's ability to conduct timely, independent, and fact-based audits and inspections of DHS.

Three issues stand out. First, it has come to our attention that DHS OIG employees have filed numerous complaints of misconduct against each other over the past few years, which appear to have had significant implications for the office's operations. Relatedly, it is our understanding that prior to your confirmation, DHS OIG inexplicably moved the human resources operations out of the office of management to the general counsel's office. Although this may be an accepted practice at small organizations, it is difficult to imagine a general counsel fulfilling both positions effectively and without a conflict of interest.

Second, we understand that, between your nomination (November 18, 2018) and confirmation (July 25, 2019), DHS OIG filled a number of senior management staff and other vacant positions. We are concerned that filling numerous senior management positions while your nomination was under active consideration by the Senate deprived you of the opportunity to install lasting and coherent leadership. Additionally, we are concerned that this rash of hiring may have contributed to the OIG's multi-million dollar budget shortfall.[4]

Third, employee morale within DHS OIG remains low. In the 2018 Federal Employee Viewpoint Survey (FEVS), DHS OIG ranked 303 of 415 component agencies that operate as part of larger agencies.[5] Unfortunately, this represents a decline of 4.7 points from 2017, and is consistent with its positioning near the bottom of the list for the past several years.[6]

Congress and the American people depend on DHS OIG to be our eyes and ears on the ground and to serve as a reliable outlet for whistleblowers at DHS. To ensure that DHS OIG can operate efficiently to carry out its mission, including preventing and detect waste, fraud, and abuse,[7] please respond to the following no later than December 20, 2019:

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[3] U.S. Gov't Accountability Office, GAO-14-726, Inspectors General, DHS OIG's Structure, Policies, and Procedures Are Consistent with Standards, but Areas for Improvement Exist (Sept. 2014), *available at* https://www.gao.gov/assets/670/666087.pdf.
[4] 31 U.S.C. § 1341.
[5] Best Places to Work in the Federal Government, Agency Report, Office of the Inspector General, https://bestplacestowork.org/rankings/detail/HS15.
[6] *Id.*
[7] Pub. L. No. 113-126.

1. For each of the last five years, please provide:

    a. The total number of staff employed by the DHS OIG at the beginning of each fiscal year.

    b. All organizational charts and other materials that document the structure of DHS OIG and, if available, a breakdown of staffing totals for each office and division.

    c. All final budgets and budget requests prepared by DHS OIG.

2. For the last year, please provide a list of all DHS OIG staff members who were hired or reassigned, including for each the date of hire or reassignment and the GS/SES level and series;

3. For each of the last five years, please provide all raw FEVS data provided to DHS OIG by the Office of Personnel Management. Please provide the data in the most disaggregated format available.

4. For each of the last five years, please provide a breakdown by division (audits, inspections, and investigations) of the number of products issued.

5. Please provide a breakdown by division (audits, inspections, and investigations) of the number of products you expect to have completed in 2019.

6. Please provide a copy of all internal employee complaints provided to DHS OIG since January 2017.

    a. Please provide the status of each of the complaints and the estimated date of resolution.

Thank you for your attention to this important matter. If you have any questions about this request, please contact Michelle Woods of Chairman Johnson's staff (202-224-4751) and Alexa Noruk of Ranking Member Peters' staff (202-224-2627) for the U.S. Senate Committee on Homeland Security and Governmental Affairs, and Alison Northrop of Chairman Thompson's staff (202-226-2616) and Forrest McConnell for Ranking Member Rogers' staff (202-226-8417) for the U.S. House Committee on Homeland Security.

Sincerely,

Ron Johnson
Chairman
Committee on Homeland Security and
Governmental Affairs
U.S. Senate

Gary C. Peters
Ranking Member
Committee on Homeland Security
and Governmental Affairs
U.S. Senate

Bennie G. Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives

Mike Rogers
Ranking Member
Committee on Homeland Security
U.S. House of Representatives

Enclosure 3

Ms. Shaw's Response to the DOT OIG Report

June 17, 2024

VIA EMAIL

Integrity Committee
Council Of Inspectors General on Integrity and Efficiency

SUBJECT: Response to Draft Report on Complaint Number 20-059

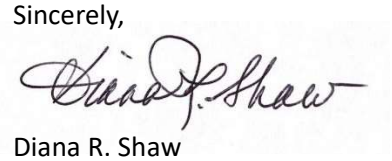
To Whom it May Concern:

Thank you for the opportunity to review and provide comment on portions of the above-referenced report. I am relieved to know that, after four long years, the allegations brought against me by or on behalf of the leadership of the Department of Homeland Security Office of Inspector General (DHS OIG) have finally been thoroughly investigated by an objective, independent body. As I trusted would be the outcome of this process, all three allegations against me were unsubstantiated. I appreciate the extensive work that went into reaching this conclusion, particularly in light of the obstruction investigators faced from DHS OIG leadership.

I continue to believe that these allegations were brought against me in retaliation for protected disclosures I made to the Council Of Inspectors General on Integrity and Efficiency (CIGIE) and congressional oversight committees about improper conduct by the DHS IG. They were part of an aggressive campaign by the IG to discredit me, damage my reputation, and drive me out of the oversight community. My belief is bolstered by this report's acknowledgement that the very day investigators began interviewing people about the most serious allegation of the three, the alleger sought to withdraw the allegation. I can only infer from this that the alleger knew, as I have always known, that the allegation was a meritless fabrication.

I hope CIGIE and others will seriously consider what additional safeguards are needed to ensure that neither this IG nor any other current or future IG is able to abuse their position to try to conceal wrongdoing and silence whistleblowers.

Sincerely,



Diana R. Shaw

Enclosure 4

Ms. Ouzts' Response to the DOT OIG Report

MEMORANDUM RESPONSE

TO: [redacted], Council of the Inspectors General on Integrity and Efficiency

FROM: Karen J. Ouzts

SUBJ: Draft Report of Investigation for Integrity Committee Case No.: IC 20-059

DATE: June 19, 2024

Thank you for providing me with the referenced draft ROI. Below are my comments.

Page 110-111

Last full paragraph on page 110: "The changes were made without further challenges."

Q: What challenges are you referring to, and concerning what? The changes I directed HR to make?

Last full paragraph on page 110-first full paragraph on page 111: "The correction featured an approval and effective date of June 10, 2019 (the date of his retirement); however, it was entered in the 14th pay period of 2019 (July 7-July 20, 2019). [fn not included.]

In contrast, Ms. Costello remained in the DIG position from November 11, 2018, up until IG Cuffari terminated her employment."

Q: What are you contrasting in this paragraph?

P. 111, second paragraph. There is a reference to the Federal Vacancies Reform Act (FVRA). Is this term defined anywhere else in the ROI, and is the significance of the FVRA discussed with respect to the actions I took concerning the retroactive changes to Witness #1 PD and SF-50? That was why DHS OGC contacted me. Neither Ms. Costello, Ms. Shaw nor I was aware that Witness #1 had directed HR to make the changes to his position in early 2019 until after he retired.

Similarly, on page 113, under i., the paragraph appears to attempt to summarize my explanation of what triggered the issue with respect to the FVRA. I find it vague, confusing, it includes a reference to apparently irrelevant text ("the black hole") and does not provide the proper context concerning the issue.

I propose the following revisions:

The IC investigative team interview Ms. Ouzts …. Ms. Ouzts explained that after Witness #1 retirement, she was contacted by DHS OGC concerning Witness #1 position as DIG when he retired. OIG's Order of Succession at the time included a reference only to one DIG, who would serve as Acting IG in the absence of a PAS IG. Because Witness #1 appointed Ms. Costello to serve as Deputy IG in late 2018, DHS OGC attorneys expressed concern that he effectively removed himself from the line of succession and from serving in that role under the Order of Succession/FVRA. However, from December 2018 until his retirement in June 2019, he served as Acting IG.

Further in the same paragraph, it states: "Based on the information provided by [Witness #19] DHS OGC attorney, Ms. Ouzts believed the matter was properly resolved and that DHS OIG had remedied an approximate 6-month conflict whereby [Witness #1] inadvertently removed himself from the line of succession."

I propose the following revisions:

"Also, based on the information provided by DHS OGC attorney, Ms. Ouzts and the DHS OGC attorneys (two legal experts for the FVRA at DHS) believed the matter was properly resolved and that DHS OIG had remedied …." The DHS OGC attorney contacted me, and we discussed how to remedy the issue. It was not only I who believed the issue was resolved, but also the two DHS OGC attorneys who contacted me.

I would appreciate your consideration of any clarification concerning this issue as it was one of the improper bases for the OIG's proposal to terminate my federal employment.

Enclosure 5

Ms. Costello's Response to the DOT OIG Report

Thank you for the opportunity to comment on Integrity Committee (IC) Case 20-59. I appreciate the Department of Transportation agents' diligence in conducting the investigation and their commitment to reporting the facts. However, I disagree with the finding that I treated Mr. Cuffari unprofessionally, in part because this section lacks the balance so painstakingly included in the others provided to me for review. I realize that the final draft will include information related to others' actions and it is very likely that at least some of the missing context will be presented elsewhere. Nevertheless, I think the finding could be revised and made more accurate. I will not offer suggestions for how to do so, but I respectfully request that the IC consider the following perspective as it works to finalize the report.

Expressing concerns about challenges facing an OIG is not unprofessional just because it embarrasses leadership or makes some employees uncomfortable. It is true that I expressed my concerns about Mr. Cuffari's qualifications after his nomination, though I did not broadcast these concerns to the entire agency. I had several conversations with Witness #1 about Mr. Cuffari's prior experience, including a discussion of my role in the Government Accountability Office (GAO) review of various "diploma mill" institutions and whether I needed to disclose my involvement with anyone. These conversations were private, though Witness #1 allowed his assistant to remain in the room. I also had discussions with the Assistant Inspectors General (AIG) with whom I worked most closely, and several staff who asked to speak with me because they shared the same concerns. I held exactly one meeting with all the AIGs after Ms. Ouzts and I contacted Witness #18 for guidance on how to handle the Intelligence Community Inspector General's inquiry about DHS OIG's prior work on diploma mills. I believed it was important to explain what had happened and to be fully transparent about why we sought advice, in part to try to prevent misinformation from spreading throughout the agency though gossip and rumors about my actions flourished anyway.

In all these instances, I engaged in factual and candid discussions about legitimate issues. Indeed, concerns about Mr. Cuffari's ability to lead one of the largest and most troubled IG offices with minimal management experience were shared by many in the IG community at large prior to his confirmation.[1] And while Mr. Cuffari clearly disagrees with the GAO report,

[1] Rein, Lisa, et al. "Homeland Security Watchdog Previously Accused of Misleading Investigators, Report Says." *Washington Post,* August 3, 2022 (comments from former IG Michael Bromwich noting Mr. Cuffari "did not have qualifications for the job"); Fine, Glenn. "The Most Important Public Servants You've Never Heard Of." *The Atlantic,* August 25, 2022 (former IG Fine notes that Mr. Cuffari's appointment "reflected a failure in vetting"); Sanchez, Yvonne Wingett, et al. "How DHS Watchdog Under Fire in Jan. 6 Investigations Pushed to Get His Post." *Washington Post,* September 15, 2022 (noting that CIGIE did not recommend Mr. Cuffari); and

it is undeniable that the findings have the potential to cast doubt on his credibility, as reflected in media reports[2] and questions at congressional hearings.[3] Even if some find my discussions about these issues to be distasteful, the mere suggestion that they constitute misconduct heads down a slippery slope. Members of Congress rightly criticized Mr. Cuffari for stating in his Merit Systems Protection Board (MSPB) deposition that employees who had expressed concerns with his qualifications "were sowing the seeds of dissension." The Members found this viewpoint to be alarming because it indicates Mr. Cuffari is a "willful contributor to a toxic culture where employees may be subject to retaliation if they express concerns" with his leadership.[4] I certainly hope the IC agrees.

I also challenge any suggestion that my concerns with Mr. Cuffari's qualifications led me to treat him disrespectfully when he onboarded. To the contrary, I called Mr. Cuffari within moments of his confirmation on the Senate floor to congratulate him and offer my support. It is true that I was out of the office when he first arrived in Washington, D.C., from Arizona in August 2019, but this was not an impulsive trip intended to slight the new Inspector General or an effort to shirk my responsibilities as the Deputy. I had long-standing plans to be at my family home away from Washington during that time and I took steps in June to ensure there would be a sufficient senior executive presence in the office then, and throughout the summer, since Mr. Cuffari could be confirmed at any time. Being away from the office became more important to me in mid July [redacted] that had previously caused me to miss a testimony before the House Committee on Oversight and Reform at the end of June.[5] I did not share this information with anyone at DHS OIG, but I certainly would have explained my reasons to Mr. Cuffari had he ever expressed concern about my absence or even simply asked me about my whereabouts. He did neither. Moreover, he did not inform me about the timing of his swearing-in, nor did he share with me any information about his travel plans or his arrival date at the agency. I had one phone conversation with Mr. Cuffari and Ms. Ouzts at the end of July, during which he was primarily interested in whether the federal government would pay for his travel and moving expenses. During this call, I committed to reviewing and signing off on reports while

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Project on Government Oversight. "Who is Joseph Cuffari?" *Bad Watchdog Podcast* (comments from former IG Gordon Heddell noting Mr. Cuffari did not have the qualifications for the job).

[2] Lanard, Noah. "The DHS Inspector General Claimed to Have a PhD. He Doesn't." *Mother Jones,* May 29, 2020.

[3] "Children in CBP Custody: Examining Deaths, Medical Care Procedures and Improper Spending," Committee on Homeland Security, 116th Congress, July 15, 2020 (Representative Al Green's questions to Mr. Cuffari).

[4] Letter from Ranking Member Raskin and Ranking Member Thompson to Inspector General Cuffari, July 28, 2023.

[5] I delegated testimony on TSA's security vulnerabilities scheduled June 25, 2019, to another executive because I [redacted] I informed Committee staff about my reasons for missing the hearing and shared the information with some of the executives.

he settled in and to continue leading key OIG meetings scheduled during my absence. I followed through on both commitments.

I called Mr. Cuffari several times while I was away to try to schedule briefings, at his convenience, to bring him up-to-speed on the most pressing matters facing the agency. He spoke to me once for about 5 minutes, but never followed through on scheduling any detailed discussions. When I returned to the office, he met with me one time for approximately 30 minutes. He never again met with me one-on-one or consulted with me in any meaningful way about agency operations, despite my many, well-documented requests for communication. With respect to the few larger team meetings that occurred soon after my return to the office, I welcomed Mr. Cuffari to the OIG, introduced the meeting participants, asked him how he wanted to proceed, and repeatedly stressed that his priorities for the office were now our priorities. The comments in the report about the positioning of my chair during these meetings are irrelevant and overblown. To be clear, I did not purposefully turn my chair so that my back faced Mr. Cuffari and most likely did so to face whoever was speaking at the time. I also recall, as mentioned by one of the witnesses, that we typically sat across the table from one another. If I had my back toward Mr. Cuffari, I would have been facing a wall with my back to the entire room. I did occasionally send texts and e-mails during these meetings, but I was doing so on government-issued mobile device to handle work-related matters, as was common practice for all the executives at the agency.

I continued to have a few private conversations about Mr. Cuffari's qualifications during the first few weeks of his tenure, but I did not raise these issues in any agency meetings. In fact, any lingering concerns about Mr. Cuffari's prior experience were almost immediately subsumed by my observations of his *actual performance* as Inspector General and the constant barrage of complaints I received from staff at all levels. Taken together these include the following in no particular order: steering a DHS contract to a friend for financial gain, freezing agency hiring and internal promotions without explanation, refusing to provide resources to the whistleblower protection unit, misspending appropriated funds, suppressing OIG findings and reports, sidetracking staff with requests for voluminous and unnecessary document productions, preventing staff from interviewing senior DHS leaders, displaying partisan preferences, directing a detailee to interrogate staff about OIG operations behind closed doors, removing critical information from correspondence to DHS without consulting staff, promoting 9/11 conspiracy theories, condoning racist remarks from a guest speaker, ordering procurement of contracts in violation of federal regulations, demanding a firearm from the Office of Investigations without justification, sidelining executives in favor of unqualified individuals, circumventing records retention requirements, providing misleading and false information to Congress, forcing staff to sign

nondisclosure agreements without appropriate whistleblower protections, targeting individual employees with policy changes, attempting to limit staff communications with Congress, and coercing staff to file complaints about me and other executives.

There is no question that by mid October 2019, I had become extremely unsettled and deeply distrustful of Mr. Cuffari, feelings that were compounded by the fact that he refused to talk to me. I can understand why staff who had not yet been exposed to the full breadth of the foregoing issues would question my demeanor and interpret my discomfort with Mr. Cuffari as unprofessionalism. It is accurate and fair to say that Mr. Cuffari and I had developed an extremely dysfunctional relationship that negatively impacted the DHS OIG workforce. For my role in this, I must take responsibility. No matter how legitimate and serious my concerns were, the best leaders rise above disorder and chaos, focus on the goals and mission of the organization, and try to promote positivity even in the face of the most daunting obstacles. In this respect, the hardworking men and women of DHS OIG deserved more from me then. They certainly deserve more now.

Although I do accept some measure of responsibility for the toxic relationship, I will not apologize for being the first to recognize the perils facing the agency or for sounding the alarm loudly, clearly, and often. And while I may have been the first to do so, I was certainly not the last. Inarguably, public reporting has repeatedly shown that concerns with Mr. Cuffari's behavior continued and intensified after my termination. Documents obtained from DHS OIG through the MSPB discovery process also confirm that by July 2020, other individuals had filed multiple complaints with the IC about Mr. Cuffari, encompassing almost all of the same allegations I listed above. It is also important to emphasize that I recognized the untenable nature of the toxicity at the agency and sought help prior to filing my own complaints with Congress and the IC in November 2019 and confronting Mr. Cuffari directly with additional protected disclosures. In late October 2019, I and other executives contacted Witness #18 to explain the deteriorating atmosphere in the office and to request assistance in navigating a path forward. Witness #18 did not in any way suggest that [redacted] believed that Mr. Cuffari had engaged in misconduct, but [redacted] did agree the situation called for some type of outside aid. [redacted] assured us, and continued to reassure me throughout the remainder of the fall, that [redacted] would work with CIGIE leadership to identify a seasoned IG to act as a mediator or facilitator. That person never materialized. It is very telling that these same concerns and pleas for help are echoed in the unprecedented open letter DHS OIG staff sent to President Biden three years later in September 2022.

Finally, the completion of this investigation presents an opportunity for the IC to undertake an internal reckoning. I appreciate the fact that the IC faces a number of challenges,

including budget constraints and a lack of dedicated staff, but these issues are unlikely to be fully resolved any time soon. The IC must act now to address accusations of cronyism, partisanship, and mismanagement[6] and to restore confidence in its work.

Notably, the IC has faced significant criticism for not investigating the allegations made against me and my colleagues, with Members of Congress raising this concern as recently as May of this year.[7] These criticisms are not without merit. Mr. Cuffari first filed his complaints with the IC in late 2019, the most serious being that I illegally seized control of DHS OIG after Witness #1 departure. An allegation of this nature deserved an inquiry, yet the IC did nothing. Mr. Cuffari then fired me June 2020 and sent a letter to Congress presenting his allegations as facts, but the IC did not ask me for a response. Records obtained from DHS OIG through discovery show that multiple individuals immediately filed complaints with the IC about Mr. Cuffari's actions and specifically alleged that he retaliated against me, but the IC still did not ask me a single question. Even if the final report explains why the IC took no action, it impossible not to wonder what would have happened had it simply followed its own policies and given me 20 days to respond to the allegations when they were first made. It is quite likely that any resulting investigation would have been far less complicated than this one. There may never have been a dubious private law firm report or a protracted MSPB case. Without question, millions and millions of taxpayer dollars could have been directed toward conducting actual oversight as opposed to resolving this mess.

Further, the amount of time it has taken to complete the investigation is simply unacceptable. Most troubling to me is the fact that the report suggests that the IC has known for quite some time that Mr. Cuffari's allegations could not be substantiated, and yet the process has dragged on and on. This is not an isolated instance; the simple act of comparing start and end dates reported in publicly available information shows that the IC routinely takes years to finish its work, leaving incompetent and misbehaving IGs in place and letting their offices fall into disarray.[8] However, it is exponentially worse when such delays allow specious allegations to become widely accepted as facts. Mr. Cuffari and his top aides have continued to peddle misleading tales to Congress, the courts, the media, and indeed to anyone who would listen, relying on the flawed work of an elite law firm to

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[6] Lucas, Fred. "Is This Unelected Panel Targeting Trump-Appointed Inspectors General." *The Daily Signal,* June 24, 2024.

[7] Willis, Halston. "Who Watches the Watchdogs? Group Overseeing Inspectors General Under Pressure." *Washington Examiner,* June 9, 2024.

[8] Bolton, Alexander. "Report Finds Federal Housing Agency Official 'Abused Her Authority.'" *The Hill,* April 28, 2021; Lynch, Sarah N. "SEC's Internal Watchdog Kept Job Despite 'Serious Misconduct' Finding." *Reuters,* December 7, 2021; Osipovich, Alexander. "Federal Agency Suspends Inspector General After Oversight Body Alleged 'Substantial Misconduct.'" *Wall Street Journal,* May 3, 2023; and Rein, Lisa. "Former Social Security Watchdog Abused Her Authority, Investigation Finds." *Washington Post,* July 5, 2024.

impart a veneer of truth to their stories. No matter how thorough the investigation, nothing the IC reports at this late date will supersede Mr. Cuffari's false narrative for those who were already predisposed to believe it.

Thank you again for considering my comments. Should you require further information, please contact my counsel, [redacted]

Respectfully,

/s/ Jennifer Costello

Enclosure 6

Integrity Committee matter 22-046.069 and Supporting Documents

ADDENDUM

Background Regarding Referral of Additional Allegations against DHS OIG Senior Leaders (IC 22-046.069)

As described in the Cover Letter regarding IC 20-059, and pursuant to the IC's Policies and Procedures, these matters, which are encompassed in IC 22-046.069,[1] are being referred for your awareness and any additional action you deem appropriate. The IC has not investigated these allegations nor made findings or conclusions about them. The below includes both the allegations the IC received, and portions of the responses provided by the respondents.[2]

Allegations Surrounding Two DHS OIG Reports

On April 27, 2022, IC Working Group (ICWG) staff received a referral containing a copy of a letter from the Senate Judiciary Committee Chairman and Ranking Member to IG Cuffari, dated April 26, 2022 (IC 22-046). The letter raised issues with two DHS OIG reports. In pertinent part, the letter states,

> *recent press articles suggest intolerable levels of sexual harassment and sexual misconduct at DHS, as well as DHS OIG's efforts to delay the release of an unpublished report containing troubling findings about apparent widespread sexual harassment and misconduct within the agency. The unpublished report reveals that a DHS OIG survey completed in 2018 found that more than 10,000 of 28,000 responding employees at DHS law enforcement components say that they have experienced sexual harassment or misconduct. The majority of respondents also said that they did not report the incidents, and of those who did, about 41 percent reported that doing so "negatively affected their careers. Such findings demand an urgent agency-wide response. However, delays and revisions in publishing the report appear to have downplayed the severity of the crisis. It's also not clear that the OIG considered whether these findings triggered its statutory obligation to notify agency leadership and Congress…*

The letter further states,

> *The documents released… also indicate that the scope of a prior report related to domestic violence was substantially restricted, with the final version omitting findings and recommendations concerning DHS's failure to adequately investigate or discipline*

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[1] Complaints that are received by the IC for review are assigned a case number with the first two digits denoting the fiscal year in which the complaint was received, and then are provided with a three-digit case specific identifying number in ascending numerical order relative to the complaints received prior to it. In this matter, the number "22" denotes that the complaint was received in fiscal year 2022, while the number "046" denotes that the complaint was the forty-sixth received in fiscal year 2022. Sometimes, as is the case with these matters, the IC will combine multiple complaints that overlap in terms of Subjects, and/or underlying facts and circumstances, into one larger complaint. In this matter, "IC 22-046.069" consists of three separate complaints, IC 22-046, IC 22-069, and IC 23-057, against DHS OIG senior leaders.

[2] Prior to making a determination as to whether to open an investigation, the IC may, as it did here, request in writing that the Covered Person who is the subject of the matter (the Respondent) submit a written response to some or all of the allegations. *See* ICP&P, Section 7(B)(ii).

> *personnel alleged to have committed domestic violence. In a July 9, 2020 email, you make several recommendations to the report, including removing language that would, in your words, risk DHS OIG "appearing biased" and put DHS OIG in a position to "second guess DHS disciplinary decisions" without having "full facts" and "potentially in violation of applicable rules." It is not clear what rules you are referencing, why you believed the information that was removed would make the OIG appear "biased," or why you believed that DHS OIG did not possess adequate evidence to make substantive claims and recommendations about these cases.*

The source of these allegations originated from two articles published on April 7, 2022.[3]

In responses to letters from both the House and Senate, as well as to the IC, IG Cuffari denied any wrongdoing.[4] [5] More specifically, he provided the following explanations:

> Generally, for both reports:
>
> - edits he and members of his immediate staff "requested to be made to certain draft reports were consistent with the extensive edits recommended by career civil servants who were asked to review the drafts because they are subject matter experts in the relevant field;"[6] and
>
> - changes to the reports were necessary to align the reports with CIGIE standards.[7]

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[3] Chris Cameron, *Homeland Security Watchdog Omitted Damaging Findings From Reports*, The New York Times (Apr. 7 2022), available at https://www.nytimes.com/2022/04/07/us/politics/homeland-security-inspector-general.html; Adam Zagorin and Nick Schwellenbach, Protecting the Predators at DHS, Project on Government Oversight (Apr. 7, 2022), available at https://www.pogo.org/investigation/2022/04/protecting-the-predators-at-dhs/.

[4] *See* Letter from the Chairpersons for the House Committee on Oversight and Reform and Committee of Homeland Security to IG Cuffari, dated May 10, 2022; Letter from IG Cuffari to the Senate Judiciary Committee, dated May 13, 2022; Letter from IG Cuffari to the Chairpersons for the House Committee on Oversight and Reform and Committee of Homeland Security, dated May 17, 2022 (attaching his May 13, 2022, letter to the Senate Judiciary Committee with a short description thereof); Letter from the Senate Judiciary Committee with clarifying questions to IG Cuffari regarding the two DHS OIG reports at issue, dated June 27, 2022; and Letter from IG Cuffari to the Senate Judiciary Committee, dated August 8, 2022 (stating, in part, that he was unable to answer all their questions due to the deliberative process privilege, but providing some additional details).

[5] Meanwhile, on May 18, 2022, IG Cuffari sent a letter to the IC Chairperson "referring to the Integrity Committee allegations of unauthorized disclosure of sensitive, non-public information" regarding the aforementioned reports and states that an internal investigation by DHS OIG "may appear to lack objectivity." On May 27, 2022, IC closed the matter involving the allegation of unauthorized disclosure as it did not allege wrongdoing by a covered person, but offered to assist DHS OIG with finding a disinterested OIG to investigate. The IC engaged with the Department of Education OIG (a disinterested IG) who agreed to investigate the allegation on June 21, 2022. Of note, Education OIG was unable to complete the investigation due to DHS OIG's non-cooperation.

[6] Letter from IG Cuffari to the Senate Judiciary Committee, dated May 13, 2022.

[7] *Id*.

As to the Sexual Harassment Report:

- *"IG Cuffari learned about a 2018 survey concerning sexual harassment and misconduct within DHS in December 2020, approximately 17 months after he became Inspector General and more than two years after DHS OIG completed the survey."* He, therefore, raised concerns about 'timeliness' requirements for reporting;[8]

- statements in the report were supported by sufficient evidence; [9] and

- after the failure to disclose the sexual harassment survey results was raised by Congress, IG Cuffari's attorney argued that "*IG Cuffari acted to promote transparency without impermissibly disclosing internal agency deliberative material. He [IG Cuffari] ultimately released the results of the sexual harassment survey to DHS leadership and Congress. This project remains open, and IG Cuffari approved a new sexual harassment survey to take place in the 2023 fiscal year. IG Cuffari is committed to ensuring that decisions are made based upon accurate and timely data."*[10]

As to the Domestic Violence Report:

- As to his revisions to the report entitled, *DHS Components Have not Fully Complied with the Department's Guidelines for Implementing the Lautenberg Amendment*, he, "*...found the report confusing inasmuch as it blurred the distinction between a criminal conviction for a domestic violence offense and administrative discipline by the employing agency for 'domestic violence.' The latter topic was beyond the scope of the project as originally approved and the conclusions in the draft report were unpersuasive."* [11]

- *The project, as expanded, included an examination of how DHS deals with law enforcement officers who are not convicted of an MCDV [misdemeanor crimes of domestic violence] and are not subject to a domestic violence restraining order -- and who therefore are not covered*

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[8] Letter from IG Cuffari to the IC, dated December 5, 2022.
[9] *Id*. The letter does not specify how the evidence was insufficient in a way that would have prevented the distribution of the survey data.
[10] It is not clear what about the data, or IG Cuffari's view of the data, changed that ultimately made it acceptable, in his view, to share the data after previously asserting the deliberative process privilege. Once DHS learned of this survey information, its Secretary took immediate action. On April 7, 2022, he issued a Memorandum for DHS Component and Office Leaders titled "Working Group to Review Employee Accountability Processes." In the memorandum, the Secretary directed the DHS General Counsel "to stand up and lead a Department-wide working group to conduct a 45-day review of the employee misconduct discipline processes currently in effect throughout DHS and to recommend any necessary improvements, including to ensure these processes align with relevant best practices and are consistent with all applicable laws."
[11] Letter from IG Cuffari to the Senate Judiciary Committee, dated May 13, 2022.

> *by the Lautenberg Amendment -- but who are alleged to have engaged in off-duty conduct that OIE [Office of Inspections and Evaluations] staff characterized as 'domestic violence.' I am not opposed to modifying the scope of a project when the fieldwork reveals a systemic problem that should be corrected, but in this case, the portions of the May 2020 draft report that addressed the expanded scope were unpersuasive.* [12]

Allegations Surrounding Reporting the Deletion of Secret Service Text Messages

On July 26, 2022, the Chairpersons for the House Committee on Oversight and Reform and Committee of Homeland Security sent a letter to IG Cuffari and then-CIGIE Chairperson Alison Lerner relaying "grave concerns." The letter reiterated concerns the Chairpersons had raised in their April 27, 2022, letter (discussed above as IC 22-046) and alleged that:

> *Inspector General Cuffari's failure to promptly notify Congress of crucial information while conducting an investigation of the Secret Service's preparation for and response to the January 6, 2021, insurrection at the U.S. Capitol. Inspector General Cuffari is required by law to "immediately" report problems or abuses that are "particularly serious or flagrant." Yet, Inspector General Cuffari failed to provide adequate or timely notice that the Secret Service had refused for months to comply with DHS Office of Inspector General (OIG) requests for information related to the January 6 attack and failed to notify Congress after DHS OIG learned that the Secret Service had erased text messages related to this matter.*

The letter also alleged that DHS-OIG's semi-annual reports lacked relevant details regarding this matter. In pertinent part, the letter reads:

> *On November 29, 2021, DHS OIG issued a 50-page semiannual report to Congress covering the period from April 1, 2021, to September 30, 2021. On page 19, under a broader section with the heading "Highlights of Significant Office of Inspector General Activities," the report stated that DHS "significantly delayed the OIG's access to Department records, thereby impeding the progress of the OIG's review" related to January 6. However, the brief description failed to mention that the Secret Service was the source of the access issues and did not indicate that OIG continued to encounter stonewalling. On the contrary, the report noted that "Secretary Mayorkas issued a reminder to all Department personnel about OIG access" in September 2021, and "[s]hortly thereafter, OIG began receiving responsive records." The semiannual report was transmitted to Congress on November 29, 2021—nine months after DHS OIG requested communications records around the events of January 6.*

***

[12] Letter from IG Cuffari to the Senate Judiciary Committee, dated August 8, 2022. This response does not address the fact that the scope of the project had been expanded by DHS OIG staff to include how DHS was handling domestic abuse allegations and that IG Cuffari appears to have chosen to re-narrow the scope in the ultimate report.

> *In December 2021, two months earlier than previously reported, DHS OIG became aware that text messages sent and received by Secret Service agents related to the events of January 6 had been erased. Yet, Inspector General Cuffari took no steps to inform Congress of this serious and flagrant violation of federal records laws. On June 14, 2022, DHS OIG submitted another semiannual report to Congress covering the period of October 1, 2021, to March 31, 2022. That report failed to mention the erasure of text messages. The report noted a "significant delay of OIG's access to Secret Service records, impeding the progress of our January 6, 2021 review," and stated, "We continue to discuss this issue with Secret Service."*

On August 3, 2022, IG Cuffari self-referred anonymous allegations of wrongdoing, received against him by DHS OIG, to the IC regarding his alleged failure to notify Congress about missing Secret Service text messages. On August 15, 2022, DHS OIG referred similar allegations with respect to a senior DHS OIG official. (IC 22-069).[13]

On August 11, 2022, Project on Government Oversight (POGO) published an article entitled, "DHS Watchdog Nixed Alert to Congress About Purged January 6 Texts, New Docs Show," [14] that alleged that, as of April 1, 2022, DHS OIG staff had prepared language for the draft semiannual report to Congress that offered additional details about the Secret Service text message deletions, but that those details were not ultimately included after the draft was sent to IG Cuffari and a senior DHS OIG official. The language that was removed from the draft read:

> *On February 23, 2022—more than 2 months after OIG renewed its requests for select Secret Service employees' text messages—Secret Service claimed inability to extract text message content due to an April 2021 mobile phone system migration, which wiped all data.*

The unsent paragraph continues:

> *Secret Service caused significant delay by not clearly communicating this highly relevant information at the outset of its exchanges with OIG during this reporting period. Moreover, Secret Service has not explained why it did not preserve the texts prior to the migration.*

On October 26, 2022, the IC requested responses to the above allegations from both IG Cuffari and the senior DHS OIG official.

In IG Cuffari's December 5, 2022, response to the IC to this allegation, he stated, through counsel, that:

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[13] In light of the fact that the underlying letter associated with IC 22-069 contained the allegations originally described in 22-046, the matters were combined for administrative simplicity.

[14] Adam Zagorin and Nick Schwellenbach, *DHS Watchdog Nixed Alert to Congress About Purged January 6 Texts, New Docs Show*, Project on Government Oversight (Aug. 11, 2022), available at https://www.pogo.org/investigation/2022/08/dhs-watchdog-nixed-alert-to-congress-about-purged-january-6-texts-new-docs-show.

> *On February 23, 2022, the Secret Service told DHS OIG that text messages had been deleted, during the period from January 2021 to April 2021, as part of a planned cellphone replacement project.* [15]

IG Cuffari's response acknowledged that he did not notify Congress of the deleted text messages until July 13, 2022. No explanation was provided for the delay.

In the other senior DHS OIG official's response, dated December 5, 2022, the official stated, through counsel, that:

> *The semiannual report did not minimize OIG's concerns with the conduct of the Secret Service. See Semiannual Report: Oct. 1, 2021 – Mar. 31, 2022 at p. 15 (explaining that the "Secret Service's significant delay of OIG access to Secret Service records" was "impeding the progress of [OIG's] January 6, 2021 review").*

The response further cited revelations made to Congress by IG Cuffari on July 13, 2022, regarding the deleted text messages and other correspondence between DHS OIG and Congress. However, no explanation was offered regarding why DHS OIG failed to disclose the deleted text messages issue sooner (for instance in the Spring 2022 semiannual report) when they had reportedly had knowledge of the issue since December 2021, but no later than February 23, 2022.

Allegations that IG Cuffari Deleted Work-Related Text Messages from his Work Phone

On March 12, 2023, the IC received allegations referred from the National Archives and Records Administration against IG Cuffari, and other senior officials at DHS OIG, pertaining to alleged violations of records retention requirements (*e.g.*, deletion of text messages by IG Cuffari and no action taken by those senior officials after being alerted). These allegations were incorporated into IC 23-057. The IC requested additional information from the subjects and reviewed the responses as they were supplied.

On June 6, 2023, IG Cuffari testified before the House Oversight and Accountability Committee that it was his "normal practice" to delete text messages from his government-issued phone; that he does not "use my government cell phone to conduct official business:" that the text messages that he deletes would not "be considered a federal record;" that he uses his government phone to "conduct business," but not "federal business considering that they are records;" and that ultimately "[t]he messages that I deleted, I did not consider those to be federal records and therefore deleted them…" When IG Cuffari revealed his practice of deleting messages, he was on notice of congressional interest surrounding missing text messages.

As part of a document request response to the on-going 20-59 IC investigation, IC investigators received text messages from senior officials at DHS OIG. While the IC did not conduct a

[15] The July 26, 2022, letter from the Chairpersons for the House Committee on Oversight and Reform and Committee of Homeland Security to IG Cuffari and CIGIE Chairperson Alison Lerner states that DHS OIG was aware of the deleted text messages in December of 2021.

comprehensive analysis, some of the messages are to/from IG Cuffari and appeared to be on work-related topics.

RICHARD J. DURBIN, ILLINOIS, CHAIR

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MARSHA BLACKBURN, TENNESSEE

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

April 26, 2022

The Honorable Joseph V. Cuffari
Inspector General
U.S. Department of Homeland Security
245 Murray Lane, SW
Washington, D.C. 20528

Dear Inspector General Cuffari:

We write to express our concern regarding recent reports that you and senior officials in your office have diminished and delayed reports of sexual harassment and other misconduct at the Department of Homeland Security (DHS). These reports raise serious questions about DHS Office of Inspector General's (OIG) commitment to independent oversight and to defending the rights and safety of the tens of thousands of employees at DHS.

Documents recently released by the Project on Government Oversight (POGO) suggest intolerable levels of sexual harassment and sexual misconduct at DHS, as well as DHS OIG's efforts to delay the release of an unpublished report containing troubling findings about apparent widespread sexual harassment and misconduct within the agency.[1] The unpublished report reveals that a DHS OIG survey completed in 2018 found that more than 10,000 of 28,000 responding employees at DHS law enforcement components say that they have experienced sexual harassment or misconduct. The majority of respondents also said that they did not report the incidents, and of those who did, about 41 percent reported that doing so "negatively affected their careers."[2]

Such findings demand an urgent agency-wide response. However, delays and revisions in publishing the report appear to have downplayed the severity of the crisis. It's also not clear that the OIG considered whether these findings triggered its statutory obligation to notify agency leadership and Congress "whenever the Inspector General becomes aware of serious or flagrant problems, abuses, or deficiencies."[3]

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[1] Chris Cameron, Homeland Security Watchdog Omitted Damaging Findings From Reports, THE NEW YORK TIMES (Apr. 7, 2022), https://www.nytimes.com/2022/04/07/us/politics/homeland-security-inspector-general html.
[2] Adam Zagorin and Nick Schwellenbach, Protecting the Predators at DHS, PROJECT ON GOVERNMENT OVERSIGHT (Apr. 7, 2022), https://www.pogo.org/investigation/2022/04/protecting-the-predators-at-dhs/.
[3] 5 U.S.C. App. 3 § 5(d); Memorandum from Alejandro N. Mayorkas to DHS Component and Office Leaders (Apr. 7, 2022) ("Yesterday, I became aware of draft unpublished reports from the Office of the Inspector General that underscore the need for immediate action.").

The documents released by POGO also indicate that the scope of a prior report related to domestic violence was substantially restricted, with the final version omitting findings and recommendations concerning DHS's failure to adequately investigate or discipline personnel alleged to have committed domestic violence.[4] In a July 9, 2020 email, you make several recommendations to the report, including removing language that would, in your words, risk DHS OIG "appearing biased" and put DHS OIG in a position to "second guess DHS disciplinary decisions" without having "full facts" and "potentially in violation of applicable rules." It is not clear what rules you are referencing, why you believed the information that was removed would make the OIG appear "biased," or why you believed that DHS OIG did not possess adequate evidence to make substantive claims and recommendations about these cases.

Sexual harassment and misconduct in agency ranks always demand immediate action. Any efforts by an OIG to obscure or downplay the seriousness or pervasiveness of the issue, or to improperly delay releasing evidence of misconduct, are inappropriate. To that end, please respond to the following questions as soon as possible, but no later than May 17, 2022:

1. When does DHS OIG plan to release the unpublished report on sexual harassment and misconduct?

2. Why was the report delayed? By whom?

3. Why did DHS OIG remove findings and recommendations regarding DHS's failure to investigate and/or discipline personnel alleged to have committed domestic violence from the November 13, 2020 report titled *DHS Components Have Not Fully Complied with the Department's Guidelines for Implementing the Lautenberg Amendment*?

    a. You made several recommendations to remove content from and narrow the scope of the draft report. Please explain the recommendations you made in your July 9, 2020 email, as well as your decision to omit certain language that you characterized as going beyond the Lautenberg amendment.

    b. Please explain, in your view, how these editorial decisions comply with CIGIE standards.

4. Has DHS OIG removed similar findings from the unpublished report regarding sexual harassment and sexual misconduct at DHS?

    a. Did you personally direct or approve the removal of this language, and if not, were you aware of its removal?

[4] U.S. Dep't of Homeland Security, Office of Inspector General, OIG-21-09, DHS Components Have Not Fully Complied with the Department's Guidelines for Implementing the Lautenberg Amendment (Nov. 13, 2020), https://www.oig.dhs.gov/sites/default/files/assets/2020-11/OIG-21-09-Nov20.pdf.

b. Please explain, in your view, how these editorial decisions comply with CIGIE standards.

5. Please provide a copy of the DHS OIG survey that sought information regarding sexual harassment and misconduct at DHS components, as well as the results. When was the survey conducted, and why? How was it administered? Did you report the survey results to DHS leadership or to Congress? If so, when? If not, why not?

Thank you for your prompt attention to this important request.

Sincerely,

Richard J. Durbin
Chair

Charles E. Grassley
Ranking Member

cc: The Honorable Alejandro Mayorkas
Secretary of the Department of Homeland Security

Congress of the United States

Washington, DC 20515

May 10, 2022

The Honorable Joseph V. Cuffari
Inspector General
Department of Homeland Security
245 Murray Lane, S.W., Building 410
Washington, D.C. 20528

Dear Inspector General Cuffari:

We are investigating disturbing reports that under your leadership, the Department of Homeland Security Office of Inspector General (DHS OIG) sought to censor findings of domestic abuse and sexual harassment by DHS employees. According to public reporting, your office removed key findings from draft investigation reports that described misconduct by DHS employees involving domestic violence, and your office delayed releasing a separate report on pervasive sexual harassment within DHS. These reports, along with a recent briefing your office provided to staff from our Committees, raise concerns about your ability to independently and effectively perform your duties as Inspector General. In particular, this new information calls into question whether you are able to perform high-quality audit work with integrity, objectivity, and independence, and provide accountability and transparency over government programs and operations.

The Inspector General Act recognizes independence as one of the most important elements of an Inspector General's effectiveness.[1] Documents obtained by the Project on Government Oversight (POGO) demonstrate that your office made significant substantive changes to a report titled, "DHS Components Have Not Fully Complied with the Department's Guidelines for Implementing the Lautenberg Amendment," or OIG-21-09, before its publication on November 13, 2020.[2] The changes fundamentally altered the report by narrowing its scope and removing alarming evidence that DHS had failed to adequately address instances of domestic violence by its employees. The draft report's lead finding, which was removed, stated:

> We identified 35 cases in which CBP [Customs and Border Protection], Secret Service, ICE [Immigration and Customs Enforcement] investigations substantiated that an employee had engaged in domestic violence, but in most instances, the employee

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[1] **Government Accountability Office,** *Inspectors General: Independence Principles and Considerations for Reform* **(June 8, 2020) (GAO-20-639R) (online at www.gao.gov/assets/gao-20-639r.pdf).**

[2] **Project on Government Oversight,** *Protecting the Predators at DHS* **(Apr. 7, 2022) (online at www.pogo.org/investigation/2022/04/protecting-the-predators-at-dhs/);** *See* **Department of Homeland Security Office of Inspector General,** *DHS Components Have Not Fully Complied with the Department's Guidelines for Implementing the Lautenberg Amendment* **(Nov. 13, 2020) (OIG-21-09) (online at www.oig.dhs.gov/sites/default/files/assets/2020-11/OIG-21-09-Nov20.pdf).**

received little or no discipline and remained a law enforcement officer with access to a firearm.[3]

The draft report found that 86% of officers who committed domestic violence retained their jobs and possession of firearms and did not receive a suspension longer than 15 days. The scope of the final report, however, was drastically narrowed to evaluate only agencies' compliance with the Lautenberg Amendment, which prohibits people convicted of misdemeanor domestic violence from possessing a firearm.[4]

Your office reportedly removed other relevant evidence from the report, including evidence that CBP, Secret Service, and ICE took limited disciplinary actions against law enforcement officers who were found to have engaged in domestic violence, the number of substantiated cases of domestic violence by DHS employees between January 2016 and December 2018, and disciplinary actions taken by the respective agencies.[5]

Generally accepted government auditing standards require auditors to perform their work in a manner that is objective, fact-based, nonpartisan, and nonideological.[6] According to publicly released documents, on July 9, 2020, you sent an email instructing staff to rewrite the domestic violence report to "[p]eel off the remaining language and cases that essentially go beyond Lautenberg and risk appearing biased/in the posture of second guessing DHS disciplinary decisions."[7] This instruction appears inconsistent with the role of an inspector general, which routinely includes examining agencies' disciplinary processes and decisions.[8] Limiting the scope of OIG's public report to only those instances in which DHS officers were convicted of a

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[3] **Project on Government Oversight,** *Protecting the Predators at DHS* **(Apr. 7, 2022) (online at www.pogo.org/investigation/2022/04/protecting-the-predators-at-dhs/).**

[4] *Id.*

[5] *Id.*

[6] **Government Accountability Office,** *Government Auditing Standards 2018 Revision* **(Apr. 2021) (GAO-21-368G) (online at www.gao.gov/assets/gao-21-368g.pdf).**

[7] **Project on Government Oversight,** *DHS Watchdog Directs the Removal of Domestic Violence Findings* **(Apr. 7, 2022) (online at www.pogo.org/document/2022/04/dhs-watchdog-directs-the-removal-of-domestic-violence-findings/).**

[8] *See, e.g.*, **Department of Homeland Security, Office of Inspector General,** *CBP Senior Leaders' Handling of Social Media Misconduct* **(May 12, 2021) (online at www.oig.dhs.gov/sites/default/files/assets/2021-05/OIG-21-34-May21.pdf); Department of Homeland Security, Office of Inspector General,** *Special Report – ICE Should Document Its Process for Adjudicating Disciplinary Matters Involving Senior Executive Service Employees* **(July 20, 2020) (online at www.oig.dhs.gov/sites/default/files/assets/2020-07/OIG-20-54-Jul20.pdf); Department of Homeland Security, Office of Inspector General,** *DHS Needs to Improve Its Oversight of Misconduct and Discipline* **(June 17, 2019) (online at www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-48-Jun19.pdf); Department of Homeland Security, Office of Inspector General,** *DHS Support Components Do Not Have Sufficient Processes and Procedures to Address Misconduct* **(Sept. 26, 2018) (online at www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-81-Sep18.pdf).**

misdemeanor and excluding other critical findings raises questions about your integrity and professional judgement, both of which are crucial to meet government audit standards.[9]

Reporting from POGO also indicates that a separate DHS OIG report on sexual misconduct and harassment remains unpublished even though audit work began in 2018. The draft report included a 2018 survey that found that out of 28,000 DHS employees surveyed, more than 10,000 reported experiencing sexual harassment and misconduct in the workplace.[10] Your office also reportedly objected to including findings that discussed DHS agencies' use of individual cash payments in the hundreds of thousands of dollars to settle harassment cases and suggested that this finding be removed from the report.[11] Despite the fact that the review began almost four years ago, and was approved by your Office of Counsel, quality assurance staff, and several high-level DHS OIG officials in 2020, the final report remains unpublished.[12] During a staff briefing on April 20, 2022, your staff could not provide a timeline for when this report would be released.[13]

DHS OIG staff asserted during this briefing that the facts removed from these reports were already known to DHS, implying that there was no need for them to be included.[14] However, government audit standards make clear that the work of auditors must be guided by the public interest, which is defined as "the collective well-being of the community of people and entities" an auditor serves and that "a distinguishing mark of an auditor is acceptance of responsibility to serve the public interest."[15] Limiting transparency and shielding the full set of facts from the public undermines the importance of public accountability to help address systemic issues of sexual misconduct and harassment within DHS, and may violate generally accepted government auditing standards.[16]

The Committees have previously expressed concern over your office's handling of investigative reports. On March 26, 2020, Chairwoman Maloney wrote to you regarding the

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[9] *Id.*; Department of Homeland Security, Office of Inspector General, *DHS Components Have Not Fully Complied with the Department's Guidelines for Implementing the Lautenberg Amendment* (Nov. 13, 2020) (OIG-21-09) (online at www.oig.dhs.gov/sites/default/files/assets/2020-11/OIG-21-09-Nov20.pdf); Government Accountability Office, *Government Auditing Standards 2018 Revision* (Apr. 2021) (GAO-21-368G) (online at www.gao.gov/assets/gao-21-368g.pdf).

[10] Project on Government Oversight, *Draft Homeland Security Watchdog Survey on Sexual Misconduct* (Apr. 7, 2022) (online at www.pogo.org/document/2022/04/draft-homeland-security-watchdog-survey-on-sexual-misconduct/).

[11] *Homeland Security Watchdog Omitted Damaging Findings from Reports*, New York Times (Apr. 7, 2022) (online at www.nytimes.com/2022/04/07/us/politics/homeland-security-inspector-general.html).

[12] Project on Government Oversight, *Protecting the Predators at DHS* (Apr. 7, 2022) (online at www.pogo.org/investigation/2022/04/protecting-the-predators-at-dhs/).

[13] Call with Staff, Committee on Oversight and Reform; Staff, Committee on Homeland Security; and Staff, Department of Homeland Security, Office of Inspector General (Apr. 20, 2022).

[14] *Id.*

[15] Government Accountability Office, *Government Auditing Standards 2018 Revision* (Apr. 2021) (GAO-21-368G) (online at www.gao.gov/assets/gao-21-368g.pdf).

[16] *Id.*

alarmingly slow pace with which your office was issuing reports—including reports on DHS's processing of asylum seekers, conditions in immigration detention facilities, and secret Border Patrol Facebook groups with offensive posts—after you refused to provide Oversight Committee staff with updates on forthcoming reports of investigation.[17]

Also on March 26, 2020, Chairman Thompson wrote to you regarding numerous shortcomings in reports issued by your office on the deaths of two children in the custody of CBP.[18] The public summary of your office's investigative report excluded crucial details which rendered the public summary both inaccurate and misleading, raising significant concerns about your office's quality assurance process as well as the willingness of your office to conduct in-depth examinations of sensitive topics.

In June 2021, the Government Accountability Office (GAO) found that DHS OIG failed to address long-standing weaknesses that have impacted the quality and timeliness of its work.[19] Among the deficiencies, GAO noted: "Project time frames have increased in recent years, and DHS OIG has not taken steps to understand the causes of such increases or determine how to address them."[20] GAO made a stunning 21 recommendations for DHS OIG to address management and operational weaknesses—all of which your office concurred with. However, as of April 2022, just one recommendation has been closed, leaving serious concerns about your commitment to carry out independent, objective, and fact-based oversight of DHS.

For these reasons, the Committees request that you produce the following documents and information by May 24, 2022:

1. All versions of the OIG-21-09 report, including:

    a. all drafts;

    b. all comments, edits, questions, and concerns made in draft versions by any DHS OIG personnel; and

    c. all work papers associated with the report;

2. All communications regarding revisions or modifications to the OIG-21-09 report involving DHS OIG personnel, including but not limited to:

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[17] Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Inspector General Joseph V. Cuffari, Department of Homeland Security, Office of Inspector General (Mar. 26, 2020) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-03-26.CBM%20to%20Cuffari-DHS%20IG%20re%20Reports.pdf).

[18] Letter from Chairman Bennie G. Thompson, Committee on Homeland Security, to Inspector General Joseph V. Cuffari, Department of Homeland Security, Office of Inspector General (Mar. 26, 2020) (online at https://homeland.house.gov/imo/media/doc/2020-03-26%20DHS%20OIG.pdf).

[19] Government Accountability Office, *DHS Office of Inspector General: Actions Needed to Address Long-Standing Management Weaknesses* (June 2021) (GAO-21-316) (online at www.gao.gov/assets/gao-21-316.pdf).

[20] *Id.*

a. Office of Audits personnel;

b. Office of Inspections and Evaluations personnel;

c. Front office personnel, including you;

d. Deputy Assistant Inspector General for Audits;

e. Chief of Staff;

f. Deputy Inspector General;

g. Assistant Inspector General; and

h. Deputy Counsel to the Inspector General;

3. All versions of the DHS OIG report on sexual misconduct and harassment related to the 2018 survey, including:

a. all drafts;

b. all comments, edits, questions, and concerns made in draft versions by any DHS OIG personnel;

c. all work papers associated with report; and

d. all survey data collected;

4. All communications regarding revisions, modifications, and decisions regarding when or whether to issue the DHS OIG report on sexual misconduct and harassment related to the 2018 survey, including but not limited to:

a. Office of Audits personnel;

b. Office of Inspections and Evaluations personnel;

c. Front office personnel, including you;

d. Deputy Assistant Inspector General for Audits;

e. Chief of Staff;

f. Deputy Inspector General;

g. Assistant Inspector General; and

h. Deputy Counsel to the Inspector General;

5. Any policies or audit planning documentation, including interim policies or draft audit plans, regarding DHS OIG project timelines and report changes for:

a. OIG-21-09; or

b. the report on sexual misconduct and harassment;

6. All documents, including internal and external communications, relating to DHS OIG quality control measures or review processes for:

a. OIG-21-09;

b. report on sexual misconduct and harassment; and

7. Any policies regarding application of standards to reports and audits produced by DHS OIG.

An attachment to this letter provides additional instructions for responding to this request. If you have any questions, please contact Oversight Committee staff at [redacted], or Committee on Homeland Security staff at [redacted]

Sincerely,

Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform

Bennie G. Thompson
Chairman
Committee on Homeland Security

Enclosure

cc: The Honorable James Comer, Ranking Member
Committee on Oversight and Reform

The Honorable John Katko, Ranking Member
Committee on Homeland Security

Responding to Committees' Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.

2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committees.

3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, including alternate spellings or transliterations of any names, the request shall be read also to include that alternative identification.

4. The Committees' preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.

5. Documents produced in electronic format should be organized, identified, and indexed electronically.

6. Electronic document productions should be prepared according to the following standards:

    a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

    b. Document numbers in the load file should match document Bates numbers and TIF file names.

    c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

    d. All electronic documents produced to the Committees should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

    BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

7. Documents produced to the Committees should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.

8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.

9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committees' letter to which the documents respond.

10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.

11. The pendency of or potential for litigation shall not be a basis to withhold any information.

12. In accordance with 5 U.S.C.§ 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.

13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.

14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.

15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.

16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.

17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.

19. All documents shall be Bates-stamped sequentially and produced sequentially.

21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committees.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

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4. The term "including" shall be construed broadly to mean "including, but not limited to."

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6. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; (b) the individual's business or personal address and phone number; and (c) any and all known aliases.

7. The terms "relating to" and "referring or relating to," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.

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10. The term "individual" means all natural persons and all persons or entities acting on their behalf.

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

May 18, 2022

Via e-mail: Integrity-WG@cigie.gov

The Honorable Kevin H. Winters
Chairperson, Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
Integrity-Complaint@cigie.gov

Re: DHS OIG Referral of Unauthorized Disclosure Allegation and Request for Assistance

Dear Chairperson Winters:

I am referring to the Integrity Committee allegations of unauthorized disclosure of sensitive, non-public information as described below. I respectfully request expedited processing of my request for an investigation.

On April 7, 2022, the Project on Government Oversight (POGO), published an article entitled, "Protecting the Predators at DHS: How a Federal Watchdog Suppresses Findings of Sexual Harassment and Domestic Violence" (Zaogorin & Schwellenbach, retrieved from pogo.org/investigation). This article discussed and published a Department of Homeland Security (DHS), Office of Inspector General (OIG) draft report that POGO obtained without authorization.[1] In addition to the draft report, POGO also published internal DHS OIG emails, the unpublished results of a survey conducted by DHS OIG, and mentioned another draft report about sexual harassment and sexual misconduct. On April 7, 2022, the *New York Times* (NYT) published an article entitled, "Homeland Security Watchdog Omitted Damaging Findings From Reports" (Cameron, retrieved from nytimes.com). The NYT article included information about the POGO article and the draft report. On May 10, 2022, the NYT again published an article about our draft reports, internal emails, and confidential conversation, entitled, "D.H.S. Watchdog Said Damaging Findings Removed From Reports Were Already Known" (Cameron, retrieved from nytimes.com).

I understand from recent media reports that the Department of Justice (DOJ) OIG referred to the Council of the Inspectors General on Integrity and Efficiency (CIGIE) similar allegations of an unauthorized disclosure of a draft DOJ OIG report. I understand that CIGIE assisted DOJ OIG by appointing another OIG to conduct an independent investigation into that matter. Likewise, and consistent with the IG Act, §11(d),

[1] On November 13, 2020, my office issued the related, final report, "DHS Components Have Not Fully Complied with the Department's Guidelines for Implementing the Lautenberg Amendment" (OIG-21-09).

concerning internal OIG investigations, I am referring the allegation of an unauthorized disclosure of DHS OIG draft reports, emails, and unpublished information to your office for appropriate action. I have determined that an internal investigation by my office of this matter may appear to lack objectivity.

Any unauthorized disclosure of Federal Government information can cause harm and have serious repercussions to everyday operations. See Executive Orders 13526 and 13556. Unauthorized disclosures such as the one referenced above are disruptive to the workforce and the integrity of the work of any OIG. It is also demoralizing to the dedicated employees of the DHS OIG who, on a daily basis, conduct the valuable inspections and evaluations central to our mission. Given the profound negative impact of unauthorized disclosures on the DHS OIG's mission, I am requesting that you make a determination as soon as possible about the investigation of this allegation and advise me of your decision.

Thank you for your prompt attention to this matter. Please call me with any questions at [redacted]

Sincerely,

Joseph V. Cuffari, Ph.D.
Inspector General

Government Executive

DHS IG Says He Did Not Mishandle the Agency's Reports on Sexual Harassment and Domestic Violence

By Courtney Bublé

May 18, 2022

The Homeland Security Department's inspector general is contesting claims that he improperly handled reports on sexual harassment and domestic violence.

Last month, the chair and ranking member of the Senate Judiciary Committee – Sens. Dick Durbin, D-Ill., and Chuck Grassley, R-Iowa -- questioned DHS IG Joseph Cuffari following an investigation by the Project on Government Oversight that alleged the office delayed and suppressed reports about sexual assault and domestic violence. According to one of the unpublished reports, more than 10,000 employees at DHS said they have experienced sexual harassment or sexual misconduct.

"Any suggestion that I demanded changes to the draft reports for improper purposes is false as is the suggestion that I suppressed evidence of widespread sexual harassment in DHS law enforcement components," Cuffari wrote in a 17-page letter to the senators. The May 13 letter, which included some redactions, was released by the IG's office on Tuesday.

"The edits that I and members of my immediate staff requested to be made to certain draft reports were consistent with the extensive edits recommended by career civil servants who were asked to review the drafts because they are subject matter experts in the relevant field," he wrote. Cuffari argued this was necessary to align the reports with the standards from the Council of the Inspectors General on Integrity and Efficiency.



The issue centers on two projects approved by Cuffari's predecessor Acting IG John Kelly: to look at Customs and Border Protection, Immigrations and Customs Enforcement, the Transportation Security Administration and the Secret Service's handling of allegations or sexual harassment and workplace sexual misconduct, and to determine if DHS agencies with law enforcement personnel were in compliance with the Lautenberg Amendment, which bans the possession of firearms for individuals convicted of domestic violence.

Cuffari, who was confirmed in July 2019, said the report on sexual harassment and misconduct was "plagued by problems from the start" and claimed he didn't know about the survey (that was conducted in June and July 2018) until December 2020. The IG said he provided DHS, along with the Senate Judiciary Committee, with the results.

"I am considering closing the review without issuing a report. Before taking that step, however, I will give [Office of Inspections and Evaluations] an opportunity to explain what a report that meets [CIGIE's] Blue Book standards might look like," Cuffari wrote. "In addition, I have approved a project proposal under which OIE will administer another survey in fiscal year 2023," which "would likely provide DHS leadership with useful information about any changes in response patterns since 2018 and give [the office of inspector general] a foundation to scope future work in this area."

In the letter he also explains his rationale to revise portions of a report titled, "DHS Components Have not Fully Complied with the Department's Guidelines for Implementing the Lautenberg Amendment." Among other issues, the IG wrote that he "found the report confusing inasmuch as it blurred the distinction between a criminal conviction for a domestic violence offense and administrative discipline by the employing agency for 'domestic violence.' The latter topic was beyond the scope of the project as originally approved and the conclusions in the draft report were unpersuasive."

Liz Hempowicz, director of public policy at POGO, reacted to the IG's letter in a series of tweets on Wednesday.

"This is not the response of someone committed to meeting the statutory mandate for inspectors general," Hempowicz wrote. "The response is devoid of any leadership (a prerequisite for any IG), with Cuffari pointing fingers every way, but himself when answering why he failed to inform agency leadership about a survey showing rampant sexual harassment and misconduct at DHS, for over 16 months."

Hempowicz also noted that shortly after the stories from POGO and *The New York Times*, DHS Secretary Alejandro Mayorkas ordered a working group to conduct a 45-day review of the employee accountability processes.

POGO has written several other reports alleging wrongdoing at the watchdog office and has called for Cuffari to resign.

Government Executive asked the offices of Durbin and Grassley for comment on the letter, but they did not immediately respond.

In addition to the senators, Reps. Carolyn Maloney, D-N.Y., chair of the House Oversight and Reform Committee, and Bennie Thompson, chair of the House Homeland Security Committee, sent Cufarri a letter on May 10 regarding the POGO report.

By Courtney Bublé

May 18, 2022

https://www.govexec.com/oversight/2022/05/DHS-ig-says-he-did-not-mishandle-agencys-reports-sexual-harassment-and-domestic-violence/367118/

Accountability

Protecting the Predators at DHS

How a Federal Watchdog Suppresses Findings of Sexual Harassment and Domestic Violence

BY **ADAM ZAGORIN** & **NICK SCHWELLENBACH** | FILED UNDER **INVESTIGATION** | APRIL 07, 2022



(Illustration: Leslie Garvey / POGO)

IMPORTANT UPDATE: This story now includes the response of Secretary of the Department of Homeland Security Alejandro Mayorkas to revelations in POGO's story, published yesterday. Only hours after the story appeared, Mayorkas announced he had become "aware of draft unpublished reports from the Office of the Inspector General that underscore the need for immediate action." Mayorkas announced the creation of a "working group" to "conduct a 45-day

review of employee misconduct discipline processes currently in effect throughout DHS…" (see update below).

More than 10,000 employees at law enforcement components of the Department of Homeland Security (DHS) say they have experienced sexual harassment or sexual misconduct, according to an unpublished federal watchdog report obtained by the Project On Government Oversight (POGO). That's over one-third of the roughly 28,000 employees who responded to a **survey conducted** as part of the long-pending review.

DHS's Office of Inspector General has been working on the report, which includes the survey responses, for more than four years. Capitol Hill received the draft report. POGO is not making it public in full at this time to protect sources who fear retaliation. None of its results have been previously released, even though a draft was cleared by a group of senior watchdog officials in late 2020.

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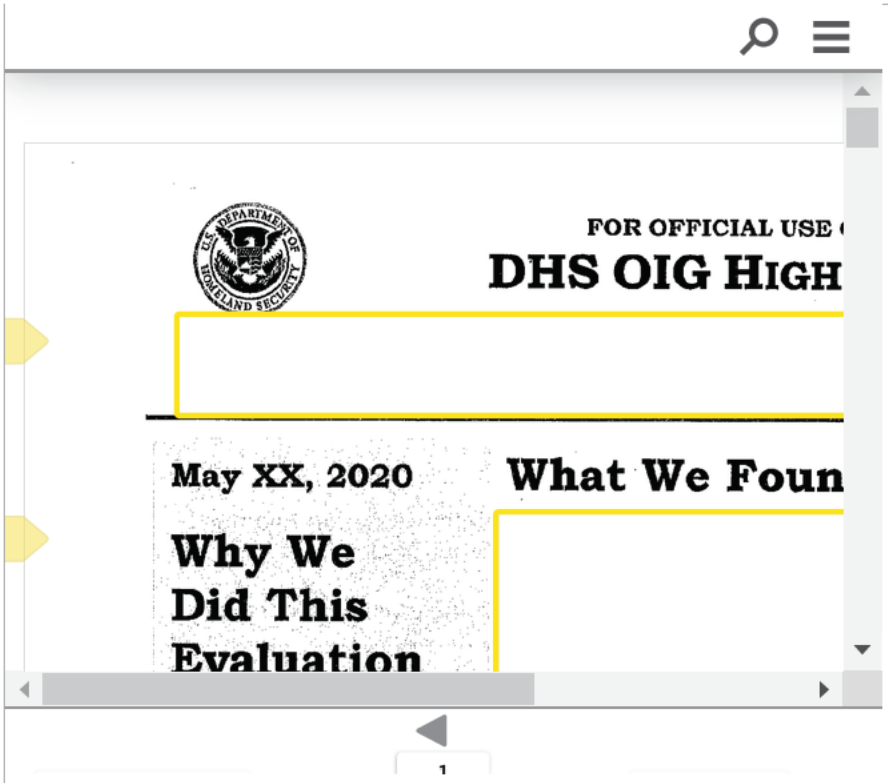
email@email.com

Sign up

Since then, a few top advisors close to Inspector General Joseph V. Cuffari have been trying to delete material from the sexual misconduct review, citing his removal of findings and evidence from previous reports. While it's common for draft reports to face revisions to adjust language or double-check evidence and data, the wholesale proposed cuts of key material have led to delays of more than a year, an unusually long hold-up.

A censored version of one of those previous reports focused on domestic violence committed by DHS law enforcement personnel. It was published in November 2020. But POGO obtained **an earlier draft of that document**, which

shows significant portions were removed prior to its release — for many of the same reasons now being used to justify major cuts from the sexual misconduct review.



It was initially unclear whether DHS Secretary Alejandro Mayorkas was even aware of the shockingly high number of claims of sexual misconduct. Or that relatively few are ever officially reported. Or how those that do get official attention are ultimately dealt with by Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), the Transportation Security Administration (TSA), and the Secret Service.

It was also unclear whether Mayorkas knew about the inspector general's cuts from the 2020 report on domestic violence at DHS. Or that the agency substantiated those charges in 30 cases involving its employees — and then continued to allow them access to government-issued firearms.

Hours after POGO's story appeared, Mayorkas announced in a memo addressed to all "DHS Component and Office Leaders" and **provided** to the *New York Times* that he had just become "aware of draft unpublished reports from the Office of the Inspector General that underscore the need for immediate action." Mayorkas said he was creating a "working group" to "conduct a 45-day review of employee misconduct discipline processes currently in effect throughout DHS…"

An earlier response to POGO from Mayorkas's office had given no indication what he might do, one way or the other. "By law, the DHS Office of Inspector General occupies a unique and independent status within the Department. DHS does not have any involvement with internal OIG deliberations or decisions," a spokesperson for Mayorkas said.

In the sexual misconduct report, the sheer number of alleged abuses is all the more troubling because survey respondents reference their frequent fear of reprisal when considering whether to officially divulge what they say happened to them. Of the more than 10,000 survey respondents who say they experienced sexual misconduct during the seven-year period of fiscal years 2012 through 2018, only about 22% formally reported it. Among those who did report, a substantial number — about 41% — say doing so "negatively

affected their careers."



Four DHS components appear to be suffering from a widespread culture of impunity, silencing, and retaliation when dealing with sexual misconduct and domestic violence. Above, DHS Secretary Alejandro Mayorkas speaks with Chief of the U.S. Border Patrol Raul Ortiz, September 20, 2021. *(DHS Photo by Benjamin Applebaum)*

Taken as a whole, detailed evidence in the unfinished sexual misconduct report, as well as cuts from the domestic violence report, create the appearance that the four DHS components — which employ roughly 150,000 federal workers — suffer from a widespread culture of impunity, silencing, and retaliation when dealing with sexual misconduct and domestic violence.

A spokesperson for Mayorkas said the current administration has been trying to reform the agency. "Secretary Mayorkas has made it clear to the DHS workforce that sexual harassment and sexual assault will not be tolerated," the spokesperson told POGO. "Since the start of the Biden-Harris Administration, DHS has taken important steps to combat abuse and misconduct, including reforms to Department policies and employee trainings."

These revelations come just as Congress on a bipartisan basis renewed and expanded the landmark Violence Against Women Act (VAWA) by **closing some key loopholes**. **In the words of former U.S. Representative Gabrielle Giffords** (D-AZ), a prominent victim of gun violence, "It should anger all of us how many abusers and stalkers are able to slip through cracks in our laws and obtain guns."

At the same time, influential Senate Republicans are trying to block two of President Joe Biden's nominees because of allegations involving sexual harassment and domestic violence.

Senator Chuck Grassley (R-IA) — who has long kept close tabs on inspectors general — **is seeking to delay a vote on one of Biden's ambassador nominees** who is accused of covering up sexual harassment allegations made against a close associate.

Senator James Lankford (R-OK), who sits on the Senate Homeland Security and Governmental Affairs Committee, recently cited a **sworn 2021 affidavit** alleging that Biden's nominee to run ICE may have become violent with his wife at home.

"If these allegations of physical and violent domestic abuse are true, they are disqualifying for a law enforcement officer at any level," Lankford said in **a statement last month**.

A spokesperson for Inspector General Cuffari offered only a limited reply in response to POGO's detailed questions about the still-pending sexual misconduct report and the material removed from the domestic violence review. "Since coming on board in July 2019, Dr. Cuffari established the highest expectations for quality standards for every employee," a spokesperson for Cuffari said in a statement emailed to POGO. "All reports initiated and published during his tenure meet appropriate quality standards."

PART 1

“Better to be one of



In response to the sexual harassment survey, DHS employees provided several reasons for not reporting misconduct, such as believing some behavior was too minor, that their agency’s “law enforcement culture” was not supportive of reporting, or that no one would investigate their claims anyway. The draft report obtained by POGO quotes a female ICE employee saying: “this is the community I have to work in and grow in the ranks with and it’s better to be one of the guys than ‘that girl.’”

The unpublished report says that about 15% of federal law enforcement jobs are filled by women, and some agencies have even fewer. It notes that “women made up only 5 percent of CBP’s Border Patrol workforce.”

The draft also confirms that, in many cases, DHS managers did not investigate alleged offenders when employees filed formal complaints against them, even when those complaints led to six-figure financial settlements.

The unreleased document references 249 cases where DHS components reached settlements with employees who filed Equal Employment Opportunity (EEO) complaints related to sexual harassment. Yet in most cases — 185 out of 249 — inspector general staff found no records showing that DHS components carried out investigations or took disciplinary action against purported perpetrators.

The draft confirms that, in many cases, DHS managers did not investigate alleged offenders when employees filed formal complaints against them.



While investigations of alleged offenders and potential discipline are not required to resolve an EEO complaint, they are strongly encouraged. The Equal Employment Opportunity Commission advises that once “on notice of alleged misconduct,” an agency “has a duty to exercise due care by launching an internal investigation, regardless of whether an EEO complaint is filed,” according to the draft report.

Even so, the draft found that, “although sexual harassment is a violation of each components’ policies and standards, none of the four components had formal mechanisms in place to administer discipline for violations reported exclusively through the EEO process.”

In one startling case, Customs and Border Protection paid a female employee $255,000 to settle her 2016 Equal Employment Opportunity complaint. She alleged her boss repeatedly made sexual remarks and propositioned her for sex. When she refused, the boss retaliated by denying her training and work opportunities, the unreleased draft says. It notes that an examination of CBP records showed “no indication the component conducted a corresponding misconduct investigation or administered disciplinary action for this case.”

In another case, a male Secret Service employee complained in 2018 that a male co-worker, “repeatedly stood over him and put his genitals near his face and shoulder.” As of late 2019, when the watchdog office wrapped up its fact-finding, the case was unresolved, and there was no record of any investigation or disciplinary action.

PART 2

“My



The draft report's findings are consistent with accounts from a former insider and agency critic. Former Senior Patrol Agent Jenn Budd has said she was **raped in the Border Patrol academy** in the 1990s, faced pressure not to report it, and later experienced sexual harassment on the job.



Former Senior Patrol Agent Jenn Budd has said she was raped in the Border Patrol academy in the 1990s, faced pressure not to report it, and later experienced sexual harassment on the job. *(Photo courtesy of Jenn Budd)*

"My experience is not an anomaly. In general, the agency has an attitude that male agents are to be believed and those who complain about sexual assault or harassment are not," Budd, who also served as a Border Patrol intelligence officer, told POGO.

"Whether an agent is disciplined or not is never known to most victims because the agency claims privacy restrictions. Offenders are often moved from station to station, sector to sector, and victims are often given settlements to remain quiet," Budd said.

Her experience may help explain why the unpublished survey showed about 41% of those who reported their harassment said they felt that doing so harmed their careers.

If you file an Equal Employment Opportunity complaint, “everyone in your [Border Patrol] station will know within a week,” Budd told POGO. “You will be given dangerous positions without backup, your car may be vandalized, you may find yourself being written up for minor infractions such as a wrinkled uniform, and they will isolate you with a do-nothing position.”

Despite acknowledging receipt of POGO’s query, Customs and Border Protection – the Border Patrol’s parent agency – did not provide comments for this story.



Amid the #MeToo movement and **a 36% increase** in allegations of sexual misconduct from fiscal years 2017 to 2018, then-DHS Secretary Kirstjen Nielsen issued **a statement** about the problem of workplace harassment.



Then-DHS Secretary Kirstjen Nielsen stressed the need for DHS to "respond swiftly," and to block "retaliation" against agency staff who reported abuse. Nielsen, center, above, tours a replacement border wall construction site on April 18, 2018 in Calexico, California. *(Photo by David McNew/Getty Images)*

Nielsen stressed the need for DHS to "respond swiftly," and to block "retaliation" against agency staff who reported abuse. In her statement, she referenced incidents of sexual misconduct tied to DHS personnel that appeared in **news stories** around the country. "Courageous women and men have come forward to report their experiences with unwanted sexual advances, comments, or conduct in the workplace. Preventing this type of behavior is a subject I feel strongly about," she said.

Around this same time, in early 2018, the DHS watchdog office began its review of how DHS's law enforcement divisions handled sexual misconduct. It examined reams of internal sexual misconduct claims and disciplinary files and surveyed personnel at all four DHS law enforcement components.

By the end of November 2020, an all-but-complete version of the unpublished report on sexual misconduct had been approved by Cuffari's Office of Counsel, by quality assurance staff, and by three high-level watchdog officials, according to interviews conducted by POGO.

Now, more than a year later, significant parts of the document seem to be at risk — if the report is ever issued at all.

Top aides to Cuffari, who are still reviewing the document, have marked for removal any mention of public, high-profile cases of sexual misconduct at DHS — even though Secretary Nielsen alluded to such cases in her statements condemning sexual misconduct in early 2018.



Top aides to Cuffari have marked for removal any mention of public, high-profile cases of sexual misconduct at DHS.

"In recent years, all four components have faced widely reported allegations and incidents of sexual harassment and sexual misconduct," reads one of many factually accurate segments marked for deletion by a Cuffari advisor.

"For example, in 2012, the ICE Chief of Staff resigned amid allegations of sexual harassment and several Secret Service employees solicited prostitutes in Cartagena, Colombia," reads another, also marked for removal.

And yet another tagged for excision: "In 2017, public reports surfaced about CBP's 'rape table' at the Newark airport where employees were held down while other employees simulated sexual acts on them."

To support their argument for censoring these references, and others, senior Cuffari aides opined in writing that they were "irrelevant," "inflammatory," or "unnecessary."

In an attempted rebuttal, a staffer working on the report argued, also in writing, that "[I] don't think there is anything to be embarrassed about beginning a review with topics of high public interest."



Other efforts by Cuffari's aides to excise passages cite an aversion to "second-guessing" disciplinary decisions within DHS, pointing to an earlier directive by Cuffari.

The unreleased draft also highlights the finding that, even when sexual misconduct does lead to discipline, accountability often falls short. For example, it says many of the employees alleged to have sexually harassed co-workers or engaged in sexual misconduct get written up for vague infractions like "conduct unbecoming," "inappropriate conduct," and "unprofessional behavior."

> *Non-specific allegations may present a false picture of reality and hamper the ability of*

agencies to track sexual offenders over time.

Because these generic charges do not detail the sexual nature of the offense, it is harder to keep track of subsequent acts of misconduct, impeding accountability.

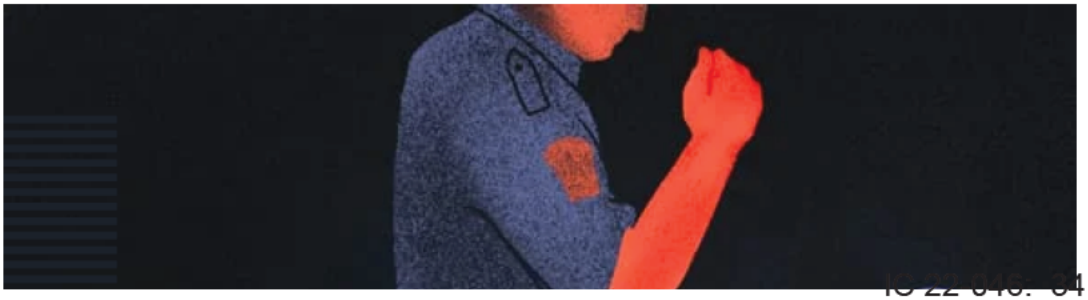
A defense of non-specific, generic charges is that they can make it easier to discipline employees in certain cases — notably where the standard of proof for a sexual offense cannot be met because evidence is weak or absent. But non-specific allegations may also present a false picture of reality and hamper the ability of agencies to track sexual offenders over time when there is recidivism.

Nonetheless, a top aide to Cuffari objected to a finding in the draft that generic charges are often used to deal with sexual misconduct, writing:

“Aren’t we again going behind or second guessing the decisions of disciplinary authorities?” Another official backed that up, citing two prior reports issued under Cuffari that also cut findings regarding discipline.

PART 5

“Peel





One of those prior reports focused on domestic violence by DHS law enforcement agents.

A pre-publication draft of the domestic violence report obtained by POGO prominently highlighted 35 cases where DHS law enforcement agents — mostly within Customs and Border Protection — had engaged in domestic violence but had not been convicted.

Although DHS internal affairs officials "substantiated" their violent abuse of domestic partners, in 30 cases they kept their jobs and their government-issued guns. "In most instances the employee received little or no discipline and remained a law enforcement officer with access to a firearm," the draft states.

This information was stripped out of the **final document** published in November 2020.

Instructions to remove this material, in addition to a data table and summaries of how and whether DHS disciplined the offenders, appeared in a July 9, 2020, email signed by Cuffari, also obtained by POGO.

Although DHS internal affairs officials "substantiated" their violent abuse of domestic partners, "in most instances the employee received little or no discipline and remained a law enforcement officer with access to a firearm," the draft states.

"Peel off the remaining language and cases that essentially go beyond Lautenberg and risk appearing biased/in the posture of second guessing DHS disciplinary decisions without full facts and potentially in violation of applicable rules," **Cuffari wrote in the email**. The Lautenberg Amendment is a law specifying that persons convicted of domestic violence cannot carry firearms.

In response to Cuffari's directive, his staff **removed nearly four pages** of factual evidence, narrowed **the declared scope** of the report, and **changed its title** — essentially suppressing evidence, only to publish a softer, markedly incomplete version of the original document.

What had been described in the original draft as a presentation of how DHS handles "arrests and/or convictions" for domestic violence, was recast and limited to a technical analysis of the department's compliance with the Lautenberg Amendment, which applies only to convictions.

The change in the report's title highlights the shift. The original title, "**DHS Has Not Adequately Addressed Law Enforcement Misconduct Related to Domestic Violence**," was weakened to read, "DHS Components Have Not Fully Complied with the Department's Guidelines for Implementing the Lautenberg Amendment."

PART
6

"A Clear



But the title change overlooked a key fact: Existing agency policies already allow and actually encourage DHS to take action against alleged offenders — even if they avoid a conviction for domestic violence that would trigger the Lautenberg Amendment.

As a suppressed portion of the draft report clearly notes, DHS rules stipulate that even without a domestic violence conviction, agency components can "still investigate the offenses to determine whether the employees engaged in misconduct." And a finding of misconduct — even it occurs off duty — can result in discipline, up to and including termination.

> *“If they liked an employee, they diluted discipline.”*
>
> **JAMES TOMSHECK, FORMER ASSISTANT COMMISSIONER OF CBP IN CHARGE OF INTERNAL AFFAIRS**

One former Customs and Border Protection official was pointed in his criticism. “It is highly inappropriate for that information to be stripped from the report,” former Assistant Commissioner of CBP in charge of Internal Affairs James Tomsheck told POGO. “It is their job to second guess and look at disciplinary practices to ensure consistency.”

He pointed to “wild discrepancies inside the Border Patrol” in disciplining employees for on-duty and off-duty conduct, such as confirmed instances of domestic violence. “If they liked an employee, they diluted discipline,” Tomsheck said.

There is no question that other inspector general offices have focused on how discipline is administered. A case in point: a **2015 report** by the Justice Department watchdog. It found employees “are being charged inconsistently, which raises a potential that employees may receive inconsistent penalties for similar misconduct.”

Critics say **DHS’s Customs and Border Protection**, in particular, needs more scrutiny because of its wide-ranging power at and near borders and because it has more agents than any other law enforcement organization in the U.S.

“The public has a clear and compelling need to know what's going on in America's largest law enforcement agency,” Tomsheck said.

PART
7

“Punched



Cuffari’s directive to remove material from the 2020 domestic violence report led to the stripping out not only of statistics, but of disturbing case studies as well. One deletion involved the factual account of an unnamed CBP agent attacking his own wife and another woman.

“A CBP officer was arrested and charged with assault after he punched his wife in the face,” **says the excised segment**.

Following the CPB agent’s assault on his wife, which the agent admitted in court papers despite never being convicted, CBP suspended him for five days, the deleted segment says.

Less than two years later, the agent assaulted another woman. CBP again suspended him, this time for 15 days. Then he returned to work.

During investigations of the assaults, CBP removed his firearm. After each investigation, it was returned to him.

No mention of the CBP agent's assault on his wife, or other specific incidents of domestic violence at DHS law enforcement divisions ever appeared in the published version of the report.

Context in the domestic violence report was also put on the chopping block.

Federal **standards** in place at the time say that inspections "should provide the reader with the context … to help ensure the focus is not too narrowly drawn and to give clearer understanding of the impact of any report recommendations."

Despite this guidance, the final report did not include a statement from the draft that read, "Research … suggests that domestic violence is higher in law enforcement families than in the general population."

Cuffari's advisors also directed the deletion of **the statement** that "domestic violence victims are five times more likely to be killed if their abuser has access to a gun" and an associated citation to the *American Journal of Public Health*.

PART 8





The increased risk to victims is in part what motivated passage of the Lautenberg Amendment, which the DOJ described as "a tool" to remove firearms from "certain explosive domestic situations thus decreasing the possibility of deadly violence." But the Lautenberg Amendment applies only when there is a conviction.

The case of the CBP agent who admitted to punching his wife, but was never convicted, illustrates the limits of relying solely on the criminal justice system. While assailants may be arrested, and their violence may be well documented, they are often not prosecuted or convicted. Indeed, the domestic violence report says that out of a sample of 162 domestic violence allegations over 2016 through 2018, **only two led to convictions**.

However, each DHS law enforcement component has an internal affairs unit. One such unit is CBP's Office of Professional Responsibility.

According to James Wong, a former CBP deputy assistant commissioner for internal affairs, when a CBP employee is arrested by local law enforcement, the Office of Professional Responsibility opens a parallel investigation.

> *Border Patrol managers frequently use strong relationships with local police to persuade them*

to downgrade or dump charges against CBP or other DHS agents.

The office keeps in touch with local law enforcement or the district attorney — so that if they decline to prosecute, the office can proceed with its own administrative investigation "to get rid of the bad apples," Wong said.

Under such circumstances, an administrative investigation is often the only means to hold perpetrators accountable.

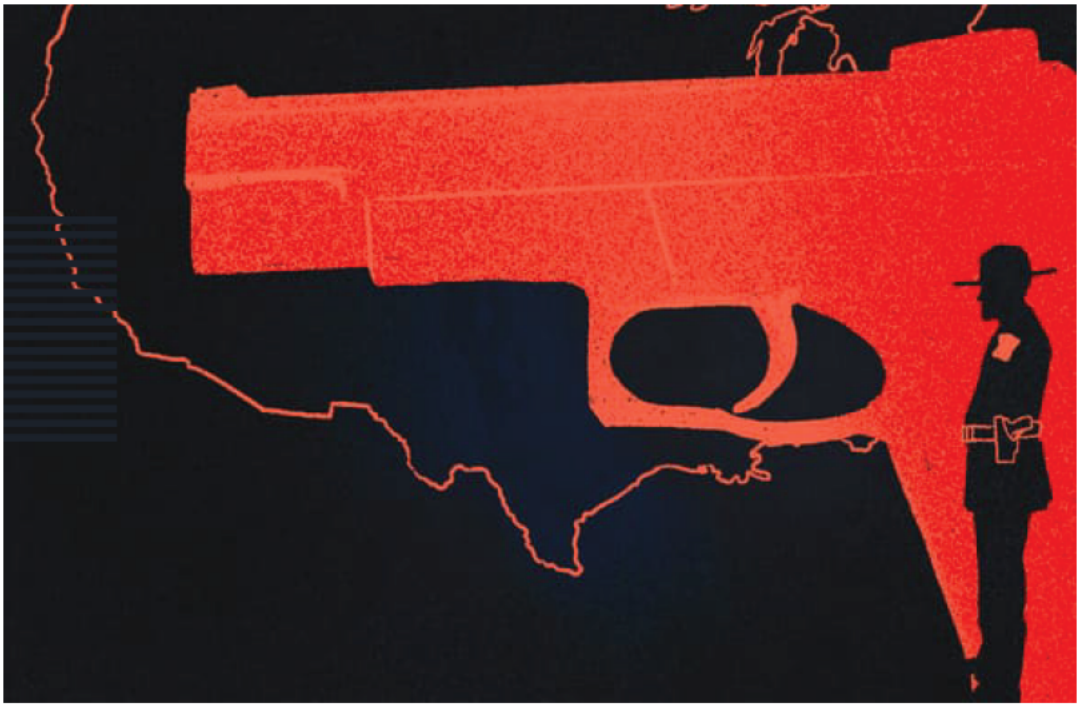
Wong, Tomsheck, the former CBP official, and Budd, the ex-Border Patrol agent, all told POGO that the Border Patrol, a part of CBP, has particularly strong relationships with local law enforcement along the U.S.-Mexico border. Border Patrol managers frequently use those relationships to pull strings or apply pressure to persuade local police to downgrade or dump charges against CBP or other DHS agents.

As Wong put it, "The Border Patrol closes ranks."

According to Tomsheck, local Border Patrol managers sometimes even pressure victims to drop charges. He says that they frequently "go to victims and say, 'If you go forward with these charges, [your] primary breadwinner … will be out of a job.'" Wong said law enforcement at all levels, including at CBP, often try to influence spouses, or other potential complainants, not to testify against their alleged abusers.

When victims recant or withhold their testimony, it can pose a significant hurdle to criminal prosecution, **according to researchers**.





Wong said that any effort to understand how CBP and other DHS law enforcement components deal with domestic violence by their own agents cannot be limited to convictions that trigger the Lautenberg Amendment. He said there is a clear additional need to examine administrative investigations, their findings, and the discipline that results — not just convictions. “That’s the bigger picture,” Wong said.

He also said the propensity to commit domestic violence off duty is a sign of how Border Patrol agents, who often work with vulnerable immigrants in remote settings far from public view, will conduct themselves on the job.

“It raises questions about someone’s fitness for the job if they abuse someone they have committed their life to,” Wong said. “How are they going to treat a total stranger they have no relationship with? Who’s going to stop them?”

A portion of the draft report that was cut before publication addresses those questions.

“In cases where the employee has shown a propensity to violence, agencies put victims and the public at risk of further violence by keeping weapons in

these individuals' hands," **the draft report says** in another section that was removed.

> *"It raises questions about someone's fitness for the job if they abuse someone they have committed their life to. How are they going to treat a total stranger they have no relationship with? Who's going to stop them?"*
>
> **JAMES WONG, A FORMER CBP DEPUTY ASSISTANT COMMISSIONER FOR INTERNAL AFFAIRS**

Recently, the head of ICE's union noted the connection between domestic violence and fitness for law enforcement duty when he raised questions about Biden's nominee for ICE director, Harris County, Texas sheriff Ed Gonzalez, **who faces** allegations of violence against his wife.

"Federal law enforcement agencies are entrusted by the American people to enforce laws passed by our elected representatives, and to do so in an honorable, humane, and respectable fashion," wrote Chris Crane, National ICE Council president, **in a letter** regarding the allegations against Gonzalez sent to Senator Gary Peters (D-MI), chairman of the Senate Homeland Security Committee. "The 'good old boy' culture that currently exists within our agency needs to end."

Gonzalez has denied the accusations. "It's false, it's all

Some 45,000 CBP law enforcement officers are

politics," he told a local Houston news station that also reported his wife has denied the allegations and that he was never charged.

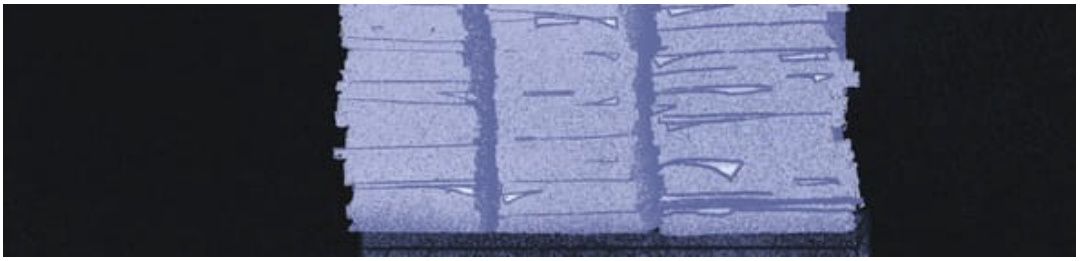
required to carry guns — with another 12,000 at ICE, and 5,000 at the Secret Service.

But worry about his nomination is only the latest concern, widely shared across the political spectrum, about domestic violence in the ranks of law enforcement — even in the absence of criminal convictions.

The draft report speaks to those concerns. Given that some 45,000 CBP law enforcement officers are required to carry guns — with another 12,000 at ICE, and 5,000 at the Secret Service — the draft report concluded that, "it is imperative that DHS and its components take appropriate action against those who have committed domestic violence."

Yet these statements were also removed, as well as several recommendations calling for disciplinary improvements at the four DHS law enforcement components.





Last June, about two years into Cuffari's tenure as DHS's top watchdog, the **Government Accountability Office (GAO) issued a report** noting serious deficiencies in his office, some that predated his arrival.

Among other problems, the GAO found that little or nothing had been done to reduce delays in completing reports, noting that an increasing percentage are taking longer than 18 months to publish.



DHS Inspector General Joseph Cuffari has an undeniable pattern of removing significant facts and evidence from major reports. Above, Cuffari, then-policy advisor for Military and Veteran Affairs for Governor Doug Ducey of Arizona, delivers remarks at a 2019 event. *(Photo: **USMEPCOM**)*

While GAO made no mention of the unfinished review of sexual misconduct, it fits the bill because it has been in the works since February 2018 — and Cuffari's office has now been stalling a near-final draft for more than a year and counting.

According to GAO, "without timely DHS OIG reports, DHS's ability to respond to such oversight efforts and Congress's ability to conduct effective oversight of

DHS operations are limited."

Moreover, the suppressed DHS watchdog reports on sexual misconduct and domestic violence are part of a pattern where Cuffari has appeared unwilling to oversee his department as an independent watchdog.

In an **article published in April 2021**, POGO documented how Cuffari refused to approve any review into the use of force by Secret Service agents in clearing Black Lives Matter protestors from Lafayette Square across from the White House. Around the same time, he also refused to probe a sizable outbreak of COVID-19 among Secret Service agents.

RELATED

Did Whistleblower Reprisal Help Set the Stage for a January 6 Intelligence Failure?

In July 2021, **POGO documented how**, as part of an investigation into CBP's 2019 Facebook scandal where at least 60 Border Patrol agents engaged in misconduct such as **posting racist and sexist** comments online, Cuffari prevented his own professional investigators from interviewing senior DHS officials about their knowledge of the matter.

In the same article, POGO described, using documents, various ways in which Cuffari delayed and interfered with a probe into charges made by a high-ranking DHS whistleblower who claimed that politically sensitive intelligence was being manipulated and suppressed by top DHS officials, including then acting secretary Chad Wolf. Wolf and other top officials denied the charges.

And in February, **POGO reported** that Cuffari is the principal target of a probe into his alleged retaliation against an official then serving as his top deputy. Cuffari has denied retaliating.

Yet more recently, Cuffari finds himself confronting a very different kind of criticism: that he signed off on a report that allegedly mischaracterizes the

facts and is harsh on DHS management.

In March, Cuffari's office issued a **report finding "egregious conditions"** and understaffing in an ICE detention center, calling for the "immediate removal" of immigrant detainees.

In ICE's official response, the agency wrote that it has questioned whether the report met federal standards and alleged that Cuffari's office "falsified and mischaracterized evidence, and has ignored facts in order to achieve preconceived conclusions."

Cuffari's office has responded that it "fully disagrees" and stands by the accuracy of its report. "Our employees' impartiality, independence, and integrity are essential to our oversight work and will remain so moving forward," the inspector general's office said in a statement.

Sadly, Cuffari himself has an undeniable pattern of removing significant facts and evidence from major reports. As a result of this pattern, his independence and impartiality are in question. And, intentionally or not, he is effectively protecting alleged predators inside DHS.

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This article originally reported that James Tomsheck was a former Assistant Secretary of Internal Affairs, and has been updated to reflect his correct position as a former Assistant Commissioner of CBP in charge of Internal Affairs.

AUTHOR

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Appendix D
Employee Questionnaire Results

Between June 18, 2018, and July 8, 2018, we administered an anonymous questionnaire to all CBP, ICE, TSA, and Secret Service Federal employees. The purpose of the questionnaire was to gather information from employees about the possible occurrence of sexual harassment and sexual misconduct in the components and the components' communication of relevant policies and procedures. In total, the questionnaire contained 23 questions with skip logic based on certain responses.

The following tables contain total responses and a percent for each question. The total number of responses differs across questions due to the skip logic of the questions and the fact that some respondents did not finish the questionnaire. We calculated the percent in each table based on the total number of respondents for each question. Due to rounding, the sum included in the following tables may not total 100 percent for all questions.

Question 1: What is your employment type? Federal employee or contractor.
We asked this question to ensure we captured only Federal employee responses.

Question 2: What is your gender?

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Female	3,766 34%	2,001 37%	5,087 45%	322 34%	11,176 39%
Male	6,747 62%	3,237 59%	5,881 51%	586 62%	16,451 57%
Prefer not to answer	421 4%	234 4%	450 4%	42 4%	1,147 4%
Component Respondents	10,934	5,472	11,418	950	28,774

Question 3: Which agency do you work for?

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Total Federal Employees Onboard	59,313	19,895	62,954	7,069	149,231

Number of respondents	10,934	5,472	11,418	950	28,774
Agency response rate	18%	28%	18%	13%	19%
Percent of questionnaire respondents	38%	19%	40%	3%	100%

Question 4: How long have you worked at your agency?

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Less than 1 year	477 4%	301 6%	1,019 9%	83 9%	1,880 7%
1-3 years	878 8%	742 14%	1,407 12%	128 14%	3,155 11%
4-6 years	684 6%	327 6%	931 8%	50 5%	1,992 7%
7-9 years	1,556 14%	888 16%	1,284 11%	98 10%	3,826 13%
10 or more years	7,325 67%	3,202 59%	6,758 59%	588 62%	17,873 62%
Component Respondents	10,920	5,460	11,399	947	28,726

Question 5: Where is your primary duty location?

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Field location	9,082 83%	4,502 83%	10,096 89%	580 61%	24,260 85%
Headquarters	1,829 17%	948 17%	1,287 11%	365 39%	4,429 15%
Component Respondents	10,911	5,450	11,383	945	28,689

Question 6: Do you supervise other employees?

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Yes	2,969 27%	1,102 20%	3,815 34%	253 27%	8,139 28%
No	7,931 73%	4,344 80%	7,559 66%	688 73%	20,522 72%

Component Respondents	10,900	5,446	11,374	941	28,661

Question 7: My agency (CBP, ICE, TSA, or Secret Service) informs employees of what constitutes sexual harassment.

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Strongly agree	3,283 30%	2,479 46%	3,678 32%	356 38%	9,796 34%
Agree	4,937 46%	2,364 44%	5,429 48%	405 43%	13,135 46%
Neither agree nor disagree	1,426 13%	347 6%	1,236 11%	119 13%	3,128 11%
Disagree	803 7%	142 2%	668 6%	40 4%	1,653 6%
Strongly disagree	388 4%	83 2%	309 3%	16 2%	796 3%
Component Respondents	10,837	5,415	11,320	936	28,508

Question 8: My agency informs employees of what constitutes sexual misconduct.

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Strongly agree	3,016 28%	2,275 42%	3,344 30%	324 35%	8,959 32%
Agree	4,605 43%	2,311 43%	5,083 45%	400 43%	12,399 44%
Neither agree nor disagree	1,725 16%	488 9%	1,562 14%	121 13%	3,896 14%
Disagree	1,062 10%	235 4%	956 8%	72 8%	2,325 8%
Strongly disagree	399 4%	95 2%	346 3%	16 2%	856 3%
Component Respondents	10,807	5,404	11,291	933	28,435

Question 9: My agency informs employees of how to report sexual harassment.

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Strongly agree	3,004 28%	2,318 43%	3,259 29%	325 35%	8,906 31%
Agree	4,936 46%	2,432 45%	5,350 47%	422 45%	13,140 46%
Neither agree nor disagree	1,511 14%	396 7%	1,387 12%	118 13%	3,412 12%
Disagree	933 9%	152 3%	883 8%	44 5%	2,012 7%
Strongly disagree	392 4%	97 2%	390 3%	23 2%	902 3%
Component Respondents	10,776	5,395	11,269	932	28,372

Question 10: My agency informs employees of how to report sexual misconduct.

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Strongly Agree	2,856 27%	2,175 40%	3,049 27%	301 32%	8,381 30%
Agree	4,677 44%	2,380 44%	5,089 45%	403 43%	12,549 44%
Neither Agree nor Disagree	1,770 16%	505 9%	1,634 15%	134 14%	4,043 14%
Disagree	1,042 10%	220 4%	1,059 9%	71 8%	2,392 8%
Strongly Disagree	403 4%	107 2%	417 4%	22 2%	949 3%
Component Respondents	10,748	5,387	11,248	931	28,314

Question 11: I would most likely report sexual harassment or sexual misconduct to: (select all that apply)

	CBP	ICE	TSA	Secret Service	Questionnaire Total
My direct supervisor	7,989 75%	4,257 80%	8,883 79%	725 78%	21,854 78%
Another supervisor other than my direct supervisor	2,805 26%	1,093 20%	3,090 28%	238 26%	7,226 26%
DHS OIG	2,984 28%	1,670 31%	2,022 18%	169 18%	6,845 24%
Agency EEO	2,636 25%	1,610 30%	1,976 18%	267 29%	6,489 23%
Agency Human Resources	1,027 10%	515 10%	3,161 28%	109 12%	4,812 17%
Agency Internal Affairs/Office of Professional Responsibility	4,220 40%	2,132 40%	1,892 17%	258 28%	8,502 30%
Agency Ombudsman	163 2%	83 2%	1,590 14%	183 20%	2,019 7%
Do not know	709 7%	201 4%	713 6%	49 5%	1,672 6%
I would not report it	602 6%	271 5%	559 5%	62 7%	1,494 5%
Other*	414 4%	118 2%	407 4%	25 3%	964 3%
Component Respondents	10,662	5,335	11,176	925	28,098

*Respondents who selected "other" were able to enter comments. Comments included reporting to union representatives, senior colleagues, trusted coworkers, component counsel, an attorney, local police, family, personal friends, Congress, news media, Office of Special

Counsel, Employee Assistance Program, and religious leaders. Some commented on why they did or did not select certain responses.

Question 12: Within the past 7 years, have you experienced any of the following behaviors in your current workplace? (select all that apply)

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Insulting remarks of a sexual nature	1,970 19%	707 13%	2,049 19%	140 15%	4,866 18%
Jokes or sexual humor, verbal or displayed in print or media	3,008 29%	1,073 20%	2,909 26%	185 20%	7,175 26%
Unwanted sexual advances or invitations	793 8%	297 6%	959 9%	60 7%	2,109 8%
Unwanted texts or email communications of a sexual nature	483 5%	162 3%	385 3%	38 4%	1,068 4%
Promise of reward or preferential treatment for sexual activity or behavior	141 1%	49 1%	151 1%	7 <1%	348 1%
Coercion for sexual activity	107 1%	44 <1%	122 1%	3 <1%	276 1%
Threats of punishment for not engaging in sexual activity	78 <1%	23 <1%	74 <1%	1 <1%	176 <1%
Unwanted touching, crowding, leaning	926 9%	345 7%	1,273 12%	70 8%	2,614 9%
Sexual assault or attempted sexual assault, including rape	74 <1%	18 <1%	64 <1%	4 <1%	160 <1%
Indecent exposure	136 1%	35 <1%	124 1%	4 <1%	299 1%
Prefer not to answer	639 6%	312 6%	744 7%	49 5%	1,744 6%
I have not witnessed* any	6,280 60%	3,601 68%	6,696 61%	636 70%	17,213 62%

of the listed or other unlisted behaviors associated with sexual harassment / sexual misconduct					
Other sexual harassment and/or sexual misconduct related behavior not listed**	390 4%	165 3%	380 3%	13 1%	948 3%
Component Respondents	10,482	5,271	11,060	915	27,728

*Although the question stated "experienced," the final questionnaire response used "witnessed"; this was an unintended error that we factored into the totals for future questions. Unless the respondents included another response, they were automatically directed to Question 16.

**Respondents who selected "other" were able to enter comments. In some of these comments, respondents wrote a form of not applicable or other note indicating that they had not experienced any of the behaviors. Because they selected "other," they were automatically directed to Question 13 even though they indicated in comments that they did not experience any of the behaviors. We accounted for these respondents as footnoted in Questions 13 and 14 below.

Question 13: If you experienced any of the above behaviors, did you report it?[36]

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Yes*	801 19%	303 18%	1,121 26%	37 14%	2,262 22%
No	3,366 81%	1,342 82%	3,204 74%	236 86%	8,148 78%
Component Respondents	4,167	1,645	4,325	273	10,410

*Respondents who selected "yes" were automatically directed to Question 15.

[36] We subtracted from this question the 150 respondents who selected "other" in Question 14 and included a comment indicating that they did not experience a behavior, who did not select another responsive answer, and who did not previously select a behavior in Question 12.

Question 14: Please indicate your reason for not reporting the behavior(s). (select all that apply)[37]

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Someone else reported the behavior	141 4%	47 4%	180 6%	5 2%	373 5%
I was afraid of reprisal or retaliation for reporting the behavior	761 23%	333 25%	857 27%	61 26%	2,012 25%
I do not believe management is supportive of employee reporting that type of behavior	935 28%	347 26%	938 30%	76 33%	2,296 29%
The behavior took place off-duty	185 6%	68 5%	165 5%	21 9%	440 5%
I did not feel the behavior was serious enough to warrant reporting	1,698 51%	658 50%	1,380 44%	115 50%	3,851 48%
I was unfamiliar with the process for reporting the behavior	254 8%	65 5%	243 8%	14 6%	576 7%
I did not believe the employee would be investigated even if reported	724 22%	257 20%	759 24%	59 26%	1,799 22%
I did not want to cause an adverse action against a co-worker	510 15%	199 15%	455 14%	42 18%	1,206 15%
I did not want to get involved	451 14%	209 16%	462 15%	35 15%	1,157 14%
Management was already aware of this behavior	454 14%	195 15%	430 14%	25 11%	1,104 14%
Other*	522 16%	188 14%	440 14%	35 15%	1,185 15%

[37] We subtracted from this question the 150 respondents who selected "other" and included a comment indicating that they did not experience a behavior, who did not select another responsive answer, and who did not previously select a behavior in Question 12.

Component Respondents	3,302	1,311	3,164	231	8,008

*Respondents who selected "other" were able to enter comments. Comments included that the individuals handled it themselves, they were not offended and/or knew it was unintentional, their component does not care, they do trust the component and/or process, it is common knowledge and/or part of the component culture, the person they would report the behavior to engaged in it, there is a stigma to reporting, and a coworker asked them not to report the behavior.
**Respondents then directed to Question 16.

Question 15: My reporting of the behaviors I experienced has had a negative impact on my career.

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Strongly agree	220 28%	86 29%	205 18%	6 17%	517 23%
Agree	129 16%	54 18%	217 19%	6 17%	406 18%
Neither agree nor disagree	242 30%	89 30%	370 33%	15 42%	716 32%
Disagree	124 16%	44 15%	206 18%	5 14%	379 17%
Strongly disagree	80 10%	25 8%	121 11%	4 11%	230 10%
Component Respondents	795	298	1,119	36	2,248

Question 16: In the past 7 years, have you had knowledge of, or witnessed any of the following behaviors at your current agency? (select all that apply)

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Insulting remarks of a sexual nature	2,172 21%	788 15%	2,381 22%	145 16%	5,486 20%
Jokes or sexual humor, verbal or displayed in print or media	3,045 30%	1,109 21%	3,101 28%	195 22%	7,450 27%
Unwanted sexual advances or invitations	973 10%	329 6%	1,333 12%	80 9%	2,715 10%

Unwanted texts or email communications of a sexual nature	672 7%	238 5%	755 7%	60 7%	1,725 6%
Promise of reward or preferential treatment for sexual activity or behavior	312 3%	112 2%	401 4%	31 3%	856 3%
Coercion for sexual activity	175 2%	61 1%	252 2%	12 1%	500 2%
Threats of punishment for not engaging in sexual activity	109 1%	33 <1%	148 1%	6 <1%	296 1%
Unwanted touching, crowding, leaning	974 10%	319 6%	1,467 13%	65 7%	2,825 10%
Sexual assault or attempted sexual assault, including rape	130 1%	33 <1%	136 1%	7 <1%	306 1%
Indecent exposure	191 2%	77 1%	221 2%	11 1%	500 2%
Prefer not to answer	573 6%	268 5%	704 6%	42 5%	1,587 6%
I have not witnessed any of the listed or other unlisted behavior associated with sexual harassment / sexual misconduct*	6,030 59%	3,531 68%	6,373 58%	618 69%	16,552 61%
Other sexual harassment and/or sexual misconduct related behavior not listed	250 2%	93 2%	259 2%	17 2%	619 2%
Component Respondents	10,234	5,175	10,915	897	27,221

*Unless the individuals selected another response, they were automatically directed to Question 20.

Question 17: If you have had knowledge of or witnessed any of the above behaviors, did you report it?

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Yes	933 22%	321 19%	1,521 33%	43 15%	2,818 26%
No	3,292 78%	1,328 81%	3,039 67%	239 85%	7,898 74%
Component Respondents	4,225	1,649	4,560	282	10,716

*Respondents who selected "yes" were automatically directed to Question 19.

Question 18: Please indicate your reason for not reporting the behavior(s). (select all that apply)

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Someone else reported the behavior	445 14%	179 14%	602 20%	33 14%	1,259 16%
I was afraid of reprisal or retaliation for reporting the behavior	707 22%	289 22%	764 25%	55 23%	1,815 23%
I do not believe management is supportive of employees reporting that type of behavior	833 26%	320 24%	803 27%	64 27%	2,020 26%
The behavior took place off-duty	171 5%	67 5%	151 5%	14 6%	403 5%
I did not feel the behavior was serious enough to warrant reporting	1,274 39%	512 39%	867 29%	81 34%	2,734 35%
I was unfamiliar with the process for reporting the behavior	228 7%	46 4%	201 7%	11 5%	486 6%

I did not believe the employee would be investigated even if reported	628 19%	220 17%	694 23%	52 22%	1,594 20%
I did not want to cause an adverse action against a co-worker	328 10%	135 10%	305 10%	28 12%	796 10%
I did not want to get involved	530 16%	225 17%	549 18%	45 19%	1,349 17%
Management was already aware of this behavior	647 20%	240 18%	638 21%	44 18%	1,569 20%
Other	444 14%	182 14%	349 12%	39 16%	1,014 13%
Component Respondents	3,260	1,314	3,017	238	7,829

*Respondents then directed to Question 20.

Question 19: My reporting of the behaviors I had knowledge of or witnessed has had a negative impact on my career.

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Strongly agree	175 19%	79 25%	199 13%	8 19%	461 16%
Agree	136 15%	46 14%	196 13%	6 14%	384 14%
Neither agree nor disagree	267 29%	96 30%	471 31%	12 28%	846 30%
Disagree	185 20%	45 14%	337 22%	6 14%	573 20%
Strongly disagree	168 18%	53 17%	311 21%	11 26%	543 19%
Component Respondents	931	319	1,514	43	2,807

Question 20: Sexual harassment occurs within my agency.

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Frequently	708	229	887	38	1,862

	7%	4%	8%	4%	7%
Sometimes	1,873 18%	715 14%	2,161 20%	143 16%	4,892 18%
Rarely	2,018 20%	976 19%	2,070 19%	169 19%	5,233 19%
Never	902 9%	632 12%	973 9%	78 9%	2,585 10%
Do not know	4,646 46%	2,588 50%	4,742 44%	463 52%	12,439 46%
Component Respondents	10,147	5,140	10,833	891	27,011

Question 21: Sexual misconduct occurs within my agency.

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Frequently	500 5%	149 3%	666 6%	22 2%	1,337 5%
Sometimes	1,386 14%	484 9%	1,665 15%	95 11%	3,630 13%
Rarely	2,021 20%	929 18%	1,962 18%	174 20%	5,086 19%
Never	1,151 11%	779 15%	1,256 12%	99 11%	3,285 12%
Do not know	5,058 50%	2,782 54%	5,247 49%	499 56%	13,586 50%
Component Respondents	10,116	5,123	10,796	889	26,924

Question 22: Sexual harassment occurs within my immediate work unit.

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Frequently	321 3%	102 2%	455 4%	16 2%	894 3%
Sometimes	745 7%	271 5%	1,011 9%	48 5%	2,075 8%
Rarely	1,225 12%	462 9%	1,550 14%	69 8%	3,306 12%
Never	4,739 47%	2,867 56%	4,233 39%	514 58%	12,353 46%
Do not know	3,064 30%	1,410 28%	3,529 33%	239 27%	8,242 31%
Component Respondents	10,094	5,112	10,778	886	26,870

Question 23: Sexual misconduct occurs within my immediate work unit.

	CBP	ICE	TSA	Secret Service	Questionnaire Total
Frequently	220 2%	69 1%	356 3%	8 1%	653 2%
Sometimes	491 5%	171 3%	776 7%	31 4%	1,469 5%
Rarely	996 10%	365 7%	1,366 13%	51 6%	2,778 10%
Never	5,189 52%	3,060 60%	4,634 43%	539 61%	13,422 50%
Do not know	3,173 32%	1,435 28%	3,619 34%	255 29%	8,482 32%
Component Respondents	10,069	5,100	10,751	884	26,804

DRAFT

From: Cuffari, Joseph
Sent: Thursday, July 09, 2020 12:20 PM
To: [redacted]
Cc: [redacted]
Subject: FW: Revision of the Lautenberg Report

[redacted]

Closing the loop on the draft Lautenberg report. Please rewrite the draft, with the following reports in mind:

https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-48-Jun19.pdf

https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-81-Sep18.pdf

I want the next draft to:

1. Retain text that describes the Lautenberg amendment/requirements and the related DHS implementation directive.
2. Build findings that highlight the steps DHS has taken under Lautenberg to discipline (i.e., remove from service) those who have been convicted of misdemeanor domestic violence.
3. Add findings concerning gaps in implementation of the DHS directive – e.g., lack of training and failure to enforce self-reporting requirements.
4. Recommend that DHS through the Under Secretary for Management / Chief Human Capital Office address these gaps across all law enforcement components.
5. Peel off the remaining language and cases that essentially go beyond Lautenberg and risk appearing biased/in the posture of second guessing DHS disciplinary decisions without full facts and potentially in violation of applicable rules.

Thank you.

Joe

FOR OFFICIAL USE ONLY

DHS OIG HIGHLIGHTS

DHS Has Not Adequately Addressed Law Enforcement Officer Misconduct Related to Domestic Violence

May XX, 2020

Why We Did This Evaluation

We conducted this evaluation to determine whether CBP, Secret Service, ICE, and TSA effectively identify, report, investigate, and discipline law enforcement employees arrested for and/or convicted of domestic violence offenses.

What We Recommend

We made 9 recommendations to improve components' oversight of domestic violence committed by law enforcement officers and ensure implementation of Departmental requirements related to the Lautenberg Amendment.

For Further Information:
Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

CBP, Secret Service, ICE, and TSA have not adequately addressed allegations of domestic violence committed by law enforcement officers. We identified 35 cases in which CBP, Secret Service, and ICE investigations substantiated that an employee had engaged in domestic violence, but in most instances, the employee received little or no discipline and remained a law enforcement officer with access to a firearm. In addition, none of the four components has fully complied with a DHS Policy Directive that established guidelines for implementing the requirements of the Lautenberg Amendment, a law intended to ensure domestic violence offenders do not have access to firearms. Specifically, none of the four components provided annual domestic violence awareness training and quarterly advisements of officers' duty to self-report. Additionally, CBP and Secret Service did not ensure law enforcement officers annually certified that they had not been convicted of a misdemeanor crime for domestic violence. Further, CBP and ICE have not used available resources to monitor law enforcement officer arrests for domestic violence offenses in real-time.

Agency Response

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Abbreviations

CBP	U.S. Customs and Border Protection
FBI	Federal Bureau of Investigation
ICE	U.S. Immigration and Customs Enforcement
MCDV	Misdemeanor Crime of Domestic Violence
OIG	Office of Inspector General
TOP	Table of Offenses and Penalties
TSA	Transportation Security Administration

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Introduction

According to the American Journal of Public Health, domestic violence victims are five times more likely to be killed if their abuser has access to a gun. Research also suggests that domestic violence is higher in law enforcement families than in the general population. Prior to 1996, only individuals convicted of felonies were prohibited from possessing firearms. Yet, those who engage in serious spousal or child abuse often were not charged with felonies. To address this issue, in 1996, Congress amended the *Gun Control Act of 1968* (Lautenberg Amendment) to prohibit individuals convicted of a misdemeanor crime of domestic violence (MCDV) from possessing a firearm. As a result, Federal law enforcement officers, whose jobs require them to possess a firearm, cannot continue to hold such positions if convicted of an MCDV. Several DHS components employ law enforcement officers — including U.S. Customs and Border Protection (CBP) with approximately 45,000, United States Secret Service (Secret Service) with over 5,000, and U.S. Immigration and Customs Enforcement (ICE) with more than 12,000. The Transportation Security Administration (TSA) also employees law enforcement officers.[1] With tens of thousands of law enforcement officers in its ranks, it is imperative that DHS and its components take appropriate action against those who have committed domestic violence.

Background

The Lautenberg Amendment prohibits any person convicted of an MCDV from possessing a firearm.[2] A qualifying MCDV under the Lautenberg Amendment consists of any misdemeanor conviction in any court involving:

> *the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.*[3]

[1] The number of TSA law enforcement numbers is considered Sensitive Security Information, which is information that, if publicly released, would be detrimental to transportation security, as defined by Federal Regulation 49 C.F.R. Part 1520. Accordingly, we have not reported the number of law enforcement officers employed by TSA in this report.
[2] 18 U.S.C. § 922(g)(9).
[3] 18 U.S.C. § 921(a)(33)(A)(ii).

There is no exception for law enforcement officers. Therefore, any law enforcement officer who has a qualifying MCDV may not lawfully possess or receive firearms or ammunition for any purpose, including performance of his or her official duties.

In 2017, DHS issued Policy Directive 045-05 (Policy Directive)[4] to ensure department-wide compliance with the Lautenberg Amendment. The Policy Directive sought to "ensure officer behavior is consistent with the Department's law enforcement mission, responsibilities, and values" and to clarify the "expectation that its law enforcement personnel will uphold the highest standards of conduct." DHS assigned responsibility for overseeing implementation of the Policy Directive to its Law Enforcement Policy Division within the DHS Office of Strategy, Policy, and Plans. The Policy Directive outlines component and law enforcement officer responsibilities for complying with the Lautenberg Amendment and reporting domestic violence offenses and convictions. The Policy Directive states components must, among other things:

- Require law enforcement officers to report all off-duty law enforcement officer/agency and judicial contact, including MCDV convictions;
- Require law enforcement officers to annually certify they have no convictions of an MCDV;
- Revoke law enforcement officer authority to carry a weapon and perform duties with a qualifying MCDV conviction; and
- Require domestic violence awareness training for all law enforcement officers.

At the component level, CBP, Secret Service, ICE, and TSA identify incidents of domestic violence committed by their law enforcement officers through various methods, including employee self-reporting; partnerships with local law enforcement agencies regarding contact or arrests; periodic employee background checks; and information-sharing agreements with the Federal Bureau of Investigation (FBI). According to component field office personnel, after becoming aware of a domestic violence allegation, the components take steps to protect the interests of the public, including removing firearms from law enforcement officers and immediately suspending their authority to perform law enforcement duties. If the allegation involves an arrest, the components cooperate with local law enforcement in the formal investigation and any related legal proceedings. Law enforcement officers convicted of an

[4] Policy Directive 045-05, *Required Reporting of Off-Duty Contact with Law Enforcement by DHS Law Enforcement Personnel and the Suspension and/or Revocation of Authority to Carry a Firearm or other Weapon and Perform Law Enforcement Duties,* January 10, 2017.

MCDV are generally removed from their position since they can no longer carry a weapon, which is a condition of their employment.

However, even when allegations of domestic violence do not result in an MCDV conviction, CBP, Secret Service, ICE, and TSA may still investigate the offenses to determine whether the employees engaged in misconduct. Components address domestic violence allegations through their misconduct process, which establishes standards for employee conduct, both on and off duty. The standards of conduct outline component expectations for employees, including that they maintain high standards of character and a standard of personal behavior that reflects positively upon DHS. When an employee is alleged to have violated the standards of conduct, the component's designated investigative office may conduct an internal investigation. If the investigation substantiates misconduct, each component's Table of Offenses and Penalties (TOP) provides a range of penalties for appropriate discipline.

We conducted this evaluation to determine how CBP, Secret Service, ICE, and TSA identify, report, investigate, and discipline law enforcement employees arrested for and/or convicted of domestic violence offenses. To identify the full universe of allegations, we reviewed all domestic violence-related arrests identified by the four components from January 2016 through December 2018. Of these 344 arrests, we selected a judgmental sample of 162 cases and examined investigative and disciplinary files for each. We identified 2 cases in which the employee was convicted of a domestic violence offense and removed. We found another 35 cases in which the employee was not convicted of a domestic violence offense, but CBP, Secret Service, or ICE determined the employee engaged in domestic violence.[5] In addition, we evaluated actions taken by each component to comply with the Policy Directive requirements.

Results of Evaluation

Although DHS has expressed a commitment to take a stand against crimes of domestic violence, CBP, Secret Service, ICE, and TSA have not adequately addressed allegations of domestic violence involving their law enforcement officers. We identified cases in which CBP, Secret Service, and ICE determined their law enforcement officers engaged in domestic violence, but in most instances, the employees received little to no discipline and returned to their law enforcement positions with access to firearms. Further, none of the four components has fully complied with the requirements of the Policy Directive related to the Lautenberg Amendment. Specifically, none of the four

[5] During this timeframe, TSA did not substantiate any domestic violence allegations that did not result in a criminal conviction.

components provided annual domestic violence awareness training and quarterly advisements regarding officers' duty to self-report, as required. CBP and Secret Service did not ensure officers annually certified they had not been convicted of an MCDV. In addition, CBP and ICE do not use available resources to monitor law enforcement officer arrests for domestic violence offenses in real-time. The limited discipline for employees who engaged in domestic violence-related misconduct, as well as the components' non-compliance with elements of the DHS Policy Directive, put victims and the public at risk of further violence.

CBP, ICE, and Secret Service Took Limited Disciplinary Action Against Law Enforcement Officers Who Engaged in Domestic Violence

Our review of investigative and disciplinary files from the four components found that CBP, Secret Service, and ICE took limited disciplinary action against law enforcement officers who engaged in domestic violence. From 162 allegations spanning January 2016 to December 2018, we identified 2 cases in which the employee was convicted of a domestic violence offense and removed. We identified an additional 35 cases in which the employee was not convicted of an MCDV[6], but internal investigations by the three components[7] substantiated that the employee engaged in domestic violence. The penalty ranges outlined in the components' TOPs offered the component proposing and deciding officials a wide range of disciplinary actions to select from to address the substantiated charges in these 35 cases — e.g., issuing Letters of Reprimand up to removal. We found that the components generally took disciplinary action on the lower side of the penalty ranges.

As shown in table 1, in 5 of the 35 instances (14 percent) in which the components determined that a law enforcement officer had committed domestic violence, the employee either resigned, retired, or was removed from his/her position. In the remaining 30 cases (86 percent), the penalties ranged from letters of reprimand to suspensions of 15 days or less. In these 30 instances, the employees retained their law enforcement positions and possession of firearms after the misconduct investigations were completed. In at least one case, the employee committed domestic violence again. None of the employees received a suspension of more than 15 days, even though the applicable penalty ranges included suspensions of longer lengths, as well as removal.

[6] In these cases, there may not have been an MCDV conviction because the employee entered into court agreements (plea deal) to plead to lesser crimes or the victim dropped the criminal charges.
[7] We did not identify any allegations where TSA determined domestic violence occurred.

Table 1: Discipline Administered by CBP, Secret Service, and ICE for Substantiated Domestic Violence, January 2016 to December 2018

Component	Substantiated Cases of Domestic Violence	Employee Removed, Resigned, or Retired	Employee Received Suspension of 15 Days or Less	Employee Received Letter of Reprimand
CBP	27	3	17	7
Secret Service	4	1	1	2
ICE	4	1	3	0
Total	35	5	21	9

Source: OIG analysis of component investigative and disciplinary files

The following are examples of law enforcement officers at CBP, Secret Service, and ICE who were arrested for, charged with, or had other law enforcement contact for domestic violence offenses. Ultimately, none of these employees received an MCDV conviction, but internal investigations by the components determined the employee had engaged in domestic violence:

- A CBP officer was arrested and charged with assault after he punched his wife in the face. He admitted assaulting his wife in court documents but entered into an agreement to avoid a criminal conviction. CBP proposed termination for the assault, citing Conduct Unbecoming a CBP Protection Officer, but ultimately suspended the employee for 5 days. The CBP officer then assaulted another woman less than 2 years later. In this instance, CBP charged the officer with Conduct Unbecoming a CBP Officer and proposed a 30-day suspension, but ultimately suspended him for 15 days. In both instances, the officer had his firearm removed during the investigation, but later returned to his law enforcement position and regained possession of his firearm.

- A Border Patrol agent was arrested for domestic violence for a physical altercation with his girlfriend, and pleaded guilty to misdemeanor assault. Although the conviction did not include domestic violence as part of the offense, the court-imposed sentence required the agent to attend 26 domestic-violence counseling sessions. During CBP's internal investigation, the agent admitted hitting his girlfriend multiple times. CBP initially proposed a 30-day suspension, explaining in the proposal

letter that the agent's "conduct was in direct conflict with the professional image [CBP] strives to project to the public." Ultimately, CBP suspended the agent for 15 days for Conduct Unbecoming a Border Patrol Agent. The officer had his firearm removed during the investigation, but later returned to his law enforcement position and regained possession of his firearm.

- A Secret Service Agent was served with a preliminary protective order after his wife alleged he physically assaulted her in their home. Although the protective order was later dismissed, the agent admitted to Secret Service investigators that he engaged in a verbal and physical altercation with his spouse when he "put his knee on her chest" and "shoved her cheek with his fist." Secret Service suspended the agent for 10 days, stating that the agent's "behavior [was] inappropriate and raises serious questions about [his] judgment and trustworthiness." The agent had his firearm removed during the investigation, but later returned to his law enforcement position and regained possession of his firearm.

- An ICE detention and deportation officer was arrested for domestic battery, but pleaded guilty to a misdemeanor public nuisance offense. The police report stated the ICE officer shoved his live-in girlfriend and her child. Although the guilty plea was not for a domestic violence offense, the court-imposed sentence required the ICE officer to complete a 52-week domestic-violence recovery program and provided a civil protection order for the girlfriend. ICE initially proposed a 15-day suspension, but ultimately suspended the officer for 5 days for Conduct Unbecoming. The officer had his firearm removed during the investigation, but later returned to his law enforcement position and regained possession of his firearm.

- An ICE detention and deportation officer was arrested following a physical altercation with his girlfriend and charged with felony aggravated assault (domestic violence), felony larceny, and misdemeanor vandalism. According to the police report, the ICE officer threw a glass object at the victim, striking her and leaving a large contusion on her forehead and cuts on her foot. The ICE officer also threw a metal object at the victim. The two felony counts were not prosecuted pursuant to a guilty plea on the misdemeanor vandalism charge, but the officer acknowledged having engaged in the physical altercation to ICE investigators. ICE initially proposed a 14-day suspension, but ultimately suspended the officer for 7 days for Conduct Unbecoming. The officer had his firearm removed during the investigation, but later returned to his law enforcement position and regained possession of his firearm.

Although CBP, Secret Service, ICE, and TSA have specific penalties for many offenses in their TOP, none had a specific offense charge or penalty related to domestic violence that did not result in an MCDV or felony conviction.[8] Instead, when a component substantiated domestic violence that did not result in an MCDV or felony conviction, the components used general misconduct categories to charge the law-enforcement-officer offenders. For example, in most cases we reviewed, CBP and ICE charged the employee with Conduct Unbecoming. Based on our case file review, these non-specific charges result in a broad range of penalties, from letters of reprimand to employee termination. Because there are generally no specific charges for offenses related to domestic violence, the components have wide discretion to choose among charges and penalties.

Based on their standards of conduct, components expect employees to act in a way that reflects positively on DHS and that sustains the trust, respect, and confidence of the public they serve. Even when there is no legal or other requirement to remove an employee who was not convicted of an MCDV, leaving employees who have engaged in domestic violence in law enforcement positions with authority to possess firearms perpetuates the risk the Lautenberg Amendment seeks to address. In cases where the employee has shown a propensity to violence, agencies put victims and the public at risk of further violence by keeping weapons in these individuals' hands.

Components Did Not Provide Required Domestic Violence Awareness Training to Law Enforcement Officers

In January 2017, DHS issued Policy Directive 045-05 as part of "the Department's strong stand against crimes of domestic violence." It requires components to provide: 1) annual domestic violence awareness training for law enforcement officers and their supervisors, and 2) quarterly verbal advisement to officers, during quarterly firearms qualifications, of the duty to report any off-duty contact with law enforcement. However, CBP, Secret Service, ICE, and TSA did not fully develop plans to implement the Policy Directive and did not comply with the training requirements. As a result, law enforcement officers

[8] Although Secret Service's TOP contains an offense code for domestic violence, it only applies when a law enforcement officer is actually convicted of misdemeanor or felony domestic violence. CBP officials told us during our review that they were planning to add domestic violence as a specific offense, but were still in the process of revising their TOP. Although the other components' TOPs do not include an MCDV charge as a specific offense, all components we reviewed nevertheless stated that they remove employees convicted of an MCDV. Our case review corroborated this claim — in the two cases in which an employee was convicted of an MCDV, the component removed the employee.

may not understand their responsibilities to self-report or the consequences they could face under the Lautenberg Amendment.

In January 2017, DHS' Law Enforcement Policy Division forwarded the Policy Directive to the components and requested that each component provide a plan to implement the policy. ICE, TSA, and Secret Service provided implementation plans, which identified component officials or offices responsible for implementation and, in some cases, the written policies that required revision in order to meet the requirements of the Policy Directive.[9] However, none of the implementation plans described specific actions the components intended to take to comply with the new training requirements. For example, none of the implementation plans specified whether the component would develop a new training course, how the component would deliver the training to law enforcement officers in the field, or when the training would begin.

None of the components could provide documentary evidence, such as training records or training slides, to demonstrate they consistently provided either annual awareness training or quarterly verbal advisements. Finally, law enforcement officers from the 15 field offices we visited across the four components unanimously confirmed that the required domestic violence awareness training was not provided annually to either law enforcement officers or supervisors. The law enforcement officers we asked in the field also told us they were not receiving the mandatory verbal advisements during quarterly firearms qualifications. Because components did not fully implement the training requirements outlined in the Policy Directive, components lack assurance that law enforcement officers understand requirements under the Lautenberg Amendment.

Moreover, we found that DHS did not conduct oversight of, or provide assistance to, components to ensure they met the Policy Directive requirements. When we asked why, DHS' Office of Strategy, Policy, and Plans told us the Law Enforcement Policy Division, the unit responsible for overseeing implementation of the Policy Directive, was eliminated during a May 2019 reorganization and DHS never reassigned oversight responsibility. Notwithstanding this explanation, DHS could not provide any documentation of oversight conducted by the Law Enforcement Policy Division between the March 2017 request for implementation plans and when the group was eliminated in May 2019.

[9] According to the Director for DHS Office of Strategy, Policy and Plans, CBP initially acknowledged it received the policy directive, but never submitted a completed plan. CBP could not provide any evidence that it took any actions to implement the Policy Directive.

Some Components Have Not Taken Steps to Identify Law Enforcement Officer Arrests or Convictions for Domestic Violence Offenses

CBP and Secret Service did not comply with the Policy Directive requirement that all law enforcement officers complete an annual Lautenberg Amendment certification stating they do not have an MCDV conviction. In addition, while TSA and Secret Service have taken advantage of available FBI monitoring programs to identify law-enforcement-officer arrests and MCDV convictions through continuous background checks, CBP and ICE have not.

CBP and Secret Service Did Not Enforce Completion of DHS-Required Annual Lautenberg Certification

The Policy Directive requires all law enforcement officers to complete an annual Lautenberg Amendment certification stating they have not been convicted of an MCDV. None of the CBP field offices we visited required law enforcement officers to complete the annual certifications mandated by the Policy Directive. Management at these CBP field offices told us that they were not aware of the annual certification requirement. In addition, CBP never provided an implementation plan to DHS to outline how the component planned to comply with the Policy Directive, including the annual certification requirement. DHS did not conduct oversight to ensure CBP had implemented this requirement. As a result, since the Policy Directive became effective in January 2017, CBP law enforcement officers have not been required to submit annual certifications attesting that they have not been convicted of an MCDV.

Secret Service also did not require law enforcement officers to complete annual certifications during the timeframe we reviewed. Secret Service management told us that, in lieu of signing annual certifications, agents signed an annual statement of compliance with the contents of the Secret Service Law Enforcement Manual. However, this manual did not specify agent responsibilities related to the Lautenberg Amendment. The implementation plan Secret Service submitted to the DHS Policy Division suggested DHS should develop an annual Lautenberg Amendment certification for use by all of the components, but did not specify how Secret Service would comply with the annual certification requirement in the absence of DHS action.[10] DHS did not

[10] In June 2019, Secret Service issued a policy requiring compliance with the annual Lautenberg Amendment certification requirement. OIG could not examine the implementation of this new policy for compliance with the DHS Policy Directive because Secret Service had not completed a full cycle of certifications at the time of our review.

conduct oversight to ensure Secret Service had implemented the certification requirement under the Policy Directive.

Unlike CBP and Secret Service, ICE and TSA both complied with the Policy Directive's annual certification requirement. All but one ICE and TSA field offices we visited provided 100 percent of the annual certifications we requested. One TSA field office was missing 5 of 115 signed annual certifications from the 2 years we examined; according to TSA, this was due to a clerical error.

CBP and ICE Did Not Use Available Resources to Monitor Law Enforcement Officer Arrests and Convictions for Domestic Violence Offenses

Secret Service and TSA currently enroll all their respective law enforcement agents in FBI monitoring programs that notify the components when an officer is arrested or convicted.[11] These monitoring programs help Secret Service and TSA comply with the Lautenberg Amendment by identifying officers arrested for or convicted of an MCDV. The FBI monitoring programs are described below:

- Secret Service receives notifications of law-enforcement-officer arrests and convictions through the Blue Force program, operated by the FBI Specialized Identity Management Unit. Secret Service enrolls each law enforcement officer in Blue Force upon hire and provides the FBI with the identification and biometric data necessary to match the Secret Service officers against FBI crime databases. As the FBI databases are updated, real-time notifications of Secret Service law-enforcement-officer arrests and convictions, including those for domestic violence offenses, are sent to Secret Service.

- TSA participates in the FBI Rap Back service, which functions similarly to the Blue Force Program and provides the component with continuous monitoring of the law enforcement officers enrolled in the service and notifications of any TSA law-enforcement-officer arrests and convictions. Like Secret Service, TSA enrolls all of its officers in the service upon hire and provides FBI with a list of the identifying information necessary to match TSA law enforcement personnel against the FBI crime databases.

In contrast, CBP and ICE do not participate in FBI monitoring programs. Although these free services are currently available to CBP and ICE, DHS

[11] FBI officials explained that although their programs provide comprehensive monitoring of arrests and convictions of enrolled officers based upon a thorough search of FBI databases, they are not foolproof because the underlying FBI databases are dependent upon the accurate and timely reporting of arrests and convictions by state and local jurisdictions.

officials told us CBP and ICE have not enrolled their law enforcement officers in these programs because they are awaiting implementation of an internal DHS technology solution that will provide real-time monitoring of FBI databases for arrests and convictions of DHS law enforcement officers ("continuous evaluation program"). DHS is currently enrolling a portion of each component's population into the continuous evaluation program and expects to complete implementation sometime in 2021.

Recommendations

1. We recommend the CBP Commissioner revise CBP's table of offenses and penalties to identify specific charges and penalties for domestic violence offenses.

2. We recommend the Secret Service Director broaden Secret Service's table of penalties to identify specific charges and penalties for substantiated domestic violence offenses, regardless of whether there was an accompanying misdemeanor or felony conviction for domestic violence.

3. We recommend the ICE Director revise ICE's table of offenses and penalties to identify specific charges and penalties for domestic violence offenses.

4. We recommend the TSA Administrator revise TSA's table of offenses and penalties to identify specific charges and penalties for domestic violence offenses.

5. We recommend the CBP Commissioner ensure compliance with requirements in DHS Policy Directive 045-05, specifically:
   a. Annual domestic violence awareness training for law enforcement officers and their supervisors;
   b. Quarterly verbal advisement, during quarterly firearms qualifications, of duty to report contact with law enforcement; and
   c. Annual completion of Lautenberg Amendment certifications by all law enforcement officers.

6. We recommend the Secret Service Director ensure compliance with requirements in DHS Policy Directive 045-05, specifically:
   a. Annual domestic violence awareness training for law enforcement officers and their supervisors;
   b. Quarterly verbal advisement, during quarterly firearms qualifications, of duty to report contact with law enforcement; and

c. Annual completion of Lautenberg Amendment certifications by all law enforcement officers.

7. We recommend the ICE Director ensure compliance with requirements in DHS Policy Directive 045-05, specifically:
   a. Annual domestic violence awareness training for law enforcement officers and their supervisors; and
   b. Quarterly verbal advisement, during quarterly firearms qualifications, of duty to report contact with law enforcement.

8. We recommend the TSA Administrator ensure completion of requirements in DHS Policy Directive 045-05, specifically:
   a. Annual domestic violence awareness training for law enforcement officers and their supervisors; and
   b. Quarterly verbal advisement, during quarterly firearms qualifications, of duty to report contact with law enforcement.

9. We recommend the DHS Under Secretary for the Office of Strategy, Policy, and Plans exercise oversight of components to ensure compliance with DHS Policy Directive 045-05.

DHS Comments

OIG Analysis of DHS Comments

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Appendix A
Objective, Scope, and Methodology

The DHS Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Pub. L. No. 107–296) by amendment to the *Inspector General Act of 1978.*

We conducted this evaluation to determine whether CBP, Secret Service, ICE, and TSA effectively identify, report, investigate, and discipline law enforcement employees who commit domestic violence offenses.

We reviewed DHS and component policies as well as applicable databases or other mechanisms used to track compliance with the Lautenberg Amendment, the process for law enforcement officers reporting arrests and convictions for MCDVs, and guidance used to determine disciplinary actions for law enforcement officers who have been arrested for and/or convicted of an MCDV.

We interviewed DHS, CBP, Secret Service, ICE, and TSA leadership with oversight of policies and directives, personnel security, misconduct investigations, and disciplinary actions. We also spoke with representatives from FBI's Criminal Justice Information Services, as well as FBI representatives with oversight of TSA's Rap Back and Secret Service's Blue Force data services.

We reviewed case files to determine actions the components took to discipline law enforcement officers who engaged in domestic violence offenses. We did not review pending cases in which either local law enforcement authorities or components had not completed their investigations or prosecutions, or cases in which the components determined the employee had not engaged in domestic violence. Secret Service headquarters conducts all investigations and maintains all case files on site in Washington, DC, where we reviewed its case files. We also conducted interviews with senior field office leadership at the Secret Service Field Office in Denver, CO. For CBP, ICE, and TSA, we completed field site visits in five states where we conducted interviews with senior field office leadership and (at locations with relevant cases) documented the results of case file review performed at the following locations:

CBP:

- Office of Field Operations and Border Patrol – El Paso, TX; Laredo, TX; Tucson, AZ
- Office of Field Operations – New York, NY
- Air and Marine Operations – Tucson, AZ

ICE:

- Enforcement and Removal Operations – Newark, NJ; New York, NY; Denver, CO
- Homeland Security Investigations – Newark, NJ; Tucson, AZ; Denver, CO
- Office of Professional Responsibility – Tucson, AZ

TSA:

- Federal Air Marshal Service – Newark NJ; New York, NY; Denver, CO

In addition, we evaluated actions taken by each component to comply with the requirements of the Policy Directive.

We conducted this evaluation between April and November 2019 under the authority of the *Inspector General Act of 1978*, as amended, and according to the Quality Standards for Inspection and Evaluation issued by the Council of the Inspectors General on Integrity and Efficiency. The evidence obtained provides a reasonable basis for our findings and conclusions based upon our objectives.

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Appendix B
DHS Comments to the Draft Report

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Appendix C
Major Contributors to This Report

[redacted] Chief Inspector
[redacted] Supervisory Lead Inspector
[redacted] Attorney Advisor
[redacted] Senior Inspector
[redacted] Senior Inspector
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XXX, Independent Referencer

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Appendix D
Report Distribution

Department of Homeland Security

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Deputy Secretary
Chief of Staff
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Executive Secretary
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DHS OIG Budget Examiner

Congress

Congressional Oversight and Appropriations Committees

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OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

May 13, 2022

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Your April 26, 2022 letter

Dear Chairman Durbin and Ranking Member Grassley:

Thank you for your letter of April 26, 2022, in which you ask for information about a report and ongoing work at the Department of Homeland Security (DHS) Office of Inspector General (OIG). I am grateful for the opportunity to provide you with important background and context that is missing from the New York Times and Project on Government Oversight articles referenced in your letter.

Chairman Durbin, I promised you in July 2019 that if confirmed, I would clean up DHS OIG. I made the same commitment to the Members of the Senate Committee on Homeland Security and Governmental Affairs. I am very proud of the progress I have made since that time.

Quality Transformation

As you may recall, prior to my confirmation, in 2017 and 2018 DHS OIG was forced to retract thirteen audit reports that failed to comply with appropriate government standards. A 2018 independent peer review of DHS OIG audits issued a rating of "pass with deficiencies," noting that it needed to "improve its system of quality control to provide reasonable assurance that audits performed are in compliance with [government standards],"

noting "lack of internal controls, lack of managerial direction, [and lack] of competence and technical expertise to manage and oversee work."

Since my confirmation in July 2019, I have established the highest expectations for quality standards for every employee. All reports initiated and published during my tenure have met appropriate government standards. Under my leadership, DHS OIG has passed all three independent peer reviews that were conducted by other OIGs. These reviews included quality metrics.

In FY 2021, the General Accountability Office (GAO) reviewed DHS OIG's activities from FY 2015 – FY 2020 and found that there were numerous areas for strategic, policy, and organizational improvement. I have embraced GAO's recommendations, and I have been working closely with GAO leadership to implement its twenty-one recommendations for our office. We have submitted eight recommendations for closure. I am proud that the first recommendation to be closed was #14, which recommended that we ensure our work "adheres to federal OIG standards of independence, due professional care, and quality assurance."[1]

As part of our organizational transformation, we also followed GAO's key principles and implementation steps identified in GAO-03-669, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*. In April 2021, I restructured DHS OIG, to further improve our performance. Among other changes, I created the Office of Integrity (OI) to ensure the quality standards I established were embedded at every level of our organization and to promote integrity throughout the enterprise.

The progress we have made is demonstrated in the quantity and quality of our work and the morale of our employees, which are, respectively, at all-time highs. In the FY 2020 Federal Employee Viewpoint Survey (FEVS), DHS OIG showed significant improvement in several different categories measuring employee morale. In the FY 2021 FEVS, DHS OIG again showed substantial and sustained improvement in virtually every major category that measures employee morale. Here are the key trends in DHS OIG's FEVS scores since my confirmation in July 2019:

[1] https://www.gao.gov/products/gao-21-316 (last viewed May 9, 2022).

Year	Employee Engagement: Overall	Employee Engagement: Leaders Lead	Employee Engagement: Supervisors	Employee Engagement: Intrinsic Work Experience	Global Satisfaction
2021	75%	64%	84%	76%	71%
2020	69%	53%	81%	72%	67%
2019	61%	42%	75%	67%	61%
Change since 2019	+ 14%	+ 22%	+ 9%	+ 9%	+ 10%

Turning to the subject of your letter, as you will see from the discussion below,[2] the edits that I and members of my immediate staff requested be made to certain draft reports were consistent with the extensive edits recommended by career civil servants who were asked to review the drafts because they are subject matter experts in the relevant field. These revisions were necessary to bring the reports up to the applicable standards promulgated by the Council of the Inspectors General on Integrity & Efficiency (CIGIE). Any suggestion that I demanded changes to draft reports for improper purposes is false, as is any suggestion that I suppressed evidence of widespread sexual harassment in DHS law enforcement components.

Background of the two projects

Many projects were under way at DHS OIG at the time of my July 25, 2019 Senate confirmation. Two projects are pertinent to your inquiry.[3] Here are the details of each project, as approved by my predecessor Acting Inspector General John Kelly:

[2] The Senate Committee on the Judiciary has oversight authority over the Department of Homeland Security. *See* https://www.judiciary.senate.gov/about/jurisdiction (last viewed April 28, 2022). Accordingly, to the extent that the discussion below contains names of DHS OIG staff derived from a system of records, DHS OIG is not required to withhold the names from the Committee under the Privacy Act. *See* 5 U.S.C. § 552a(b)(9). Nonetheless, I have identified employees below the senior executive level by their initials.

[3] The division of DHS OIG responsible for carrying out these projects is currently known as the Office of Inspections & Evaluations (OIE). In 2019 and 2020 this division was called the Office of Special Reviews & Evaluations, and in 2018 it was called the Office of Inspections. The different names of this division have no bearing on your inquiry, and accordingly, to avoid confusion I refer to the division as OIE throughout this letter.

PROJECT TITLE	PROJECT OBJECTIVE	DATE APPROVED
CBP, ICE, TSA, and USSS Handling of Employee Allegations of Sexual Harassment and Workplace Sexual Misconduct	Determine whether CBP, ICE, TSA, and USSS appropriately report, investigate, and adjudicate employee allegations of sexual harassment and workplace sexual misconduct	1/19/2018
DHS Law Enforcement Agencies' Compliance with the Lautenberg Amendment	Determine whether DHS agencies with law enforcement officers and agents are complying with requirements of the Lautenberg Amendment	12/13/2018

Applicable CIGIE standards

DHS OIG's inspections must adhere to CIGIE's *Quality Standards for Inspection and Evaluation* (2020), also known as the *Blue Book*.[4] Insofar as is relevant here, the *Blue Book* states that one valid purpose of an inspection is "[d]etermining compliance with law, regulation, and policy." *Blue Book* p.1. This was the purpose of the two projects described above.

In scoping an inspection aimed at determining compliance with law, regulation, and policy, among the criteria to be considered are "[l]aws and regulations applicable to the operation of a program or activity." *Blue Book*, § 3.4b. Such an inspection may result in a finding of a "deficiency, such as noncompliance with provisions of law [or] regulation." *Id.*, p.21. However, "[e]vidence must sufficiently and appropriately support inspection findings and provide a reasonable basis for conclusions." *Id.*, § 4.3; *see also* § 5.2c ("[a]n accurate inspection report is supported by sufficient, appropriate evidence with key facts, figures, and findings being traceable to the evidence").

[4] The previous version of the *Blue Book*, issued in 2012 and in effect when the two projects were approved, was substantially similar to the portions of the current version of the *Blue Book* that I discuss below.

Moreover, inspection organizations "must provide supervision over the inspection work performed" so as to "ensure that the . . . [f]indings, conclusions, and recommendations resulting from the inspection are adequately supported by the evidence." *Id.*, §§ 7.2, 7.2b. Such supervision may include using "the services of a subject matter expert to ensure that the inspection topic is competently reviewed." *Id.*, § 2.1c.

Finally, and perhaps most importantly, is the foundational principle that underlies all of an Inspector General's work, namely, independence. According to the *Blue Book*, p.3, the independence principle requires "[i]nspectors, inspection organizations, and their reports" to be "impartial and without bias in both fact and appearance."

Responses to the questions in your April 26, 2022 letter

1. **When does DHS OIG plan to release the unpublished report on sexual harassment and misconduct?**

As discussed below, the report has been plagued by problems from the outset. The first problem was the failure of senior DHS OIG officials who preceded me to appreciate the significance of the survey results they received nearly four years ago and their choice to withhold information about the survey from me. The second problem was the intransigence of some inspectors, who refused to accept the input of subject matter experts. These problems caused serious delays, and as a result, the information in the most recent draft report does not satisfy the "currency" criterion found in section 2 of the Inspector General Act.

Today I provided the Department with the results of the survey because I do not believe it would be appropriate for me to provide the Committee with the results without also providing them to the Department. I am considering closing the review without issuing a report. Before taking that step, however, I will give OIE an opportunity to explain what a report that meets *Blue Book* standards might look like. In addition, I have approved a project proposal under which OIE will administer another survey in Fiscal Year 2023. Such longitudinal research is a common practice of those who study workplace conditions, and a second survey would likely provide DHS leadership with useful information about any changes in response patterns since 2018 and give OIG a foundation to scope future work in this area.

2. Why was the report delayed? By whom?

DHS OIG staff withheld information about the survey from me and took over two years to prepare a draft report. OIE administered a survey on sexual harassment and related matters to employees of ICE, CBP, USSS, and TSA in June and July of 2018. At that time, (b) (6), (b) (7)(C) [redacted] OIE staff provided the results of the survey to Acting Inspector General John Kelly on August 15, 2018. In March 2019, (b) (6), (b) (7)(C) [redacted] Not long after that, (b) (6), (b) (7)(C) [redacted] Acting Inspector General Kelly retired on June 10, 2019.

I was confirmed by the Senate on July 25, 2019. (b) (6), (b) (7)(C) [redacted]

In your letter you suggest that when DHS OIG received the results of the sexual harassment survey, it may have had an obligation to issue a so-called "7-day letter" under section 5(d) of the Inspector General Act to alert DHS leadership to "particularly serious or flagrant problems, abuses, or deficiencies" in DHS programs. However, in reconstructing events surrounding the survey, I have found no indication that between August 15, 2018 (when the results of the survey were available) and my confirmation almost one year later, Mr. Kelly, (b) (6), (b) (7)(C) [redacted] ever considered issuing a 7-day letter.

Moreover, in the months following my confirmation DHS OIG senior staff brought many matters to my attention that they recommended be given priority, but to my recollection I was never briefed on the sexual harassment survey. The project with which the survey was associated was one of many listed on a spreadsheet of pending work, with no recommendation that the project take precedence over work on other matters such as: (1) Separation of migrant families; (2) Secret Service spending at a Trump resort; (3) race-based harassment in the Coast Guard; (4) detention conditions during the 2019 migrant surge; and (5) ICE's early experience with COVID-19 at detention centers, among several other matters. I first became aware that DHS OIG had conducted a survey concerning sexual harassment in DHS law enforcement components on or around December 3, 2020, when for the first time OIE forwarded for front office review a draft report that discussed the survey. By then, the survey results were 2-1/2 years old.

(b) (6), (b) (7)(C)

The report has been delayed further by some OIE staff members' refusal to accept input from subject matter experts. DHS OIG (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) believed that the December 3, 2020 draft report had serious flaws. In accordance with the *Blue Book* standards discussed above, (b) (6), (b) (7)(C) asked subject matter experts to review the draft:

- On December 7, 2020, (b) (6), (b) (7)(C) reviewed the draft report and provided extensive comments.
- On January 28, 2021, (b) (6), (b) (7)(C) reviewed the draft report and provided extensive comments.
- On August 9, 2021, (b) (6), (b) (7)(C) reviewed the draft report and provided extensive comments.

(b) (6), (b) (7)(C) found problems such as unsupported inferences and conclusions, analysis that was inconsistent with federal law, recommendations that were contrary to best practices, and subjective commentary on DHS components' strategic decisions that would have impermissibly involved OIG in component operations. (b) (6), (b) (7)(C) was forced to have the draft report go through multiple rounds of subject matter expert review over several months because some OIE staff refused to make

changes to the report in response to the subject matter experts' comments.[5] The following examples are illustrative.

The draft report criticizes DHS components for often charging employees who engaged in inappropriate behavior carrying sexual overtones with general offenses such as "Improper Conduct." According to the draft report, DHS components should instead charge employees who engaged in such behavior with a specific offense, such as "sexual harassment," drawn from a Table of Penalties. [redacted] a subject matter expert, disagreed with this portion of the report because it was divorced from, and in some ways contrary to, applicable law and best practice.

The standard for disciplining a non-probationary federal employee is broad. The relevant portion of the Civil Service Reform Act provides that discipline may be imposed for "such cause as will promote the efficiency of the service." 5 U.S.C. § 7513(a). As the Merit Systems Protection Board (MSPB) stated in *Otero v. U.S. Postal Service*, 73 M.S.P.R. 198 (1997):

> Nothing in law or regulation requires that an agency affix a label to a charge of misconduct. If it so chooses, it may simply describe actions that constitute misbehavior in a narrative form, and have its discipline sustained if the efficiency of the service suffers because of the misconduct.

Basing a disciplinary action on a labeled charge raises the risk that a third-party neutral such as MSPB or an arbitrator will overturn the discipline in its entirety because the agency, although presenting evidence of misconduct that impairs the efficiency of the service, failed to prove all of the technical elements of the charge. For example, in *Gregory v. Department of the Army*, 114 M.S.P.R. 607 (2010), MSPB overturned an employee's suspension and demotion based on a charge of "sexual harassment," on the ground that the employee's inappropriate behavior did not meet all the technical elements of sexual harassment under Title VII of the Civil Rights Act. The decision notes that the agency could have levied a generic charge without technical elements but chose not to do so.

[5] Wherever possible, we integrate subject matter experts into our work. For example, we consult with medical personnel when we examine whether migrants in detention facilities are receiving substandard health care; experts on immigration law when we examine the administration of a visa program; experts in IT security when we examine vulnerabilities in DHS networks; and experts in law enforcement techniques when we examine the effectiveness of DHS programs aimed at intercepting contraband at the border.

Based on decisions such as *Gregory*, agency attorneys and managers often make the strategic, legally-permitted decision to charge an employee who has engaged in inappropriate behavior carrying sexual overtones with a generic offense such as "Conduct Unbecoming." In fact, a training module for agency Employee Relations staff produced by the Office of Personnel Management (OPM) states, under the heading Practice Preference:

> Don't use Title VII terms of art like Sexual Harassment or Hostile Work Environment in your charge.
>
> Better to charge general count of misconduct than be required to prove the elements[.]

Charge Writing for ER Practitioners: An Essential Building Block for Defensible Actions, slide 32.[6]

With respect to a Table of Penalties, a nationally-renowned expert in federal employment law who co-founded a company that trains agency Attorneys and Employee Relations staff advises that an agency is "not obligated to reference a charge in [its] Table of Penalties" when it disciplines an employee; that a Table of Penalties is "a guide, not controlling policy"; and that it is often better to impose discipline based on a charge with few or no technical elements. *Tables of Penalties Can Be Deadly* (William Wiley, Federal Employment Law Training Group).[7] In similar fashion, official guidance from OPM states that creation and use of a Table of Penalties "is not required by statute, case law or OPM regulation"; that agencies "have the ability to address misconduct appropriately without a [Table of Penalties], and with sufficient flexibility to determine the appropriate penalty for each instance of misconduct"; that a Table of Penalties "may create drawbacks to the viability of a particular action and to effective management"; and finally, that "by creating a range of penalties for an offense," a Table of Penalties may "limit the scope of management's discretion to tailor the penalty to the facts and circumstances of a particular case by excluding certain penalties along the continuum." 84 Fed. Reg. 48794, 48798 (2019).

(b) (6), (b) (7)(C) critique of the draft report was informed by (b) (6), (b) (7)(C) and was consistent with the principles

[redacted]

[6] Available at https://www.opm.gov/policy-data-oversight/employee-relations/training/charge-writing-for-er-practitioners.pdf (last viewed May 8, 2022).

[7] Available at https://feltg.com/tables-of-penalties-can-be-deadly (last viewed May 6, 2022).

set forth above. Yet, some OIE staff refused to change the report and instead insisted that OIG criticize DHS components for charging employees with generic offenses not found in a Table of Penalties. Apart from these particular substantive issues, on many other issues some OIE staff did not pay heed to the subject matter expert's insightful suggestions and tersely retorted "no change required" over and over again. An objective observer would say that some OIE staff refused to engage with a subject matter expert, in contravention of *Blue Book* standards.

I would not expect DHS components, Congress, and other stakeholders to take the report seriously had DHS OIG issued the version for which some OIE staff advocated. Under the applicable *Blue Book* standards, a report that is heavily focused on compliance with law and policy must be supported by authoritative, expert interpretations of the relevant law and policy. The December 3, 2020 version of the OIE report fell far short of the mark. An Inspector General is in no position to substitute the subjective preferences of an inspector for the considered strategic judgments of agency attorneys and managers, especially where, as here, those strategic judgments are firmly grounded in contemporary understandings of the law and accepted best practices. An Inspector General who did so would rightly be accused of bias and partiality.

3. Why did DHS OIG remove findings and recommendations regarding DHS's failure to investigate and/or discipline personnel alleged to have committed domestic violence from the November 13, 2020 report *DHS Components have Not Fully Complied with the Department's Guidelines for Implementing the Lautenberg Amendment*?

As noted above, the approved objective of this project was to "[d]etermine whether DHS agencies with law enforcement officers and agents are complying with requirements of the Lautenberg Amendment." Enacted in 1997 as an addition to the Gun Control Act of 1968, the Lautenberg Amendment prohibits an individual who has been *convicted* of a misdemeanor crime of domestic violence (MCDV) from possessing a firearm. *See* 18 U.S.C. § 922(g). There is no exception for law enforcement officers (LEO), which means that a LEO convicted of an MCDV may no longer hold his or her position.

After (b) (6), (b) (7)(C) , declined to make changes to the draft report that [redacted] and I thought were warranted (see discussion below), another subject matter expert, [redacted], reviewed the draft. [redacted] concluded that major portions were inconsistent with governing

legal principles and contained unsupported criticisms of DHS components. The draft created the incorrect impression that a DHS component must treat a LEO who engaged in certain forms of off-duty conduct, but was not convicted of an MCDV, in similar fashion to one who was convicted of such an offense.

Further, the draft suggested, without support from the applicable precedent of *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), that DHS components were too lenient on LEOs who were not convicted of MCDVs but who engaged in certain forms of off-duty conduct. Under *Douglas*, an agency official who is responsible for determining what discipline should be imposed in a particular case must consider the following factors:

> (1) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
>
> (2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
>
> (3) the employee's past disciplinary record;
>
> (4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
>
> (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
>
> (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
>
> (7) consistency of the penalty with any applicable agency table of penalties;
>
> (8) the notoriety of the offense or its impact upon the reputation of the agency;
>
> (9) the clarity with which the employee was on notice of any rules that where violated in committing the offense, or had been warned about the conduct in question;

> (10) potential for the employee's rehabilitation;
>
> (11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
>
> (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

5 M.S.P.R. at 305-06. The draft report did not demonstrate that DHS components systematically underweighted those *Douglas* factors that would support a severe penalty or that they systematically overweighted those *Douglas* factors that would support a light penalty. In fact, the draft report made absolutely no mention of *Douglas*, which experts in federal employment law view as a foundational element of federal employees' due process rights.[8]

(b) (6), (b) (7)(C) discussed (b) (6), (b) critique of the draft report with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)[9] (b) (6), (b) (7)(C) decided to make major revisions to the report, and explained (b) (6), (b) (7) thinking in a September 13, 2020 e-mail as follows:

> (b) (6), (b) (7)(C)
>
> I essentially want to eliminate the section which discusses varying discipline administered by each of the four components. The fact that they administer different discipline is not necessarily incorrect because each case has to be adjudicated on its own standards relating to the Douglas Factors. Since the report is about Lautenberg, I don't believe we need the "DHS Components Used Varying Approaches to

[8] According to Westlaw, as of May 9, 2022 the *Douglas* precedent had been cited in 599 court decisions and 2353 administrative decisions.

[9] The (b) (6), (b) (7)(C) and the (b) (6), (b) (7)(C) also reviewed the draft report and agreed with (b) (6), (b) (7)(C) critique.

Discipline Law Enforcement Officers Who Engaged in Domestic Violence" section in this report.

I want to keep Recommendations 1, 6 and 7 and eliminate 2-5. 2-5 were my attempt to try to enforce uniform punishment across the components which was an incorrect application before I appreciated how the Douglas Factors were applied in each case.

(b) (6), (b) (7)(C) thus chose -- in response to comments from a subject matter expert -- to bring the report into necessary conformity with the approved project scope, which again, was about LEOs convicted of MCDVs. Recommendations 2-5, which (b) (6), (b) (7)(C) chose to eliminate, called for DHS components with LEOs to discipline employees who had engaged in certain forms of off-duty behavior with offenses drawn from a Table of Penalties. As explained above, such recommendations are inappropriate because they substitute the subjective policy preferences of OIE staff for the lawful, strategic judgments of component attorneys and managers that in turn are based on authoritative expert opinion and accepted best practices.

a. You made several recommendations to remove content from and narrow the scope of the draft report. Please explain the recommendations you made in your July 9, 2020 e-mail, as well as your decision to omit certain language that you characterized as going beyond the Lautenberg Amendment.

In late June and early July 2020, (b) (6), (b) (7)(C) career civil servants and attorneys with expert knowledge on the disciplinary process, reviewed the draft report on the Lautenberg Amendment and found serious flaws. When (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) to make revisions, (b) (6), (b) (7)(C) said (b)(6), (b) was "opposed to these changes" and indicated that (b)(6), (b) would "like the IG to decide" whether the report should be revised. Specifically, (b) (6), (b) (7)(C) wanted to retain portions of the report that recommended DHS components stop using "general misconduct charges" when disciplining employees whose behavior OIE believed could be described as "domestic violence." According to (b) (6), (b) (7)(C), such employees received only "limited" discipline, and the situation could be rectified by components adding "specific offenses" for domestic violence to their Tables of Penalties.

I agreed with (b) (6), (b) (7)(C) and [redacted] that the draft report should be revised. They explained that attorneys and managers often make the strategic decision to use generic charges when disciplining an employee in order to eliminate the risk that MSPB or an arbitrator would overturn the discipline upon finding that the agency failed to prove every technical element of a charge drawn from a Table of Penalties. They also explained that (b) (6), (b) (7)(C) was incorrect in concluding that use of a generic charge results in an employee receiving "limited" discipline because, under MSPB precedent in *Douglas*, the appropriate level of discipline is determined by considering the 12 factors set forth above. How a charge is labeled is not a factor under *Douglas*.

I was also aware, based on my more than 26-years' experience as a Criminal Investigator with the Department of Justice Office of Inspector General and the Air Force Office of Special Investigations, that the Lautenberg Amendment applies only when an individual is *convicted* of an MCDV. The portions of the report that (b) (6), (b) (7)(C) wanted to retain pertained to cases in which a DHS employee committed off-duty misconduct but had not been convicted of an MCDV. I found the report confusing inasmuch as it blurred the distinction between a criminal conviction for a domestic violence offense and administrative discipline by the employing agency for "domestic violence." The latter topic was beyond the scope of the project as originally approved and the conclusions in the draft report were unpersuasive.

For all of these reasons, I asked that the draft report be revised. I later learned that OIE staff chose not to make all of the revisions I requested. As explained above, it was not until two months later, after (b) (6), (b) (7)(C) and conferred with [redacted], that the appropriate revisions were eventually made.

b. Please explain, in your view, how these editorial decisions comply with CIGIE standards.

As explained above, *Blue Book* standards require a report that examines an agency's compliance with law, regulation, and policy to be informed by authoritative expert opinion on the relevant laws and regulations and associated best practices. A report that substituted the subjective policy preferences of inspectors for the lawful strategic judgments made by DHS attorneys and managers, which themselves are rooted in authoritative interpretations of law and accepted best practice, would not be taken seriously and would call into question DHS OIG's impartiality.

4. Has DHS OIG removed similar findings from the unpublished report regarding sexual harassment and sexual misconduct at DHS?

Yes. Please see the discussion above in response to Question # 1.

a. Did you personally direct or approve the removal of this language, and if not, were you aware of its removal?

I was aware that career civil servants who are experts in federal employment law had concluded that major revisions to the report were warranted. When staff described the changes to me, I concurred.

b. Please explain, in your view, how these editorial decisions comply with CIGIE standards.

As explained above, *Blue Book* standards require a report that examines an agency's compliance with law, regulation, and policy to be informed by authoritative expert opinion on the relevant laws and regulations and associated best practices. A report that substituted the subjective policy preferences of inspectors for the lawful strategic judgments made by DHS attorneys and managers, which themselves are rooted in authoritative interpretations of law and accepted best practice, would not be taken seriously and would call into question DHS OIG's impartiality.

5. Please provide a copy of the DHS OIG survey that sought information regarding sexual harassment and misconduct at DHS components, as well as the results. When was the survey conducted, and why? How was it administered? Did you report the survey results to DHS leadership or to Congress? If so, when? If not, why not?

A copy of the survey instrument and summary-level results accompany this letter. In order to preserve respondent anonymity, I am unable to provide individual survey responses.

The survey was administered in June and July of 2018 via secure electronic means to ensure confidentiality. I have no insight into the thinking of the DHS OIG officials who proposed and approved the survey, as the survey had already been completed roughly a year before I was confirmed as Inspector General. To my knowledge Acting Inspector General Kelly, (b) (6), (b) (7)(C), and others who were in a position to report the results to DHS leadership and to Congress in the year leading up to my

confirmation never did so. As stated above, I learned of the survey when OIE forwarded a draft report to the front office for review on or about December 3, 2020, and by that time the results were 2-1/2 years old.

Further, the results were integral to a draft report that had serious flaws and needed reworking, yet some OIE staff were uncooperative and placed their subjective policy preferences ahead of the DHS OIG mission of producing impartial and unbiased work. OIE staff never suggested that the survey results could be decoupled from an analytical report. Moreover, typically an Inspector General does not release raw data obtained in field work to a Department or agency, but instead includes the relevant data along with a report that contains recommendations.

In closing, I thank you again for allowing me to set the record straight concerning the reports and ongoing work discussed in recent press articles. I respectfully ask that the Committee not treat the discussion of internal DHS OIG deliberations above as precedent. I have decided to describe to you the internal deliberations surrounding certain reports because doing so is the only way to counter the incomplete and misleading narrative that grew out of the unauthorized, selective public disclosure of draft OIG reports.

I also take this opportunity to set the record straight on an April 29, 2022 meeting between the President and certain Inspectors General. One topic discussed at that meeting was Inspector General oversight of spending under the Infrastructure Investment and Jobs Act (IIJA).[10] At least one news account noted that I was "absent" from the White House meeting. Although DHS OIG has oversight authority over billions of dollars in spending under the IIJA, the Inspectors General who coordinated the meeting selected others to attend and did not invite me to that meeting.

[10] *See Remarks by President Biden with Inspectors General on Commitment to Oversight, Accountability, and Transparency* (4/29/22), available at https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/04/29/remarks-by-president-biden-with-inspectors-general-on-commitment-to-oversight-accountability-and-transparency (last viewed May 12, 2022).

I would be happy to testify before the Committee about these matters and DHS OIG's other important oversight work. Please call me with any questions at [redacted]

Sincerely,

JOSEPH V CUFFARI [redacted]

Joseph V. Cuffari, Ph.D.
Inspector General

cc: The Hon. Patrick J. Leahy
The Hon. Dianne Feinstein
The Hon. Sheldon Whitehouse
The Hon. Amy Klobuchar
The Hon. Chris Coons
The Hon. Richard Blumenthal
The Hon. Mazie K. Hirono
The Hon. Cory Booker
The Hon. Alex Padilla
The Hon. Jon Ossoff
The Hon. Lindsey Graham
The Hon. John Cornyn
The Hon. Mike Lee
The Hon. Ted Cruz
The Hon. Ben Sasse
The Hon. Josh Hawley
The Hon. Tom Cotton
The Hon. John Kennedy
The Hon. Thom Tillis
The Hon. Marsha Blackburn

Secretary

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

April 7, 2022

MEMORANDUM FOR: DHS Component and Office Leaders

FROM: Alejandro N. Mayorkas
Secretary

SUBJECT: **Working Group to Review Employee Accountability Processes**

It is our responsibility to provide every DHS employee with a professional environment free of sexual harassment and other misconduct.

Since I was sworn in as Secretary, I have focused on the Department's processes for reviewing allegations of employee misconduct and how discipline is applied when misconduct is found. I have made it one of our Department's top priorities to champion our workforce and create a culture of excellence, openness, and accountability, and I have spoken to many of you about what related steps we can take. Yesterday, I became aware of draft unpublished reports from the Office of the Inspector General that underscore the need for immediate action.

Today, I am directing our General Counsel, Jonathan Meyer, to stand up and lead a Department-wide working group to conduct a 45-day review of the employee misconduct discipline processes currently in effect throughout DHS and to recommend any necessary improvements, including to ensure these processes align with relevant best practices and are consistent with all applicable laws. At the end of the 45-day period, Jon will provide me with the Working Group's findings and recommendations.

The final recommendations will be implemented as expeditiously as possible and consistent with our Department's relevant legal obligations, including those related to labor organizations representing our workforce. The Working Group will leverage the work that has been underway for several months to assess the Department's policies and practices for its investigation of workplace misconduct.

Jon will identify attorneys across DHS to serve on the Working Group. I expect each component and office to cooperate fully with the Working Group, including by promptly providing it with the information and resources it needs to do its work.

Thank you for your continued leadership in service of our Department and our nation.

Accountability

POGO Calls on President Biden to Remove DHS IG Joseph Cuffari

BY **DANIELLE BRIAN** | FILED UNDER **LETTER** | APRIL 08, 2022

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Biden:

In order to preserve the integrity of the independent inspectors general system and to begin counteracting the pervasive culture of impunity at the Department of Homeland Security (DHS), we urge you to take swift and decisive action to address the chilling lack of independence demonstrated in multiple instances by DHS Inspector General Joseph V. Cuffari, who was under investigation as of February of this year by the Council of the Inspectors General on Integrity and Efficiency's (CIGIE) Integrity Committee. While POGO has said in the past that it would be reasonable to place Cuffari on administrative leave pending the findings of a CIGIE investigation, our enclosed reporting reveals such extraordinary and improper deference to DHS officials that we call on you to immediately remove Cuffari from his position as DHS inspector general.[1]

The Project On Government Oversight (POGO) is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and

when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

As an organization, we vigilantly monitor the circumstances around how and why a president removes inspectors general. We have not hesitated to call for removals of inspectors general that, for lack of reasonable and detailed explanations to Congress and the public, undermine the integrity and nonpartisan nature of the inspector general community.[2] Nor do we, with sufficient explanation, hesitate to call for the removal of an inspector general who is not upholding the office's statutory mandate to prevent waste, fraud, abuse, and mismanagement within their affiliated federal agency or entity. For example, we called for you to remove Federal Housing Finance Agency Inspector General Laura Wertheimer, and called for the Securities and Exchange Commission to remove its inspector general, Carl Hoecker — both of whom abused their authority and undermined the integrity reasonably expected of inspectors general.[3]

POGO's most recent investigation documents an unreleased survey in which more than 10,000 employees at DHS law enforcement components said they have experienced sexual harassment or sexual misconduct, part of an unpublished report that Cuffari still has not released, even though the survey was conducted from fiscal years 2012 to 2018. The same POGO investigation documents Cuffari's signed instructions resulting in the removal of evidence from a 2020 report showing that Customs and Border Protection, a DHS component, substantiated domestic violence charges in 30 cases involving its employees — then continued to allow them access to government firearms.

That latest investigation is enclosed, as are previous POGO investigations which revealed that Cuffari quashed a pair of investigations involving the Secret Service that had been recommended by the agency's career staff, that he repeatedly impeded and delayed two ongoing investigations into alleged intelligence manipulation and whistleblower retaliation, and that he may have

illegally “retaliated” against former high-ranking employees within the DHS inspector general office.[4]

Cuffari’s lack of independence contributes to a culture of impunity at DHS and its components. Time and time again, Cuffari has used the authority of his office to bury instances of systemic wrongdoing and perpetuated an environment in which dysfunctional and predatory behavior goes unpunished. This should be deeply concerning to you and anyone else committed to the principles of accountability, transparency, and oversight in the federal government.

Cuffari’s failure to uphold the standards of his office undermines the legitimacy of the inspectors general system. As independent watchdogs tasked with the enormous responsibility of conducting oversight and strengthening accountability, inspectors general themselves must be held to the highest ethical standard. As Representative Gerry Connolly (D-VA), Chairman of the House Committee on Oversight and Reform’s Subcommittee on Government Operations, has said, “Inspectors general must be pure as the driven snow because if they’re not all their work is tainted.”[5] Cuffari has never even come close, repeatedly tainting the office’s work and allowing misconduct to be swept under the rug. Our investigations show that during his tenure as DHS inspector general, Cuffari has consistently compromised his independence by deferring to DHS management — which is unbefitting of his office and betrays the trust placed in him by the American public.

Cuffari must be held accountable for his actions. As an organization that has a longstanding history of advocating on behalf of a strong inspectors general system, we call for you to remove Cuffari. As long as he is inspector general, Cuffari is both a threat to the health of all independent inspectors general and a reminder that efforts to take corrective action against waste, fraud, and abuse lack the necessary independence needed to truly hold DHS officials accountable for wrongdoing.

Sincerely,

Danielle Brian

Enclosures: 4

1. Protecting the Predators at DHS
2. Homeland Security's Embattled Watchdog Faces Probe
3. Did Whistleblower Reprisal Help Set the Stage for a January 6 Intelligence Failure?
4. Pulling Punches: Trump-Appointed Watchdog Suppressed White House-Related Probes



AUTHOR

Danielle Brian

Danielle Brian is POGO's Executive Director.

RELATED TAGS

Accountability | Governance | Abuse of Power | Department of Homeland Security (DHS) | Inspectors General | Joe Biden | Oversight

May 27, 2022

Via Email
The Honorable Joseph V. Cuffari
Inspector General,
U.S. Department of Homeland Security
Office of Inspector General
245 Murray Dr.; Building 410
Washington, DC 20528
[redacted]

Re: DHS OIG Referral of Unauthorized Disclosure Allegation and Request for Assistance

Dear Inspector General Cuffari:

Thank you for your letter, dated May 18, 2022, requesting the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency's assistance in reviewing an allegation of an unauthorized disclosure of Department of Homeland Security Office of Inspector General draft reports, emails, and unpublished information and potentially referring said allegation for investigation by a disinterested Office of Inspector General (OIG). On May 26, 2022, the IC met to consider your referral and request.

The IC is charged with receiving, reviewing, and investigating, where appropriate, allegations of misconduct made against Inspectors General (IG) and designated members of an IG's staff. These individuals are frequently described as "covered persons." The IC takes action on allegations of wrongdoing that involve abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such covered persons.

After thoroughly reviewing the matter, the IC determined it should be closed because the allegation did not reference a covered person within the IC's purview. However, IC staff can assist you in finding a suitable OIG to independently undertake an investigation, on terms similar to those used in IC investigations, on a reimbursable

basis. IC staff will reach out to you and your office once they have identified an OIG willing to handle the investigation. In the meantime, should you have further questions, please contact IC staff at Integrity-WG@cigie.gov for assistance.

Sincerely,



Kevin H. Winters
Chairperson
Integrity Committee

October 26, 2022

Via Email
The Honorable Joseph V. Cuffari
Inspector General
U.S. Department of Homeland Security
Office of Inspector General
45 Murray Dr.; Building 410
Washington, DC 20528
[redacted]

Integrity Committee Cases 22-046 and 22-069: Request for Response

Dear Inspector General Cuffari:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged with receiving, reviewing, and investigating, where appropriate, allegations of misconduct made against an Inspectors General (IG) and designated members of an IG's staff. The IC takes action on allegations of wrongdoing that involve abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such persons.

The IC has received allegations against you for abuse of authority, gross mismanagement, and conduct undermining independence or integrity. These allegations were outlined in letters to you from the Chairperson and Ranking Member of the Senate Committee on the Judiciary, dated April 26, 2022, and the Chairpersons of the House of Representatives Committees on Oversight and Reform and Homeland Security, dated May 10, 2022, and July 26, 2022. Your office referred the last of these letters to the IC on August 3, 2022. The allegations are:

1. *[that you] delay[ed] the release of an unpublished report containing troubling findings about apparent widespread sexual harassment and misconduct within [DHS]. The unpublished report reveals that a DHS OIG survey completed in 2018 found that more than 10,000 of 28,000 responding employees at DHS law enforcement components say that they have experienced sexual harassment or misconduct. The majority of respondents also said that they did not report the incidents, and of those who did, about 41 percent reported that doing so negatively affected their careers.*

Additionally, that your "delays and revisions in publishing the report appear to have downplayed the severity of the crisis" and that you failed to "consider[] whether these findings triggered its statutory obligation to notify agency leadership and Congress…"

Also, that you "reportedly objected to including findings that discussed DHS agencies' use of individual cash payments in the hundreds of thousands of dollars to settle harassment cases and suggested that this finding be removed from the report."

2. That with respect to the scope of a prior report related to domestic violence, you "substantially restricted, with the final version omitting findings and recommendations concerning DHS's failure to adequately investigate or discipline personnel alleged to have committed domestic violence." Specifically, it is alleged that "[i]n a July 9, 2020 email, you make several recommendations to the report, including removing language that would, in your words, risk DHS OIG 'appearing biased' and put DHS OIG in a position to 'second guess DHS disciplinary decisions' without having 'full facts' and 'potentially in violation of applicable rules.'"

3. *[That you] fail[ed] to promptly notify Congress of crucial information while conducting an investigation of the Secret Service's preparation for and response to the January 6, 2021, insurrection at the U.S. Capitol. [You are] required by law to 'immediately' report problems or abuses that are 'particularly serious or flagrant.' Yet, [you] failed to provide adequate or timely notice that the Secret Service had refused for months to comply with DHS Office of Inspector General (OIG) requests for information related to the January 6 attack and failed to notify Congress after DHS OIG learned that the Secret Service had erased text messages related to this matter.* Likewise, that you failed to issue a management or 7-day letter.

   In particular, that the November 29, 2021, DHS OIG semiannual report to Congress: *failed to mention that the Secret Service was the source of the access issues and did not indicate that OIG continued to encounter stonewalling. On the contrary, the report noted that "Secretary Mayorkas issued a reminder to all Department personnel about OIG access" in September 2021, and "[s]hortly thereafter, OIG began receiving responsive records."*

   This allegation includes reports that, as of April 1, 2022, DHS OIG staff had prepared language for the draft semiannual report to Congress that offered additional details about the Secret Service text message deletions, but that those details were not ultimately included after the draft was sent to you. The language that was removed from the draft read:

> *On February 23, 2022—more than 2 months after OIG renewed its requests for select Secret Service employees' text messages—Secret Service claimed inability to extract text message content due to an April 2021 mobile phone system migration, which wiped all data.*

The unsent paragraph continues:

> *Secret Service caused significant delay by not clearly communicating this highly relevant information at the outset of its exchanges with OIG during this reporting period. Moreover, Secret Service has not explained why it did not preserve the texts prior to the migration.*

Pursuant to IC procedures, we are reaching out to you to seek your perspective on the issues raised above. While the IC is aware of your responses to certain of these Congressional correspondences, the IC has yet to fully deliberate on the merits of this matter and believes it would be helpful to provide you the opportunity to respond to these allegations, so you might offer any background, context, or supporting evidence (if available) prior to the IC's deliberations. The IC respectfully requests your response to this allegation within 20 days of receipt of this letter.

While the IC recognizes that you may need some assistance in gathering this information, please be advised that seeking assistance from fact-witnesses in your response to the IC may raise questions about the intent or effect of such contacts, which may lead to other issues. Therefore, please feel free to reach out to the IC Working Group should you have any questions regarding this request. You may submit your response and any questions you have regarding this request to Integrity-WG@CIGIE.GOV.

Sincerely,

K. H. Winters

Kevin H. Winters
Chairperson
Integrity Committee

From: [redacted]
To: Integrity-WG
Cc: [redacted]
Subject: {EXTERNAL} Correspondence on Behalf of DGS IG Joseph Cuffari - CIGIE Integrity Committee Cases 22-046 and 22-069
Date: Monday, December 5, 2022 12:00:22 PM
Attachments: 2022.12.05 - Correspondence to CIGIE IC Inquiry and Exhibits.pdf

This email originated from outside of CIGIE. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairperson Winters and Members of the CIGIE Integrity Committee:

On behalf of Department of Homeland Security Inspector General Joesph Cuffari, please find the attached correspondence in response to your October 26, 2022 inquiry regarding CIGIE Integrity Committee Cases 22-046 and 22-069.

Thank you.

[redacted]

December 5, 2022

VIA EMAIL

Kevin H. Winters
Integrity Committee (IC) Chairperson
Council of the Inspectors General on Integrity and Efficiency (CIGIE)
1717 H Street NW | Suite 825 | Washington, DC 20006
Integrity-WG@cigie.gov

RE: Correspondence on Behalf of Inspector General Joseph Cuffari
CIGIE Integrity Committee Cases 22-046 and 22-069

Dear Chairperson Winters:

On behalf of Department of Homeland Security (DHS) Inspector General (IG) Joseph Cuffari, we write in response to your October 26, 2022 letter requesting that IG Cuffari respond to the allegations underlying the above referenced CIGIE IC cases.[1] For the reasons that follow, any allegations that IG Cuffari downplayed or withheld information are contrary to his track record of demonstrated actions to promote transparency, accountability, and integrity within the DHS Office of Inspector General (OIG).

During his nomination and confirmation process, Mr. Cuffari pledged to members of the Senate to hold DHS OIG to the highest standard. On December 6, 2019, the Chairmen and Ranking Members of the Senate Homeland Security and Governmental Affairs Committee (HSGAC) and the House Homeland Security Committee wrote to IG Cuffari to "express serious concern about the cumulative effect of ***longstanding*** mismanagement and operational challenges" within DHS OIG that threatened to undermine its ability to "provide independent oversight and promote integrity and accountability within [DHS.]" *See* Exhibit A (December 6, 2019 Letter from HSGAC to IG Cuffari) (emphasis added). Congress viewed DHS OIG as "plagued by ongoing bureaucratic infighting and competing allegations of misconduct." *Id*. In response to these allegations, which preceded IG Cuffari's tenure, IG Cuffari promised to promote efficiency, accountability, and transparency. During IG Cuffari's tenure, he has fulfilled this commitment by establishing a foundational expectation that every DHS OIG employee will perform quality work with integrity. Specifically, IG Cuffari has sought to consistently improve the quality and utility of the audits, inspections, investigations, and reports generated by the DHS OIG.[2]

[1] CIGIE IC cases 22-046 and 22-069 relate to purported decisions and actions by IG Cuffari in his official role as DHS IG. The allegations are directed at IG Cuffari individually, not at the DHS Office of Inspector General as an institution. Accordingly, IG Cuffari offers this response based on his knowledge, understanding, and the information available to him in his official capacity as DHS Inspector General. IG Cuffari engaged the undersigned counsel because, according to CIGIE IC rules, government attorneys cannot represent the subject of a CIGIE IC inquiry for purposes of responding to the CIGIE IC. *See* CIGIE IC Guidelines, "Frequently Asked Questions & Guidance for Communicating with the Integrity Committee (IC)" (available on the CIGIE IC website at https://www.ignet.gov/content/guidance-and-faqs). Further, your letter discourages IG Cuffari from seeking assistance from DHS OIG staff. Accordingly, this response reflects the best of IG Cuffari's own knowledge and understanding.

[2] A 2018 independent peer review of DHS OIG audits, conducted before IG Cuffari became DHS IG, noted that DHS OIG needed to improve its quality control to provide reasonable assurance that its audits comply with government standards. The 2018 peer review "pass with deficiency" rating spurred the DHS OIG to retract multiple audit reports

IG Cuffari is dedicated to ensuring that DHS OIG provides "rigorous, independent, and objective oversight" and promotes "excellence, integrity, and accountability. *See* DHS OIG Semiannual Report to Congress, October 1, 2021 – March 31, 2022 (available on the DHS OIG website at https://www.oig.dhs.gov/sites/default/files/assets/SAR/2022/oig-sar-oct21-mar22.pdf). For example, between October 1, 2021 and March 31, 2022, DHS OIG issued 265 investigative reports and generated $63.8 million in recoveries, restitutions, and fines. *Id*. During that same period, DHS OIG made 81 recommendations to improve DHS programs and operations. *Id*.

The allegations underlying CIGIE IC cases 22-046 and 22-069 suggesting that IG Cuffari delayed reports and suppressed or withheld information stemming from DHS OIG investigations are inconsistent with the diligent progress IG Cuffari has made to promote transparency and efficiency within the DHS OIG.

IG Cuffari learned about a 2018 survey concerning sexual harassment and misconduct within DHS in December 2020, approximately 17 months after he became Inspector General and more than two years after DHS OIG completed the survey. When IG Cuffari learned about the survey, he sought to bring the resulting report into compliance with CIGIE reporting requirements.[3]

In June and July of 2018, more than one year before the Senate confirmed IG Cuffari, the DHS OIG inspections and evaluations program office surveyed employees of Immigration and Customs Enforcement (ICE), Customs and Border Patrol (CBP), the United States Secret Service (USSS), and the Transportation Safety Administration (TSA) with respect to sexual harassment and misconduct within DHS. In August 2018, DHS OIG staff provided the results of the survey to Acting Inspector General John Kelly. IG Cuffari has found no indication that Mr. Kelly or any other DHS OIG employees, who were in senior leadership positions at that time, considered reporting the survey results to DHS leadership or Congress.

In late July 2019, the Senate confirmed Mr. Cuffari to become the DHS Inspector General. IG Cuffari learned about the sexual harassment survey more than a year later in December 2020 when DHS OIG inspectors submitted a draft report that discussed the survey results to senior staff for consideration and approval. The results of the survey were already two and a half years old. The survey also addressed data dating back approximately five years before the survey occurred.

DHS OIG inspections must adhere to CIGIE guidelines outlined in the *Quality Standards for Inspection and Evaluation*, known as the *Blue Book*. *See* CIGIE Quality Standards (www.ignet.gov/sites/default/files/files/QualityStandardsforInspectionandEvaluation-2020.pdf). Most fundamentally, "[r]eporting should be ***timely***." *See Blue Book* at § 5.1b. Here, the relevant

from its public facing website. In contrast, under IG Cuffari's leadership, his office has passed three separate independent peer reviews, including quality metrics. *See* Exhibit B (May 13, 2022 Letter from IG Cuffari to Senate Judiciary Committee).

[3] In a series of letters to Congress, IG Cuffari explained when and how he learned about the sexual harassment survey and the efforts to bring the report into compliance with CIGIE reporting requirements. These letters are attached as exhibits and briefly summarized in this response. *See* Exhibit B (May 13, 2022 Letter from IG Cuffari to Senate Judiciary Committee), Exhibit C (May 17, 2022 Letter from IG Cuffari to House Oversight and Homeland Security Committees), and Exhibit D (August 8, 2022 Letter from IG Cuffari to Senate Judiciary Committee).

draft report addressed outdated data. Moreover, CIGIE guidelines emphasize that an "accurate inspection report" must be "supported by sufficient, appropriate evidence with key facts, figures, and findings being traceable to the evidence." *Id*. at § 5.2c. An inspection organization "must provide supervision over the inspection work performed" to ensure that any "findings, conclusions, and recommendations resulting from the inspection are adequately supported by the evidence." *Id*. at § 7.2 and 7.2b. Multiple DHS OIG career senior staff and several subject matter experts reviewed the draft report and suggested revisions to ensure that the report was legally and factually supported. IG Cuffari concurred that the proposed revisions were necessary to bring the report into compliance with CIGIE reporting requirements.

IG Cuffari acted to promote transparency without impermissibly disclosing internal agency deliberative material. He ultimately released the results of the sexual harassment survey to DHS leadership and Congress. This project remains open, and IG Cuffari approved a new sexual harassment survey to take place in the 2023 fiscal year. IG Cuffari is committed to ensuring that decisions are made based upon accurate and timely data.[4]

Similarly, IG Cuffari concurred with senior DHS OIG staff and subject matter experts who proposed revisions to a report on whether DHS law enforcement agencies were complying with the Lautenberg Amendment.[5]

The DHS OIG inspections and evaluations program office also undertook a project to determine whether DHS components with law enforcement officers and agents were complying with the Lautenberg Amendment, which prohibits an individual who has been <u>*convicted*</u> of a misdemeanor crime of domestic violence from possessing a firearm. *See* 18 U.S.C. § 922(g). There is no exception for law enforcement officers, which means that a law enforcement officer convicted of domestic violence can no longer carry a firearm. DHS OIG career senior staff and subject matter experts reviewed a draft report regarding DHS compliance with the Lautenberg Amendment and proposed a series of revisions to bring the report into compliance with the law and CIGIE reporting requirements. The draft report created the incorrect impression that the Lautenberg Amendment prohibited a law enforcement officer from carrying a firearm if the officer engaged in certain off-duty conduct even though the officer was *not convicted* of a misdemeanor crime of domestic violence. As noted, the Lautenberg Amendment applies when an individual is *convicted* of misdemeanor domestic violence. Accordingly, IG Cuffari concurred with proposed revisions to this draft report to ensure that the report was factually and legally accurate.[6]

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[4] A documented example of IG Cuffari's commitment to ensuring DHS OIG final reports are factually accurate and adhere to CIGIE quality standards is a similar inspection of FEMA's reporting, investigating, and adjudicating of employee allegations of sexual harassment and sexual misconduct. In its final report about that project, the DHS OIG made five recommendations to improve FEMA's handling of such matters. FEMA senior officials concurred with all those recommendations. *(See FEMA Must Take Additional Steps to Better Address Employee Allegations of Sexual Harassment and Sexual Misconduct, project OIG-21-71; September 29, 2021.)*

[5]IG Cuffari addressed this report in a series of letters to Congress. These letters are attached as exhibits and briefly summarized in this response. *See* Exhibit B (May 13, 2022 Letter from IG Cuffari to Senate Judiciary Committee), Exhibit C (May 17, 2022 Letter from IG Cuffari to House Oversight and Homeland Security Committees), and Exhibit D (August 8, 2022 Letter from IG Cuffari to Senate Judiciary Committee).

[6] In its final report about this project, the DHS OIG made three recommendations to ensure implementation of departmental requirements relating to the Lautenberg Amendment. DHS senior officials concurred with all those

IG Cuffari has cooperated with Congress to information about the January 6, 2021 attack on the United States Capitol without compromising several interrelated and ongoing national security and law enforcement matters.[7]

The January 6, 2021 attack on the United States Capitol was an unprecedented and sobering moment in our history. The individuals who infiltrated the Capitol threatened our democratic foundation when they endeavored to leverage violence to thwart the peaceful transfer of power. Following the attack, DHS OIG began the imperative task of investigating not only the complex and multifaceted factors that coalesced to cause the attack, but also how our citizens and institutions responded. The OIGs from the Department of Justice, Department of the Interior, and Department of Defense also undertook similar reviews of their respective preparation for and response to the January 6 events. DHS OIG coordinated its efforts with representatives from those OIGs during their respective reviews.

In February 2021, DHS OIG requested from DHS *all electronic communications* related to the events of January 6, 2021.[8] IG Cuffari and his staff coordinated with the Secretary of Homeland Security and the Director of the Secret Service to request information from the Secret Service. IG Cuffari met personally with DHS Secretary Alejandro Mayorkas in the fall of 2021. Secretary Mayorkas agreed that DHS OIG should have access to the records it needed to conduct its oversight work. On September 30, 2021, Secretary Mayorkas issued a memorandum reminding DHS employees of their obligation to cooperate with DHS OIG. *See* Exhibit F, September 30, 2021 Memorandum. Secretary Mayorkas indicated that he "expect[ed] DHS employees to respond to OIG requests for information in a timely manner." *Id*.

On February 23, 2022, the Secret Service told DHS OIG that text messages had been deleted, during the period from January 2021 to April 2021, as part of a planned cellphone replacement project. IG Cuffari again sought clarification and cooperation from the Secretary of Homeland Security and the Director of the Secret Service.

On June 14, 2022, DHS Secretary Mayorkas wrote a letter to Congress to transmit the DHS OIG Semiannual Report for the period October 1, 2021 through March 31, 2022. *See* Exhibit G (June 14, 2022 Letter from Secretary Mayorkas to Congress). In his letter, Secretary Mayorkas stated that DHS OIG had "erroneously" suggested that DHS had "restricted and significantly delayed the OIG's access to information regarding the January 6, 2021 attack on the U.S. Capitol." *Id*. Accordingly, on July 13, 2022, IG Cuffari informed Congress that the Secret Service had deleted text messages after receiving multiple preservation notices. IG Cuffari and DHS OIG

recommendations. (*See DHS Components Have Not Fully Complied with the Department's Guidelines for Implementing the Lautenberg Amendment, project OIG-21-09; November 13, 2020.)*

[7]IG Cuffari addressed efforts by DHS OIG to investigate the January 6, 2021 attack on the Capital in correspondence to Congress. One representative letter is attached as an exhibit and summarized in this response. *See* Exhibit E (August 23, 2022 Letter from IG Cuffari to the House Committee on Oversight and Reform and the House Committee on Homeland Security).

[8] Multiple Congressional committees and the DHS OIG issued at least five preservation notices to DHS beginning days after the January 6, 2021 attack. Beginning, at the latest, ten days after the attack, DHS was on formal notice to preserve electronic communications related to January 6. Despite these notices, DHS embarked on a cellphone replacement project and deleted text messages from cellphones that were used on or about January 6, 2021.

career senior staff then briefed the House Select Committee to Investigate the January 6 Attack on the United States Capitol about the difficulty DHS OIG experienced in accessing DHS records.

Guidance from the DOJ Office of Legal Counsel prohibits an Inspector General from providing confidential information about open criminal investigations to Congress. *See* Exhibit H (March 24, 1989 Office of Legal Counsel Opinion). Similarly, Department of Justice policy prohibits disclosure of information related to ongoing criminal investigations. *See* Justice Manual § 1-7.400 (available on the Justice Department website at www.justice.gov). Accordingly, IG Cuffari will continue to cooperate and share information with Congress and other investigatory entities to the extent possible without jeopardizing national security and law enforcement concerns.

Thank you for your consideration and the opportunity to submit this letter to ensure that any allegations CIGIE IC investigates against IG Cuffari are based upon complete and accurate information. We are available at your convenience to address this matter further. We respectfully request a meeting to discuss this matter in person prior to any further adverse action or decision.

Sincerely,

[redacted]

[redacted]

[redacted]

Counsel for Inspector General Joseph Cuffari

Exhibit A

RON JOHNSON, WISCONSIN, CHAIRMAN

ROB PORTMAN, OHIO
RAND PAUL, KENTUCKY
JAMES LANKFORD, OKLAHOMA
MITT ROMNEY, UTAH
RICK SCOTT, FLORIDA
MICHAEL B. ENZI, WYOMING
JOSH HAWLEY, MISSOURI

GARY C. PETERS, MICHIGAN
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MAGGIE HASSAN, NEW HAMPSHIRE
KAMALA D. HARRIS, CALIFORNIA
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GABRIELLE D'ADAMO SINGER, STAFF DIRECTOR
DAVID M. WEINBERG, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

December 6, 2019

Joseph Cuffari
Inspector General
Department of Homeland Security
Office of the Inspector General
245 Murray Lane S.W.
Washington, D.C. 20528-0305

Dear Inspector General Cuffari:

As the Chairmen and Ranking Members of the undersigned committees, we want to congratulate you on your unanimous Senate confirmation in July. You have our collective commitment to ensuring that you have the resources and authorities you need to provide independent oversight and promote integrity and accountability within the Department of Homeland Security (DHS). We write today to express serious concern about the cumulative effect of longstanding management and operational challenges within the Office of the Inspector General (OIG) that threaten to undermine that critical mission.

DHS's OIG is responsible for the oversight of an agency with a budget of more than $70 billion divided across dozens of components tasked with securing the homeland, including border security, cybersecurity, terrorism prevention, and emergency response preparedness. Allegations have come to our attention that the office has been plagued by ongoing bureaucratic infighting and competing allegations of misconduct that threaten OIG's ability to conduct effective oversight.

We have been concerned for some time about DHS OIG's ability to perform its statutory mission.[1] In April 2014, a bipartisan congressional investigation found allegations of misconduct by the then-Acting Inspector General that "contributed to an office environment characterized by low morale, fear, and general dissatisfaction with [] leadership."[2] In September

[1] Pub. L. 113-126.

[2] Letter and Report on Investigation Into Allegations of Misconduct by the Former Acting and Deputy Inspector General of the Department of Homeland Security from Claire McCaskill, Chairman, and Ron Johnson, Ranking Member of the Subcommittee on Financial and Contracting Oversight, Senate Committee on Homeland Security & Governmental Affairs, to The Honorable Phyllis K. Fong, Chair, Council of the Inspectors General on Integrity and Efficiency (Apr. 23, 2014), *available at* https://www.hsgac.senate.gov/imo/media/doc/2014-04-24%20FCO%20Letter%20and%20Investigation%20Report%20into%20Allegations%20of%20Misconduct%20by%20the%20Former%20Acting%20and%20Deputy%20Inspector%20General%20of%20the%20Department%20of%20Homeland.pdf.

2014, the Government Accountability Office issued a report recommending changes to address organizational, management, and independence issues within the OIG.[3]

Unfortunately, problems have apparently persisted and in some cases worsened. Over the past year, we have received numerous complaints from whistleblowers of alleged misconduct within DHS OIG that leave us concerned about the office's ability to conduct timely, independent, and fact-based audits and inspections of DHS.

Three issues stand out. First, it has come to our attention that DHS OIG employees have filed numerous complaints of misconduct against each other over the past few years, which appear to have had significant implications for the office's operations. Relatedly, it is our understanding that prior to your confirmation, DHS OIG inexplicably moved the human resources operations out of the office of management to the general counsel's office. Although this may be an accepted practice at small organizations, it is difficult to imagine a general counsel fulfilling both positions effectively and without a conflict of interest.

Second, we understand that, between your nomination (November 18, 2018) and confirmation (July 25, 2019), DHS OIG filled a number of senior management staff and other vacant positions. We are concerned that filling numerous senior management positions while your nomination was under active consideration by the Senate deprived you of the opportunity to install lasting and coherent leadership. Additionally, we are concerned that this rash of hiring may have contributed to the OIG's multi-million dollar budget shortfall.[4]

Third, employee morale within DHS OIG remains low. In the 2018 Federal Employee Viewpoint Survey (FEVS), DHS OIG ranked 303 of 415 component agencies that operate as part of larger agencies.[5] Unfortunately, this represents a decline of 4.7 points from 2017, and is consistent with its positioning near the bottom of the list for the past several years.[6]

Congress and the American people depend on DHS OIG to be our eyes and ears on the ground and to serve as a reliable outlet for whistleblowers at DHS. To ensure that DHS OIG can operate efficiently to carry out its mission, including preventing and detect waste, fraud, and abuse,[7] please respond to the following no later than December 20, 2019:

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[3] U.S. Gov't Accountability Office, GAO-14-726, Inspectors General, DHS OIG's Structure, Policies, and Procedures Are Consistent with Standards, but Areas for Improvement Exist (Sept. 2014), *available at* https://www.gao.gov/assets/670/666087.pdf.
[4] 31 U.S.C. § 1341.
[5] Best Places to Work in the Federal Government, Agency Report, Office of the Inspector General, https://bestplacestowork.org/rankings/detail/HS15.
[6] *Id.*
[7] Pub. L. No. 113-126.

1. For each of the last five years, please provide:

    a. The total number of staff employed by the DHS OIG at the beginning of each fiscal year.

    b. All organizational charts and other materials that document the structure of DHS OIG and, if available, a breakdown of staffing totals for each office and division.

    c. All final budgets and budget requests prepared by DHS OIG.

2. For the last year, please provide a list of all DHS OIG staff members who were hired or reassigned, including for each the date of hire or reassignment and the GS/SES level and series;

3. For each of the last five years, please provide all raw FEVS data provided to DHS OIG by the Office of Personnel Management. Please provide the data in the most disaggregated format available.

4. For each of the last five years, please provide a breakdown by division (audits, inspections, and investigations) of the number of products issued.

5. Please provide a breakdown by division (audits, inspections, and investigations) of the number of products you expect to have completed in 2019.

6. Please provide a copy of all internal employee complaints provided to DHS OIG since January 2017.

    a. Please provide the status of each of the complaints and the estimated date of resolution.

Thank you for your attention to this important matter. If you have any questions about this request, please contact [redacted] and [redacted] for the U.S. Senate Committee on Homeland Security and Governmental Affairs, and [redacted] for the U.S. House Committee on Homeland Security.

Sincerely,

Ron Johnson
Chairman
Committee on Homeland Security and
Governmental Affairs
U.S. Senate

Gary C. Peters
Ranking Member
Committee on Homeland Security
and Governmental Affairs
U.S. Senate

Bennie G. Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives

Mike Rogers
Ranking Member
Committee on Homeland Security
U.S. House of Representatives

Exhibit B

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

May 13, 2022

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Your April 26, 2022 letter

Dear Chairman Durbin and Ranking Member Grassley:

Thank you for your letter of April 26, 2022, in which you ask for information about a report and ongoing work at the Department of Homeland Security (DHS) Office of Inspector General (OIG). I am grateful for the opportunity to provide you with important background and context that is missing from the New York Times and Project on Government Oversight articles referenced in your letter.

Chairman Durbin, I promised you in July 2019 that if confirmed, I would clean up DHS OIG. I made the same commitment to the Members of the Senate Committee on Homeland Security and Governmental Affairs. I am very proud of the progress I have made since that time.

Quality Transformation

As you may recall, prior to my confirmation, in 2017 and 2018 DHS OIG was forced to retract thirteen audit reports that failed to comply with appropriate government standards. A 2018 independent peer review of DHS OIG audits issued a rating of "pass with deficiencies," noting that it needed to "improve its system of quality control to provide reasonable assurance that audits performed are in compliance with [government standards],"

noting "lack of internal controls, lack of managerial direction, [and lack] of competence and technical expertise to manage and oversee work."

Since my confirmation in July 2019, I have established the highest expectations for quality standards for every employee. All reports initiated and published during my tenure have met appropriate government standards. Under my leadership, DHS OIG has passed all three independent peer reviews that were conducted by other OIGs. These reviews included quality metrics.

In FY 2021, the General Accountability Office (GAO) reviewed DHS OIG's activities from FY 2015 – FY 2020 and found that there were numerous areas for strategic, policy, and organizational improvement. I have embraced GAO's recommendations, and I have been working closely with GAO leadership to implement its twenty-one recommendations for our office. We have submitted eight recommendations for closure. I am proud that the first recommendation to be closed was #14, which recommended that we ensure our work "adheres to federal OIG standards of independence, due professional care, and quality assurance."[1]

As part of our organizational transformation, we also followed GAO's key principles and implementation steps identified in GAO-03-669, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*. In April 2021, I restructured DHS OIG, to further improve our performance. Among other changes, I created the Office of Integrity (OI) to ensure the quality standards I established were embedded at every level of our organization and to promote integrity throughout the enterprise.

The progress we have made is demonstrated in the quantity and quality of our work and the morale of our employees, which are, respectively, at all-time highs. In the FY 2020 Federal Employee Viewpoint Survey (FEVS), DHS OIG showed significant improvement in several different categories measuring employee morale. In the FY 2021 FEVS, DHS OIG again showed substantial and sustained improvement in virtually every major category that measures employee morale. Here are the key trends in DHS OIG's FEVS scores since my confirmation in July 2019:

[1] https://www.gao.gov/products/gao-21-316 (last viewed May 9, 2022).

Year	Employee Engagement: Overall	Employee Engagement: Leaders Lead	Employee Engagement: Supervisors	Employee Engagement: Intrinsic Work Experience	Global Satisfaction
2021	75%	64%	84%	76%	71%
2020	69%	53%	81%	72%	67%
2019	61%	42%	75%	67%	61%
Change since 2019	+ 14%	+ 22%	+ 9%	+ 9%	+ 10%

Turning to the subject of your letter, as you will see from the discussion below,[2] the edits that I and members of my immediate staff requested be made to certain draft reports were consistent with the extensive edits recommended by career civil servants who were asked to review the drafts because they are subject matter experts in the relevant field. These revisions were necessary to bring the reports up to the applicable standards promulgated by the Council of the Inspectors General on Integrity & Efficiency (CIGIE). Any suggestion that I demanded changes to draft reports for improper purposes is false, as is any suggestion that I suppressed evidence of widespread sexual harassment in DHS law enforcement components.

Background of the two projects

Many projects were under way at DHS OIG at the time of my July 25, 2019 Senate confirmation. Two projects are pertinent to your inquiry.[3] Here are the details of each project, as approved by my predecessor Acting Inspector General John Kelly:

[2] The Senate Committee on the Judiciary has oversight authority over the Department of Homeland Security. *See* https://www.judiciary.senate.gov/about/jurisdiction (last viewed April 28, 2022). Accordingly, to the extent that the discussion below contains names of DHS OIG staff derived from a system of records, DHS OIG is not required to withhold the names from the Committee under the Privacy Act. *See* 5 U.S.C. § 552a(b)(9). Nonetheless, I have identified employees below the senior executive level by their initials.

[3] The division of DHS OIG responsible for carrying out these projects is currently known as the Office of Inspections & Evaluations (OIE). In 2019 and 2020 this division was called the Office of Special Reviews & Evaluations, and in 2018 it was called the Office of Inspections. The different names of this division have no bearing on your inquiry, and accordingly, to avoid confusion I refer to the division as OIE throughout this letter.

PROJECT TITLE	PROJECT OBJECTIVE	DATE APPROVED
CBP, ICE, TSA, and USSS Handling of Employee Allegations of Sexual Harassment and Workplace Sexual Misconduct	Determine whether CBP, ICE, TSA, and USSS appropriately report, investigate, and adjudicate employee allegations of sexual harassment and workplace sexual misconduct	1/19/2018
DHS Law Enforcement Agencies' Compliance with the Lautenberg Amendment	Determine whether DHS agencies with law enforcement officers and agents are complying with requirements of the Lautenberg Amendment	12/13/2018

Applicable CIGIE standards

DHS OIG's inspections must adhere to CIGIE's *Quality Standards for Inspection and Evaluation* (2020), also known as the *Blue Book*.[4] Insofar as is relevant here, the *Blue Book* states that one valid purpose of an inspection is "[d]etermining compliance with law, regulation, and policy." *Blue Book* p.1. This was the purpose of the two projects described above.

In scoping an inspection aimed at determining compliance with law, regulation, and policy, among the criteria to be considered are "[l]aws and regulations applicable to the operation of a program or activity." *Blue Book*, § 3.4b. Such an inspection may result in a finding of a "deficiency, such as noncompliance with provisions of law [or] regulation." *Id.*, p.21. However, "[e]vidence must sufficiently and appropriately support inspection findings and provide a reasonable basis for conclusions." *Id.*, § 4.3; *see also* § 5.2c ("[a]n accurate inspection report is supported by sufficient, appropriate evidence with key facts, figures, and findings being traceable to the evidence").

[4] The previous version of the *Blue Book*, issued in 2012 and in effect when the two projects were approved, was substantially similar to the portions of the current version of the *Blue Book* that I discuss below.

Moreover, inspection organizations "must provide supervision over the inspection work performed" so as to "ensure that the . . . [f]indings, conclusions, and recommendations resulting from the inspection are adequately supported by the evidence." *Id.*, §§ 7.2, 7.2b. Such supervision may include using "the services of a subject matter expert to ensure that the inspection topic is competently reviewed." *Id.*, § 2.1c.

Finally, and perhaps most importantly, is the foundational principle that underlies all of an Inspector General's work, namely, independence. According to the *Blue Book*, p.3, the independence principle requires "[i]nspectors, inspection organizations, and their reports" to be "impartial and without bias in both fact and appearance."

Responses to the questions in your April 26, 2022 letter

1. **When does DHS OIG plan to release the unpublished report on sexual harassment and misconduct?**

As discussed below, the report has been plagued by problems from the outset. The first problem was the failure of senior DHS OIG officials who preceded me to appreciate the significance of the survey results they received nearly four years ago and their choice to withhold information about the survey from me. The second problem was the intransigence of some inspectors, who refused to accept the input of subject matter experts. These problems caused serious delays, and as a result, the information in the most recent draft report does not satisfy the "currency" criterion found in section 2 of the Inspector General Act.

Today I provided the Department with the results of the survey because I do not believe it would be appropriate for me to provide the Committee with the results without also providing them to the Department. I am considering closing the review without issuing a report. Before taking that step, however, I will give OIE an opportunity to explain what a report that meets *Blue Book* standards might look like. In addition, I have approved a project proposal under which OIE will administer another survey in Fiscal Year 2023. Such longitudinal research is a common practice of those who study workplace conditions, and a second survey would likely provide DHS leadership with useful information about any changes in response patterns since 2018 and give OIG a foundation to scope future work in this area.

2. Why was the report delayed? By whom?

DHS OIG staff withheld information about the survey from me and took over two years to prepare a draft report. OIE administered a survey on sexual harassment and related matters to employees of ICE, CBP, USSS, and TSA in June and July of 2018. At that time, Chief Operating Officer Jennifer Costello was overseeing OIE. OIE staff provided the results of the survey to Acting Inspector General John Kelly on August 15, 2018. In March 2019, Diana Shaw became the head of OIE. Not long after that, [redacted] Acting Inspector General Kelly retired on June 10, 2019.

I was confirmed by the Senate on July 25, 2019. Ms. Costello held herself out as DHS OIG's second-in-command until she left DHS OIG on June 11, 2020. Ms. Shaw led OIE from the time of my confirmation until she transferred to another federal agency on or about May 8, 2020. [redacted].

In your letter you suggest that when DHS OIG received the results of the sexual harassment survey, it may have had an obligation to issue a so-called "7-day letter" under section 5(d) of the Inspector General Act to alert DHS leadership to "particularly serious or flagrant problems, abuses, or deficiencies" in DHS programs. However, in reconstructing events surrounding the survey, I have found no indication that between August 15, 2018 (when the results of the survey were available) and my confirmation almost one year later, Mr. Kelly, Ms. Costello, Ms. Shaw, [redacted] ever considered issuing a 7-day letter.

Moreover, in the months following my confirmation DHS OIG senior staff brought many matters to my attention that they recommended be given priority, but to my recollection I was never briefed on the sexual harassment survey. The project with which the survey was associated was one of many listed on a spreadsheet of pending work, with no recommendation that the project take precedence over work on other matters such as: (1) Separation of migrant families; (2) Secret Service spending at a Trump resort; (3) race-based harassment in the Coast Guard; (4) detention conditions during the 2019 migrant surge; and (5) ICE's early experience with COVID-19 at detention centers, among several other matters. I first became aware that DHS OIG had conducted a survey concerning sexual harassment in DHS law enforcement components on or around December 3, 2020, when for the first time OIE forwarded for front office review a draft report that discussed the survey. By then, the survey results were 2-1/2 years old.

It is disappointing, but not surprising, that Ms. Costello and Ms. Shaw never briefed me on the survey. An independent investigation conducted in 2020 found that Ms. Costello and Ms. Shaw often withheld important information from me and encouraged others to do the same, and that Ms. Costello "insisted [to DHS OIG staff] that the agency's business run through her." Although Ms. Costello, Ms. Shaw, and [redacted] let the project with which the survey was associated languish for years, [redacted] to [redacted] credit, revived the project and oversaw the forwarding of a draft report to the front office just 96 days after [redacted]

The report has been delayed further by some OIE staff members' refusal to accept input from subject matter experts. [redacted] believed that the December 3, 2020 draft report had serious flaws. In accordance with the *Blue Book* standards discussed above, [redacted] asked subject matter experts to review the draft:

- On December 7, 2020, E.M., a career civil service attorney with expert knowledge of the EEO process, reviewed the draft report and provided extensive comments.

- On January 28, 2021, V.C., a career civil service attorney with considerable experience counseling managers on disciplinary matters and successfully defending disciplinary actions before third-party neutrals, reviewed the draft report and provided extensive comments.

- On August 9, 2021, G.A., a career civil service attorney with considerable experience counseling managers on disciplinary matters and successfully defending disciplinary actions before third-party neutrals, reviewed the draft report and provided extensive comments.

E.M., V.C., and G.A. found problems such as unsupported inferences and conclusions, analysis that was inconsistent with federal law, recommendations that were contrary to best practices, and subjective commentary on DHS components' strategic decisions that would have impermissibly involved OIG in component operations. [redacted] was forced to have the draft report go through multiple rounds of subject matter expert review over several months because some OIE staff refused to make

changes to the report in response to the subject matter experts' comments.[5] The following examples are illustrative.

The draft report criticizes DHS components for often charging employees who engaged in inappropriate behavior carrying sexual overtones with general offenses such as "Improper Conduct." According to the draft report, DHS components should instead charge employees who engaged in such behavior with a specific offense, such as "sexual harassment," drawn from a Table of Penalties. V.C., a subject matter expert, disagreed with this portion of the report because it was divorced from, and in some ways contrary to, applicable law and best practice.

The standard for disciplining a non-probationary federal employee is broad. The relevant portion of the Civil Service Reform Act provides that discipline may be imposed for "such cause as will promote the efficiency of the service." 5 U.S.C. § 7513(a). As the Merit Systems Protection Board (MSPB) stated in *Otero v. U.S. Postal Service*, 73 M.S.P.R. 198 (1997):

> Nothing in law or regulation requires that an agency affix a label to a charge of misconduct. If it so chooses, it may simply describe actions that constitute misbehavior in a narrative form, and have its discipline sustained if the efficiency of the service suffers because of the misconduct.

Basing a disciplinary action on a labeled charge raises the risk that a third-party neutral such as MSPB or an arbitrator will overturn the discipline in its entirety because the agency, although presenting evidence of misconduct that impairs the efficiency of the service, failed to prove all of the technical elements of the charge. For example, in *Gregory v. Department of the Army*, 114 M.S.P.R. 607 (2010), MSPB overturned an employee's suspension and demotion based on a charge of "sexual harassment," on the ground that the employee's inappropriate behavior did not meet all the technical elements of sexual harassment under Title VII of the Civil Rights Act. The decision notes that the agency could have levied a generic charge without technical elements but chose not to do so.

---

[5] Wherever possible, we integrate subject matter experts into our work. For example, we consult with medical personnel when we examine whether migrants in detention facilities are receiving substandard health care; experts on immigration law when we examine the administration of a visa program; experts in IT security when we examine vulnerabilities in DHS networks; and experts in law enforcement techniques when we examine the effectiveness of DHS programs aimed at intercepting contraband at the border.

Based on decisions such as *Gregory*, agency attorneys and managers often make the strategic, legally-permitted decision to charge an employee who has engaged in inappropriate behavior carrying sexual overtones with a generic offense such as "Conduct Unbecoming." In fact, a training module for agency Employee Relations staff produced by the Office of Personnel Management (OPM) states, under the heading Practice Preference:

> Don't use Title VII terms of art like Sexual Harassment or Hostile Work Environment in your charge.
>
> Better to charge general count of misconduct than be required to prove the elements[.]

Charge Writing for ER Practitioners: An Essential Building Block for Defensible Actions, slide 32.[6]

With respect to a Table of Penalties, a nationally-renowned expert in federal employment law who co-founded a company that trains agency Attorneys and Employee Relations staff advises that an agency is "not obligated to reference a charge in [its] Table of Penalties" when it disciplines an employee; that a Table of Penalties is "a guide, not controlling policy"; and that it is often better to impose discipline based on a charge with few or no technical elements. *Tables of Penalties Can Be Deadly* (William Wiley, Federal Employment Law Training Group).[7] In similar fashion, official guidance from OPM states that creation and use of a Table of Penalties "is not required by statute, case law or OPM regulation"; that agencies "have the ability to address misconduct appropriately without a [Table of Penalties], and with sufficient flexibility to determine the appropriate penalty for each instance of misconduct"; that a Table of Penalties "may create drawbacks to the viability of a particular action and to effective management"; and finally, that "by creating a range of penalties for an offense," a Table of Penalties may "limit the scope of management's discretion to tailor the penalty to the facts and circumstances of a particular case by excluding certain penalties along the continuum." 84 Fed. Reg. 48794, 48798 (2019).

V.C.'s critique of the draft report was informed by [redacted] own expertise drawn from decades of practicing law and was consistent with the principles

[6] Available at https://www.opm.gov/policy-data-oversight/employee-relations/training/charge-writing-for-er-practitioners.pdf (last viewed May 8, 2022).

[7] Available at https://feltg.com/tables-of-penalties-can-be-deadly (last viewed May 6, 2022).

set forth above. Yet, some OIE staff refused to change the report and instead insisted that OIG criticize DHS components for charging employees with generic offenses not found in a Table of Penalties. Apart from these particular substantive issues, on many other issues some OIE staff did not pay heed to the subject matter expert's insightful suggestions and tersely retorted "no change required" over and over again. An objective observer would say that some OIE staff refused to engage with a subject matter expert, in contravention of *Blue Book* standards.

I would not expect DHS components, Congress, and other stakeholders to take the report seriously had DHS OIG issued the version for which some OIE staff advocated. Under the applicable *Blue Book* standards, a report that is heavily focused on compliance with law and policy must be supported by authoritative, expert interpretations of the relevant law and policy. The December 3, 2020 version of the OIE report fell far short of the mark. An Inspector General is in no position to substitute the subjective preferences of an inspector for the considered strategic judgments of agency attorneys and managers, especially where, as here, those strategic judgments are firmly grounded in contemporary understandings of the law and accepted best practices. An Inspector General who did so would rightly be accused of bias and partiality.

3. Why did DHS OIG remove findings and recommendations regarding DHS's failure to investigate and/or discipline personnel alleged to have committed domestic violence from the November 13, 2020 report *DHS Components have Not Fully Complied with the Department's Guidelines for Implementing the Lautenberg Amendment*?

As noted above, the approved objective of this project was to "[d]etermine whether DHS agencies with law enforcement officers and agents are complying with requirements of the Lautenberg Amendment." Enacted in 1997 as an addition to the Gun Control Act of 1968, the Lautenberg Amendment prohibits an individual who has been *convicted* of a misdemeanor crime of domestic violence (MCDV) from possessing a firearm. *See* 18 U.S.C. § 922(g). There is no exception for law enforcement officers (LEO), which means that a LEO convicted of an MCDV may no longer hold his or her position.

After [redacted] declined to make changes to the draft report that E.M. and I thought were warranted (see discussion below), another subject matter expert, V.C., reviewed the draft. [redacted] concluded that major portions were inconsistent with governing

legal principles and contained unsupported criticisms of DHS components. The draft created the incorrect impression that a DHS component must treat a LEO who engaged in certain forms of off-duty conduct, but was not convicted of an MCDV, in similar fashion to one who was convicted of such an offense.

Further, the draft suggested, without support from the applicable precedent of *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), that DHS components were too lenient on LEOs who were not convicted of MCDVs but who engaged in certain forms of off-duty conduct. Under *Douglas*, an agency official who is responsible for determining what discipline should be imposed in a particular case must consider the following factors:

> (1) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
>
> (2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
>
> (3) the employee's past disciplinary record;
>
> (4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
>
> (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
>
> (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
>
> (7) consistency of the penalty with any applicable agency table of penalties;
>
> (8) the notoriety of the offense or its impact upon the reputation of the agency;
>
> (9) the clarity with which the employee was on notice of any rules that where violated in committing the offense, or had been warned about the conduct in question;

> (10) potential for the employee's rehabilitation;
>
> (11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
>
> (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

5 M.S.P.R. at 305-06. The draft report did not demonstrate that DHS components systematically underweighted those *Douglas* factors that would support a severe penalty or that they systematically overweighted those *Douglas* factors that would support a light penalty. In fact, the draft report made absolutely no mention of *Douglas*, which experts in federal employment law view as a foundational element of federal employees' due process rights.[8]

V.C. discussed [redacted] critique of the draft report with [redacted] shortly after [redacted] took over from [redacted] decided to make major revisions to the report, and explained [redacted] thinking in a September 13, 2020 e-mail as follows:

> I had a really good discussion with [V.C.] Friday afternoon on the Douglas Factors and I am in a much better place with the Lautenberg report now.
>
> I have attached it with my revisions and think I have a way forward for the meeting tomorrow at 10:00. The meeting should be quick.
>
> I essentially want to eliminate the section which discusses varying discipline administered by each of the four components. The fact that they administer different discipline is not necessarily incorrect because each case has to be adjudicated on its own standards relating to the Douglas Factors. Since the report is about Lautenberg, I don't believe we need the "DHS Components Used Varying Approaches to

[8] According to Westlaw, as of May 9, 2022 the *Douglas* precedent had been cited in 599 court decisions and 2353 administrative decisions.

[9] The Chief of Staff and the Counsel to the Inspector General also reviewed the draft report and agreed with V.C.'s critique.

Discipline Law Enforcement Officers Who Engaged in Domestic Violence" section in this report.

I want to keep Recommendations 1, 6 and 7 and eliminate 2-5. 2-5 were my attempt to try to enforce uniform punishment across the components which was an incorrect application before I appreciated how the Douglas Factors were applied in each case.

I appreciate everyone's patience and contributions on this report. I think we are close to a good report.

[redacted] thus chose -- in response to comments from a subject matter expert -- to bring the report into necessary conformity with the approved project scope, which again, was about LEOs convicted of MCDVs. Recommendations 2-5, which [redacted] chose to eliminate, called for DHS components with LEOs to discipline employees who had engaged in certain forms of off-duty behavior with offenses drawn from a Table of Penalties. As explained above, such recommendations are inappropriate because they substitute the subjective policy preferences of OIE staff for the lawful, strategic judgments of component attorneys and managers that in turn are based on authoritative expert opinion and accepted best practices.

a. You made several recommendations to remove content from and narrow the scope of the draft report. Please explain the recommendations you made in your July 9, 2020 e-mail, as well as your decision to omit certain language that you characterized as going beyond the Lautenberg Amendment.

In late June and early July 2020, [redacted] and E.M., career civil servants and [redacted] with expert knowledge on the disciplinary process, reviewed the draft report on the Lautenberg Amendment and found serious flaws. When [redacted] was "opposed to these changes" and indicated that [redacted] would "like the IG to decide" whether the report should be revised. Specifically, [redacted] wanted to retain portions of the report that recommended DHS components stop using "general misconduct charges" when disciplining employees whose behavior OIE believed could be described as "domestic violence." According to [redacted] such employees received only "limited" discipline, and the situation could be rectified by components adding "specific offenses" for domestic violence to their Tables of Penalties.

I agreed with [redacted] and E.M. that the draft report should be revised. They explained that attorneys and managers often make the strategic decision to use generic charges when disciplining an employee in order to eliminate the risk that MSPB or an arbitrator would overturn the discipline upon finding that the agency failed to prove every technical element of a charge drawn from a Table of Penalties. They also explained that [redacted] was incorrect in concluding that use of a generic charge results in an employee receiving "limited" discipline because, under MSPB precedent in *Douglas*, the appropriate level of discipline is determined by considering the 12 factors set forth above. How a charge is labeled is not a factor under *Douglas*.

I was also aware, based on my more than 26-years' experience as a Criminal Investigator with the Department of Justice Office of Inspector General and the Air Force Office of Special Investigations, that the Lautenberg Amendment applies only when an individual is *convicted* of an MCDV. The portions of the report that [redacted] wanted to retain pertained to cases in which a DHS employee committed off-duty misconduct but had not been convicted of an MCDV. I found the report confusing inasmuch as it blurred the distinction between a criminal conviction for a domestic violence offense and administrative discipline by the employing agency for "domestic violence." The latter topic was beyond the scope of the project as originally approved and the conclusions in the draft report were unpersuasive.

For all of these reasons, I asked that the draft report be revised. I later learned that OIE staff chose not to make all of the revisions I requested. As explained above, it was not until two months later, after [redacted] and conferred with V.C., that the appropriate revisions were eventually made.

b. Please explain, in your view, how these editorial decisions comply with CIGIE standards.

As explained above, *Blue Book* standards require a report that examines an agency's compliance with law, regulation, and policy to be informed by authoritative expert opinion on the relevant laws and regulations and associated best practices. A report that substituted the subjective policy preferences of inspectors for the lawful strategic judgments made by DHS attorneys and managers, which themselves are rooted in authoritative interpretations of law and accepted best practice, would not be taken seriously and would call into question DHS OIG's impartiality.

4. Has DHS OIG removed similar findings from the unpublished report regarding sexual harassment and sexual misconduct at DHS?

Yes. Please see the discussion above in response to Question # 1.

a. Did you personally direct or approve the removal of this language, and if not, were you aware of its removal?

I was aware that career civil servants who are experts in federal employment law had concluded that major revisions to the report were warranted. When staff described the changes to me, I concurred.

b. Please explain, in your view, how these editorial decisions comply with CIGIE standards.

As explained above, *Blue Book* standards require a report that examines an agency's compliance with law, regulation, and policy to be informed by authoritative expert opinion on the relevant laws and regulations and associated best practices. A report that substituted the subjective policy preferences of inspectors for the lawful strategic judgments made by DHS attorneys and managers, which themselves are rooted in authoritative interpretations of law and accepted best practice, would not be taken seriously and would call into question DHS OIG's impartiality.

5. Please provide a copy of the DHS OIG survey that sought information regarding sexual harassment and misconduct at DHS components, as well as the results. When was the survey conducted, and why? How was it administered? Did you report the survey results to DHS leadership or to Congress? If so, when? If not, why not?

A copy of the survey instrument and summary-level results accompany this letter. In order to preserve respondent anonymity, I am unable to provide individual survey responses.

The survey was administered in June and July of 2018 via secure electronic means to ensure confidentiality. I have no insight into the thinking of the DHS OIG officials who proposed and approved the survey, as the survey had already been completed roughly a year before I was confirmed as Inspector General. To my knowledge Acting Inspector General Kelly, Ms. Costello, and others who were in a position to report the results to DHS leadership and to Congress in the year leading up to my

confirmation never did so. As stated above, I learned of the survey when OIE forwarded a draft report to the front office for review on or about December 3, 2020, and by that time the results were 2-1/2 years old.

Further, the results were integral to a draft report that had serious flaws and needed reworking, yet some OIE staff were uncooperative and placed their subjective policy preferences ahead of the DHS OIG mission of producing impartial and unbiased work. OIE staff never suggested that the survey results could be decoupled from an analytical report. Moreover, typically an Inspector General does not release raw data obtained in field work to a Department or agency, but instead includes the relevant data along with a report that contains recommendations.

In closing, I thank you again for allowing me to set the record straight concerning the reports and ongoing work discussed in recent press articles. I respectfully ask that the Committee not treat the discussion of internal DHS OIG deliberations above as precedent. I have decided to describe to you the internal deliberations surrounding certain reports because doing so is the only way to counter the incomplete and misleading narrative that grew out of the unauthorized, selective public disclosure of draft OIG reports.

I also take this opportunity to set the record straight on an April 29, 2022 meeting between the President and certain Inspectors General. One topic discussed at that meeting was Inspector General oversight of spending under the Infrastructure Investment and Jobs Act (IIJA).[10] At least one news account noted that I was "absent" from the White House meeting. Although DHS OIG has oversight authority over billions of dollars in spending under the IIJA, the Inspectors General who coordinated the meeting selected others to attend and did not invite me to that meeting.

[10] *See Remarks by President Biden with Inspectors General on Commitment to Oversight, Accountability, and Transparency* (4/29/22), available at https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/04/29/remarks-by-president-biden-with-inspectors-general-on-commitment-to-oversight-accountability-and-transparency (last viewed May 12, 2022).

I would be happy to testify before the Committee about these matters and DHS OIG's other important oversight work. Please call me with any questions at [redacted]

Sincerely,

JOSEPH V CUFFARI [redacted]

Joseph V. Cuffari, Ph.D.
Inspector General

cc: The Hon. Patrick J. Leahy
The Hon. Dianne Feinstein
The Hon. Sheldon Whitehouse
The Hon. Amy Klobuchar
The Hon. Chris Coons
The Hon. Richard Blumenthal
The Hon. Mazie K. Hirono
The Hon. Cory Booker
The Hon. Alex Padilla
The Hon. Jon Ossoff
The Hon. Lindsey Graham
The Hon. John Cornyn
The Hon. Mike Lee
The Hon. Ted Cruz
The Hon. Ben Sasse
The Hon. Josh Hawley
The Hon. Tom Cotton
The Hon. John Kennedy
The Hon. Thom Tillis
The Hon. Marsha Blackburn

Exhibit C

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

May 17, 2022

The Honorable Carolyn B. Maloney, Chairwoman
Committee on Oversight and Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Bennie G. Thompson, Chairman
Committee on Homeland Security
U.S. House of Representatives
H2-176 Ford House Office Building
Washington, DC 20515

Re: Your letter of May 10, 2022

Dear Chairwoman Maloney and Chairman Thompson:

Thank you for your letter of May 10, 2022, in which you ask for information surrounding two projects at the Department of Homeland Security (DHS) Office of Inspector General (OIG).

As a partial response, I am transmitting herewith a copy of a letter that I sent to Chairman Durbin and Ranking Member Grassley of the Senate Committee on the Judiciary on May 13, 2022. In that letter, I discuss the projects about which you have inquired. As you can see from the letter, some DHS OIG inspectors resisted making changes to draft reports recommended by multiple career civil servants who are experts in federal employment law. Those inspectors instead insisted on criticizing DHS components based on their own subjective preferences, which were contrary to basic principles of federal law and associated best practices and inconsistent with applicable standards promulgated by the Council of the Inspectors General on Integrity and Efficiency.

I have distributed a redacted version of my May 13, 2022 letter to the DHS OIG workforce, and I intend to release the same version to the public. The redactions conceal the names and initials of career DHS OIG employees who were involved in drafting and reviewing the subject reports. Because you have requested information about the same reports, I am

providing you with an unredacted version of my May 13, 2022 letter. *See* 5 U.S.C. § 552a(b)(9).

Please contact me with any questions at [redacted]

Sincerely,
JOSEPH V CUFFARI [redacted]
Joseph V. Cuffari, Ph.D.
Inspector General

cc: The Honorable James Comer, Ranking Member
Committee on Oversight and Reform

The Honorable John Katko, Ranking Member
Committee on Homeland Security

Exhibit D

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

August 8, 2022

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Your June 27, 2022 letter

Dear Chairman Durbin and Ranking Member Grassley:

I am writing in response to your letter of June 27, 2022, in which you pose further questions about draft reports authored by staff of the Office of Inspections & Evaluations (OIE), Department of Homeland Security (DHS) Office of Inspector General (OIG), that were released to the Project on Government Oversight (POGO) and the New York Times without authorization.

Before turning to your questions, however, I want to address two preliminary matters.

The suggestion in the media that I am inclined to protect law enforcement officers who engage in violent off-duty conduct is misplaced.

Approximately three months after my confirmation and after repeated attempts to learn particulars about internal DHS OIG investigations, prior DHS OIG senior leadership eventually disclosed to me that two DHS OIG Criminal Investigators were alleged to have engaged in violent and/or menacing behavior off-duty. One of the episodes involved a domestic dispute between a [redacted] I further learned that under prior DHS OIG leadership, both [redacted] had been placed on open-ended, *paid* leave for more than six months with no clear

plan to discipline them (if the allegations were substantiated) or return them to duty (if the allegations were not substantiated). After repeated attempts to seek resolution of those matters, I subsequently instructed the head of DHS OIG's Office of Investigations to resolve the allegations and ensure that discipline was imposed, if warranted.[1] As a result of my instructions, [redacted] was demoted and the other was removed from federal service. Thus, my own actions demonstrate that I follow the law, respect employee's due process rights, and hold law enforcement officers who engage in violent off-duty conduct accountable for their actions.

I am unable to respond to all of the questions in your June 27, 2022, letter at this time.

The questions in your June 27, 2022, letter concern two projects at DHS OIG. The first project, which is now concluded, concerns implementation of the Lautenberg Amendment in DHS. The second project, which is ongoing, concerns sexual harassment in DHS law enforcement components.

Authorities such as *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020), *Assertion of Executive Privilege over Documents Generated in Response to Congressional Investigation into Operation Fast and Furious*, 36 Op. O.L.C. 1, 4-5 (2012), *Letter from Assistant Attorney General Raben to Chairman Linder, Subcommittee on Rules and Organization of House, House Committee on Rules* (Jan. 27, 2000), *Assertion of Executive Privilege in Response to Congressional Demands for Law Enforcement Files*, 6 Op. O.L.C. 27 (1982), and *United States v. American Tel. & Tel. Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977), establish these following principles: Congress may obtain information only as an adjunct to the legislative process; the Executive Branch has a legitimate, constitutionally-recognized interest in protecting the confidentiality of its internal deliberations, including those below the cabinet and subcabinet level; Congress may obtain deliberative materials from the Executive Branch only in the most unusual circumstances; Congress' request for deliberative materials that are part of an ongoing matter would intrude into Executive Branch decision-making

[1] Prior DHS OIG leadership had transferred the Human Resources Division (HRD) staff into the Personnel Law Division (PLD) of the Office of Counsel (OC). At the time, PLD attorneys and HRD staff were responsible for not only conducting the investigations into the underlying allegations but were also responsible for advising OIG management of appropriate adverse action, and representing the OIG in any corresponding litigation. In 2020, I corrected the inherent conflict-of-interest that was unnecessarily created in that then-current arrangement and returned HRD back to the Office of Management.

and interfere with the execution of the laws; and disputes between Congress and the Executive Branch over congressional demands for information should be resolved by negotiation and compromise aimed at accommodating the respective legitimate interests of Congress and the Executive Branch.

With respect to the Lautenberg Amendment project, I can describe internal DHS OIG deliberations as a compromise between the extremes of declining to provide any information about internal deliberations and providing the Committee with the primary-source deliberative materials themselves. With respect to the sexual harassment project, the authorities set forth above indicate that I may not provide the Committee any information about DHS OIG deliberations because the project is ongoing.

To confirm my understanding of the limits of my authority to furnish deliberative records and information to Congress, on June 10, 2022, I sought guidance from the Executive Office of the President (EOP). On July 11, 2022, attorneys in EOP informally advised DHS OIG staff that this Administration's policy is to follow the approach outlined in the November 4, 1982, Memorandum from the President to the Heads of Executive Departments and Agencies entitled *Procedures Governing Responses to Congressional Requests for Information.* On July 28, 2022, EOP indicated that the informal advice supplied to DHS OIG represented the official position of EOP.

The November 4, 1982, Memorandum from the President instructs agency heads to seek the advice of the Office of Legal Counsel (OLC), Department of Justice, when faced with congressional requests for deliberative records and information. On August 3, 2022, I requested an opinion from OLC concerning whether I am permitted to release deliberative records and information to Congress.

Responses to the questions in your June 27, 2022, letter

1. **You state that "[a]n Inspector General is in no position to substitute the subjective preferences of an inspector for the considered strategic judgments of agency attorneys and managers."**

a. **What is the basis for this assertion that an OIG is in no position to question agency decision-making?**

I have never claimed that "an OIG is in no position to question agency decision-making."

Rather, in my May 13, 2022, letter to you, I stated that when agency attorneys and managers decide to propose discipline against an employee based on a generic charge such as "inappropriate conduct," an OIG should not criticize the agency merely because some OIG staff subjectively prefer that the agency levy specific charges with technical elements such as "domestic violence." As explained in my May 13 letter, this is because the agency's approach: Follows the official guidance of the Office of Personnel Management (OPM); is consistent with best practices endorsed by experts in federal employment law; and eliminates the risk that an arbitrator or the Merit Systems Protection Board (MSPB) will reverse the discipline on the ground that, although the employee committed misconduct, the agency failed to prove each and every technical element of a specific charge. In short, an agency's decision to base discipline on a generic charge is objectively reasonable.

By contrast, the analysis in draft reports recommending that DHS components should not use generic charges but instead should employ charges such as "domestic violence" is: Contrary to OPM's official guidance; inconsistent with best practices endorsed by experts in federal employment law; and creates the risk that an arbitrator or the MSPB will reverse the discipline on the ground that, although the employee committed misconduct, the agency failed to prove each and every technical element of a specific charge. The draft reports criticizing DHS components for using generic disciplinary charges do not identify an objective criterion to support such criticism.

Put differently, the decision of DHS components to impose discipline based on generic charges instead of charges such as "domestic violence" is not contrary to law, regulation, or policy; is not an abuse of authority or mismanagement; does not result in waste, fraud, or a danger to the public; and does not represent any other form of maladministration of a DHS program. Therefore, there is no basis for an OIG report to criticize DHS components for using generic charges.

As I explained in my May 13 letter, an agency official who is responsible for determining what level of discipline (if any) to impose on an employee must make an individualized decision after considering the 12 factors identified in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981). An agency would be subject to warranted criticism if it had a policy or a discernible practice of systematically underweighting those *Douglas* factors that supported severe penalties for misconduct and/or systematically overweighting those *Douglas* factors that supported leniency. The draft reports discussed in the New York Times and POGO articles,

however, did not identify any evidence of systematic misapplication of *Douglas* by DHS components.

The most that can be said is that if some DHS OIG staff had stood in the shoes of component managers in certain cases examined in the draft reports, they might have weighed the *Douglas* factors differently and imposed more severe penalties than component managers imposed. The DHS OIG staff who drafted the reports do not supervise law enforcement officers; would never be called to explain, under oath, their decisions before the MSPB or an arbitrator; and would not face any risk that their decisions would be overturned in litigation. In short, there is every reason to believe that the draft reports, if issued as written, would not have been taken seriously by DHS components. In the report that was ultimately issued, we made three recommendations in that report to assist DHS in strengthening its process. DHS agreed with all of our recommendations.

b. The Department of State and Department of Justice OIGs have issued similar reports on sexual harassment in recent years, albeit with slightly different scopes and methodologies. Please explain how the conclusions reached and recommendations made in those reports are substantively different than those reached in the draft DHS OIG report, and why DHS OIG would be stopped from evaluating agency disciplinary decisions in this instance.

Pending guidance from OLC, I cannot comment on deliberations in an ongoing project.

c. When did you and/or your staff develop this theory? How does this theory guide OIG's approach to the preparation of reports in general?

I do not subscribe to the "theory" that "an OIG is in no position to question agency decision-making." An OIG *should* question agency decision-making when it is contrary to law, regulation, or policy; leads to waste, fraud, or a danger to the public; amounts to an abuse of authority or mismanagement; or represents some other form of maladministration of a DHS program. I also believe, though, that an Inspector General needs a justification for questioning decisions made by agency officials in anticipation of litigation.

A non-probationary career federal employee has the right to appeal a disciplinary action to the MSPB, before which the agency must prove, by

preponderant evidence, that the employee committed the conduct charged and that the penalty is reasonable. The MSPB is empowered to reverse or mitigate a disciplinary action on the ground that the agency failed to meet its burden of proving that the charged conduct occurred and that the penalty is reasonable; committed harmful procedural error or violated the employee's right to due process; or took the action because of an improper motivation such as discrimination or whistleblower reprisal. *See* 5 U.S.C. §§ 1221, 2302, 7511 – 7513, 7701.

An employee covered by a collective bargaining agreement has the option of appealing a disciplinary action to the MSPB or instituting a grievance that is ultimately resolved by an arbitrator. *See* 5 U.S.C. § 7121. Arbitration procedures differ somewhat from MSPB's procedures, but an arbitrator applies the same substantive law as the MSPB and has the same remedial powers as the MSPB. *Cornelius v. Nutt*, 472 U.S. 648 (1985).

As the MSPB stated in *Otero v. U.S. Postal Service*, 73 M.S.P.R. 198, 202 (1997):

> Nothing in law or regulation requires that an agency affix a label to a charge of misconduct. If it so chooses, it may simply describe actions that constitute misbehavior in a narrative form, and have its discipline sustained if the efficiency of the service suffers because of the misconduct.

Manifestly, an agency's decision on how to frame a disciplinary charge is a decision made in anticipation of litigation before either the MSPB or an arbitrator. When an agency chooses to impose discipline based on a generic charge rather than a specific charge with technical elements, it is choosing to avoid the risk of outright reversal of the discipline by the MSPB or an arbitrator based on the agency's failure to prove each and every element of a technical charge. Although an Inspector General receives legal advice from attorneys who report to him or her and not to the agency head, this does not give an Inspector General license to criticize an agency's legal strategy where, as here, the agency's strategy is an objectively reasonable measure aimed at reducing the risk of an adverse outcome in litigation and is expressly authorized by MSPB precedent.

2. Regarding the November 2020 report on domestic violence by DHS personnel, you state that "the approved objective of this project was to 'determine whether DHS agencies with law enforcement officers and agents are complying with the requirements of the Lautenberg Amendment.'"

a. Why does this objective, which you state was approved on December 13, 2018, differ from the objective listed in the draft report from May 2020? If the scope of the report was changed between December 13, 2018 and November 13, 2020, please provide an explanation of any changes along with the relevant documentation.

The original project objective, approved December 13, 2018, was: "Determine whether DHS agencies with law enforcement officers and agents are complying with requirements of the Lautenberg Amendment." According to Office of Inspections and Evaluations (OIE)[2] staff, initial fieldwork revealed that there was a "low number of related convictions," which I take to mean a "low number" of law enforcement officers in DHS covered by the Lautenberg Amendment during the period studied. It is my understanding that DHS components removed all of these law enforcement officers. Thus, DHS OIG set out to examine whether DHS components that employ law enforcement officers were in compliance with the Lautenberg Amendment and found that the components were in compliance.

The OIE team proposed to change the project objective to the following: "To determine whether DHS agencies (CBP/ICE/TSA/USSS) with law enforcement officers and agents effectively identify, report, investigate and discipline employees arrested and/or convicted of domestic violence offenses." Acting Inspector General John Kelly approved this change on or about April 22, 2019.

I was confirmed as Inspector General of DHS on July 25, 2019.

b. What OIG standards or best practices pertain to changing the scope or objective of a report after the work on that report has been completed?

DHS OIG's inspections must adhere to CIGIE's *Quality Standards for Inspection and Evaluation* (2020), also known as the *Blue Book*.[3] Section 3.5g of the *Blue Book* states that "[i]nspectors should adjust the [project] plan, as appropriate, based on new information and document any significant changes to the plan in the inspection documentation." In a

[2] OIE was previously known as the Office of Special Reviews and Evaluations (SRE). For purposes of this letter, we refer to that office by its current name.

[3] The previous version of the *Blue Book*, issued in 2012 and in effect when the two projects that are discussed in this letter were approved, was substantially similar to the portions of the current version of the *Blue Book* that I discuss below.

similar vein, DHS OIG's *OIE Manual* (2021) provides that after a project is approved, the Chief Inspector "must review and approve the work plan" prior to the initiation of fieldwork. Further, "the team may change direction or make adjustments" as fieldwork progresses. However, a "formal change in objective requires IG approval and documentation."

As shown in my response to subpart c of this question below, the scope of Lautenberg Amendment project, as originally approved, was limited to whether DHS removed law enforcement officers who automatically became ineligible for their positions because they were convicted of an MCDV or were subject to a domestic violence restraining order.

The project, as expanded, included an examination of how DHS deals with law enforcement officers who are *not* convicted of an MCDV and are *not* subject to a domestic violence restraining order -- and who therefore are not covered by the Lautenberg Amendment -- but who are alleged to have engaged in off-duty conduct that OIE staff characterized as "domestic violence." I am not opposed to modifying the scope of a project when the fieldwork reveals a systemic problem that should be corrected, but in this case, the portions of the May 2020 draft report that addressed the expanded scope were unpersuasive.

Again, the May 2020 report criticized DHS for using generic disciplinary charges. I did not find these criticisms persuasive, as they were contrary to OPM guidance, inconsistent with best practices endorsed by experts in federal employment law, and increased the risk that a disciplinary action would be overturned by the MSPB or an arbitrator. I was not alone. DHS OIG attorneys who are career civil servants and experts in federal employment law also disagreed with the criticisms in the draft, as did the career senior executive in charge of OIE. It was within the discretion of the career senior executive in charge of OIE to eliminate portions of the draft report that pertained to the expanded scope. Although I could have overruled the career senior executive's decision, I had no objective reason for doing so.

c. Please provide the original scope language that was approved on December 13, 2018.

The DHS OIG New Project Request Form, approved on December 13, 2018, provided in relevant part as follows:

Project Objectives	Determine whether DHS agencies with law enforcement officers and agents are complying with requirements of the Lautenberg Amendment.
Project Background	Studies have found that law enforcement officer families experience a higher rate (40 percent) of domestic violence than the general population (10 percent). The Lautenberg Amendment (18 USC Section 921 and 922) prohibits anyone, including Federal law enforcement officers and agents, convicted of a misdemeanor crime of domestic violence (MCDV) or subject to a restraining order from possessing any firearm or ammunition. Because lawfully carrying a firearm is considered a condition of employment, any such officer or agent convicted of domestic violence or with a restraining order filed against him/her is ineligible to remain in such a position. Employees are required to report incidents of domestic violence investigations, prosecutions and convictions to their agency. DHS agencies may also receive reports directly from State/Local authorities. When DHS agencies become aware that one of their law enforcement officers has been convicted of an MCDV or been subject to a restraining order, the agencies must comply with the requirements of the Lautenberg Amendment and take appropriate personnel actions, including removing the individual from his/her position.
Expected Focus of Engagement	Determine whether DHS agencies with law enforcement officers and agents are complying with requirements of the Lautenberg Amendment.
Areas of Concern/Issues to Address	Component law enforcement officers and agents convicted of a misdemeanor crime of domestic violence (MCDV) who are still employed by the Department as a law enforcement officer, even though they are ineligible to remain in such a position because they are prohibited from possessing a firearm or ammunition.

Potential Engagement Impact	This review would identify whether law enforcement officers convicted of MCDVs are still employed as such by the Dept. It would also determine whether DHS has policies and procedures in place to identify and take appropriate personnel/disciplinary action for those law enforcement officers with qualifying convictions.

The detailed descriptions of the scope of the Lautenberg Amendment project, set forth above, make clear that the project was not originally intended to stray into the topic of how DHS treats employees who are alleged to have engaged in certain forms of off-duty conduct but are *not* covered by the Lautenberg Amendment.

3. You provide two explanations for the unreleased sexual harassment and misconduct report that was delayed: (1) "DHS OIG staff withheld information about the survey"; and (2) "[t]he report has been delayed further by some OIE staff members' refusal to accept input from subject matter experts."

a. Did you at any point after December 3, 2020 request a staff briefing on the draft report?

Pending guidance from OLC, I cannot comment on deliberations in an ongoing project.

b. You state that you did report the survey to DHS leadership on the day you transmitted the response to Congress. However, it is unclear why the reporting requirement was not triggered upon your learning of the existence of the survey. Please explain why this survey did not meet the reporting requirement of the IG Act, which states that an IG "shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment."

Pending guidance from OLC, I cannot comment on deliberations in an ongoing project.

c. Please provide a description of the changes that were made by OIE staff members in response to input from subject matter experts. Please also provide all finalized versions of the draft report including comments from OIE staff members and subject matter experts?

Pending guidance from OLC, I cannot comment on deliberations in an ongoing project.

4. You state that you are "considering closing the review without issuing a report" and that you have approved a new survey.

a. When did you first consider not releasing a report?

Pending guidance from OLC, I cannot comment on deliberations in an ongoing project.

b. Please explain the "currency criterion" you noted in your response and why you believe that the survey results do not currently meet this standard. Given that the survey results covered a period of seven years, please explain why OIG analysis of these results would not be relevant for DHS leadership.

Although this question deals with an ongoing project, I am responding because it is directed toward survey data and quality standards rather than internal DHS OIG deliberations.

Among the three purposes of an Office of Inspector General is "to provide a means for keeping the head of the establishment and the Congress fully and *currently* informed about problems and deficiencies relating to the administration of [agency] programs and operations." Inspector General Act, § 2(3) (emphasis supplied). In like fashion, section 5.1b of the *Blue Book* provides that inspection reports should be "timely," among other things. As I stated in my May 13, 2022 letter to you, OIE first forwarded a draft report to DHS OIG front office staff in December 2020, 2-1/2 years after the survey was administered in mid-2018. As noted in this question, the survey asked respondents about their experiences going back seven years, *i.e.*, back to 2011. A report issued in 2020 describing employee experiences going back to 2011 would not have been "current" or "timely."

It is worth noting that MSPB, which embarked on a longitudinal examination of sexual harassment in the federal workplace decades ago and

is considered an expert in the field, asks respondents in periodic MSPB surveys to describe their experiences "during the preceding 2 years." *See, e.g., Update on Sexual Harassment in the Federal Workplace*, at 3 (Merit Systems Protection Board March 2018).[4] It is unclear why the DHS OIG survey, which was designed and administered a year before I was confirmed as Inspector General, covered a period 3-1/2 times longer than an MSPB survey on the same subject. This question contains the implicit, but unwarranted, assumption that the 2018 DHS OIG survey was based on best practices among industrial organization psychologists.

c. What was the status of the draft report on April 7, 2022?

Pending guidance from OLC, I cannot comment on deliberations in an ongoing project.

d. What is the scope of the new project proposal which you have approved? Does it differ in scope from the original project scope? And if it does, how so?

The objective of the new project is: "To gather information about allegations of sexual harassment and how they are addressed within the Department of Homeland Security."

e. When did you approve this new project proposal?

I approved this new project on May 13, 2022.

f. How will you determine whether to issue a report based on the proposed project proposal?

Pending guidance from OLC, I cannot comment on deliberations in an ongoing project.

g. Please provide the proposal and any accompanying documentation.

See attachment.

[4] The 2018 MSPB report is available at: https://mspb.gov/studies/researchbriefs/Update_on_Sexual_Harassment_in_the_Federal_Workplace_1500639.pdf (last visited August 6, 2022).

I would be happy to testify before the Committee about DHS OIG's important oversight work. Please call me with any questions at [redacted]

Sincerely,

JOSEPH V CUFFARI [redacted]

Joseph V. Cuffari, Ph.D.
Inspector General

Attachment

cc: The Hon. Patrick J. Leahy
The Hon. Dianne Feinstein
The Hon. Sheldon Whitehouse
The Hon. Amy Klobuchar
The Hon. Chris Coons
The Hon. Richard Blumenthal
The Hon. Mazie K. Hirono
The Hon. Cory Booker
The Hon. Alex Padilla
The Hon. Jon Ossoff
The Hon. Lindsey Graham
The Hon. John Cornyn
The Hon. Mike Lee
The Hon. Ted Cruz
The Hon. Ben Sasse
The Hon. Josh Hawley
The Hon. Tom Cotton
The Hon. John Kennedy
The Hon. Thom Tillis
The Hon. Marsha Blackburn

Exhibit E

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

August 23, 2022

The Honorable Carolyn B. Maloney, Chairwoman
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Bennie G. Thompson, Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

Re: Your August 16, 2022 letter

Dear Chairwoman Maloney and Chairman Thompson:

I write to respond to your August 16, 2022, letter and to clarify the record in this matter. As explained below, your letter incorrectly characterizes my responses to your previous letters as a "refusal" to comply with your requests for information. Your letter also uncritically accepts anonymously-sourced media reporting. The attention that has been lavished upon my organization, the Department of Homeland Security (DHS) Office of Inspector General (OIG), more properly belongs with DHS.

As Inspector General of DHS, I have reported that DHS has destroyed evidence related to the events of January 6, 2021 in violation of multiple preservation notices, concealed that destruction from Congress, and unreasonably delayed OIG's access to other DHS records.

Beginning just 10 days after the assault on the Capitol, OIG and multiple committees of Congress issued five separate notifications to DHS that it must preserve all electronic communications related to the events of January 6.[1] By letter dated July 13, 2022, I informed you that DHS --

[1] A January 16, 2021 notice issued by Chairs Adam Schiff, Bennie Thompson, Carolyn Maloney, and Jerrold Nadler, on behalf of their respective committees, to senior officials of the Federal Bureau of Investigation, National Counterterrorism Center, DHS, and the Directorate of National Intelligence, mandated the preservation of "[a]ll documents or materials that refer or relate to events that could or ultimately did transpire on January 6, or refer or relate to threats in connection with the US presidential inauguration." On February 9, 2021, DHS OIG issued an engagement letter for inspection of "*DHS Law Enforcement Preparation for and Response to the January 6, 2021 Events at the U.S. Capitol.*" About two weeks later, OIG formally requested

specifically, the Secret Service -- had deleted texts from DHS-owned phones after receiving OIG's preservation notice. On July 15, 2022, at Chairman Thompson's request, I briefed the House Select Committee to Investigate the January 6 Attack on the United States Capitol concerning OIG's issues with access to DHS records. During that briefing, I, along with career OIG staff, who were conducting the administrative review of DHS's preparation for and response to the events of January 6, described three major problems that OIG had encountered in connection with that review:

- DHS delayed producing requested e-mails for seven months, without ever identifying a legal justification for the delay;

- DHS personnel repeatedly told OIG personnel that they were not allowed to provide records directly to OIG and that instead such records had to undergo pre-disclosure review, leading to weeks-long delays and confusion over whether all records requested by OIG had been produced; and

- DHS deleted text messages from DHS-issued phones used by Secret Service personnel on January 6, 2021, after OIG and multiple committees of Congress had issued notices for DHS to preserve electronic communications related to January 6.

During the briefing, I emphasized that the Secretary sent Congress a transmittal letter, dated June 14, 2022 (attached), which accompanied OIG's Semi-Annual Report (SAR) to Congress for the period October 1, 2021 – March 31, 2022. In his letter, the Secretary inaccurately stated that OIG had not had any access problems.

Shortly thereafter, I was criticized for not informing Congress about the deletion of texts earlier than I did. To my knowledge, I am the only Inspector General to report these issues to Congress.

I respectfully suggest that this criticism is misdirected. DHS senior managers had the greatest contemporaneous fidelity about what the Secret

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from DHS all electronic communications related to the events of January 6. On March 25, 2021, Chairwoman Maloney, Chairman Thompson, Chairman Schiff, Chairman Nadler, and five other members requested documents and communications received, prepared, or sent by DHS employees related to the events of January 6. On August 11, 2021, a notice issued by Chairman Thompson of the January Select Committee joined in both referenced Congressional requests. On August 25, 2021, a preservation notice issued by Chairman Thompson for the January 6 Select Committee requested all documents and communications received or shared relating to events that occurred on January 6. This notice directed DHS to provide the January 6 Select Committee with all documents DHS produced to other investigatory bodies, to include the OIG, relating to the January 6 attack.

Service was undertaking (and had allowed to occur) with their data and cellular telephones.

I came forward and told the January 6 committee about the deletion of texts. I did so only after it became clear, from the Secretary's June 14, 2022 letter, that the Secretary was intent on denying that there was a problem with OIG access.[2] DHS was subject to multiple notices to preserve electronic communications related to January 6, it deleted the texts anyway, it concealed that information from Congress and the OIG for more than a year, and it continued to dissemble as late as June 14, 2022 (in the Secretary's letter accompanying the SAR).

I share your and your colleagues' concerns about the denial of access to DHS' records, communications, and other materials.[3] Typically, when an Inspector General notifies Congress that he or she is having trouble obtaining access to agency records and information, Congress demands that the agency explain why it is not cooperating with the Inspector General.

DHS has engaged in sustained resistance to OIG oversight, destroyed evidence requested by Congress and the OIG, concealed that destruction of evidence from Congress and the OIG, and finally, after OIG staff confronted a high-level DHS official about the destruction of texts in a May 23, 2022 meeting, denied that anything was amiss in a letter to Congress. Moreover, yesterday, the media published a July 2022 Customs & Border Protection (CBP) memo that describes guidance from the DHS' Office of General Counsel and CBP's Office of Chief Counsel and advises CBP senior leadership about how to interfere with and prevent OIG oversight.[4] That advice, which misinterprets the Inspector General Act, is further

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[2] Prior to receiving a copy of the Secretary's June 14, 2022 letter, I continued to believe that DHS leadership would support OIG's oversight work related to the events of January 6 and other OIG oversight projects. I personally met with the Secretary in October 2021 and described to him the months-long delay in obtaining e-mails that OIG had requested. The Secretary agreed that OIG should have access to the records it needs to conduct its oversight work. Shortly thereafter, the Secretary issued a memorandum to all DHS employees reminding them of their obligation to cooperate with OIG. Not long after that, DHS produced a large trove of e-mails that it had been withholding for seven months. Criticizing me for not informing Congress about the deleted texts before I reviewed the Secretary's June 14, 2022, letter amounts to saying that I should not have trusted the Secretary to follow through on the commitments he made to me when I met with him in October 2021.

[3] Herridge, Catherine, and Sganga, Nicole, CBS News, *DHS watchdog says department's lawyers are slowing down Secret Service Jan. 6 text probe*, August 10, 2022.

[4] Klippenstein, Ken, The Intercept, *DHS Jan. 6 Investigators Raised Alarm About Being Stonewalled Last Year*, August 22, 2022.

documentation, at the highest levels of DHS, of the Department's misguided and orchestrated interference with OIG's mission.[5]

I have not "refus[ed]" to provide the committees with information. Instead, I have provided information in the spirit of compromise aimed at balancing the Executive branch's legitimate interests with those of the Legislative branch. I have also been careful to adhere to Administration policy.

By letter dated June 13, 2022, I responded to your May 10, 2022 letter requesting information related to internal deliberations and unpublished reports. I highlighted the established principle that the Executive branch has a legitimate, constitutionally-recognized interest in protecting the confidentiality of its internal deliberations, to include deliberations conducted below the cabinet and subcabinet levels. I further explained that when Congress seeks deliberative materials, the two branches should negotiate in an effort to reach a compromise that accommodates the interests of the Executive branch and Congress.[6]

In that vein, as a compromise between refusing to provide any deliberative materials and producing the deliberative records themselves, I provided the committees with detailed descriptions of edits made to draft reports and the reasons for those edits. I also provided the committees with a survey that DHS OIG administered in connection with one of the projects at issue, as well as the results of the survey.

By letter dated August 8, 2022, I explained that based on guidance from attorneys in the Executive Office of the President (EOP), I had requested an opinion from the Office of Legal Counsel (OLC) concerning the production of deliberative materials sought by the committees. Contrary to the suggestion in your August 16, 2022 letter, my request to OLC was not a "delay tactic." Rather, EOP attorneys informed OIG that the official policy of the current Administration is found in the

[5] Although the CBP memo is in the public domain, the memo contains what appears to be attorney work product and it is not clear that DHS authorized public release of the memo. OIG is seeking the Department's consent to disclose the CBP memo to Congress. If that consent is obtained, OIG will demonstrate that the Department's interpretation of the Inspector General Act is incorrect.

[6] *See Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020); *Assertion of Executive Privilege over Documents Generated in Response to Congressional Investigation into Operation Fast and Furious*, 36 Op. O.L.C. 1, 4-5 (2012); Letter from Assistant Attorney General Raben to Chairman Linder, Subcommittee on Rules and Organization of House, House Committee on Rules (Jan. 27, 2000); *Assertion of Executive Privilege in Response to Congressional Demands for Law Enforcement Files*, 6 Op. O.L.C. 27 (1982); and *United States v. American* Tel. & Tel. Co., 567 F.2d 121, 127 (D.C. Cir. 1977).

November 4, 1982 Memorandum from the President to the Heads of Executive Departments and Agencies entitled *Procedures Governing Responses to Congressional Requests for Information.* According to that Memorandum, when an agency head is in doubt about the propriety of disclosing records of internal Executive branch deliberations to Congress, he or she should seek the opinion of OLC. Although the Inspector General Act gives an Inspector General considerable independence from the department or agency he oversees, I am not a free agent. To my knowledge the current Administration has not provided Congress with records of internal Executive branch deliberations, and it is not for me to set a precedent. If the Administration directs OIG to produce records of internal OIG deliberations to Congress, OIG will comply. Likewise, if the Administration directs OIG to produce records or witnesses related to the deletion of texts by DHS, OIG will comply.

As I stated in my August 8, 2022, letter, and as I explained during our July 15, 2022, briefing to the January 6 committee members, OIG does not confirm or comment on criminal investigations. We also do not comment on ongoing administrative reviews. Once any ongoing work is completed, OIG will examine Executive branch equities while considering any outstanding Congressional requests for documents, briefings, and transcribed interviews.

Contrary to your letter, I did not learn that the texts had been deleted 14 months before I notified Congress.

Your letter appears to credit inaccurate, anonymously-sourced reporting insofar as it suggests that I knew the Secret Service texts had been deleted 14 months before my July 13, 2022 notification to Congress. In fact, the Secret Service did not tell OIG that the texts had been deleted until on or about February 23, 2022. A draft management alert (disclosed without authorization) prepared by career staff in October 2021 refutes any claim that OIG knew about the deleted texts 14 months prior to July 13, 2022.[7] That draft document describes DHS's unjustified seven-month delay in providing e-mails that OIG requested, and also describes lengthy delays in OIG's receipt of other records stemming from the widespread belief among DHS personnel that records cannot be produced directly to OIG but instead must first undergo internal review. The draft management alert says nothing about the deletion of texts. In fact, the draft management alert states that text messages are "relevant" to OIG's inquiry and that OIG might "reinstitute" its request for texts (which OIG did). It is

[7] Although normally I would not discuss a draft OIG document, the draft management alert has already been released or described to the media.

virtually inconceivable that the career OIG staff who drafted the management alert concerning access issues, and who I know were strongly opposed to DHS's persistent restrictions on OIG access, would have left out any mention of deleted Secret Service texts had they been aware of the deletion.

Please call me with questions, or a member of your staff may contact [redacted]

Sincerely,

JOSEPH V CUFFARI [redacted]

Joseph V. Cuffari, Ph.D.
Inspector General

Attachment

cc: The Honorable James Comer, Ranking Member
Committee on Oversight and Reform

The Honorable John Katko, Ranking Member
Committee on Homeland Security

Exhibit F

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

September 30, 2021

MEMORANDUM FOR: All DHS Personnel

FROM: Alejandro N. Mayorkas
Secretary

SUBJECT: Cooperation with the Office of Inspector General

The Office of Inspector General (OIG) plays a critical role in helping the Department prevent and detect fraud, waste, abuse, and mismanagement. By doing so, the OIG helps improve the economy, effectiveness, and efficiency of DHS programs and activities. The OIG does this through independent and objective audits, investigations, evaluations, and inspections. It cannot do so alone. To carry out this important mission, the OIG needs certain information (for example, facts, reports, statistics, and data) from the Department and our Components.

Accordingly, I expect DHS employees to respond to OIG requests for information in a timely manner. This expectation extends to requests from any contractor hired by the OIG, including, but not limited to, firms with which the OIG contracts to audit the Department's financial statements. Such cooperation includes:

1) providing information responsive to the OIG's work, including making DHS employees (for example, program officials, subject matter experts, and others) available to the OIG for interviews;

2) respecting employees' rights to speak directly and confidentially with the OIG in accordance with legal requirements; and,

3) refraining from any activity that might inhibit an employee's or contractor's communication or cooperation with the OIG.

Information related to an OIG request may be provided directly to the OIG. DHS employees should, however, advise the OIG when information provided contains classified national security information, privacy-protected materials, attorney-client or deliberative (in other words, pre-decisional and draft) communications, other sensitive information, or information from agencies outside the Department. DHS employees must ensure that all information provided to the OIG is properly identified, marked, and treated. It is important to note that when providing information to the OIG, DHS does not waive applicable privileges or other protections.

The Department is committed to supporting the OIG's mission. DHS employees are expected to cooperate with OIG audits, inspections, investigations, and other inquiries. Any effort to conceal information or obstruct the OIG in carrying out its critical work is against Department directives and can lead to serious consequences.

For its part, the OIG is likewise expected to operate with integrity and meet important obligations in the conduct of its work. Specifically, I expect OIG employees to:

1) honor requests for confidentiality consistent with the law;

2) coordinate with Department and Component managers and supervisors to avoid disrupting DHS programs and activities; and,

3) safeguard sensitive information received and be watchful for information that may not have been properly identified with restrictive markings, thereby ensuring that privileges and other obligations are not compromised. These important precautions protect the Department's ability to assert applicable claims prior to sharing the information externally.

If you have any questions regarding these expectations, you should consult your Component's counsel, the Office of the General Counsel, or the Departmental GAO-OIG Liaison Office.

Thank you for your service to our Department and our Nation.

Exhibit G

Secretary

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

June 14, 2022

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20510

Dear Chairman Thompson:

Pursuant to Section 5 of the *Inspector General Act of 1978*, as amended, Public Law 95-452, I hereby transmit to Congress the enclosed U.S. Department of Homeland Security (DHS or the Department) Office of Inspector General's (OIG) Semiannual Report for the period October 1, 2021 to March 31, 2022 (reporting period). This is the 39th Semiannual Report since the OIG was established on March 1, 2003.

This Semiannual Report outlines the OIG's work during this reporting period. While much of that work added significant value to the Department, the OIG continued to face challenges. For example, in a June 3, 2021 report, the U.S. Government Accountability Office (GAO) concluded that the OIG suffered from long-standing management and operational weaknesses.[1] Of particular concern, the GAO report indicated that the OIG lacked a consistent process for coordinating with DHS agencies to receive and respond to technical and management comments, contributing to increased risk of miscommunication and misunderstanding. The OIG has acknowledged the challenges identified in the GAO report and begun to address the report's 21 related recommendations. This is of critical importance, given the OIG's mission. However, as of the end of this reporting period, GAO had not closed any of the 21 recommendations made in its 2021 report.

Further, in this Semiannual Report, the OIG once again erroneously suggests that the Department restricted and significantly delayed the OIG's access to information regarding the January 6, 2021 attack on the U.S. Capitol. It is particularly disturbing that the OIG does not provide any specifics concerning this unfounded assertion, with which DHS strongly disagrees.

As I noted in my November 20, 2021 transmittal letter to Congress enclosing the previous OIG Semiannual Report (for the period ending September 30, 2021), understanding what led to and occurred on January 6, 2021 is one of our Department's top priorities. To this end, DHS has made every effort to coordinate with the OIG on its reviews related to the January 6, 2021 attack on the U.S. Capitol, including by providing timely access to relevant information. At no time did the Department refuse access to relevant information or impede progress on

[1] GAO Report 21-316, "DHS Office of Inspector General; Actions Needed to Address Long-Standing Management Weaknesses," June 2021.

either of the OIG's January 6-related reviews.[2] This has not changed. To the contrary, throughout these reviews, the U.S. Secret Service and other DHS agencies have made available countless documents and hundreds of personnel to be interviewed by the OIG, often within days of an initial request. The breadth and scope of the OIG's requests have been extensive, and often required discussion to ensure proper handling of highly sensitive information, much of which was not relevant to the events of January 6, 2021. The Department has worked diligently with OIG to provide broad access to information, and to minimize any delays in accommodating OIG's sweeping requests, subject to the Department's legal obligations. The Department will continue to ensure the OIG has timely access to all relevant information needed to conduct a full and accurate evaluation of January 6-related events.

In addition, I am concerned that the OIG Semiannual Report does not always provide sufficient context regarding relevant underlying reports and their related issues and findings. For example, the OIG's reference to the Torrance County Detention Facility Management Alert[3] does not mention ICE's disagreement with the OIG's unprecedented recommendation that ICE "immediately relocate all detainees" from the facility, nor that ICE's disagreement was based, in part, on concerns about the accuracy and integrity of the report and whether it met the "Quality Standards for Inspection and Evaluation" issued by the Council of Inspectors General on Integrity and Efficiency.

The Department is committed to working with the OIG and our other oversight entities in a transparent and open manner, and I have emphasized the importance of doing so to our Department's leadership and workforce. Of note, during this reporting period, the Department closed 135 open recommendations from the OIG. The Department also continues its self-imposed practice of communicating with and reaching agreement with OIG staff before closing any OIG recommendations, ensuring appropriate and responsive actions are taken. DHS leaders remain committed to cultivating a culture across the Department that facilitates open and transparent interactions with the OIG.

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[2] DHS Project Nr. 21-023-SRE-I&A: "I&A Intelligence Prior to the January 6, 2021 Events at the U.S. Capitol and DHS Project Nr. 21-025-SRE-DHS: "DHS Law Enforcement Preparation for and Response to the January 6, 2021 Events at the U.S. Capitol."

[3] OIG Report 22-31, "Management Alert – Immediate Removal of all Detainees from the Torrance County Detention Facility," dated March 16, 2022.

The OIG has a unique and independent status within our Department, with the charge of helping to prevent and detect waste, fraud, abuse, and mismanagement, and promote integrity and accountability at every level. Its work helps strengthen our Department's ability to execute our critical mission. We look forward to continuing to work closely with the OIG on these matters. Should you wish to discuss this report further, please contact IG Joseph Cuffari or me directly. Thank you.

Sincerely,

Alejandro N. Mayorkas
Secretary

Enclosure

Exhibit H

Congressional Requests for Information from Inspectors General Concerning Open Criminal Investigations

Long-established executive branch policy and practice, based on consideration of both Congress' oversight authority and principles of executive privilege, require that in the absence of extraordinary circumstances an Inspector General must decline to provide confidential information about an open criminal investigation in response to a request pursuant to Congress' oversight authority

The reporting provisions of the Inspector General Act do not require Inspectors General to disseminate to Congress confidential information pertaining to open criminal investigations.

March 24, 1989

MEMORANDUM OPINION FOR THE CHAIRMAN
INVESTIGATIONS/LAW ENFORCEMENT COMMITTEE
PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

Introduction and Summary

This memorandum is in response to your request for the opinion of this Office on the obligations of Inspectors General ("IGs") with respect to congressional requests for confidential information about open criminal investigations. Specifically, you have asked this Office to advise you as to the obligations of the IGs with respect to (1) requests based on Congress' oversight authority and (2) requests based on the reporting requirements of the Inspector General Act of 1978 ("the Act"), Pub. L. No. 95-452, 92 Stat. 1101 (1978) (codified at 5 U.S.C. app. 3).[1]

As discussed below, when pursuant to its oversight authority Congress seeks to obtain from an IG confidential information about an open criminal investigation, established executive branch policy and practice, based on consideration of both Congress' oversight authority and principles of executive privilege, require that the IG decline to provide the information, absent extraordinary circumstances. With respect to congressional requests based on the congressional reporting requirements of the Act, we have concluded as a matter of statutory construction that Congress did not intend those provisions to require production of confi-

[1] On March 8, 1989, Larry Elston of your staff orally confirmed to Paul Colborn of this Office that these are the questions on which you seek our opinion

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dential information about open criminal investigations. Accordingly, IGs are under no obligation under the Act to disseminate confidential law enforcement information.

I. Congressional Requests Based on Oversight Authority

The decision on how to respond to a congressional request for information from an IG based on Congress' oversight authority requires the weighing of a number of factors arising out of the separation of powers between the executive and legislative branches. The principal factors to be weighed are the nature of Congress' oversight interest in the information and the interest of the executive branch in maintaining confidentiality for the information.

A. Congress' Oversight Authority

The constitutional role of Congress is to adopt general legislation that will be implemented — "executed" — by the executive branch. "It is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments." *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 136 (1810). The courts have recognized that this general legislative interest gives Congress investigatory authority. Each House of Congress has power, "through its own process, to compel a private individual to appear before it or one of its committees and give testimony needed to enable it efficiently to exercise a legislative function belonging to it under the Constitution." *McGrain v. Daugherty*, 273 U.S. 135, 160 (1927). The issuance of subpoenas in aid of this function "has long been held to be a legitimate use by Congress of its power to investigate," *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 504 (1975), provided that the investigation is "related to, and in furtherance of, a legitimate task of the Congress." *Watkins v. United States*, 354 U.S. 178, 187 (1957). The inquiry must pertain to subjects "on which legislation could be had." *McGrain v. Daugherty*, 273 U.S. at 177.

In short, Congress' oversight authority

> is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.
>
> Broad as it is, the power is not, however, without limitations. Since Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters *which are within the exclusive province of one of the other branches of the Government.*

Barenblatt v. United States, 360 U.S. 109, 111-12 (1959) (emphasis added).

The execution of the law is one of the functions that the Constitution makes the exclusive province of the executive branch. Article II, Section 1 provides that "the executive Power shall be vested in a President of the United States of America." Article II, Section 3 imposes on the President the corresponding duty to "take Care that the Laws be faithfully executed."[2] In particular, criminal prosecution is an exclusively executive branch responsibility. *Heckler v. Chaney*, 470 U.S. 821, 832 (1985); *Buckley v. Valeo*, 424 U.S. 1, 138 (1976); *United States v. Nixon*, 418 U.S. 683, 693 (1974). Accordingly, neither the judicial nor legislative branches may directly interfere with the prosecutorial discretion of the executive branch by directing it to prosecute particular individuals.[3] Indeed, in addition to these general constitutional provisions on executive power, the Framers specifically demonstrated their intention that Congress not be involved in prosecutorial decisions or in questions regarding the criminal liability of specific individuals by including in the Constitution a prohibition against the enactment of bills of attainder. U.S. Const. art. I, § 9, cl. 3. *See United States v. Lovett*, 328 U.S. 303, 317-18 (1946); *INS v. Chadha*, 462 U.S. 919, 961-62 (1983) (Powell, J., concurring).

On the other hand, Congress' oversight authority does extend to the evaluation of the general functioning of the Inspector General Act and relevant criminal statutes, as well as inquiring into potential fraud, waste and abuse in the executive branch. Such evaluations may be seen to be necessary to determine whether the statutes should be amended or new legislation passed. *See Watkins v. United States*, 354 U.S. at 187. Given the general judicial reluctance to look behind congressional assertions of legislative purpose, an assertion that Congress needed the information for such evaluations would likely be deemed sufficient in most cases to meet the threshold requirement for congressional inquiry. This general legislative interest, however, does not provide a compelling justification

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[2] One of the fundamental rationales for the separation of powers is that the power to enact laws and the power to execute laws must be separated in order to forestall tyranny As James Madison stated in Federalist No 47

> The reasons on which Montesquieu grounds his maxim [that the legislative, executive and judicial departments should be separate and distinct] are a further demonstration of his meaning "When the legislative and executive powers are united in the same person or body," says he, "there can be no liberty, because apprehensions may arise lest *the same* monarch or senate should *enact* tyrannical laws to *execute* them in a tyrannical manner "

The Federalist No 47, at 303 (James Madison) (Clinton Rossiter ed., 1961).

[3] *See Heckler v Chaney*, 470 U.S at 832 ("[T]he decision of a prosecutor in the Executive Branch not to indict ... has long been regarded as the special province of the Executive Branch, inasmuch as it is the Executive who is charged by the Constitution to 'take Care that the Laws be faithfully executed '"), *United States v Nixon*, 418 U S. at 693 ("[T]he Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case.")

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for looking into particular ongoing cases.[4] Accordingly, we do not believe that as a general matter it should weigh heavily against the substantial executive branch interest in the confidentiality of law enforcement information. We discuss that interest next.

B. Executive Privilege

Assuming that Congress has a legitimate legislative purpose for its oversight inquiry, the executive branch's interest in keeping the information confidential must be assessed. This subject is usually discussed in terms of "executive privilege," and we will use that convention here.[5] Executive privilege is constitutionally based. To be sure, the Constitution nowhere expressly states that the President, or the executive branch generally, enjoys a privilege against disclosing information requested by the courts, the public, or the legislative branch. The existence of such a privilege, however, is a necessary corollary of the executive function vested in the President by Article II of the Constitution, has been asserted by numerous Presidents from the earliest days of our Nation, and has been explicitly recognized by the Supreme Court. *United States v. Nixon*, 418 U.S. at 705-06. There are three generally-recognized components of executive privilege: state secrets, law enforcement, and deliberative process. Since congressional requests for information from IGs will generally implicate only the law enforcement component of executive privilege, we will limit our discussion to that component.

It is well established and understood that the executive branch has generally limited congressional access to confidential law enforcement information in order to prevent legislative pressures from impermissibly influencing its prosecutorial decisions. As noted above, the executive branch's duty to protect its prosecutorial discretion from congressional interference derives ultimately from Article II, which places the power to enforce the laws exclusively in the executive branch. If a congressional committee is fully apprised of all details of an investigation as the investigation proceeds, there is some danger that congressional pressures will influence, or will be perceived to influence, the course of the investigation. Accordingly, the policy and practice of the executive branch throughout our Nation's history has been to decline, except in extraordinary circumstances, to provide committees of Congress with access to,

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[4] For instance, Congress' interest in evaluating the functioning of a criminal statute presumably can be satisfied by numerical or statistical analysis of closed cases that had been prosecuted under the statute, or (at most) by an analysis of the closed cases themselves.

[5] The question, however, is not strictly speaking just one of executive privilege. While the considerations that support the concept and assertion of executive privilege apply to any congressional request for information, the privilege itself need not be claimed formally vis-a-vis Congress except in response to a lawful subpoena. In responding to a congressional request for information, the executive branch is not necessarily bound by the limits of executive privilege.

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or copies of, open law enforcement files. No President, to our knowledge, has departed from this position affirming the confidentiality and privileged nature of open law enforcement files.[6]

Attorney General Robert H. Jackson well articulated the basic position:

> It is the position of this Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to "take care that the Laws be faithfully executed," and that congressional or public access to them would not be in the public interest.
>
> Disclosure of the reports could not do otherwise than seriously prejudice law enforcement. Counsel for a defendant or prospective defendant, could have no greater help than to know how much or how little information the Government has, and what witnesses or sources of information it can rely upon. This is exactly what these reports are intended to contain.

40 Op. Att'y Gen. 45, 46 (1941).

Other grounds for objecting to the disclosure of law enforcement files include the potential damage to proper law enforcement that would be caused by the revelation of sensitive techniques, methods, or strategy; concern over the safety of confidential informants and the chilling effect on other sources of information; sensitivity to the rights of innocent individuals who may be identified in law enforcement files but who may not be guilty of any violation of law; and well-founded fears that the perception of the integrity, impartiality, and fairness of the law enforcement process as a whole will be damaged if sensitive material is distributed beyond those persons necessarily involved in the investigation and prosecution process.[7] *See generally Congressional Subpoenas of Department of Justice Investigative Files*, 8 Op. O.L.C. 252, 262-66 (1984).

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[6] *See generally Assertion of Executive Privilege in Response to Congressional Demands for Law Enforcement Files*, 6 Op O L.C. 31 (1982) (regarding request for open law enforcement investigative files of the Environmental Protection Agency); Memorandum for the Deputy Attorney General from Robert B. Shanks, Deputy Assistant Attorney General, Office of Legal Counsel, *Re. Refusals by Executive Branch to Provide Documents from Open Criminal Investigative Files to Congress* (Oct. 30, 1984).

[7] In addition, potential targets of enforcement actions are entitled to protection from premature disclosure of investigative information It has been held that there is "no difference between prejudicial publicity instigated by the United States through its executive arm and prejudicial publicity instigated by the United States through its legislative arm." *Delaney v United States*, 199 F2d 107, 114 (1st Cir. 1952). Pretrial publicity originating in Congress, therefore, can be attributed to the government as a whole and can require postponement or other modification of the prosecution on due process grounds *Id*

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C. Accommodation with Congress

The executive branch should make every effort to accommodate requests that are within Congress' legitimate oversight authority, while remaining faithful to its duty to protect confidential information.[8] *See generally United States v. AT&T*, 567 F.2d 121, 127-30 (D.C. Cir. 1977); *Assertion of Executive Privilege in Response to a Congressional Subpoena*, 5 Op. O.L.C. 27, 31 (1981) ("The accommodation required is not simply an exchange of concessions or a test of political strength. It is an obligation of each branch to make a principled effort to acknowledge, and if possible to meet, the legitimate needs of the other branch.").

The nature of the accommodation required in responding to a congressional request for information clearly depends on the balance of interests between the Executive and Congress. For its part, Congress must be able to articulate its need for the particular materials — to "point[] to ... specific legislative decisions that cannot responsibly be made without access to materials uniquely contained" in the presumptively privileged documents (or testimony) it has requested, and to show that the material "is demonstrably critical to the responsible fulfillment of the Committee's functions." *Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731, 733 (D.C. Cir. 1974). The more generalized the executive branch interest in withholding the disputed information, the more likely it is that this interest will yield to a specific, articulated need related to the effective performance by Congress of its legislative functions. Conversely, the more specific the need for confidentiality, and the less specific the articulated need of Congress for the information, the more likely it is that the Executive's need for confidentiality will prevail. *See Nixon v. Administrator of General Services*, 433 U.S. 425, 446-55 (1977) (discussion of balance of

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[8] President Reagan's November 4, 1982 Memorandum for the Heads of Executive Departments and Agencies on "Procedures Governing Responses to Congressional Requests for Information" states:

> The policy of this Administration is to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch . .. [E]xecutive privilege will be asserted only in the most compelling circumstances, and only after careful review demonstrates that assertion of the privilege is necessary Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodation should continue as the primary means of resolving conflicts between the Branches

Only rarely do congressional requests for information result in a subpoena of an executive branch official or in other congressional action. In most cases the informal process of negotiation and accommodation recognized by the courts, and mandated for the executive branch by President Reagan's 1982 memorandum, is sufficient to resolve any dispute. On occasion, however, the process breaks down, and a subpoena is issued by a congressional committee or subcommittee. At that point, it would be necessary to consider asking the President to assert executive privilege. Under President Reagan's memorandum, executive privilege cannot be asserted vis-a-vis Congress without specific authorization by the President, based on recommendations made to him by the concerned department head, the Attorney General, and the Counsel to the President. We have no reason to believe that President Bush envisions a different procedure.

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interests); *United States v. Nixon*, 418 U.S. at 707-13 (same); *United States v. AT&T*, 567 F.2d at 130-33 (same).

In light of the limited and general congressional interest in ongoing criminal investigations and the specific and compelling executive branch interest in protecting the confidentiality of such investigations, the executive branch has generally declined to make any accommodation for congressional committees with respect to open cases: that is, it has consistently refused to provide confidential information. However, on occasion after an investigation has been closed, and after weighing the interests present in the particular case, the executive branch has briefed Congress on prosecutorial decisions and has disclosed some details of the underlying investigation.[9]

In conclusion, although in the absence of a concrete factual setting we cannot analyze the case for withholding any particular document or information in response to a congressional oversight request, we can advise that as a general matter Congress has a limited oversight interest in the conduct of an ongoing criminal investigation and the executive branch has a strong interest in preserving the confidentiality of such investigations. Accordingly, in light of established executive branch policy and practice, and absent extraordinary circumstances, an IG should not provide Congress with confidential information concerning an open criminal investigation.

II. Congressional Requests Based on the Inspector General Act

The second question raised by your opinion request is whether the reporting provisions of the Inspector General Act require that IGs provide Congress with confidential information on open criminal investigations that is not normally shared with Congress under established executive branch policy and practice with respect to oversight requests. We believe that both the text and legislative history of these provisions demonstrate that they do not impose such a requirement.

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[9] Once an investigation has been closed without further prosecution, some of the considerations previously discussed lose their force Access by Congress to details of closed investigations does not pose as substantial a risk that Congress will be a partner in the investigation and prosecution or will otherwise seek to influence the outcome of the prosecution, likewise, if no prosecution will result, concerns about the effects of undue pretrial publicity on a jury would disappear. Still, such records are not automatically disclosed to Congress. Obviously, much of the information in a closed criminal enforcement file — such as unpublished details of allegations against particular individuals and details that would reveal confidential sources and investigative techniques and methods — would continue to need protection

In addition, the executive branch has a long-term institutional interest in maintaining the confidentiality of the prosecutorial decisionmaking process The Supreme Court has recognized that "human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process " *United States v Nixon*, 418 U S at 705. It is therefore important to weigh the potential "chilling effect" of a disclosure of details of the prosecutorial deliberative process in a closed case against the immediate needs of Congress

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The Act establishes a number of congressional reporting requirements with respect to the activities of the IGs. Most generally, section 4(a)(5) requires each IG

> to keep the head of [the agency within which his office is established] and the Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such [agency], to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

Section 5(a) requires each IG to prepare semi-annual reports summarizing the activities of his office, and section 5(b) requires that the head of the IG's agency submit these reports to the appropriate committees or subcommittees of Congress within 30 days of receiving them. Section 5(d) requires each IG to

> report immediately to the head of the [agency] whenever the [IG] becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such [agency]. The head of the [agency] shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the agency containing any comments such head deems appropriate.

Finally, section 5(e) provides in subsection (1) that none of the reporting requirements "shall be construed to authorize the public disclosure" of certain information, while also providing in subsection (3) that neither the reporting requirements nor any other provision of the Act "shall be construed to authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof."

In our judgment, nothing in the text of these provisions provides that confidential law enforcement materials pertaining to ongoing cases must be transmitted to Congress. To the contrary, the statutory scheme set out in section 5 of the Act merely envisions that the periodic reports from each IG to Congress will be a general "description" and "summary" of the work of the IG. This view of section 5 is supported by the Act's legislative history. In proposing the congressional reporting requirements that were ultimately enacted into law,[10] the Senate committee made it clear that it did not contemplate that reports from the IGs would be so specific that

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confidential investigative information would fall within the scope of the report and, in any event, it was not intended that such information would be required. For example, with respect to section 5(a)(4)'s requirement that semi-annual reports contain "a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted," the committee indicated:

> By using the word "summary" in subsection (a)(4), the committee intends that Congress would be given an overview of those matters which have been referred to prosecutive authorities. It would be sufficient, for instance, for an [IG] at HUD to include in his report the fact that he had referred 230 cases of fraud in FHA programs to the Justice Department for further investigation and prosecution. It would be highly improper and often a violation of due process for an IG's report to list the names of those under investigation or to describe them with sufficient precision to enable the identities of the targets to be easily ascertained. However, once prosecutions and convictions have resulted, the IG could certainly list those cases, if he deems such a listing appropriate.

S. Rep. No. 1071 at 30.

The committee noted that section 5(b)'s requirement that semi-annual reports be submitted to Congress "contemplates that the IG's reports will ordinarily be transmitted to Congress by the agency head *without alteration or deletion.*" *Id.* at 31 (emphasis added). The committee went on to stress, however, that

> nothing in this section authorizes or permits an [IG] to disregard the obligations of law which fall upon all citizens and with special force upon Government officials. The Justice Department has expressed concern that since an [IG] is to report on matters involving possible violations of criminal law, his report might contain information relating to the identity of informants, the privacy interest of people under investigations, or other matters which would impede law

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[10] The Act was originally considered by the House of Representatives as H.R. 8588, which contained similar reporting requires to those of the Senate bill *Compare* House version, sections 3-4, 124 Cong Rec. 10,399 (1978), *with* Senate version, sections 4-5, 124 Cong. Rec 32,029-30 (1978). The legislative history regarding the House provisions is much less extensive than that for the Senate provisions. *See generally* H.R. Rep. No. 584, 95th Cong., lst Sess 13-14 (1977) H R 8588 passed the House, but failed in the Senate, which considered instead a substitute bill reported from the Senate Committee on Governmental Affairs *See* 124 Cong Rec. 30,949 (1978), S. Rep. No. 1071, 95th Cong., 2d Sess (1978) The House accepted the substitute Senate bill and it was enacted into law

> enforcement investigations. *As noted above, the committee does not envision that a report by the [IG] would contain this degree of specificity. In any event, however, the intent of the legislation is that the [IG] in preparing his reports, must observe the requirements of law which exist today under common law, statutes, and the Constitution, with respect to law enforcement investigations....*
>
> The committee recognizes, however, that in rare circumstances the [IG], through inadvertence or design, may include in his report materials of this sort which should not be disclosed even to the Congress. The inclusion of such materials in an [IG's] report may put a conscientious agency head in a serious bind. The obligation of an agency head is to help the President "faithfully execute the laws." Faithful execution of this legislation entails the timely transmittal, without alteration or deletion, of an [IG's] report to Congress. However, *a conflict of responsibilities may arise when the agency head concludes that the [IG's] report contains material, disclosure of which is improper under the law. In this kind of rare case, section 5(b) is not intended to prohibit the agency head from deleting the materials in question.*[11]

Id. at 31-32 (emphasis added).[12]

The committee also made it clear that the same principles apply with equal force to the requirement of section 5(d) that the IG reports to agency heads on "particularly serious or flagrant problems" also be submitted to Congress. In stating with respect to this section that "as in subsection (b), the agency head has no general authority or right to delete or alter certain provisions of the report" *id.* at 33, the committee clearly

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[11] "In the rare cases in which alterations or deletions have been made, the committee envisions that an agency head's comments on an [IG's] report would indicate to the Congress that alterations or deletions had been made, give a description of the materials altered or deleted, and the reasons therefore." *Id.* at 32.

[12] In addition to thus stating its intention with respect to the confidentiality of law enforcement information, the committee also expressed its understanding that section 5(b) cannot override executive privilege with respect to deliberative process information

> [T]he committee is aware that the Supreme Court has, in certain contexts, recognized the President's constitutional privilege for confidential communications or for information related to the national security, diplomatic affairs, and military secrets *Insofar as this privilege is constitutionally based, the committee recognizes that subsection 5(b) cannot override it In view of the uncertain nature of the law in this area, the committee intends that subsection 5(b) will neither accept nor reject any particular view of Presidential privilege but only preserve for the President the opportunity to assert privilege where he deems it necessary.* The committee intends that these questions should be left for resolution on a case-by-case basis as they arise in the course of implementing this legislation

Id. at 32 (emphasis added) (citations omitted)

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implied that the agency head retained the ability — as in the "rare case" identified with respect to subsection (b) — to delete "materials ... which should not be disclosed even to the Congress." *Id.* at 32.

Conclusion

Long-established executive branch policy and practice, based on consideration of both Congress' oversight authority and principles of executive privilege, require that in the absence of extraordinary circumstances an IG must decline to provide confidential information about an open criminal investigation in response to a request pursuant to Congress' oversight authority. With respect to congressional requests based on the reporting requirements of the Inspector General Act, we similarly conclude that the reporting provisions of the Inspector General Act do not require IGs to disseminate confidential information pertaining to open criminal investigations.

DOUGLAS W. KMIEC
Assistant Attorney General
Office of Legal Counsel

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Congress of the United States
Washington, DC 20515

July 26, 2022

The Honorable Joseph V. Cuffari
Inspector General
Department of Homeland Security
245 Murray Lane, S.W., Building 410
Washington, D.C. 20528

The Honorable Allison C. Lerner
Chair
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, N.W., Suite 825
Washington, D.C. 20006

Dear Inspectors General Cuffari and Lerner:

As Chairwoman of the Committee on Oversight and Reform, which has jurisdiction over Inspectors General, and Chairman of the Committee on Homeland Security, which has jurisdiction over the Department of Homeland Security (DHS), we rely on the DHS Inspector General (IG) to provide rigorous and effective oversight. We are writing to express our grave concerns with Inspector General Cuffari's failure to promptly notify Congress of crucial information while conducting an investigation of the Secret Service's preparation for and response to the January 6, 2021, insurrection at the U.S. Capitol. Inspector General Cuffari is required by law to "immediately" report problems or abuses that are "particularly serious or flagrant."[1] Yet, Inspector General Cuffari failed to provide adequate or timely notice that the Secret Service had refused for months to comply with DHS Office of Inspector General (OIG) requests for information related to the January 6 attack and failed to notify Congress after DHS OIG learned that the Secret Service had erased text messages related to this matter.

These omissions left Congress in the dark about key developments in this investigation and may have cost investigators precious time to capture relevant evidence. Inspector General Cuffari's actions in this matter, which follow other troubling reports about his conduct as Inspector General, cast serious doubt on his independence and his ability to effectively conduct such an important investigation. In light of these serious failures, we request that Inspector General Cuffari step aside from the ongoing investigation into the Secret Service's erasure of text messages and whether Secret Service personnel complied with federal recordkeeping requirements, and that the Council of the Inspectors General on Integrity and Efficiency (CIGIE) appoint a different Inspector General to complete the investigation.

[1] 5 U.S.C. App. 3, § 5(d).

On January 16, 2021, we sent a letter, along with other committee chairs, to DHS and other agencies requesting that they produce to the Committees "[a]ll documents or materials that refer or relate to events that could or ultimately did transpire on January 6."[2] DHS OIG also "requested records of electronic communication" from the Secret Service on February 26, 2021, for its own investigation into the January 6 attack.[3] Despite the legal obligation to preserve these records, the Secret Service reportedly undertook a system migration process on January 27, 2021, that caused the erasure of text messages related to January 6.[4]

On November 29, 2021, DHS OIG issued a 50-page semiannual report to Congress covering the period from April 1, 2021, to September 30, 2021. On page 19, under a broader section with the heading "Highlights of Significant Office of Inspector General Activities," the report stated that DHS "significantly delayed the OIG's access to Department records, thereby impeding the progress of the OIG's review" related to January 6. However, the brief description failed to mention that the Secret Service was the source of the access issues and did not indicate that OIG continued to encounter stonewalling. On the contrary, the report noted that "Secretary Mayorkas issued a reminder to all Department personnel about OIG access" in September 2021, and "[s]hortly thereafter, OIG began receiving responsive records."[5] The semiannual report was transmitted to Congress on November 29, 2021—nine months after DHS OIG requested communications records around the events of January 6.[6] Inspector General Cuffari reportedly considered issuing a management alert in October 2021 about issues related to accessing the Secret Service's texts but decided that this warning was unnecessary.[7]

[2] Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform; Chairman Bennie G. Thompson, Committee on Homeland Security; Chairman Adam B. Schiff, Permanent Select Committee on Intelligence; and Chairman Jerrold Nadler, Committee on the Judiciary, to Director Christopher A. Wray, Federal Bureau of Investigation; Senior Official Performing the Duties of the Acting Under Secretary Joseph Maher, Office of Intelligence and Analysis, Department of Homeland Security; Acting Director Steve Vanech, National Counterterrorism Center; and Director of National Intelligence John Ratcliffe, Office of the Director of National Intelligence (Jan. 16, 2021) (online at https://intelligence.house.gov/uploadedfiles/20210116_hpsci_chs_hjc_cor_letter_to_fbi_dhs_nctc__odni_on_capitol_insurrection.pdf).

[3] Letter from Inspector General Joseph V. Cuffari, Department of Homeland Security, to Chairman Bennie G. Thompson, Committee on Homeland Security, and Chairman Gary C. Peters, Committee on Homeland Security and Governmental Affairs (July 13, 2022) (online at https://oversight.house.gov/sites/democrats.oversight house.gov/files/2022-07-13-DHS-OIG-Letter-to-HSGAC-CHS.pdf); Project on Government Oversight, *DHS Watchdog Failed to Sound Alarm for Months on Secret Service's Purged Jan. 6 Texts* (July 21, 2022) (online at www.pogo.org/investigation/2022/07/dhs-watchdog-failed-to-sound-alarm-for-months-on-secret-services-purged-jan-6-texts); Briefing by Office of Inspector General, Department of Homeland Security, to Staff, House Committee on Homeland Security, and Staff, Senate Committee on Homeland Security and Governmental Affairs (July 15, 2022).

[4] *Secret Service Watchdog Knew in February that Texts Had Been Purged*, Washington Post (July 20, 2022) (online at www.washingtonpost.com/national-security/2022/07/20/secret-service-national-archives/).

[5] Office of Inspector General, Department of Homeland Security, *Semiannual Report to the Congress, April 1, 2021–September 30, 2021* (Nov. 29, 2021) (online at www.oig.dhs.gov/sites/default/files/assets/SAR/2021/oig-sar-apr21-sept21.pdf).

[6] *Secret Service Watchdog Knew in February that Texts Had Been Purged*, Washington Post (July 20, 2022) (online at www.washingtonpost.com/national-security/2022/07/20/secret-service-national-archives/).

[7] Project on Government Oversight, *DHS Watchdog Failed to Sound Alarm for Months on Secret Service's*

In December 2021, two months earlier than previously reported, DHS OIG became aware that text messages sent and received by Secret Service agents related to the events of January 6 had been erased.[8] Yet, Inspector General Cuffari took no steps to inform Congress of this serious and flagrant violation of federal records laws. On June 14, 2022, DHS OIG submitted another semiannual report to Congress covering the period of October 1, 2021, to March 31, 2022. That report failed to mention the erasure of text messages. The report noted a "significant delay of OIG's access to Secret Service records, impeding the progress of our January 6, 2021 review," and stated, "We continue to discuss this issue with Secret Service."[9]

The Inspector General Act of 1978 requires Inspectors General to immediately report to the head of the agency "whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations." The report is commonly called a "seven-day letter." After a seven-day letter is transmitted, an agency head is required to notify appropriate committees of Congress.[10] Inspector General Cuffari did not send Secretary Mayorkas a seven-day letter notifying him of the Secret Service's refusal to fully cooperate and provide information responsive to the DHS IG's investigation. The DHS IG's failure to promptly report and escalate the Secret Service's stonewalling calls into question whether Inspector General Cuffari has the professional judgment and capacity to effectively fulfill his duties in this investigation.

As a result, Inspector General Cuffari should step aside, and CIGIE should appoint another Inspector General to conduct this critical investigation into the erasure of Secret Service text messages and whether Secret Service personnel complied with federal recordkeeping laws. Due to the nature and importance of this investigation, there must be no doubt that the Inspector General leading this investigation can conduct it thoroughly and with integrity, objectivity, and independence. We do not have confidence that Inspector General Cuffari can achieve those standards.

Our Committees have been investigating independence concerns related to Inspector General Cuffari and his office for several years. On March 26, 2020, we both wrote letters expressing concerns over DHS OIG's handling of investigative reports. Chairwoman Maloney wrote about the alarmingly slow pace with which Inspector General Cuffari's office was issuing reports.[11] Chairman Thompson wrote regarding numerous shortcomings in reports issued by

Purged Jan. 6 Texts (July 21, 2022) (online at www.pogo.org/investigation/2022/07/dhs-watchdog-failed-to-sound-alarm-for-months-on-secret-services-purged-jan-6-texts).

[8] Briefing by Office of Inspector General, Department of Homeland Security, to Staff, House Committee on Homeland Security, and Staff, Senate Committee on Homeland Security and Governmental Affairs (July 15, 2022); Briefing by United States Secret Service, to Staff, House Committee on Homeland Security (July 21, 2022).

[9] Office of Inspector General, Department of Homeland Security, *Semiannual Report to the Congress, October 1, 2021–March 31, 2022* (June 14, 2022) (online at www.oig.dhs.gov/sites/default/files/assets/SAR/2022/oig-sar-oct21-mar22.pdf).

[10] 5 U.S.C. App. 3, § 5(d).

[11] Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Inspector General Joseph V. Cuffari, Department of Homeland Security (Mar. 26, 2020) (online at https://oversight.house.gov/sites/democrats.oversight house.gov/files/2020-03-

Inspector General Cuffari's office on the deaths of two children in the custody of Customs and Border Protection.[12] On May 10, 2022, we wrote to Inspector General Cuffari about disturbing reports that he sought to censor findings of domestic abuse and sexual harassment by DHS employees. We wrote that the allegations "raise concerns about your ability to independently and effectively perform your duties as Inspector General."[13]

This is not the first time Inspector General Cuffari has shown an unwillingness to investigate the Secret Service. According to reports, Inspector General Cuffari previously refused to investigate the Secret Service's actions surrounding excessive use of force, as well as its protocols on protecting officials during the coronavirus pandemic, contradicting recommendations from DHS OIG career staff.[14]

There is past precedent for Inspectors General to step aside from an ongoing investigation in instances where there are concerns about their independence. In January 2021, at the request of the Department of Justice (DOJ) Inspector General, CIGIE's Integrity Committee identified another OIG to carry out an investigation into the unauthorized disclosure of information from a draft DOJ OIG report on the Trump Administration's child separation policy.[15] In 2020, the State Department's acting Inspector General recused himself from two investigations into Secretary of State Mike Pompeo after Chairwoman Maloney and others raised concerns about the acting Inspector General's independence.[16] In 2007, the State Department Inspector General removed himself from investigations related to Blackwater after the Oversight Committee revealed that the Inspector General's brother served on Blackwater's advisory board.[17] In this

26.CBM%20to%20CuffariDHS%20IG%20re%20Reports.pdf).

[12] Letter from Chairman Bennie G. Thompson, Committee on Homeland Security, to Inspector General Joseph V. Cuffari, Department of Homeland Security (Mar. 26, 2020) (online at https://homeland.house.gov/imo/media/doc/2020-03-26%20DHS%20OIG.pdf).

[13] Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security, to Inspector General Joseph V. Cuffari, Department of Homeland Security (May 10, 2022) (online at https://oversight.house.gov/sites/democrats.oversight house.gov/files/2022-05-10.CBM%20Thompson%20to%20Cuffari-DHS%20IG%20re%20Reports.pdf).

[14] Project on Government Oversight, *Pulling Punches: Trump-Appointed Watchdog Suppressed White House-Related Probes* (Apr. 20, 2021) (online at www.pogo.org/investigation/2021/04/pulling-punches-trump-appointed-watchdog-suppressed-white-house-related-probes).

[15] Office of the Inspector General, Department of Justice, *Investigative Summary—22-073* (May 11, 2022) (online at https://oig.justice.gov/sites/default/files/reports/22-073.pdf).

[16] *Acting Watchdog Recuses Himself from 2 Pompeo Probes*, Politico (June 23, 2020) (online at www.politico.com/news/2020/06/23/watchdog-recuses-himself-pompeo-probe-336083); Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform; Chairman Eliot L. Engel, Committee on Foreign Affairs; Chairman Gerald E. Connolly, Subcommittee on Government Operations; and Chairman Joaquin Castro, Subcommittee on Oversight and Investigations, to Secretary Michael R. Pompeo, Department of State (May 21, 2020) (online at https://oversight.house.gov/sites/democrats.oversight house.gov/files/documents/2020-05-21.CBM%20GEC%20Engel%20Castro%20to%20Pompeo-State%20re%20Removal%20of%20State%20IG.pdf).

[17] *State Department Inspector-General Bows Out of Blackwater Probe*, CNN (Nov. 14, 2007) (online at www.cnn.com/2007/US/11/14/blackwater.state/index html).

case, other Inspectors General may have significant technical experience in recovering deleted text messages.[18]

Inspectors General play a crucial role in the oversight community and are the only officers of their kind in the executive branch who report both to the agency head and to Congress. Congress and the American public must be confident in an Inspector General's ability to effectively meet the demands of the job. We request that Inspector General Cuffari step aside and that CIGIE appoint a new Inspector General to complete the investigation.

Please respond in writing to this request no later than August 9, 2022. If you have any questions, please contact Oversight Committee staff at (202) 225-5051 or Committee on Homeland Security staff at (202) 226-2616.

Sincerely,

Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform

Bennie G. Thompson
Chairman
Committee on Homeland Security

cc: The Honorable James Comer, Ranking Member
Committee on Oversight and Reform

The Honorable John Katko, Ranking Member
Committee on Homeland Security

[18] *See* Office of the Inspector General, Department of Justice, *Report of Investigation: Recovery of Text Messages From Certain FBI Mobile Devices* (Dec. 2018) (2018-003523) (online at https://oig.justice.gov/reports/2018/i-2018-003523.pdf) (The Department of Justice Office of the Inspector General was able to recover thousands of text messages through its investigation into missing text messages of FBI officials. The DOJ OIG took several steps to ensure a thorough and complete investigation, including consulting with the Department of Defense Computer Forensic Laboratory, utilizing digital forensic tools, and hiring an Android device Subject Matter Expert to assist in this investigation.).

The Washington Post
Democracy Dies in Darkness

Key Dems want DHS inspector general removed from Secret Service probe

By Carol D. Leonnig and Maria Sacchetti
July 26, 2022 at 4:33 p.m. EDT

A pair of key congressional Democrats called on Department of Homeland Security Inspector General Joseph Cuffari to step aside from his office's investigation into the Secret Service on Tuesday, saying the Trump appointee knew earlier than has been reported that the agency deleted text messages from around the time of the Jan. 6, 2021, attack on the Capitol.

Reps. Carolyn B. Maloney (D-N.Y.), who heads the House committee that oversees inspectors general, and Bennie G. Thompson (D-Miss.), chairman of the Jan. 6 committee and the Homeland Security Committee, said the inspector general's office admitted in congressional briefings that it became aware that agents' text messages were erased in December 2021 — two months earlier than reported. But Cuffari did not report that to Congress until this month.

The lawmakers said these and other omissions have broken their faith in Cuffari's ability to lead the investigation, and they urged the Council of the Inspectors General on Integrity and Efficiency, an independent entity in the executive branch, to appoint another inspector general to handle the Secret Service probe.

"Due to the nature and importance of this investigation, there must be no doubt that the Inspector General leading this investigation can conduct it thoroughly and with integrity, objectivity, and independence," the lawmakers wrote in the letter. "We do not have confidence that Inspector General Cuffari can achieve those standards."

Cuffari and the council did not immediately respond to requests for comment about the letter, which was sent to Cuffari and to Allison Lerner, the council's chair. The lawmakers asked for a response by Aug. 9.

The letter comes days after Cuffari opened a criminal investigation into the Secret Service's allegedly missing texts, halting the agency's efforts to retrieve the records itself in response to a subpoena from the Jan. 6 committee.

Cuffari sent a letter to the House and Senate Homeland Security Committees this month accusing the agency of erasing text messages from the time around the assault on the Capitol and after he had asked for them for his own investigation.

The Secret Service said that any “insinuation” that they maliciously deleted text messages is false and that the deletions were part of a preplanned “system migration” of its phones. They said none of the texts Cuffari’s office was seeking had disappeared.

In their letter, Thompson and Maloney also faulted the Secret Service for deleting messages that could offer eyewitness accounts of the Capitol attack and the actions of President Donald Trump, whose supporters raided the building in an attempt to stop lawmakers from certifying election results.

The lawmakers said several House committees investigating the attack had sought records from DHS and other agencies 10 days later. Since they protect the president and vice president and other top officials, the Secret Service records could offer a close accounting of their actions that day.

“Despite the legal obligation to preserve these records, the Secret Service reportedly undertook a system migration process on January 27, 2021, that caused the erasure of text messages related to January 6,” the lawmakers wrote.

Cuffari’s office also requested records from the Secret Service on Feb. 26, 2021, for its own investigation into the Capitol attack. But the lawmakers said in the letter that he did not tell them that he had trouble getting the Secret Service’s text messages in his semiannual reports to Congress and considered issuing an alert that would have warned them and the public about the missing information, but decided that “this warning was unnecessary.”

Cuffari also did not alert the agency head, DHS Secretary Alejandro Mayorkas, of the problem, as required under the Inspector General Act of 1978, which triggers a requirement that the agency head notify congressional committees.

“The DHS IG’s failure to promptly report and escalate the Secret Service’s stonewalling calls into question whether Inspector General Cuffari has the professional judgment and capacity to effectively fulfill his duties in this investigation,” the lawmakers wrote.

They said their call for Cuffari to step aside follows a string of concerns about the pace and content of his past investigations and said inspectors general have stepped aside before when concerns have surfaced about their independence.

In January 2021, the council identified another inspector general to investigate the unauthorized disclosure of information from a draft Justice Department OIG report on the Trump administration’s child separation policy.

And in 2020, the State Department’s acting inspector general recused himself from investigations into Secretary of State Mike Pompeo after Maloney, chair of the House Oversight Committee, and others raised concerns about the acting inspector general.

Secret Service agents, who protect the president, the vice president and other top officials and their families, would have had a “front-row seat” to Trump’s actions as his supporters sacked the Capitol, said Donald K. Sherman, senior vice president and chief counsel for Citizens for Responsibility and Ethics in Washington, a nonprofit watchdog.

The watchdog organization called on the Justice Department and the FBI to open a criminal investigation into the missing text messages on July 18.

“The Federal Records Act requires that agencies like the Secret Service preserve records so that there is a complete and accurate history of the government’s actions and decisions,” Sherman said in a statement, and anyone who willfully destroys them could face prison time and fines.

Sherman said the Secret Service's text messages could offer a window into the critical hours involving the attack, including former White House aide Cassidy Hutchinson's testimony to the Jan. 6 committee that she was told that Trump lunged at his lead Secret Service agent after being told he could not join his supporters at the Capitol.

The messages could also document the frantic moments as the Secret Service swept Pence to safety and he then refused to let them drive him away so that he could finish certifying the election results.

The National Archives and Records Administration asked the Secret Service to respond to reports about the missing text messages. Officials said Monday that "as a general rule," NARA puts its inquiries on hold until an agency's internal probes are complete.

The Washington Post
Democracy Dies in Darkness

Secret Service watchdog knew in February that texts had been purged

By Carol D. Leonnig and Maria Sacchetti
July 20, 2022 at 9:29 p.m. EDT

A watchdog agency learned in February that the Secret Service had purged nearly all cellphone texts from around the time of the Jan. 6, 2021, attack on the Capitol, but chose not to alert Congress, according to three people briefed on the internal discussions.

That watchdog agency, the Department of Homeland Security's Office of Inspector General, also prepared in October 2021 to issue a public alert that the Secret Service and other department divisions were stonewalling it on requests for records and texts surrounding the attack on the Capitol, but did not do so, the people briefed on the matter said. They spoke on the condition of anonymity to discuss sensitive internal investigations.

The previously unreported revelation about the inspector general's months-long delay in flagging the now-vanished Secret Service texts came from two whistleblowers who have worked with Inspector General Joseph V. Cuffari, the people knowledgeable about the internal discussions said.

In recent days, one former employee approached the Project on Government Oversight (POGO), an independent government-accountability group, and described the decision from Cuffari's office not to promptly disclose that Secret Service records had been wiped from agency phones starting in January 2021. The group relayed the information to congressional staff, who independently corroborated the account with a second whistleblower.

The congressional staff and two whistleblowers shared a concern that Cuffari's office not alerting congressional investigators to the missing records reduced the chances of recovering critical pieces of evidence related to the Jan. 6 attack.

The purged texts of Secret Service agents — some of whom planned President Donald Trump's movements on Jan. 6 and shadowed Trump as he sought to overturn the election results — could shed light on what Trump was planning and saying.

"It's a dereliction of duty to keep the public and Congress in the dark for months," said POGO senior investigator Nick Schwellenbach. "Digital forensics experts could have been working to recover these lost texts a long time ago."

Cuffari's office did not directly respond to the allegations about the alert Wednesday. His office issued an email saying he disclosed concerns in his semiannual reports to Congress in September and March that Homeland Security and the Secret Service were delaying his office's investigation into the Capitol attack. The reports do not mention the text messages.

The independent government accountability group has called for President Biden to remove Cuffari.

On Wednesday, Chairman Bennie G. Thompson (D-Miss.) and Vice Chairwoman Liz Cheney (R-Wyo.) of the House select committee investigating the Jan. 6 attack issued a joint statement expressing concerns that the Secret Service phone system update led to the "erasure" of records — a possible violation of federal law — and that "every effort must be made to retrieve the lost data."

"The U.S. Secret Service system migration process went forward on January 27, 2021, just three weeks after the attack on the Capitol in which the Vice President of the United States while under the protection of the Secret Service, was steps from a violent mob hunting for him," the lawmakers said.

"Four House committees had already sought these critical records from the Department of Homeland Security before the records were apparently lost," they said. "Additionally, the procedure for preserving content prior to this purge appears to have been contrary to federal records retention requirements and may represent a possible violation of the Federal Records Act."

The missing texts could provide a more detailed road map for Trump's actions and plans surrounding Jan. 6.

They could also corroborate or discount White House aide Cassidy Hutchinson's testimony to the committee, in which she said a senior Secret Service official told her on Jan. 6 that Trump had lunged in anger at the agent who led his security detail after he was told that he could not join his supporters on their march to the Capitol.

Hutchinson testified that the official Tony Ornato, then temporarily working as White House deputy chief of staff — told her that Trump had also lunged for the steering wheel of the Suburban in which he was traveling. Ornato has denied telling Hutchinson this, according to a Secret Service spokesman, and Trump's former detail leader, Bobby Engel, has claimed that no such physical altercation took place.

The Secret Service said it turned over 10,569 pages of information to the committee on Tuesday in response to a subpoena issued last week, according to a copy of the agency's letter that the committee made public Wednesday.

The Secret Service acknowledged that on June 11, 2021, Cuffari requested texts sent or received by 24 secret service personnel between Dec. 7, 2020 and Jan. 8, 2021, two days after the insurrection.

Agency officials said they found one text message, a call for help from U.S. Capitol Police to the Secret Service as Trump's supporters ransacked the Capitol that day.

In the five page letter, Secret Service Assistant Director Ronald L. Rowe Jr. told the committee that the Homeland Security Office of Inspector General in June 2021 asked them for text messages sent and received by 24 Secret Service officials around that time and that they "are currently unaware" of any lost texts. He wrote that officials are scrambling to find out if that is true, making "extensive efforts" to determine if the messages had been lost and "if so, whether such texts are recoverable."

Officials are pulling "any available metadata" to determine what text messages the 24 employees, who have not been publicly identified, sent on Jan. 5 or 6, 2021, conducting "forensic examinations of any available devices" they used and interviewing them to see if the messages were stored somewhere the Secret Service hadn't searched.

The Secret Service's letter said it has, however, "disclosed voluminous amounts" of records to the OIG's office.

The Secret Service also laid out the timeline for switching out the phones and said its employees are trained to preserve documents as required under the Federal Records Act.

Officials said the planning process for swapping out the phones began in the fall of 2020 and the chief information and chief operating officers decided in December to switch to Intune, a Microsoft mobile-device software-management application, the following month.

The agency said it issued instructions to employees to preserve content on their phones and began the "migration" process two days later, on Jan. 27. The migration ended on April 1, 2021. But individual agents were allowed to decide which texts should be preserved, and the rest were wiped.

The wiped texts raise significant concerns the agency flouted basic document preservation required under the Federal Records Act, and did so at the same time that congressional and executive branch investigators were seeking those records.

Jonathan Turley, a George Washington University law professor who has testified before Congress about federal and presidential record-keeping, said the Federal Records Act requires government officials to preserve all relevant records, including email and text messages.

He said the Secret Service had a duty to protect the text messages for historical reasons but also because it is a law-enforcement agency, in case they were needed for congressional or criminal investigations.

Even the accidental loss of information "should still be treated as a serious matter," he said.

"These records are the story of the nation," he said. "That's the point of the Federal Records Act."

The Secret Service's claim that it can no longer recover reams of text messages agents exchanged days before and on the day of one of the most chilling attacks on democracy in American history has spurred a legion of information technology gurus and amateur sleuths to action. Some have taken to social media to dispute the Secret Service's claim that the texts are forever lost — and are busy postulating about the potential ways to recover the lost texts.

Schwellenbach said Cuffari's delay in reporting the problem necessarily lowers the odds of retrieving data that wasn't properly backed up and archived.

Washington, DC 20528 / www.oig.dhs.gov

August 3, 2022

MEMORANDUM FOR: Council of Inspectors General on Integrity and Efficiency (CIGIE), Integrity Committee

FROM: Joseph V. Cuffari, Ph.D.
Inspector General

SUBJECT: Rule 5(A)(i) Referral – Complaint #C2239095

Please accept this letter as the required written referral pursuant to CIGIE Integrity Committee Rule 5(A)(i) regarding any allegation of wrongdoing concerning an Inspector General.

On July 21, 2022, the DHS OIG received an anonymous complaint alleging that I engaged in "mismanagement of DHS OIG," citing "the recent news regarding DHS OIG failing to notify Congress about the Secret Service's alleged actions taken in deleting incriminating text messages on 01/06/2022."

Should you have any questions regarding this matter or need additional information, you may contact me at [redacted]

Enclosure: Summary Report of Complaint #C2239095

Case Summary Report
C22-OIG-SIU-39095

Title: **Joseph Cuffari; OIG; Washington, DC**

Date Rcd: 7/21/2022 Date Assigned: Date Opened: 7/21/2022 Date Closed:

Rcd Method: Telephone Agent:

Affected Agency: Office of Inspector General PrimaryOffice: Special Investigations Unit

Ref Agency:

Alleg Type:

Special: No Privacy: No Confidential: No Dollar Loss:

Joint Agency:

Ref Cases:

HLCN1658433388454

Comments: 9:02 PM CST
CCO# 26686

The complainant, who wished to remain anonymous, is reporting Joseph Cuffari for mismanagement of DHS OIG. The complainant sited the recent news regarding DHS OIG failing to notify Congress about the Secret Service's alleged actions taken in deleting incriminating text messages on 01/06/2022.

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Case Summary Report
C22-OIG-SIU-39095

People - Subjects

CUFFARI, JOSEPH | **Home** | Male
Aka:
POB City:
DOB: [redacted]
Address:
SSN: [redacted] | EOD: 7/26/2019
POB State:
Alien Number:
Company Name:
City: [redacted] | State: [redacted] | Zip: [redacted]
DHS Emp: YES | DHS Exec: No
Phone:
Email:

Cuffari, Joseph | **Home**
Aka:
POB City:
DOB:
Address:
SSN: | EOD:
POB State:
Alien Number:
Company Name:
City: | State: | Zip:
DHS Emp: YES | DHS Exec: No
Phone:
Email:

Cuffari, Joseph | **Work**
Aka:
POB City:
DOB:
Address:
SSN: | EOD:
POB State:
Alien Number:
Company Name:
City: | State: | Zip:
DHS Emp: YES | DHS Exec: No
Phone:
Email:

CUFFARI, JOSEPH | **Work** | Male
Aka:
POB City:
DOB: [redacted]
Address: [redacted]
SSN: [redacted] | EOD: 7/26/2019
POB State:
Alien Number:
Company Name:
City: [redacted] | State: [redacted] | Zip: [redacted]
DHS Emp: YES | DHS Exec: No
Phone: [redacted]
Email:

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Case Summary Report
C22-OIG-SIU-39095

People - Complainants

LNU, FNU — **Home**

Aka:
SSN: EOD:
POB City:
POB State:
DOB:
Alien Number:
Address:
Company Name:
City: State: Zip:
DHS Emp: No
DHS Exec: No
Phone:
Email:

LNU, FNU — **Work**

Aka:
SSN: EOD:
POB City:
POB State:
DOB:
Alien Number:
Address:
Company Name:
City: State: Zip:
DHS Emp: No
DHS Exec: No
Phone:
Email:

People - Witness

People - Victims

Violations

Case Dates:

Received:	7/21/2022	Assigned:		Reassigned:	
Prb Referral:		Retention:		Acknowledged:	
Incident Start:		Incident End:		Approx:	No
Police Report:		Police Rpt #:			
Notified:		Reesponse:		Referred:	
Investigation Comp:		Closed:			
Prb Decision:		Reopened:			

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OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

August 15, 2022

MEMORANDUM FOR: Integrity Committee
Council of the Inspectors General on Integrity and Efficiency

FROM: [redacted]

SUBJECT: Referral of allegation against [redacted]

Please accept this as an official referral of an allegation against [redacted], U.S. Department of Homeland Security, Office of Inspector General. This matter is being referred in accordance with the Policies and Procedures of the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency. [redacted] is a person within the IC's authority ("Covered Person"). Details of the allegation are attached.

Should you have any questions regarding this matter or need additional information, you may contact me at [redacted].

From: [redacted]
To: [redacted]
Cc: [redacted]
Subject: FW: Resign Today
Date: Friday, August 12, 2022 12:52:48 PM

Referring to Hotline -thanks

From: [redacted]
Sent: Friday, August 12, 2022 12:16 PM
To: [redacted]
Subject: Resign Today

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact your component SOC with questions or concerns.

Dear [redacted]

You seem to have been involved in covering up vital information that would have been pertinent to the January 6th Investigation being conducted on behalf of THE AMERICAN PEOPLE, of which I am one.

Shame on you and your disgusting self-interest. You are meant to serve the people of this nation, not yourself.

[redacted]

Case Summary Report

C22-OIG-ISU-40486

Title: [redacted]

Date Rcd: 8/12/2022 Date Assigned: Date Opened: 8/15/2022 Date Closed:

Rcd Method: Email Agent:

Affected Agency: Office of Inspector General PrimaryOffice: [redacted]

Ref Agency:

Alleg Type:

Special: No Privacy: No Confidential: No Dollar Loss:

Joint Agency: U.S. Citizenship and Immigration Services (DHS)

Ref Cases:

Comments: Dear [redacted],

You seem to have been involved in covering up vital information that would have been pertinent to the January 6th Investigation being conducted on behalf of THE AMERICAN PEOPLE, of which I am one.

Shame on you and your disgusting self-interest. You are meant to serve the people of this nation, not yourself.

[redacted]

People - Subjects

[redacted]

Aka:

POB City:

DOB: [redacted]

Address:

DHS Emp: YES

Phone:

Email:

Home

SSN: [redacted] EOD: [redacted]

POB State:

Alien Number:

Company Name:

City: [redacted] State: [redacted] Zip: [redacted]

DHS Exec: No

[redacted]

Aka:

POB City:

DOB: [redacted]

Address:

DHS Emp: YES

Phone:

Email: [redacted]

Work

SSN: [redacted] EOD: [redacted]

POB State:

Alien Number:

Company Name:

City: WASHINGTON State: DC Zip:

DHS Exec: No

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Case Summary Report
C22-OIG-ISU-40486

People - Complainants

[redacted]

Aka:
POB City:
DOB:
Address:

DHS Emp: No
Phone:
Email:

Work
SSN:
POB State:
Alien Number:
Company Name:
City:

DHS Exec: No

EOD:
State: [redacted] Zip:

[redacted]

Aka:
POB City:
DOB:
Address:

DHS Emp: No
Phone:
Email: [redacted]

Home
SSN:
POB State:
Alien Number:
Company Name:
City: [redacted]

DHS Exec: No

EOD:
State: [redacted] Zip:

People - Witness

People - Victims

Violations

Case Dates:

Received:	8/12/2022	Assigned:		Reassigned:	
Prb Referral:		Retention:		Acknowledged:	
Incident Start:		Incident End:		Approx:	No
Police Report:		Police Rpt #:			
Notified:		Reesponse:		Referred:	
Investigation Comp:		Closed:			
Prb Decision:		Reopened:			

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Case Summary Report
C22-OIG-ISU-40486

Location

Airport: Location:
City: Washington State: DC Zip:
Facility: FFDO Airline:
Investigation Loc: Region:
Transport Mode:

Technical

Disposition - Criminal

Dispositions - Civil

Dispositions - Admin

MA

ROI / Referral

Case Type: Complaint Referral Date: 8/15/2022 Response Date: 8/15/2022 Closed Date:
Action: Agency Referred:

Collaterals

Uploaded Documents

Date Prepared: 8/12/2022 Grand Jury: No
Doc Type:
Description:

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August 8, 2022

The Honorable Carolyn B. Maloney, Chairwoman
Committee on Oversight and Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Bennie G. Thompson, Chairman
Committee on Homeland Security
U.S. House of Representatives
H2-176 Ford House Office Building
Washington, DC 20515

Re: Further update on DHS OIG's efforts to comply with your May 10, 2022 oversight request

Dear Chairwoman Maloney and Chairman Thompson:

I am writing to provide you with a further update on the status of the Department of Homeland Security (DHS) Office of Inspector General's (OIG) efforts to comply with the requests in your letter of May 10, 2022.

As I explained in my previous status report dated June 13, 2022, the materials sought in your request fall into two main categories: (i) Records that DHS OIG obtained in the course of its fieldwork; and (ii) records and information concerning DHS OIG's internal deliberations. With respect to the first category, DHS OIG continues to work with the Department to identify records that the Department determined to be responsive and prepare them for production to the Committees.

With respect to the second category, as mentioned in my June 13, 2022 update to you, DHS OIG contacted the Executive Office of the President (EOP) for guidance. On July 11, 2022, attorneys in EOP informally advised DHS OIG staff that when Congress seeks records and information concerning an agency's internal deliberations, this Administration's policy is to follow the approach outlined in the November 4, 1982, Memorandum from the President to the Heads of Executive Departments and Agencies entitled *Procedures Governing Responses to Congressional Requests for Information*. On July 28, 2022,

EOP indicated that the informal advice supplied to DHS OIG represented the official position of EOP.

The November 4, 1982, Memorandum from the President instructs agency heads to seek the advice of the Office of Legal Counsel (OLC), Department of Justice, when faced with congressional requests for deliberative records and information. On August 3, 2022, I requested an opinion from OLC concerning whether I am permitted to release deliberative records and information to Congress.

Please contact me with any questions at [redacted].

Sincerely,

Joseph V. Cuffari, Ph.D.
Inspector General

cc: The Honorable James Comer, Ranking Member
Committee on Oversight and Reform

The Honorable John Katko, Ranking Member
Committee on Homeland Security

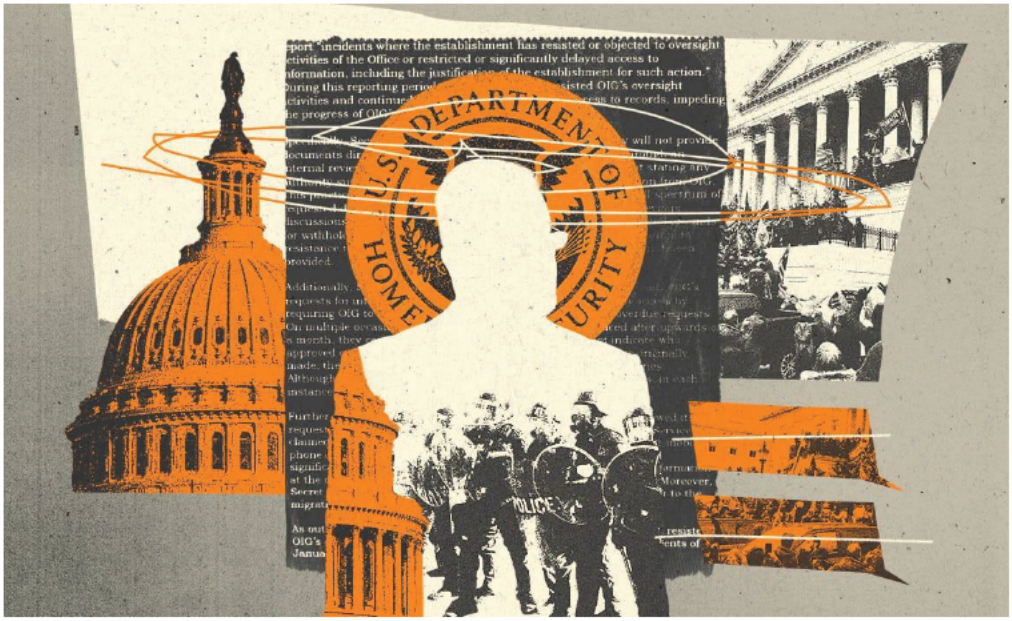
Accountability

DHS Watchdog Nixed Alert to Congress About Purged January 6 Texts, New Docs Show

Inspector general's top aides embroiled in prior controversy

BY NICK SCHWELLENBACH & ADAM ZAGORIN | FILED UNDER INVESTIGATION | AUGUST 11, 2022

10 MINUTE READ



(Illustration: Renzo Velez / POGO)

On April 1, attorneys working in the Department of Homeland Security's Office of Inspector General **approved five detailed paragraphs** of language that

would have alerted Congress to the Secret Service's deletion of texts related to January 6, according to new documents obtained by the Project On Government Oversight (POGO) and congressional staffers on multiple committees.

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email@email.com

Sign up

Yet Inspector General Joseph Cuffari never sent this detailed alert. Instead, the records show that Cuffari not only failed to alert Congress in a timely way about the erased texts, but failed to adopt his staff's explicit recommendations that he do so.

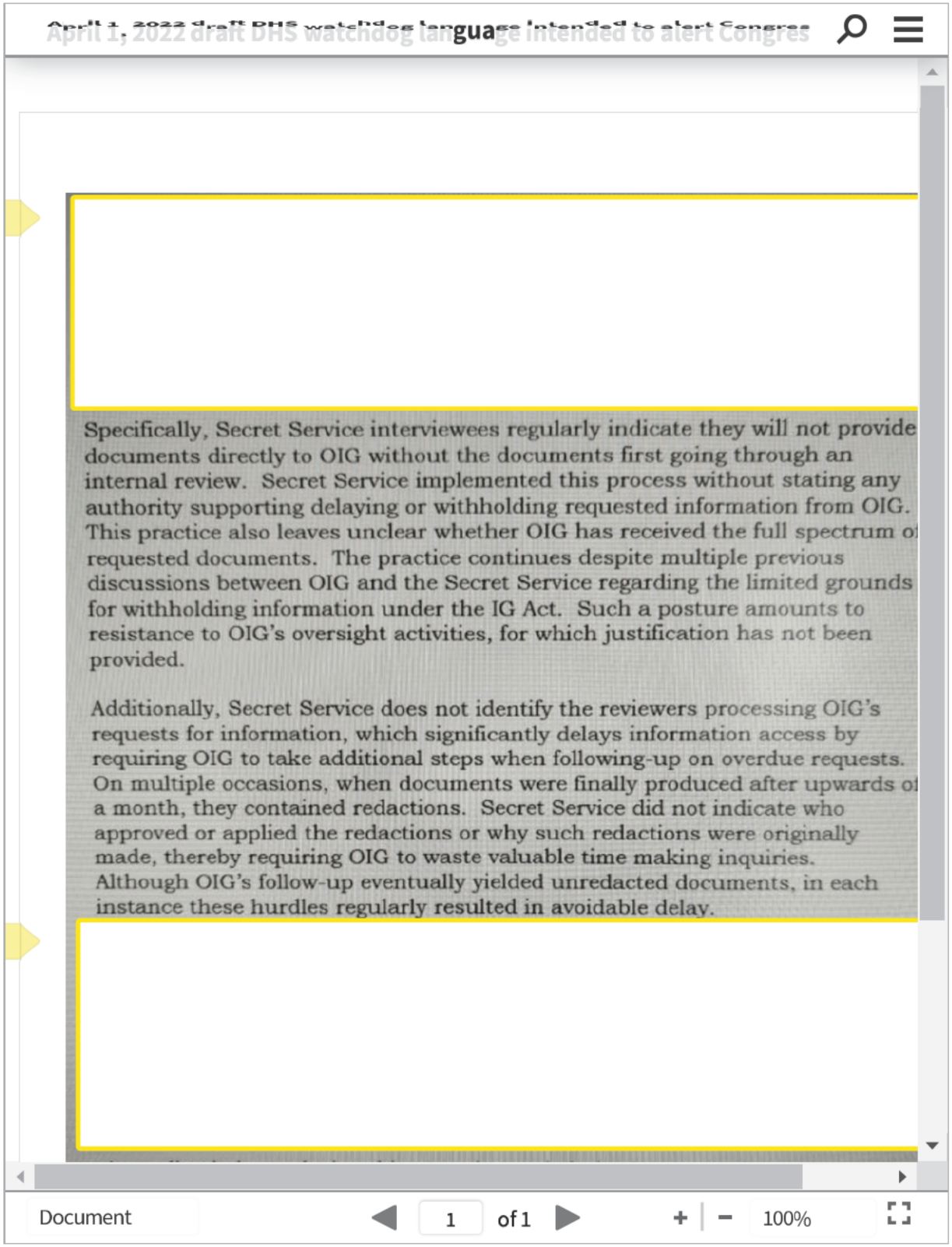
His office had known of the missing texts for weeks, if not longer, at this point. According to a key paragraph of **the April 1 alert**, which is not public and appears for the first time here:

> On February 23, 2022—more than 2 months after OIG renewed its requests for select Secret Service employees' text messages—Secret Service claimed inability to extract text message content due to an April 2021 mobile phone system migration, which wiped all data.

That unsent paragraph continues:

> Secret Service caused significant delay by not clearly communicating this highly relevant information at the outset of its exchanges with OIG during this reporting period. Moreover, Secret Service has not explained why it did not preserve the texts prior to the migration.

Career staff across several DHS Office of Inspector General teams working on January 6 reviews — including the watchdog's own Office of Counsel — approved the detailed language. On April 1, it was sent to an office run by Inspector General Joseph Cuffari's chief of staff, Kristen Fredricks. Fredricks, along with Cuffari's top deputy, had been embroiled in an earlier, previously unreported controversy involving the failure to notify hundreds of victims of a privacy data breach at the Social Security Administration, as well as alleged retaliation. The language about the deleted Secret Service texts was bottled up and never published after it was sent to Fredricks' office.



The April 1 paragraphs were intended for inclusion in a public report that was eventually sent to Congress this summer, a document obtained by POGO

IC 22-069: 28

shows. That report is legally required to disclose when an agency "has resisted or objected to oversight activities" or "restricted or significantly delayed access to information."

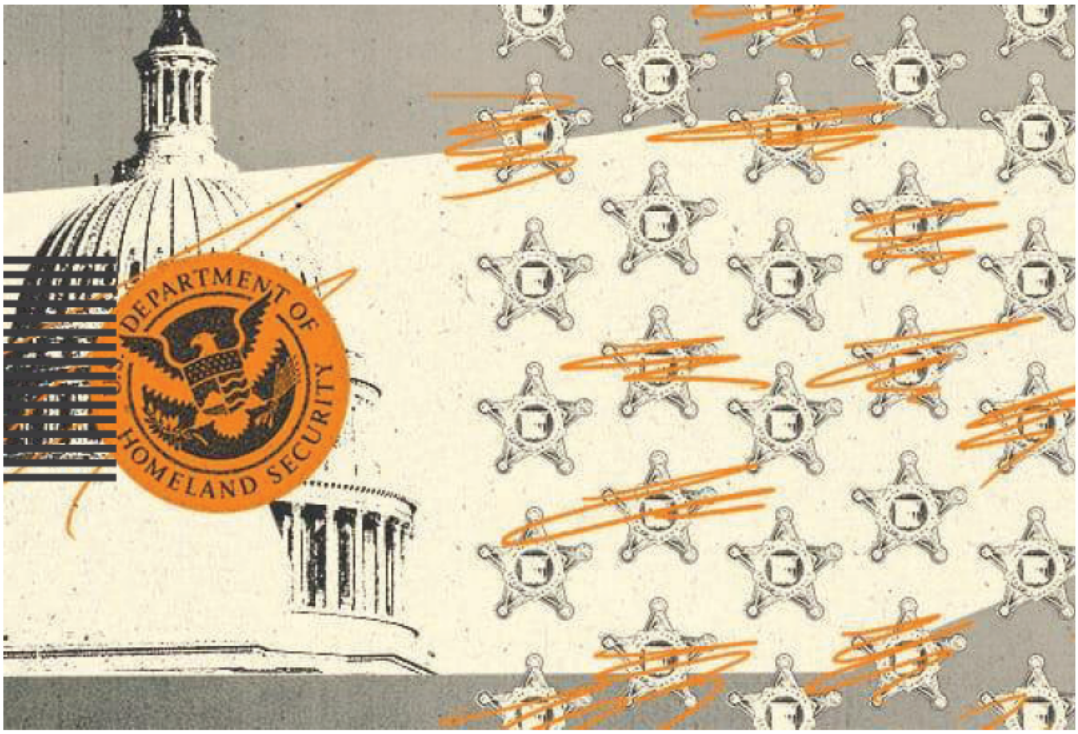
But instead of the five paragraphs informing lawmakers that the Secret Service had purged texts, the June report contained only two sentences about delayed access to Secret Service records and the January 6 review, and neither mentioned that the agency had admitted to erasing the messages.

The alert could also have been sent even earlier than June at Cuffari's discretion, given that the Inspector General Act gives him the power to inform Congress about serious problems at any time, say sources familiar with the matter but who are not authorized to speak to the press.

Instead, another month would go by before **Cuffari told Congress** that the Secret Service had "erased" texts. That information came in a one-page letter, on July 13, sent many months after Cuffari's office knew the texts were deleted — yet offering Congress far less detail than the earlier, unsent April 1 language.

The July 13 notice appeared a few weeks after former Trump White House staffer Cassidy Hutchinson's explosive testimony describing then-President Donald Trump's behavior before and on January 6. Her account partially relies on what Secret Service officials allegedly told her. One of them is Tony Ornato, who — in an unprecedented arrangement — was on leave from the agency to serve as a political aide to Trump. Some of the agents, through unnamed sources, have denied Hutchinson's sworn testimony. The missing texts could potentially corroborate or disprove her statements.

The Department of Homeland Security Office of Inspector General did not respond to a request for comment by the time of publication.



The new records show a pattern of Cuffari repeatedly rejecting proposals to inform Congress about the Secret Service's resistance to oversight.

Earlier **reporting by POGO** found that Cuffari had also declined to inform Congress in the fall of 2021 about the Secret Service's stonewalling access to information related to January 6, despite extensive efforts by multiple attorneys in his office to produce a detailed, six-page management alert about the problem. Before that, in 2020, **Cuffari rejected staff recommendations** to review the Secret Service's use of force at Lafayette Square in June of that year and its adherence to COVID protocols as numerous agents fell ill, along with Trump.

POGO also recently obtained documentation that shows Cuffari's office never told Congress it had known about **then-Acting DHS Secretary Chad Wolf and then-Acting DHS Deputy Secretary Ken Cuccinelli's deleted texts for over five months**.

The *Washington Post* recently revealed that, in February, **senior officials in Cuffari's office called off collecting January 6-related messages** from

department phones and rejected a staff proposal to inform all of DHS that the inspector general's office could help extract such text messages from them.

The revelations have undermined the accounts provided by Cuffari and his aides regarding how he has managed his office's investigations of January 6. Referring to news accounts, including POGO's, Senator Gary Peters (D-MI), chair of the Senate homeland security committee, **wrote yesterday** to Cuffari that "These are serious allegations and diverge from the information that you previously provided me and my team."

The House oversight and homeland security committees have also begun looking into these decisions — and **recently requested** that Cuffari's chief of staff, Kristen Fredricks, and another senior official appear for transcribed interviews to answer questions regarding the handling of the Office of Inspector General's reviews of January 6. It remains unclear at this time whether those questions will require Fredricks to give a detailed account of her own personal role.



The new records show a pattern of Cuffari repeatedly rejecting proposals to inform Congress about the Secret Service's resistance to oversight.

Indeed, the growing furor over Cuffari's conduct in office has provoked calls for his recusal from the probe into missing Secret Service texts. Critics including POGO have publicly asked President Biden to remove Cuffari from office because of how he has handled several high-profile matters.

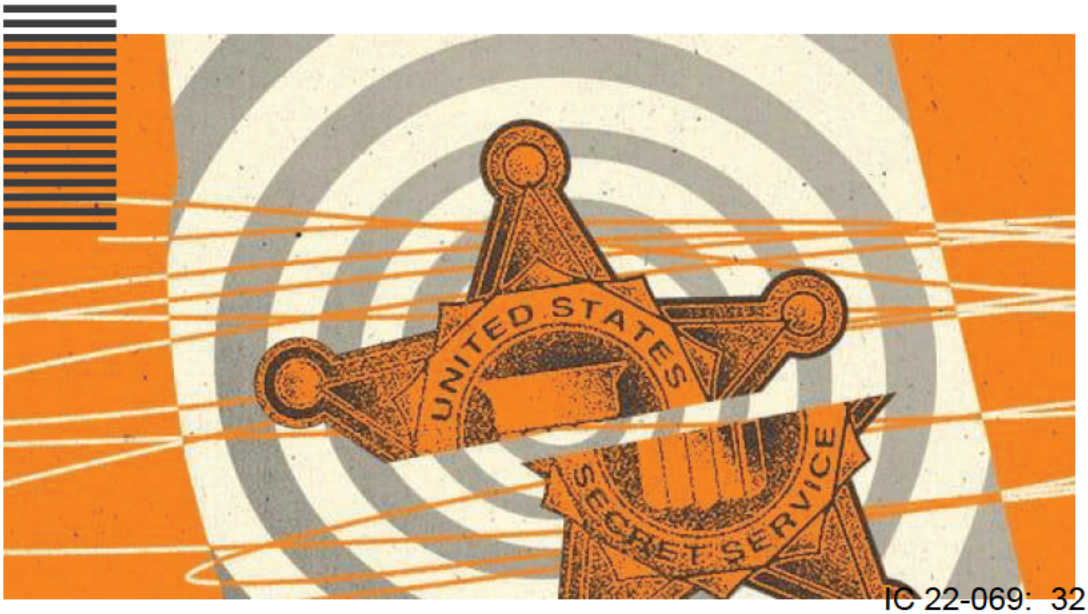
Recent reporting shows that questions about the inspector general's credibility as a watchdog official are not new. Last week, a 2013 report emerged showing that investigators **did not believe** the explanations Cuffari provided interviewers during a probe that found he violated ethical standards in his last federal job.

He painted a different picture for the Senate in 2019 when it was considering his nomination. "I answered the IG staff's questions truthfully and completely," Cuffari wrote of the 2013 investigation. "No adverse action was proposed against me."

Findings such as those outlined in the 2013 report typically would result in discipline for a federal employee, however, he **resigned from that federal position** weeks after the investigative report was finished.

Despite the drumbeat of criticism, Cuffari seems to show no sign he will leave office on his own accord.

On July 29, Cuffari issued a cheery bulletin to staff marking his third anniversary as DHS inspector general. "Thank you for the past three years," he wrote. "I look forward to many more to come!"





Not only was Cuffari's July 13 letter to Congress too late, it contained far too little. The one-page notice also wrongly implied that only texts from January 5 and 6, 2021 were erased.

This error was not in the April 1, 2022, language that DHS inspector general attorneys had previously approved. In fact, sources say, the missing Secret Service texts actually cover January 1-8, 2021, not just January 5 and 6.

The rejected April 1 language provided many other details about the Secret Service's resistance to oversight, as well, several of which are missing from Cuffari's later July 13 notice.

"Secret Service interviewees regularly indicate they will not provide documents directly to OIG without the documents first going through an internal review," the rejected language notes. "Secret Service implemented this process without stating any authority supporting delaying or withholding requested information from OIG."

"This practice leaves unclear whether OIG has received the full spectrum of requested documents," the April language says. "Such a posture amounts to resistance to OIG's oversight activities, for which justification has not been provided."

"Additionally, Secret Service does not identify the reviewers processing OIG's requests for information, which significantly delays information access by requiring OIG to take additional steps when following up on overdue requests," the language states. "On multiple occasions, when documents were finally produced after upwards of a month, they contained redactions."

"Secret Service did not indicate who approved or applied the redactions or why such redactions were originally made, thereby requiring OIG to waste valuable time making inquiries. Although OIG's follow-up eventually yielded unredacted documents, in each instance these hurdles regularly resulted in avoidable delay."

PART 3

A Data Breach, An Earlier Failure



When Cuffari finally issued the threadbare alert to Congress in his one-page July 13, 2022 letter, the alert specifically steered any queries about the matter to Kristen Fredricks.

Congressional staff say Fredricks has been their main point of contact with Cuffari on the January 6 reviews and other matters.

And, like her boss, Fredricks brings a history of controversy to her role. Yet serious and previously unreported questions about her past in a prior job at the Social Security Administration have not kept her from ascending to a senior position within the DHS watchdog office.



And, like her boss, Fredricks brings a history of controversy to her role.

The controversy started nearly a decade ago, when a Social Security Administration employee in Atlanta breached a complaints database filled with personally identifiable information pertaining to 561 people who had alleged discrimination and civil rights violations.

Upon learning of this breach, several Social Security Administration employees pressed management to alert the victims.

One of the employees who advocated warning victims is an administrative law judge named McArthur Allen, who has since left the Social Security Administration and now works in the Department of Health and Human Services.

Social Security Administration management rejected notifying victims and later reassigned the employees who had recommended doing so. During this time, Fredricks served in a role advising the Social Security Administration on disciplining employees.

In October 2015, after an investigation into the data breach controversy had begun, Fredricks was moved from the Social Security Administration to its Office of Inspector General, where she worked in its counsel's office.

Her transfer to the Social Security inspector general's office became a point of contention during an investigation of the privacy breach.

Allen told Social Security watchdog staff that he was "concerned that Fredricks now works for the OIG," according to a **public investigative report**. "Judge Allen said that he fears retaliation from Fredricks, in addition to other managers/supervisors because of his involvement with this investigation."

In a footnote to Allen's remarks, the report states that Fredricks, despite working in the inspector general's office, would not be involved in investigating the data breach affair.

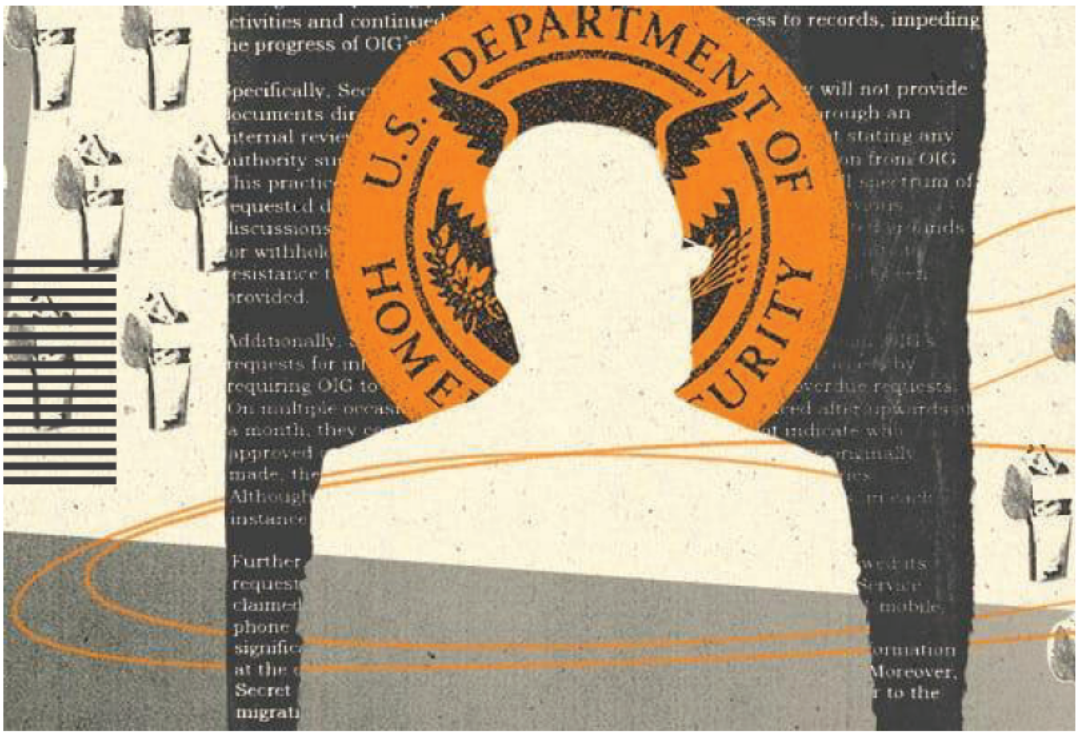
The investigation into the data breach wrapped up years ago with the Social Security Administration arguing "**that the breach did not need to be reported under agency policy**."

But Fredricks also remains the subject of a long-running, active, and previously unreported whistleblower retaliation probe related to the affair that is currently being conducted by the Social Security Administration Office of Inspector General, according to two sources familiar with the matter. It is unclear if Cuffari is aware of the active retaliation investigation into Fredricks.

By November 2019, the Social Security Administration watchdog had **detailed Fredricks to Cuffari's office**.

Allen's attorney, Morris E. Fischer, said his client declined to comment out of a continuing fear of retaliation. But Fischer himself reacted to Fredricks' ascent within the inspector general community. "Don't these people get vetted?" he asked.

Fredricks and both the Social Security Administration and DHS offices of inspectors general did not respond to a request for comment by the time of publication.



Since she came to Cuffari's office in November 2019, Fredricks has been joined by others involved in the Social Security data breach affair who now work in Cuffari's "front office" — a term often used in the federal government to refer to an agency's leadership team.

About a year into her tenure, in November 2020, Cuffari announced that Fredricks was now his chief of staff and a permanent DHS watchdog employee. In that **same emailed announcement**, he also welcomed Glenn Sklar as his

new deputy inspector general, citing Sklar's experience at the Social Security Administration, at its watchdog office, and elsewhere in government.

The email did not reveal anything about the data breach controversy or Sklar's allegedly key role in it.

One Social Security employee told investigators that Sklar was among five officials who did not inform victims about the data breach. In addition, the same employee said Sklar was among a small circle of individuals who made the decision to have McArthur Allen and two of his colleagues — who had also been raising concerns about the compromised data — clear out their offices. (Another member of that small circle also now works for Cuffari.)

Sklar did not respond to a request for comment made through the DHS inspector general's office.

Sklar and Fredricks are now key liaisons with Capitol Hill when Congress has questions, and Fredricks has emerged as Cuffari's chief spokesperson when dealing with media, sources say.

During a July 15 phone briefing with numerous congressional staff from multiple committees, sources say, Sklar told staffers the July 13 notification to Congress about the Secret Service's texts followed normal procedure.

But the revelation that Cuffari and his leadership rejected the well-vetted April 1 alert language casts doubt on Sklar's account, as others inside the watchdog's office felt strongly that Congress should have been notified far earlier.

AUTHOR

Nick Schwellenbach

Nick Schwellenbach is a Senior Investigator at POGO.

AUTHOR

Adam Zagorin

Adam Zagorin is a Senior Journalist for the Project On Government Oversight.

Congress of the United States
Washington, DC 20515

August 16, 2022

The Honorable Joseph V. Cuffari
Inspector General
Department of Homeland Security
245 Murray Lane, S.W., Building 410
Washington, D.C. 20528

Dear Inspector General Cuffari:

Since May 2022, we have written to you on three separate occasions to request documents and information about your conduct as Inspector General: first, following serious allegations that your office censored findings of domestic abuse and sexual harassment by Department of Homeland Security (DHS) employees[1]; second, after you failed to promptly notify Congress of crucial information on the Secret Service's erasure of text messages related to the January 6, 2021, attack on the U.S. Capitol[2]; and third, after new information emerged on your repeated failures to gather text messages from the Secret Service and other senior officials related to the January 6 attack.[3]

In response to the Committees' requests, you have refused to produce responsive documents and blocked employees in your office from appearing for transcribed interviews. Your obstruction of the Committees' investigations is unacceptable, and your justifications for this noncompliance appear to reflect a fundamental misunderstanding of Congress's authority and your duties as an Inspector General. If you continue to refuse to comply with our requests, we will have no choice but to consider alternate measures to ensure your compliance.

[1] Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security to Inspector General Joseph V. Cuffari, Department of Homeland Security (May 10, 2022) (online at https://oversight.house.gov/sites/democrats.oversight house.gov/files/2022-05-10.CBM%20Thompson%20to%20Cuffari-DHS%20IG%20re%20Reports.pdf).

[2] Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security to Inspector General Joseph V. Cuffari, Department of Homeland Security, and Chair Allison C. Lerner, Council of the Inspectors General on Integrity and Efficiency (July 26, 2022) (https://oversight.house.gov/sites/democrats.oversight house.gov/files/2022-07.26.CBM%20BGT%20to%20Cuffari-DHS%20and%20Lerner-CIGIE%20re%20Secret%20Service.pdf).

[3] Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security to Inspector General Joseph V. Cuffari, Department of Homeland Security (Aug. 1, 2022) (online at https://oversight.house.gov/sites/democrats.oversight house.gov/files/2022-08-01.CBM%20BGT%20to%20Cuffari-DHS%20re%20Document%20Request.pdf).

Committees' May 2022 Requests and DHS IG's Refusal to Comply

On May 10, 2022, the Committees wrote to you requesting documents related to two DHS Office of Inspector General (OIG) reports that your office reportedly sought to censor or delay. These reports included troubling findings of domestic abuse and sexual harassment by DHS employees. The Committees' letter explained that your office's conduct "calls into question whether you are able to perform high-quality audit work with integrity, objectivity, and independence, and provide accountability and transparency over government programs and operations."[4]

In response to our requests, your office withheld responsive documents and instead produced a copy of a letter you previously sent to the Senate Committee on the Judiciary in response to their separate inquiry.[5] This response failed to comply with the requests in our May 10, 2022, letter. Among other things, you failed to produce any drafts, working papers, or communications regarding the censored or delayed reports.

On August 8, 2022, you informed the Committees that on August 3—more than 12 weeks after receiving our requests—you had "requested an opinion from OLC [Office of Legal Counsel] concerning whether I am permitted to release deliberative records and information to Congress."[6] The possibility that responsive documents may reflect the deliberations of your office is not a valid justification for withholding these documents from Congress, particularly where our investigation is focused precisely on potential misconduct in your office.[7] We are

[4] Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security to Inspector General Joseph V. Cuffari, Department of Homeland Security (May 10, 2022) (online at https://oversight.house.gov/sites/democrats.oversight house.gov/files/2022-05-10.CBM%20Thompson%20to%20Cuffari-DHS%20IG%20re%20Reports.pdf).

[5] Letter from Inspector General Joseph V. Cuffari, Department of Homeland Security, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security (May 17, 2022) (online at https://oversight.house.gov/sites/democrats.oversight house.gov/files/DHS-OIG.220517.Response%20to%20CBM%20Thompson%20re%20DHS%20OIG%20Projects%20Cover.pdf); Letter from Inspector General Joseph V. Cuffari, Department of Homeland Security, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security (May 25, 2022) (online at https://oversight.house.gov/sites/democrats.oversight house.gov/files/DHS-OIG.220525.Response%20to%20CBM%20Thompson%20re%20DHS%20OIG%20Projects%20Cover.pdf).

[6] Letter from Inspector General Joseph V. Cuffari, Department of Homeland Security, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security (Aug. 8, 2022) (online at https://oversight.house.gov/sites/democrats.oversight house.gov/files/DHS-OIG.220808.Response%20to%20CBM%20BGT%20re%20DHS%20IG%20Reports.pdf).

[7] Congress often obtains documents related to executive branch deliberations where they are relevant to an investigation and Committees have long taken the position that deliberative process privilege, like other common law privileges, is not a valid basis to withhold documents from Congress. *See, e.g.,* Memorandum from Chairwoman Carolyn B. Maloney to Members of the Committee on Oversight and Reform (July 20, 2022) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022.07.20%20COR%20Census%20Memorandum.pdf) ("The successful resolution of the Committee's lawsuit against Secretary Ross and Attorney General

extremely concerned that your highly unusual request for OLC to intervene was a delay tactic meant to hamper the Committees' inquiry.

Committees' July and August 2022 Requests and DHS IG's Refusal to Comply

On July 26, 2022, the Committees wrote to you expressing serious concerns with your investigation into the Secret Service's preparation for and response to the January 6, 2021, insurrection at the U.S. Capitol.[8] During that investigation, you failed to provide adequate or timely notice that the Secret Service refused to comply with DHS OIG requests for information and you failed to notify Congress after learning that the Secret Service had erased text messages related to this matter. In light of our grave concerns about your lack of transparency and independence, we urged you to step aside from this critical investigation and allow another IG to complete this work.

On August 1, 2022, the Committees wrote to you again and requested documents and communications on the decision not to pursue missing Secret Service text messages or text messages from former DHS leaders, as well as your failure to provide timely and sufficient notification to Congress. The Committees also requested that two Deputy Inspectors General be made available for transcribed interviews.[9]

On August 8, you sent a letter to our Committees refusing to acknowledge any failures in the adequacy and timeliness of your notification to Congress.[10] You gave no indication that you

Barr vindicates the authority of the Committee to conduct robust oversight of the Executive Branch and to obtain Executive Branch documents, including with respect to potentially illegal conduct, despite inappropriate and overbroad assertions of attorney-client privilege and deliberative process privilege."); Letter from Chairman Jason Chaffetz, et al., Committee on Oversight and Government Reform, to Huban Gowadia, Acting Administrator, Transportation Security Administration (May 2, 2017) (online at https://oversight.house.gov/sites/democrats.oversight house.gov/files/2022.07.20%20COR%20Census%20Memorandum.pdf); Letter from Chairman Jason Chaffetz, et al., Committee on Oversight and Government Reform, to Huban Gowadia, Acting Administrator, Transportation Security Administration (May 2, 2017) ("The House of Representatives derives its authority from the United States Constitution and is bound only by the privileges derived therefrom. … [N]either the Committee nor the United States House of Representatives recognizes purported non-disclosure privileges associated with the common law.") (online at https://republicans-oversight.house.gov/wp-content/uploads/2017/05/2017-05-02-JEC-EEC-to-Gowadia-TSA.pdf).

[8] Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security to Inspector General Joseph V. Cuffari, Department of Homeland Security, and Chair Allison C. Lerner, Council of the Inspectors General on Integrity and Efficiency (July 26, 2022) (online at https://oversight.house.gov/sites/democrats.oversight house.gov/files/2022-07.26.CBM%20BGT%20to%20Cuffari-DHS%20and%20Lerner-CIGIE%20re%20Secret%20Service.pdf).

[9] Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security to Inspector General Joseph V. Cuffari, Department of Homeland Security (Aug. 1, 2022) (online at https://oversight.house.gov/sites/democrats.oversight house.gov/files/2022-08-01.CBM%20BGT%20to%20Cuffari-DHS%20re%20Document%20Request.pdf).

[10] Letter from Inspector General Joseph V. Cuffari, Department of Homeland Security, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security (Aug. 8, 2022) (online at

would step aside from the investigation, raising the prospect that the inquiry could be further compromised. You also refused to provide any documents responsive to our request and or allow your staff to be interviewed, stating, "we do not authorize our staff to sit for transcribed interviews with your committee about these ongoing matters."[11] As described below, you did not provide valid justifications for your refusal to comply with the Committees' requests.

DHS IG Violated the Inspector General Act

Contrary to the claims in your August 8, 2022, letter, evidence, including new information released by the Project On Government Oversight, makes clear that you have not complied with your statutory reporting obligations.[12]

In your August 8 letter, you stated that "consistent with the law, I have reported to Congress various access issues that my office has experienced since 2021." You highlighted DHS OIG's semiannual report sent to Congress in November 2021.[13] However, this report made no mention of Secret Service text messages and left the impression that access issues had been resolved. This "periodic" report was transmitted to Congress nine months after communications were requested from the Secret Service, and long after your office learned that text messages were missing. Preventing Congress from being notified of these serious access issues for nine months is not timely. The Inspector General Act of 1978 requires Inspectors General to "immediately" report to the head of the agency when they become "aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations." The head of the agency must then "transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days."[14]

New reporting reveals that DHS OIG removed key information before sending a subsequent semiannual report to Congress in June 2022. An earlier draft version of the report would have provided Congress with a detailed explanation of Secret Service's "resistance to OIG's oversight activities" and refusal to produce documents.[15] The draft report also included detailed information about the Secret Service's erasure of text messages:

https://oversight.house.gov/sites/democrats.oversight house.gov/files/DHS-OIG.220808.Response%20to%20CBM%20BGT%20re%20Document%20Request.pdf).

[11] *Id*.

[12] Project On Government Oversight, *DHS Watchdog Nixed Alert to Congress About Purged January 6 Texts, New Docs Show* (Aug. 11, 2022) (online at www.pogo.org/investigation/2022/08/dhs-watchdog-nixed-alert-to-congress-about-purged-january-6-texts-new-docs-show).

[13] Letter from Inspector General Joseph V. Cuffari, Department of Homeland Security, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security (Aug. 8, 2022) (online at https://oversight.house.gov/sites/democrats.oversight house.gov/files/DHS-OIG.220808.Response%20to%20CBM%20BGT%20re%20Document%20Request.pdf).

[14] 5 U.S.C. App. (IG Act) § 5(d).

[15] Project On Government Oversight, *DHS Watchdog Nixed Alert to Congress About Purged January 6 Texts, New Docs Show* (Aug. 11, 2022) (online at www.pogo.org/investigation/2022/08/dhs-watchdog-nixed-alert-to-congress-about-purged-january-6-texts-new-docs-show).

> Further, on February 23, 2022—more than 2 months after OIG renewed its requests for select Secret Service employees' text messages—Secret Service claimed [an] inability to extract text message content due to an April 2021 mobile phone system migration, which wiped all data. Secret Service caused significant delay by not clearly communicating this highly relevant information at the outset of its exchanges with OIG during this reporting period. Moreover, Secret Service has not explained why it did not preserve the texts prior to the migration.[16]

The final June 2022 semiannual report submitted to Congress did not include any of this language. It did not reveal that Secret Service text messages had been erased—or even mention text messages at all. The failure to notify Congress of the destruction of text message related to the January 6th attack set back efforts to recover these crucial communications and complete this important investigation.

You also failed to take several other steps to inform Congress about this issue. In addition to your failure to send a seven-day letter, you also failed to send a management alert, which is intended to be sent when your office identifies an "immediate and serious threat of waste, fraud and abuse." According to the DHS OIG website, "These alerts, usually triggered by findings made in the course of our audit, inspections and investigative work, may also contain recommendations to correct the identified concerns."[17] Career staff in your office reportedly drafted a management alert in October 2021 that would have alerted Congress and the public, but you "rejected sending the alert."[18]

In your August 8, 2022, response to the Committees you claimed that since 2021, you and your staff "provided numerous briefings to Members and congressional staff about the wide-spread access issues that [you] have faced at every level of DHS."[19] Since 2021, you have not provided a single briefing to the Oversight Committee that identified access issues with DHS, despite the Oversight Committee's jurisdiction over Inspectors General. You also did not adequately brief the Homeland Security Committee on access issues. While you briefed the Homeland Security Committee on July 15, 2022, regarding the missing Secret Service text messages, that was 14 months after you reportedly learned the text messages were unavailable. You also failed to disclose to the Homeland Security Committee that the OIG told DHS in July 2021 that it no longer needed the text messages. Further, you left out that Chad Wolf and Ken Cuccinelli's text messages were also missing.

[16] *Id*.

[17] Department of Homeland Security Office of Inspector General, *Reports* (online at www.oig.dhs.gov/reports/management-alerts) (accessed on Aug. 10, 2022).

[18] Project on Government Oversight, *DHS Watchdog Failed to Sound Alarm for Months on Secret Service's Purged Jan. 6 Texts* (July 21, 2022) (online at www.pogo.org/investigation/2022/07/dhs-watchdog-failed-to-soundalarm-for-months-on-secret-services-purged-jan-6-texts).

[19] Letter from Inspector General Joseph V. Cuffari, Department of Homeland Security, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security (Aug. 8, 2022) (online at https://oversight.house.gov/sites/democrats.oversight house.gov/files/DHS-OIG.220808.Response%20to%20CBM%20BGT%20re%20Document%20Request.pdf).

DHS IG Lacks Justification for Blocking Congressional Oversight

You have not identified a legitimate basis to refuse to comply with the Committees' requests for documents and information, and your claim that you are prevented from doing so due to an ongoing criminal investigation is inaccurate.

On July 20, 2022, DHS OIG instructed the Secret Service to stop its internal investigation due to the DHS OIG's "ongoing criminal investigation."[20] This was roughly 14 months after you reportedly learned that the Secret Service texts were unavailable—a period in which you had failed, as required by law, to "immediately" report this "particularly serious or flagrant" problem.[21] You also abandoned efforts to collect text messages from the Secret Service 13 months ago.[22] We are concerned that you are now improperly using a criminal investigation that you only recently announced to hide evidence from Congress of your misconduct and mismanagement.

Congress frequently conducts independent investigations even when a related criminal investigation is ongoing. As the Supreme Court has acknowledged, legislative inquires need not yield to parallel proceedings, even if those proceedings are criminal in nature.[23] For example, in October 2017, Committee on Oversight and Reform Chairman Trey Gowdy and Committee on the Judiciary Chairman Bob Goodlatte launched a joint investigation into the Department of Justice (DOJ), including decisions involving "the investigation into campaign associates of then-candidate Donald Trump."[24] This ran parallel to Special Counsel Robert Mueller's criminal investigation that examined the actions of President Trump and his associates during the 2016 presidential campaign.[25] Chairs Gowdy and Goodlatte subpoenaed and received documents

[20] *Exclusive: DHS Inspector General Knew of Missing Secret Service Texts Months Earlier than Previously Known*, CNN (July 30, 2022) (online at www.cnn.com/2022/07/29/politics/secret-service-missing-texts-january-6-dhs-inspector-general/index.html).

[21] Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security, to Inspector General Joseph V. Cuffari, Department of Homeland Security (Aug. 1, 2022) (online at https://oversight.house.gov/sites/democrats.oversight house.gov/files/2022-08-01.CBM%20BGT%20to%20Cuffari-DHS%20re%20Document%20Request.pdf).

[22] *Id*.

[23] *Hutcheson v. United States*, 369 U.S. 599, 618 (1962) (internal citations omitted) ("[S]urely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might be potentially harmful to a witness in some distinct proceeding, or when crime or wrongdoing is disclosed").

[24] Committee on Oversight and Reform, *Press Release: Gowdy, Goodlatte Open Investigation into Decisions Made by DOJ in 2016* (Oct. 24, 2017) (online at https://republicans-oversight house.gov/release/gowdy-goodlatte-open-investigation-decisions-made-doj-2016/).

[25] Department of Justice, *Special Counsel's Office - Special Counsel Robert S. Mueller III* (online at www.justice.gov/archives/sco-mueller) (accessed Aug. 10, 2022).

from DOJ and conducted transcribed interviews with current and former Federal Bureau of Investigation officials.[26]

Between 2013 and 2015, DOJ conducted a criminal investigation into the targeting of conservative groups by the Internal Revenue Service.[27] At the same time, Oversight Committee Chairman Darrell Issa conducted an independent investigation and received over 700,000 pages of documents and conducted over 50 transcribed interviews.[28]

Congress's Broad Authority to Investigate and the Committees' Investigation

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.[29] The Committee also has legislative jurisdiction over the Inspector General Act of 1978 and has a long history of conducting oversight related to Inspectors General.

The Committee on Homeland Security has jurisdiction of "[o]verall homeland security policy" and the "[o]rganization, administration, and general management of the Department of Homeland Security" under House Rule X.[30]

The Supreme Court has made clear that Congress has broad authority to inquire about a wide array of topics that could be the subject of legislation and appropriations:

> The power of inquiry has been employed by Congress throughout our history, over the whole range of the national interests concerning which Congress might legislate or decide upon due investigation not to legislate; it has similarly been utilized in determining what to appropriate from the national purse, or whether to appropriate. The scope of the power

[26] *See* Committee on Oversight and Reform, *Press Release: Goodlatte, Gowdy Reach Agreement with the Department of Justice* (Apr. 23, 2018) (online at https://republicans-oversight house.gov/release/goodlatte-gowdy-reach-agreement-with-the-department-of-justice/); Committee on Oversight and Reform and Committee on the Judiciary, Interview of James Rybicki (Jan. 18, 2018); Committee on Oversight and Reform and Committee on the Judiciary, Interview of James Comey (Dec. 7, 2018).

[27] *Justice Department Launches IRS Probe*, The Hill (May 14, 2013) (online at https://thehill.com/policy/finance/150513-justice-department-launches-irs-probe/); *DOJ: No Criminal Charges in IRS Tea Party Probe*, USA Today (Oct. 23, 2015) (online at www.usatoday.com/story/news/politics/2015/10/23/justice-closes-investigation-of-irs-no-criminal-charges-poor-management-not-a-crime/74470404/).

[28] Committee on Oversight and Reform, *Legislative and Oversight Accomplishments of the House Committee on Oversight and Government Reform* (Dec. 31, 2014) (online at https://republicans-oversight.house.gov/report/legislative-oversight-accomplishments-house-committee-oversight-government-reform/); Committee on Oversight and Reform, *About – IRS Targeting Investigation* (Apr. 21, 2016) (online at https://republicans-oversight.house.gov/about-irs-targeting-investigation/).

[29] House rule X, clause 4(c)(2).

[30] House rule X, clause 4(j)(1)-(2).

of inquiry, in short, is as penetrating and far[-]reaching as the potential power to enact and appropriate under the Constitution.[31]

The Committees are seeking to determine whether you censored findings of domestic abuse and sexual harassment by DHS employees, covered up the extent of missing records in your investigation of the January 6, 2021, insurrection, and failed to fulfill the requirements for Inspectors General to perform their work with independence and objectivity. Full compliance with our requests is necessary, in part to determine whether legislative reforms are needed to ensure the duties of Inspectors General are carried out in an "independent and objective" manner and that Congress is kept "fully and currently informed about problems and deficiencies" as required by law.[32]

Your failure to comply with our outstanding requests lacks any legal justification and is unacceptable. Please provide all responsive documents by August 23, 2022, and make the individuals requested for transcribed interviews available by the same date. If you continue to obstruct, we will have no choice but to consider alternate means to ensure compliance.

Sincerely,

Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform

Bennie G. Thompson
Chairman
Committee on Homeland Security

cc: The Honorable James Comer, Ranking Member
Committee on Oversight and Reform

The Honorable John Katko, Ranking Member
Committee on Homeland Security

[31] *Barenblatt v. U.S.*, 360 U.S. 109, 111 (1959). See also *Trump v. Mazars USA, LLP*, 591 U.S. __ (2020) (citations omitted) ("This 'power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.' Without information, Congress would be shooting in the dark, unable to legislate 'wisely or effectively.' The congressional power to obtain information is 'broad' and 'indispensable.' It encompasses inquiries into the administration of existing laws, studies of proposed laws, and 'surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them").

[32] 5 U.S.C. App. (IG Act) § 2.

October 26, 2022

Via Email
The Honorable Joseph V. Cuffari
Inspector General
U.S. Department of Homeland Security
Office of Inspector General
45 Murray Dr.; Building 410
Washington, DC 20528
[redacted]

Integrity Committee Cases 22-046 and 22-069: Request for Response

Dear Inspector General Cuffari:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged with receiving, reviewing, and investigating, where appropriate, allegations of misconduct made against an Inspectors General (IG) and designated members of an IG's staff. The IC takes action on allegations of wrongdoing that involve abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such persons.

The IC has received allegations against you for abuse of authority, gross mismanagement, and conduct undermining independence or integrity. These allegations were outlined in letters to you from the Chairperson and Ranking Member of the Senate Committee on the Judiciary, dated April 26, 2022, and the Chairpersons of the House of Representatives Committees on Oversight and Reform and Homeland Security, dated May 10, 2022, and July 26, 2022. Your office referred the last of these letters to the IC on August 3, 2022. The allegations are:

1. *[that you] delay[ed] the release of an unpublished report containing troubling findings about apparent widespread sexual harassment and misconduct within [DHS]. The unpublished report reveals that a DHS OIG survey completed in 2018 found that more than 10,000 of 28,000 responding employees at DHS law enforcement components say that they have experienced sexual harassment or misconduct. The majority of respondents also said that they did not report the incidents, and of those who did, about 41 percent reported that doing so negatively affected their careers.*

Additionally, that your "delays and revisions in publishing the report appear to have downplayed the severity of the crisis" and that you failed to "consider[] whether these findings triggered its statutory obligation to notify agency leadership and Congress…"

Also, that you "reportedly objected to including findings that discussed DHS agencies' use of individual cash payments in the hundreds of thousands of dollars to settle harassment cases and suggested that this finding be removed from the report."

2. That with respect to the scope of a prior report related to domestic violence, you "substantially restricted, with the final version omitting findings and recommendations concerning DHS's failure to adequately investigate or discipline personnel alleged to have committed domestic violence." Specifically, it is alleged that "[i]n a July 9, 2020 email, you make several recommendations to the report, including removing language that would, in your words, risk DHS OIG 'appearing biased' and put DHS OIG in a position to 'second guess DHS disciplinary decisions' without having 'full facts' and 'potentially in violation of applicable rules.'"

3. *[That you] fail[ed] to promptly notify Congress of crucial information while conducting an investigation of the Secret Service's preparation for and response to the January 6, 2021, insurrection at the U.S. Capitol. [You are] required by law to 'immediately' report problems or abuses that are 'particularly serious or flagrant.' Yet, [you] failed to provide adequate or timely notice that the Secret Service had refused for months to comply with DHS Office of Inspector General (OIG) requests for information related to the January 6 attack and failed to notify Congress after DHS OIG learned that the Secret Service had erased text messages related to this matter.* Likewise, that you failed to issue a management or 7-day letter.

   In particular, that the November 29, 2021, DHS OIG semiannual report to Congress: *failed to mention that the Secret Service was the source of the access issues and did not indicate that OIG continued to encounter stonewalling. On the contrary, the report noted that "Secretary Mayorkas issued a reminder to all Department personnel about OIG access" in September 2021, and "[s]hortly thereafter, OIG began receiving responsive records."*

   This allegation includes reports that, as of April 1, 2022, DHS OIG staff had prepared language for the draft semiannual report to Congress that offered additional details about the Secret Service text message deletions, but that those details were not ultimately included after the draft was sent to you. The language that was removed from the draft read:

> *On February 23, 2022—more than 2 months after OIG renewed its requests for select Secret Service employees' text messages—Secret Service claimed inability to extract text message content due to an April 2021 mobile phone system migration, which wiped all data.*

The unsent paragraph continues:

> *Secret Service caused significant delay by not clearly communicating this highly relevant information at the outset of its exchanges with OIG during this reporting period. Moreover, Secret Service has not explained why it did not preserve the texts prior to the migration.*

Pursuant to IC procedures, we are reaching out to you to seek your perspective on the issues raised above. While the IC is aware of your responses to certain of these Congressional correspondences, the IC has yet to fully deliberate on the merits of this matter and believes it would be helpful to provide you the opportunity to respond to these allegations, so you might offer any background, context, or supporting evidence (if available) prior to the IC's deliberations. The IC respectfully requests your response to this allegation within 20 days of receipt of this letter.

While the IC recognizes that you may need some assistance in gathering this information, please be advised that seeking assistance from fact-witnesses in your response to the IC may raise questions about the intent or effect of such contacts, which may lead to other issues. Therefore, please feel free to reach out to the IC Working Group should you have any questions regarding this request. You may submit your response and any questions you have regarding this request to Integrity-WG@CIGIE.GOV.

Sincerely,

K. H. Winters

Kevin H. Winters
Chairperson
Integrity Committee

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

INTEGRITY COMMITTEE

October 26, 2022

Via Email
[redacted]
Office of Inspector General
U.S. Department of Homeland Security
Office of Inspector General
45 Murray Dr.; Building 410
Washington, DC 20528
[redacted]

Integrity Committee Case 22-069: Request for Response

Dear [redacted]:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged with receiving, reviewing, and investigating, where appropriate, allegations of misconduct made against an Inspectors General (IG) and designated members of an IG's staff. The IC takes action on allegations of wrongdoing that involve abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such persons.

The IC has received allegations against you for abuse of authority, gross mismanagement, and conduct undermining independence or integrity. These allegations relate to your involvement in DHS OIG's purported failure to timely and/or adequately disclose the U.S. Secret Service's deletion of text messages potentially relevant to the January 6th investigation.

In particular, it is alleged that, as of April 1, 2022, DHS OIG staff had prepared language for the draft semiannual report to Congress that offered additional details about the Secret Service text message deletions, but that those details were not ultimately included after the draft was sent to you and IG Cuffari. The language that was removed from the draft read:

> *On February 23, 2022—more than 2 months after OIG renewed its requests for select Secret Service employees' text messages—Secret Service claimed inability to extract text message content due to an April 2021 mobile phone system migration, which wiped all data.*

The unsent paragraph continues:

> *Secret Service caused significant delay by not clearly communicating this highly relevant information at the outset of its exchanges with OIG during this reporting period. Moreover, Secret Service has not explained why it did not preserve the texts prior to the migration.*

Pursuant to IC procedures, we are reaching out to you to seek your perspective on the issues raised above. The IC has yet to fully deliberate on the merits of this matter and believes it would be helpful to provide you the opportunity to respond to these allegations, so you might offer any background, context, or supporting evidence (if available) prior to the IC's deliberations. The IC respectfully requests your response to this allegation within 20 days of receipt of this letter.

While the IC recognizes that you may need some assistance in gathering this information, please be advised that seeking assistance from fact-witnesses in your response to the IC may raise questions about the intent or effect of such contacts, which may lead to other issues. Therefore, please feel free to reach out to the IC Working Group should you have any questions regarding this request. You may submit your response and any questions you have regarding this request to Integrity-WG@CIGIE.GOV.

Sincerely,



Kevin H. Winters
Chairperson
Integrity Committee

From: [redacted]
To: Integrity-WG
Cc: [redacted]
Subject: {EXTERNAL} Correspondence on Behalf of DGS IG Joseph Cuffari - CIGIE Integrity Committee Cases 22-046 and 22-069
Date: Monday, December 5, 2022 12:00:22 PM
Attachments: 2022.12.05 - Correspondence to CIGIE IC Inquiry and Exhibits.pdf

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Dear Chairperson Winters and Members of the CIGIE Integrity Committee:

On behalf of Department of Homeland Security Inspector General Joesph Cuffari, please find the attached correspondence in response to your October 26, 2022 inquiry regarding CIGIE Integrity Committee Cases 22-046 and 22-069.

Thank you.

[redacted]

December 5, 2022

VIA EMAIL

Kevin H. Winters
Integrity Committee (IC) Chairperson
Council of the Inspectors General on Integrity and Efficiency (CIGIE)
1717 H Street NW | Suite 825 | Washington, DC 20006
Integrity-WG@cigie.gov

RE: Correspondence on Behalf of Inspector General Joseph Cuffari
CIGIE Integrity Committee Cases 22-046 and 22-069

Dear Chairperson Winters:

On behalf of Department of Homeland Security (DHS) Inspector General (IG) Joseph Cuffari, we write in response to your October 26, 2022 letter requesting that IG Cuffari respond to the allegations underlying the above referenced CIGIE IC cases.[1] For the reasons that follow, any allegations that IG Cuffari downplayed or withheld information are contrary to his track record of demonstrated actions to promote transparency, accountability, and integrity within the DHS Office of Inspector General (OIG).

During his nomination and confirmation process, Mr. Cuffari pledged to members of the Senate to hold DHS OIG to the highest standard. On December 6, 2019, the Chairmen and Ranking Members of the Senate Homeland Security and Governmental Affairs Committee (HSGAC) and the House Homeland Security Committee wrote to IG Cuffari to "express serious concern about the cumulative effect of ***longstanding*** mismanagement and operational challenges" within DHS OIG that threatened to undermine its ability to "provide independent oversight and promote integrity and accountability within [DHS.]" *See* Exhibit A (December 6, 2019 Letter from HSGAC to IG Cuffari) (emphasis added). Congress viewed DHS OIG as "plagued by ongoing bureaucratic infighting and competing allegations of misconduct." *Id*. In response to these allegations, which preceded IG Cuffari's tenure, IG Cuffari promised to promote efficiency, accountability, and transparency. During IG Cuffari's tenure, he has fulfilled this commitment by establishing a foundational expectation that every DHS OIG employee will perform quality work with integrity. Specifically, IG Cuffari has sought to consistently improve the quality and utility of the audits, inspections, investigations, and reports generated by the DHS OIG.[2]

[1] CIGIE IC cases 22-046 and 22-069 relate to purported decisions and actions by IG Cuffari in his official role as DHS IG. The allegations are directed at IG Cuffari individually, not at the DHS Office of Inspector General as an institution. Accordingly, IG Cuffari offers this response based on his knowledge, understanding, and the information available to him in his official capacity as DHS Inspector General. IG Cuffari engaged the undersigned counsel because, according to CIGIE IC rules, government attorneys cannot represent the subject of a CIGIE IC inquiry for purposes of responding to the CIGIE IC. *See* CIGIE IC Guidelines, "Frequently Asked Questions & Guidance for Communicating with the Integrity Committee (IC)" (available on the CIGIE IC website at https://www.ignet.gov/content/guidance-and-faqs). Further, your letter discourages IG Cuffari from seeking assistance from DHS OIG staff. Accordingly, this response reflects the best of IG Cuffari's own knowledge and understanding.

[2] A 2018 independent peer review of DHS OIG audits, conducted before IG Cuffari became DHS IG, noted that DHS OIG needed to improve its quality control to provide reasonable assurance that its audits comply with government standards. The 2018 peer review "pass with deficiency" rating spurred the DHS OIG to retract multiple audit reports

IG Cuffari is dedicated to ensuring that DHS OIG provides "rigorous, independent, and objective oversight" and promotes "excellence, integrity, and accountability. *See* DHS OIG Semiannual Report to Congress, October 1, 2021 – March 31, 2022 (available on the DHS OIG website at https://www.oig.dhs.gov/sites/default/files/assets/SAR/2022/oig-sar-oct21-mar22.pdf). For example, between October 1, 2021 and March 31, 2022, DHS OIG issued 265 investigative reports and generated $63.8 million in recoveries, restitutions, and fines. *Id*. During that same period, DHS OIG made 81 recommendations to improve DHS programs and operations. *Id*.

The allegations underlying CIGIE IC cases 22-046 and 22-069 suggesting that IG Cuffari delayed reports and suppressed or withheld information stemming from DHS OIG investigations are inconsistent with the diligent progress IG Cuffari has made to promote transparency and efficiency within the DHS OIG.

IG Cuffari learned about a 2018 survey concerning sexual harassment and misconduct within DHS in December 2020, approximately 17 months after he became Inspector General and more than two years after DHS OIG completed the survey. When IG Cuffari learned about the survey, he sought to bring the resulting report into compliance with CIGIE reporting requirements.[3]

In June and July of 2018, more than one year before the Senate confirmed IG Cuffari, the DHS OIG inspections and evaluations program office surveyed employees of Immigration and Customs Enforcement (ICE), Customs and Border Patrol (CBP), the United States Secret Service (USSS), and the Transportation Safety Administration (TSA) with respect to sexual harassment and misconduct within DHS. In August 2018, DHS OIG staff provided the results of the survey to Acting Inspector General John Kelly. IG Cuffari has found no indication that Mr. Kelly or any other DHS OIG employees, who were in senior leadership positions at that time, considered reporting the survey results to DHS leadership or Congress.

In late July 2019, the Senate confirmed Mr. Cuffari to become the DHS Inspector General. IG Cuffari learned about the sexual harassment survey more than a year later in December 2020 when DHS OIG inspectors submitted a draft report that discussed the survey results to senior staff for consideration and approval. The results of the survey were already two and a half years old. The survey also addressed data dating back approximately five years before the survey occurred.

DHS OIG inspections must adhere to CIGIE guidelines outlined in the *Quality Standards for Inspection and Evaluation*, known as the *Blue Book*. *See* CIGIE Quality Standards (www.ignet.gov/sites/default/files/files/QualityStandardsforInspectionandEvaluation-2020.pdf). Most fundamentally, "[r]eporting should be ***timely***." *See Blue Book* at § 5.1b. Here, the relevant

from its public facing website. In contrast, under IG Cuffari's leadership, his office has passed three separate independent peer reviews, including quality metrics. *See* Exhibit B (May 13, 2022 Letter from IG Cuffari to Senate Judiciary Committee).

[3] In a series of letters to Congress, IG Cuffari explained when and how he learned about the sexual harassment survey and the efforts to bring the report into compliance with CIGIE reporting requirements. These letters are attached as exhibits and briefly summarized in this response. *See* Exhibit B (May 13, 2022 Letter from IG Cuffari to Senate Judiciary Committee), Exhibit C (May 17, 2022 Letter from IG Cuffari to House Oversight and Homeland Security Committees), and Exhibit D (August 8, 2022 Letter from IG Cuffari to Senate Judiciary Committee).

draft report addressed outdated data. Moreover, CIGIE guidelines emphasize that an "accurate inspection report" must be "supported by sufficient, appropriate evidence with key facts, figures, and findings being traceable to the evidence." *Id*. at § 5.2c. An inspection organization "must provide supervision over the inspection work performed" to ensure that any "findings, conclusions, and recommendations resulting from the inspection are adequately supported by the evidence." *Id*. at § 7.2 and 7.2b. Multiple DHS OIG career senior staff and several subject matter experts reviewed the draft report and suggested revisions to ensure that the report was legally and factually supported. IG Cuffari concurred that the proposed revisions were necessary to bring the report into compliance with CIGIE reporting requirements.

IG Cuffari acted to promote transparency without impermissibly disclosing internal agency deliberative material. He ultimately released the results of the sexual harassment survey to DHS leadership and Congress. This project remains open, and IG Cuffari approved a new sexual harassment survey to take place in the 2023 fiscal year. IG Cuffari is committed to ensuring that decisions are made based upon accurate and timely data.[4]

Similarly, IG Cuffari concurred with senior DHS OIG staff and subject matter experts who proposed revisions to a report on whether DHS law enforcement agencies were complying with the Lautenberg Amendment.[5]

The DHS OIG inspections and evaluations program office also undertook a project to determine whether DHS components with law enforcement officers and agents were complying with the Lautenberg Amendment, which prohibits an individual who has been <u>*convicted*</u> of a misdemeanor crime of domestic violence from possessing a firearm. *See* 18 U.S.C. § 922(g). There is no exception for law enforcement officers, which means that a law enforcement officer convicted of domestic violence can no longer carry a firearm. DHS OIG career senior staff and subject matter experts reviewed a draft report regarding DHS compliance with the Lautenberg Amendment and proposed a series of revisions to bring the report into compliance with the law and CIGIE reporting requirements. The draft report created the incorrect impression that the Lautenberg Amendment prohibited a law enforcement officer from carrying a firearm if the officer engaged in certain off-duty conduct even though the officer was *not convicted* of a misdemeanor crime of domestic violence. As noted, the Lautenberg Amendment applies when an individual is *convicted* of misdemeanor domestic violence. Accordingly, IG Cuffari concurred with proposed revisions to this draft report to ensure that the report was factually and legally accurate.[6]

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[4] A documented example of IG Cuffari's commitment to ensuring DHS OIG final reports are factually accurate and adhere to CIGIE quality standards is a similar inspection of FEMA's reporting, investigating, and adjudicating of employee allegations of sexual harassment and sexual misconduct. In its final report about that project, the DHS OIG made five recommendations to improve FEMA's handling of such matters. FEMA senior officials concurred with all those recommendations. *(See FEMA Must Take Additional Steps to Better Address Employee Allegations of Sexual Harassment and Sexual Misconduct, project OIG-21-71; September 29, 2021.)*

[5]IG Cuffari addressed this report in a series of letters to Congress. These letters are attached as exhibits and briefly summarized in this response. *See* Exhibit B (May 13, 2022 Letter from IG Cuffari to Senate Judiciary Committee), Exhibit C (May 17, 2022 Letter from IG Cuffari to House Oversight and Homeland Security Committees), and Exhibit D (August 8, 2022 Letter from IG Cuffari to Senate Judiciary Committee).

[6] In its final report about this project, the DHS OIG made three recommendations to ensure implementation of departmental requirements relating to the Lautenberg Amendment. DHS senior officials concurred with all those

IG Cuffari has cooperated with Congress to information about the January 6, 2021 attack on the United States Capitol without compromising several interrelated and ongoing national security and law enforcement matters.[7]

The January 6, 2021 attack on the United States Capitol was an unprecedented and sobering moment in our history. The individuals who infiltrated the Capitol threatened our democratic foundation when they endeavored to leverage violence to thwart the peaceful transfer of power. Following the attack, DHS OIG began the imperative task of investigating not only the complex and multifaceted factors that coalesced to cause the attack, but also how our citizens and institutions responded. The OIGs from the Department of Justice, Department of the Interior, and Department of Defense also undertook similar reviews of their respective preparation for and response to the January 6 events. DHS OIG coordinated its efforts with representatives from those OIGs during their respective reviews.

In February 2021, DHS OIG requested from DHS *all electronic communications* related to the events of January 6, 2021.[8] IG Cuffari and his staff coordinated with the Secretary of Homeland Security and the Director of the Secret Service to request information from the Secret Service. IG Cuffari met personally with DHS Secretary Alejandro Mayorkas in the fall of 2021. Secretary Mayorkas agreed that DHS OIG should have access to the records it needed to conduct its oversight work. On September 30, 2021, Secretary Mayorkas issued a memorandum reminding DHS employees of their obligation to cooperate with DHS OIG. *See* Exhibit F, September 30, 2021 Memorandum. Secretary Mayorkas indicated that he "expect[ed] DHS employees to respond to OIG requests for information in a timely manner." *Id*.

On February 23, 2022, the Secret Service told DHS OIG that text messages had been deleted, during the period from January 2021 to April 2021, as part of a planned cellphone replacement project. IG Cuffari again sought clarification and cooperation from the Secretary of Homeland Security and the Director of the Secret Service.

On June 14, 2022, DHS Secretary Mayorkas wrote a letter to Congress to transmit the DHS OIG Semiannual Report for the period October 1, 2021 through March 31, 2022. *See* Exhibit G (June 14, 2022 Letter from Secretary Mayorkas to Congress). In his letter, Secretary Mayorkas stated that DHS OIG had "erroneously" suggested that DHS had "restricted and significantly delayed the OIG's access to information regarding the January 6, 2021 attack on the U.S. Capitol." *Id*. Accordingly, on July 13, 2022, IG Cuffari informed Congress that the Secret Service had deleted text messages after receiving multiple preservation notices. IG Cuffari and DHS OIG

recommendations. (*See DHS Components Have Not Fully Complied with the Department's Guidelines for Implementing the Lautenberg Amendment, project OIG-21-09; November 13, 2020.)*

[7]IG Cuffari addressed efforts by DHS OIG to investigate the January 6, 2021 attack on the Capital in correspondence to Congress. One representative letter is attached as an exhibit and summarized in this response. *See* Exhibit E (August 23, 2022 Letter from IG Cuffari to the House Committee on Oversight and Reform and the House Committee on Homeland Security).

[8] Multiple Congressional committees and the DHS OIG issued at least five preservation notices to DHS beginning days after the January 6, 2021 attack. Beginning, at the latest, ten days after the attack, DHS was on formal notice to preserve electronic communications related to January 6. Despite these notices, DHS embarked on a cellphone replacement project and deleted text messages from cellphones that were used on or about January 6, 2021.

career senior staff then briefed the House Select Committee to Investigate the January 6 Attack on the United States Capitol about the difficulty DHS OIG experienced in accessing DHS records.

Guidance from the DOJ Office of Legal Counsel prohibits an Inspector General from providing confidential information about open criminal investigations to Congress. *See* Exhibit H (March 24, 1989 Office of Legal Counsel Opinion). Similarly, Department of Justice policy prohibits disclosure of information related to ongoing criminal investigations. *See* Justice Manual § 1-7.400 (available on the Justice Department website at www.justice.gov). Accordingly, IG Cuffari will continue to cooperate and share information with Congress and other investigatory entities to the extent possible without jeopardizing national security and law enforcement concerns.

Thank you for your consideration and the opportunity to submit this letter to ensure that any allegations CIGIE IC investigates against IG Cuffari are based upon complete and accurate information. We are available at your convenience to address this matter further. We respectfully request a meeting to discuss this matter in person prior to any further adverse action or decision.

Sincerely,

[redacted]

[redacted]

[redacted]

Counsel for Inspector General Joseph Cuffari

Exhibit A

RON JOHNSON, WISCONSIN, CHAIRMAN

ROB PORTMAN, OHIO
RAND PAUL, KENTUCKY
JAMES LANKFORD, OKLAHOMA
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DAVID M. WEINBERG, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510–6250

December 6, 2019

Joseph Cuffari
Inspector General
Department of Homeland Security
Office of the Inspector General
245 Murray Lane S.W.
Washington, D.C. 20528-0305

Dear Inspector General Cuffari:

As the Chairmen and Ranking Members of the undersigned committees, we want to congratulate you on your unanimous Senate confirmation in July. You have our collective commitment to ensuring that you have the resources and authorities you need to provide independent oversight and promote integrity and accountability within the Department of Homeland Security (DHS). We write today to express serious concern about the cumulative effect of longstanding management and operational challenges within the Office of the Inspector General (OIG) that threaten to undermine that critical mission.

DHS's OIG is responsible for the oversight of an agency with a budget of more than $70 billion divided across dozens of components tasked with securing the homeland, including border security, cybersecurity, terrorism prevention, and emergency response preparedness. Allegations have come to our attention that the office has been plagued by ongoing bureaucratic infighting and competing allegations of misconduct that threaten OIG's ability to conduct effective oversight.

We have been concerned for some time about DHS OIG's ability to perform its statutory mission.[1] In April 2014, a bipartisan congressional investigation found allegations of misconduct by the then-Acting Inspector General that "contributed to an office environment characterized by low morale, fear, and general dissatisfaction with [] leadership."[2] In September

[1] Pub. L. 113-126.

[2] Letter and Report on Investigation Into Allegations of Misconduct by the Former Acting and Deputy Inspector General of the Department of Homeland Security from Claire McCaskill, Chairman, and Ron Johnson, Ranking Member of the Subcommittee on Financial and Contracting Oversight, Senate Committee on Homeland Security & Governmental Affairs, to The Honorable Phyllis K. Fong, Chair, Council of the Inspectors General on Integrity and Efficiency (Apr. 23, 2014), *available at* https://www.hsgac.senate.gov/imo/media/doc/2014-04-24%20FCO%20Letter%20and%20Investigation%20Report%20into%20Allegations%20of%20Misconduct%20by%20the%20Former%20Acting%20and%20Deputy%20Inspector%20General%20of%20the%20Department%20of%20Homeland.pdf.

2014, the Government Accountability Office issued a report recommending changes to address organizational, management, and independence issues within the OIG.[3]

Unfortunately, problems have apparently persisted and in some cases worsened. Over the past year, we have received numerous complaints from whistleblowers of alleged misconduct within DHS OIG that leave us concerned about the office's ability to conduct timely, independent, and fact-based audits and inspections of DHS.

Three issues stand out. First, it has come to our attention that DHS OIG employees have filed numerous complaints of misconduct against each other over the past few years, which appear to have had significant implications for the office's operations. Relatedly, it is our understanding that prior to your confirmation, DHS OIG inexplicably moved the human resources operations out of the office of management to the general counsel's office. Although this may be an accepted practice at small organizations, it is difficult to imagine a general counsel fulfilling both positions effectively and without a conflict of interest.

Second, we understand that, between your nomination (November 18, 2018) and confirmation (July 25, 2019), DHS OIG filled a number of senior management staff and other vacant positions. We are concerned that filling numerous senior management positions while your nomination was under active consideration by the Senate deprived you of the opportunity to install lasting and coherent leadership. Additionally, we are concerned that this rash of hiring may have contributed to the OIG's multi-million dollar budget shortfall.[4]

Third, employee morale within DHS OIG remains low. In the 2018 Federal Employee Viewpoint Survey (FEVS), DHS OIG ranked 303 of 415 component agencies that operate as part of larger agencies.[5] Unfortunately, this represents a decline of 4.7 points from 2017, and is consistent with its positioning near the bottom of the list for the past several years.[6]

Congress and the American people depend on DHS OIG to be our eyes and ears on the ground and to serve as a reliable outlet for whistleblowers at DHS. To ensure that DHS OIG can operate efficiently to carry out its mission, including preventing and detect waste, fraud, and abuse,[7] please respond to the following no later than December 20, 2019:

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[3] U.S. Gov't Accountability Office, GAO-14-726, Inspectors General, DHS OIG's Structure, Policies, and Procedures Are Consistent with Standards, but Areas for Improvement Exist (Sept. 2014), *available at* https://www.gao.gov/assets/670/666087.pdf.
[4] 31 U.S.C. § 1341.
[5] Best Places to Work in the Federal Government, Agency Report, Office of the Inspector General, https://bestplacestowork.org/rankings/detail/HS15.
[6] *Id.*
[7] Pub. L. No. 113-126.

1. For each of the last five years, please provide:

    a. The total number of staff employed by the DHS OIG at the beginning of each fiscal year.

    b. All organizational charts and other materials that document the structure of DHS OIG and, if available, a breakdown of staffing totals for each office and division.

    c. All final budgets and budget requests prepared by DHS OIG.

2. For the last year, please provide a list of all DHS OIG staff members who were hired or reassigned, including for each the date of hire or reassignment and the GS/SES level and series;

3. For each of the last five years, please provide all raw FEVS data provided to DHS OIG by the Office of Personnel Management. Please provide the data in the most disaggregated format available.

4. For each of the last five years, please provide a breakdown by division (audits, inspections, and investigations) of the number of products issued.

5. Please provide a breakdown by division (audits, inspections, and investigations) of the number of products you expect to have completed in 2019.

6. Please provide a copy of all internal employee complaints provided to DHS OIG since January 2017.

    a. Please provide the status of each of the complaints and the estimated date of resolution.

Thank you for your attention to this important matter. If you have any questions about this request, please contact [redacted] and [redacted] for the U.S. Senate Committee on Homeland Security and Governmental Affairs, and [redacted] for the U.S. House Committee on Homeland Security.

Sincerely,

Ron Johnson
Chairman
Committee on Homeland Security and
Governmental Affairs
U.S. Senate

Gary C. Peters
Ranking Member
Committee on Homeland Security
and Governmental Affairs
U.S. Senate

Bennie G. Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives

Mike Rogers
Ranking Member
Committee on Homeland Security
U.S. House of Representatives

Exhibit B

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

May 13, 2022

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Your April 26, 2022 letter

Dear Chairman Durbin and Ranking Member Grassley:

Thank you for your letter of April 26, 2022, in which you ask for information about a report and ongoing work at the Department of Homeland Security (DHS) Office of Inspector General (OIG). I am grateful for the opportunity to provide you with important background and context that is missing from the New York Times and Project on Government Oversight articles referenced in your letter.

Chairman Durbin, I promised you in July 2019 that if confirmed, I would clean up DHS OIG. I made the same commitment to the Members of the Senate Committee on Homeland Security and Governmental Affairs. I am very proud of the progress I have made since that time.

Quality Transformation

As you may recall, prior to my confirmation, in 2017 and 2018 DHS OIG was forced to retract thirteen audit reports that failed to comply with appropriate government standards. A 2018 independent peer review of DHS OIG audits issued a rating of "pass with deficiencies," noting that it needed to "improve its system of quality control to provide reasonable assurance that audits performed are in compliance with [government standards],"

noting "lack of internal controls, lack of managerial direction, [and lack] of competence and technical expertise to manage and oversee work."

Since my confirmation in July 2019, I have established the highest expectations for quality standards for every employee. All reports initiated and published during my tenure have met appropriate government standards. Under my leadership, DHS OIG has passed all three independent peer reviews that were conducted by other OIGs. These reviews included quality metrics.

In FY 2021, the General Accountability Office (GAO) reviewed DHS OIG's activities from FY 2015 – FY 2020 and found that there were numerous areas for strategic, policy, and organizational improvement. I have embraced GAO's recommendations, and I have been working closely with GAO leadership to implement its twenty-one recommendations for our office. We have submitted eight recommendations for closure. I am proud that the first recommendation to be closed was #14, which recommended that we ensure our work "adheres to federal OIG standards of independence, due professional care, and quality assurance."[1]

As part of our organizational transformation, we also followed GAO's key principles and implementation steps identified in GAO-03-669, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*. In April 2021, I restructured DHS OIG, to further improve our performance. Among other changes, I created the Office of Integrity (OI) to ensure the quality standards I established were embedded at every level of our organization and to promote integrity throughout the enterprise.

The progress we have made is demonstrated in the quantity and quality of our work and the morale of our employees, which are, respectively, at all-time highs. In the FY 2020 Federal Employee Viewpoint Survey (FEVS), DHS OIG showed significant improvement in several different categories measuring employee morale. In the FY 2021 FEVS, DHS OIG again showed substantial and sustained improvement in virtually every major category that measures employee morale. Here are the key trends in DHS OIG's FEVS scores since my confirmation in July 2019:

[1] https://www.gao.gov/products/gao-21-316 (last viewed May 9, 2022).

Year	Employee Engagement: Overall	Employee Engagement: Leaders Lead	Employee Engagement: Supervisors	Employee Engagement: Intrinsic Work Experience	Global Satisfaction
2021	75%	64%	84%	76%	71%
2020	69%	53%	81%	72%	67%
2019	61%	42%	75%	67%	61%
Change since 2019	+ 14%	+ 22%	+ 9%	+ 9%	+ 10%

Turning to the subject of your letter, as you will see from the discussion below,[2] the edits that I and members of my immediate staff requested be made to certain draft reports were consistent with the extensive edits recommended by career civil servants who were asked to review the drafts because they are subject matter experts in the relevant field. These revisions were necessary to bring the reports up to the applicable standards promulgated by the Council of the Inspectors General on Integrity & Efficiency (CIGIE). Any suggestion that I demanded changes to draft reports for improper purposes is false, as is any suggestion that I suppressed evidence of widespread sexual harassment in DHS law enforcement components.

Background of the two projects

Many projects were under way at DHS OIG at the time of my July 25, 2019 Senate confirmation. Two projects are pertinent to your inquiry.[3] Here are the details of each project, as approved by my predecessor Acting Inspector General John Kelly:

[2] The Senate Committee on the Judiciary has oversight authority over the Department of Homeland Security. *See* https://www.judiciary.senate.gov/about/jurisdiction (last viewed April 28, 2022). Accordingly, to the extent that the discussion below contains names of DHS OIG staff derived from a system of records, DHS OIG is not required to withhold the names from the Committee under the Privacy Act. *See* 5 U.S.C. § 552a(b)(9). Nonetheless, I have identified employees below the senior executive level by their initials.

[3] The division of DHS OIG responsible for carrying out these projects is currently known as the Office of Inspections & Evaluations (OIE). In 2019 and 2020 this division was called the Office of Special Reviews & Evaluations, and in 2018 it was called the Office of Inspections. The different names of this division have no bearing on your inquiry, and accordingly, to avoid confusion I refer to the division as OIE throughout this letter.

PROJECT TITLE	PROJECT OBJECTIVE	DATE APPROVED
CBP, ICE, TSA, and USSS Handling of Employee Allegations of Sexual Harassment and Workplace Sexual Misconduct	Determine whether CBP, ICE, TSA, and USSS appropriately report, investigate, and adjudicate employee allegations of sexual harassment and workplace sexual misconduct	1/19/2018
DHS Law Enforcement Agencies' Compliance with the Lautenberg Amendment	Determine whether DHS agencies with law enforcement officers and agents are complying with requirements of the Lautenberg Amendment	12/13/2018

Applicable CIGIE standards

DHS OIG's inspections must adhere to CIGIE's *Quality Standards for Inspection and Evaluation* (2020), also known as the *Blue Book*.[4] Insofar as is relevant here, the *Blue Book* states that one valid purpose of an inspection is "[d]etermining compliance with law, regulation, and policy." *Blue Book* p.1. This was the purpose of the two projects described above.

In scoping an inspection aimed at determining compliance with law, regulation, and policy, among the criteria to be considered are "[l]aws and regulations applicable to the operation of a program or activity." *Blue Book*, § 3.4b. Such an inspection may result in a finding of a "deficiency, such as noncompliance with provisions of law [or] regulation." *Id.*, p.21. However, "[e]vidence must sufficiently and appropriately support inspection findings and provide a reasonable basis for conclusions." *Id.*, § 4.3; *see also* § 5.2c ("[a]n accurate inspection report is supported by sufficient, appropriate evidence with key facts, figures, and findings being traceable to the evidence").

[4] The previous version of the *Blue Book*, issued in 2012 and in effect when the two projects were approved, was substantially similar to the portions of the current version of the *Blue Book* that I discuss below.

Moreover, inspection organizations "must provide supervision over the inspection work performed" so as to "ensure that the . . . [f]indings, conclusions, and recommendations resulting from the inspection are adequately supported by the evidence." *Id.*, §§ 7.2, 7.2b. Such supervision may include using "the services of a subject matter expert to ensure that the inspection topic is competently reviewed." *Id.*, § 2.1c.

Finally, and perhaps most importantly, is the foundational principle that underlies all of an Inspector General's work, namely, independence. According to the *Blue Book*, p.3, the independence principle requires "[i]nspectors, inspection organizations, and their reports" to be "impartial and without bias in both fact and appearance."

Responses to the questions in your April 26, 2022 letter

1. **When does DHS OIG plan to release the unpublished report on sexual harassment and misconduct?**

As discussed below, the report has been plagued by problems from the outset. The first problem was the failure of senior DHS OIG officials who preceded me to appreciate the significance of the survey results they received nearly four years ago and their choice to withhold information about the survey from me. The second problem was the intransigence of some inspectors, who refused to accept the input of subject matter experts. These problems caused serious delays, and as a result, the information in the most recent draft report does not satisfy the "currency" criterion found in section 2 of the Inspector General Act.

Today I provided the Department with the results of the survey because I do not believe it would be appropriate for me to provide the Committee with the results without also providing them to the Department. I am considering closing the review without issuing a report. Before taking that step, however, I will give OIE an opportunity to explain what a report that meets *Blue Book* standards might look like. In addition, I have approved a project proposal under which OIE will administer another survey in Fiscal Year 2023. Such longitudinal research is a common practice of those who study workplace conditions, and a second survey would likely provide DHS leadership with useful information about any changes in response patterns since 2018 and give OIG a foundation to scope future work in this area.

2. Why was the report delayed? By whom?

DHS OIG staff withheld information about the survey from me and took over two years to prepare a draft report. OIE administered a survey on sexual harassment and related matters to employees of ICE, CBP, USSS, and TSA in June and July of 2018. At that time, Chief Operating Officer Jennifer Costello was overseeing OIE. OIE staff provided the results of the survey to Acting Inspector General John Kelly on August 15, 2018. In March 2019, Diana Shaw became the head of OIE. Not long after that, [redacted] Acting Inspector General Kelly retired on June 10, 2019.

I was confirmed by the Senate on July 25, 2019. Ms. Costello held herself out as DHS OIG's second-in-command until she left DHS OIG on June 11, 2020. Ms. Shaw led OIE from the time of my confirmation until she transferred to another federal agency on or about May 8, 2020. [redacted]

In your letter you suggest that when DHS OIG received the results of the sexual harassment survey, it may have had an obligation to issue a so-called "7-day letter" under section 5(d) of the Inspector General Act to alert DHS leadership to "particularly serious or flagrant problems, abuses, or deficiencies" in DHS programs. However, in reconstructing events surrounding the survey, I have found no indication that between August 15, 2018 (when the results of the survey were available) and my confirmation almost one year later, Mr. Kelly, Ms. Costello, Ms. Shaw, [redacted]ever considered issuing a 7-day letter.

Moreover, in the months following my confirmation DHS OIG senior staff brought many matters to my attention that they recommended be given priority, but to my recollection I was never briefed on the sexual harassment survey. The project with which the survey was associated was one of many listed on a spreadsheet of pending work, with no recommendation that the project take precedence over work on other matters such as: (1) Separation of migrant families; (2) Secret Service spending at a Trump resort; (3) race-based harassment in the Coast Guard; (4) detention conditions during the 2019 migrant surge; and (5) ICE's early experience with COVID-19 at detention centers, among several other matters. I first became aware that DHS OIG had conducted a survey concerning sexual harassment in DHS law enforcement components on or around December 3, 2020, when for the first time OIE forwarded for front office review a draft report that discussed the survey. By then, the survey results were 2-1/2 years old.

It is disappointing, but not surprising, that Ms. Costello and Ms. Shaw never briefed me on the survey. An independent investigation conducted in 2020 found that Ms. Costello and Ms. Shaw often withheld important information from me and encouraged others to do the same, and that Ms. Costello "insisted [to DHS OIG staff] that the agency's business run through her." Although Ms. Costello, Ms. Shaw, and [redacted] let the project with which the survey was associated languish for years, [redacted] to [redacted]credit, revived the project and oversaw the forwarding of a draft report to the front office just 96 days after [redacted]

The report has been delayed further by some OIE staff members' refusal to accept input from subject matter experts. [redacted] believed that the December 3, 2020 draft report had serious flaws. In accordance with the *Blue Book* standards discussed above, [redacted] asked subject matter experts to review the draft:

- On December 7, 2020, E.M., a career civil service attorney with expert knowledge of the EEO process, reviewed the draft report and provided extensive comments.

- On January 28, 2021, V.C., a career civil service attorney with considerable experience counseling managers on disciplinary matters and successfully defending disciplinary actions before third-party neutrals, reviewed the draft report and provided extensive comments.

- On August 9, 2021, G.A., a career civil service attorney with considerable experience counseling managers on disciplinary matters and successfully defending disciplinary actions before third-party neutrals, reviewed the draft report and provided extensive comments.

E.M., V.C., and G.A. found problems such as unsupported inferences and conclusions, analysis that was inconsistent with federal law, recommendations that were contrary to best practices, and subjective commentary on DHS components' strategic decisions that would have impermissibly involved OIG in component operations. [redacted] was forced to have the draft report go through multiple rounds of subject matter expert review over several months because some OIE staff refused to make

changes to the report in response to the subject matter experts' comments.[5] The following examples are illustrative.

The draft report criticizes DHS components for often charging employees who engaged in inappropriate behavior carrying sexual overtones with general offenses such as "Improper Conduct." According to the draft report, DHS components should instead charge employees who engaged in such behavior with a specific offense, such as "sexual harassment," drawn from a Table of Penalties. V.C., a subject matter expert, disagreed with this portion of the report because it was divorced from, and in some ways contrary to, applicable law and best practice.

The standard for disciplining a non-probationary federal employee is broad. The relevant portion of the Civil Service Reform Act provides that discipline may be imposed for "such cause as will promote the efficiency of the service." 5 U.S.C. § 7513(a). As the Merit Systems Protection Board (MSPB) stated in *Otero v. U.S. Postal Service*, 73 M.S.P.R. 198 (1997):

> Nothing in law or regulation requires that an agency affix a label to a charge of misconduct. If it so chooses, it may simply describe actions that constitute misbehavior in a narrative form, and have its discipline sustained if the efficiency of the service suffers because of the misconduct.

Basing a disciplinary action on a labeled charge raises the risk that a third-party neutral such as MSPB or an arbitrator will overturn the discipline in its entirety because the agency, although presenting evidence of misconduct that impairs the efficiency of the service, failed to prove all of the technical elements of the charge. For example, in *Gregory v. Department of the Army*, 114 M.S.P.R. 607 (2010), MSPB overturned an employee's suspension and demotion based on a charge of "sexual harassment," on the ground that the employee's inappropriate behavior did not meet all the technical elements of sexual harassment under Title VII of the Civil Rights Act. The decision notes that the agency could have levied a generic charge without technical elements but chose not to do so.

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[5] Wherever possible, we integrate subject matter experts into our work. For example, we consult with medical personnel when we examine whether migrants in detention facilities are receiving substandard health care; experts on immigration law when we examine the administration of a visa program; experts in IT security when we examine vulnerabilities in DHS networks; and experts in law enforcement techniques when we examine the effectiveness of DHS programs aimed at intercepting contraband at the border.

Based on decisions such as *Gregory*, agency attorneys and managers often make the strategic, legally-permitted decision to charge an employee who has engaged in inappropriate behavior carrying sexual overtones with a generic offense such as "Conduct Unbecoming." In fact, a training module for agency Employee Relations staff produced by the Office of Personnel Management (OPM) states, under the heading Practice Preference:

> Don't use Title VII terms of art like Sexual Harassment or Hostile Work Environment in your charge.
>
> Better to charge general count of misconduct than be required to prove the elements[.]

Charge Writing for ER Practitioners: An Essential Building Block for Defensible Actions, slide 32.[6]

With respect to a Table of Penalties, a nationally-renowned expert in federal employment law who co-founded a company that trains agency Attorneys and Employee Relations staff advises that an agency is "not obligated to reference a charge in [its] Table of Penalties" when it disciplines an employee; that a Table of Penalties is "a guide, not controlling policy"; and that it is often better to impose discipline based on a charge with few or no technical elements. *Tables of Penalties Can Be Deadly* (William Wiley, Federal Employment Law Training Group).[7] In similar fashion, official guidance from OPM states that creation and use of a Table of Penalties "is not required by statute, case law or OPM regulation"; that agencies "have the ability to address misconduct appropriately without a [Table of Penalties], and with sufficient flexibility to determine the appropriate penalty for each instance of misconduct"; that a Table of Penalties "may create drawbacks to the viability of a particular action and to effective management"; and finally, that "by creating a range of penalties for an offense," a Table of Penalties may "limit the scope of management's discretion to tailor the penalty to the facts and circumstances of a particular case by excluding certain penalties along the continuum." 84 Fed. Reg. 48794, 48798 (2019).

V.C.'s critique of the draft report was informed by [redacted]own expertise drawn from decades of practicing law and was consistent with the principles

[6] Available at https://www.opm.gov/policy-data-oversight/employee-relations/training/charge-writing-for-er-practitioners.pdf (last viewed May 8, 2022).

[7] Available at https://feltg.com/tables-of-penalties-can-be-deadly (last viewed May 6, 2022).

set forth above. Yet, some OIE staff refused to change the report and instead insisted that OIG criticize DHS components for charging employees with generic offenses not found in a Table of Penalties. Apart from these particular substantive issues, on many other issues some OIE staff did not pay heed to the subject matter expert's insightful suggestions and tersely retorted "no change required" over and over again. An objective observer would say that some OIE staff refused to engage with a subject matter expert, in contravention of *Blue Book* standards.

I would not expect DHS components, Congress, and other stakeholders to take the report seriously had DHS OIG issued the version for which some OIE staff advocated. Under the applicable *Blue Book* standards, a report that is heavily focused on compliance with law and policy must be supported by authoritative, expert interpretations of the relevant law and policy. The December 3, 2020 version of the OIE report fell far short of the mark. An Inspector General is in no position to substitute the subjective preferences of an inspector for the considered strategic judgments of agency attorneys and managers, especially where, as here, those strategic judgments are firmly grounded in contemporary understandings of the law and accepted best practices. An Inspector General who did so would rightly be accused of bias and partiality.

3. Why did DHS OIG remove findings and recommendations regarding DHS's failure to investigate and/or discipline personnel alleged to have committed domestic violence from the November 13, 2020 report *DHS Components have Not Fully Complied with the Department's Guidelines for Implementing the Lautenberg Amendment*?

As noted above, the approved objective of this project was to "[d]etermine whether DHS agencies with law enforcement officers and agents are complying with requirements of the Lautenberg Amendment." Enacted in 1997 as an addition to the Gun Control Act of 1968, the Lautenberg Amendment prohibits an individual who has been *convicted* of a misdemeanor crime of domestic violence (MCDV) from possessing a firearm. *See* 18 U.S.C. § 922(g). There is no exception for law enforcement officers (LEO), which means that a LEO convicted of an MCDV may no longer hold his or her position.

After [redacted] declined to make changes to the draft report that E.M. and I thought were warranted (see discussion below), another subject matter expert, V.C., reviewed the draft. [redacted] concluded that major portions were inconsistent with governing

legal principles and contained unsupported criticisms of DHS components. The draft created the incorrect impression that a DHS component must treat a LEO who engaged in certain forms of off-duty conduct, but was not convicted of an MCDV, in similar fashion to one who was convicted of such an offense.

Further, the draft suggested, without support from the applicable precedent of *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), that DHS components were too lenient on LEOs who were not convicted of MCDVs but who engaged in certain forms of off-duty conduct. Under *Douglas*, an agency official who is responsible for determining what discipline should be imposed in a particular case must consider the following factors:

> (1) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
>
> (2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
>
> (3) the employee's past disciplinary record;
>
> (4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
>
> (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
>
> (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
>
> (7) consistency of the penalty with any applicable agency table of penalties;
>
> (8) the notoriety of the offense or its impact upon the reputation of the agency;
>
> (9) the clarity with which the employee was on notice of any rules that where violated in committing the offense, or had been warned about the conduct in question;

> (10) potential for the employee's rehabilitation;
>
> (11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
>
> (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

5 M.S.P.R. at 305-06. The draft report did not demonstrate that DHS components systematically underweighted those *Douglas* factors that would support a severe penalty or that they systematically overweighted those *Douglas* factors that would support a light penalty. In fact, the draft report made absolutely no mention of *Douglas*, which experts in federal employment law view as a foundational element of federal employees' due process rights.[8]

V.C. discussed [redacted] critique of the draft report with [redacted] shortly after [redacted] took over from [redacted] decided to make major revisions to the report, and explained [redacted] thinking in a September 13, 2020 e-mail as follows:

> I had a really good discussion with [V.C.] Friday afternoon on the Douglas Factors and I am in a much better place with the Lautenberg report now.
>
> I have attached it with my revisions and think I have a way forward for the meeting tomorrow at 10:00. The meeting should be quick.
>
> I essentially want to eliminate the section which discusses varying discipline administered by each of the four components. The fact that they administer different discipline is not necessarily incorrect because each case has to be adjudicated on its own standards relating to the Douglas Factors. Since the report is about Lautenberg, I don't believe we need the "DHS Components Used Varying Approaches to

[8] According to Westlaw, as of May 9, 2022 the *Douglas* precedent had been cited in 599 court decisions and 2353 administrative decisions.

[9] The Chief of Staff and the Counsel to the Inspector General also reviewed the draft report and agreed with V.C.'s critique.

Discipline Law Enforcement Officers Who Engaged in Domestic Violence" section in this report.

I want to keep Recommendations 1, 6 and 7 and eliminate 2-5. 2-5 were my attempt to try to enforce uniform punishment across the components which was an incorrect application before I appreciated how the Douglas Factors were applied in each case.

I appreciate everyone's patience and contributions on this report. I think we are close to a good report.

[redacted] thus chose -- in response to comments from a subject matter expert -- to bring the report into necessary conformity with the approved project scope, which again, was about LEOs convicted of MCDVs. Recommendations 2-5, which [redacted] chose to eliminate, called for DHS components with LEOs to discipline employees who had engaged in certain forms of off-duty behavior with offenses drawn from a Table of Penalties. As explained above, such recommendations are inappropriate because they substitute the subjective policy preferences of OIE staff for the lawful, strategic judgments of component attorneys and managers that in turn are based on authoritative expert opinion and accepted best practices.

a. You made several recommendations to remove content from and narrow the scope of the draft report. Please explain the recommendations you made in your July 9, 2020 e-mail, as well as your decision to omit certain language that you characterized as going beyond the Lautenberg Amendment.

In late June and early July 2020, [redacted] and E.M., career civil servants and [redacted] with expert knowledge on the disciplinary process, reviewed the draft report on the Lautenberg Amendment and found serious flaws. When [redacted] was "opposed to these changes" and indicated that [redacted] would "like the IG to decide" whether the report should be revised. Specifically, [redacted] wanted to retain portions of the report that recommended DHS components stop using "general misconduct charges" when disciplining employees whose behavior OIE believed could be described as "domestic violence." According to [redacted] such employees received only "limited" discipline, and the situation could be rectified by components adding "specific offenses" for domestic violence to their Tables of Penalties.

I agreed with [redacted] and E.M. that the draft report should be revised. They explained that attorneys and managers often make the strategic decision to use generic charges when disciplining an employee in order to eliminate the risk that MSPB or an arbitrator would overturn the discipline upon finding that the agency failed to prove every technical element of a charge drawn from a Table of Penalties. They also explained that [redacted] was incorrect in concluding that use of a generic charge results in an employee receiving "limited" discipline because, under MSPB precedent in *Douglas*, the appropriate level of discipline is determined by considering the 12 factors set forth above. How a charge is labeled is not a factor under *Douglas*.

I was also aware, based on my more than 26-years' experience as a Criminal Investigator with the Department of Justice Office of Inspector General and the Air Force Office of Special Investigations, that the Lautenberg Amendment applies only when an individual is *convicted* of an MCDV. The portions of the report that [redacted] wanted to retain pertained to cases in which a DHS employee committed off-duty misconduct but had not been convicted of an MCDV. I found the report confusing inasmuch as it blurred the distinction between a criminal conviction for a domestic violence offense and administrative discipline by the employing agency for "domestic violence." The latter topic was beyond the scope of the project as originally approved and the conclusions in the draft report were unpersuasive.

For all of these reasons, I asked that the draft report be revised. I later learned that OIE staff chose not to make all of the revisions I requested. As explained above, it was not until two months later, after [redacted] and conferred with V.C., that the appropriate revisions were eventually made.

b. Please explain, in your view, how these editorial decisions comply with CIGIE standards.

As explained above, *Blue Book* standards require a report that examines an agency's compliance with law, regulation, and policy to be informed by authoritative expert opinion on the relevant laws and regulations and associated best practices. A report that substituted the subjective policy preferences of inspectors for the lawful strategic judgments made by DHS attorneys and managers, which themselves are rooted in authoritative interpretations of law and accepted best practice, would not be taken seriously and would call into question DHS OIG's impartiality.

4. Has DHS OIG removed similar findings from the unpublished report regarding sexual harassment and sexual misconduct at DHS?

Yes. Please see the discussion above in response to Question # 1.

a. Did you personally direct or approve the removal of this language, and if not, were you aware of its removal?

I was aware that career civil servants who are experts in federal employment law had concluded that major revisions to the report were warranted. When staff described the changes to me, I concurred.

b. Please explain, in your view, how these editorial decisions comply with CIGIE standards.

As explained above, *Blue Book* standards require a report that examines an agency's compliance with law, regulation, and policy to be informed by authoritative expert opinion on the relevant laws and regulations and associated best practices. A report that substituted the subjective policy preferences of inspectors for the lawful strategic judgments made by DHS attorneys and managers, which themselves are rooted in authoritative interpretations of law and accepted best practice, would not be taken seriously and would call into question DHS OIG's impartiality.

5. Please provide a copy of the DHS OIG survey that sought information regarding sexual harassment and misconduct at DHS components, as well as the results. When was the survey conducted, and why? How was it administered? Did you report the survey results to DHS leadership or to Congress? If so, when? If not, why not?

A copy of the survey instrument and summary-level results accompany this letter. In order to preserve respondent anonymity, I am unable to provide individual survey responses.

The survey was administered in June and July of 2018 via secure electronic means to ensure confidentiality. I have no insight into the thinking of the DHS OIG officials who proposed and approved the survey, as the survey had already been completed roughly a year before I was confirmed as Inspector General. To my knowledge Acting Inspector General Kelly, Ms. Costello, and others who were in a position to report the results to DHS leadership and to Congress in the year leading up to my

confirmation never did so. As stated above, I learned of the survey when OIE forwarded a draft report to the front office for review on or about December 3, 2020, and by that time the results were 2-1/2 years old.

Further, the results were integral to a draft report that had serious flaws and needed reworking, yet some OIE staff were uncooperative and placed their subjective policy preferences ahead of the DHS OIG mission of producing impartial and unbiased work. OIE staff never suggested that the survey results could be decoupled from an analytical report. Moreover, typically an Inspector General does not release raw data obtained in field work to a Department or agency, but instead includes the relevant data along with a report that contains recommendations.

In closing, I thank you again for allowing me to set the record straight concerning the reports and ongoing work discussed in recent press articles. I respectfully ask that the Committee not treat the discussion of internal DHS OIG deliberations above as precedent. I have decided to describe to you the internal deliberations surrounding certain reports because doing so is the only way to counter the incomplete and misleading narrative that grew out of the unauthorized, selective public disclosure of draft OIG reports.

I also take this opportunity to set the record straight on an April 29, 2022 meeting between the President and certain Inspectors General. One topic discussed at that meeting was Inspector General oversight of spending under the Infrastructure Investment and Jobs Act (IIJA).[10] At least one news account noted that I was "absent" from the White House meeting. Although DHS OIG has oversight authority over billions of dollars in spending under the IIJA, the Inspectors General who coordinated the meeting selected others to attend and did not invite me to that meeting.

[10] *See Remarks by President Biden with Inspectors General on Commitment to Oversight, Accountability, and Transparency* (4/29/22), available at https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/04/29/remarks-by-president-biden-with-inspectors-general-on-commitment-to-oversight-accountability-and-transparency (last viewed May 12, 2022).

I would be happy to testify before the Committee about these matters and DHS OIG's other important oversight work. Please call me with any questions at [redacted]

Sincerely,

JOSEPH V CUFFARI [redacted]

Joseph V. Cuffari, Ph.D.
Inspector General

cc: The Hon. Patrick J. Leahy
The Hon. Dianne Feinstein
The Hon. Sheldon Whitehouse
The Hon. Amy Klobuchar
The Hon. Chris Coons
The Hon. Richard Blumenthal
The Hon. Mazie K. Hirono
The Hon. Cory Booker
The Hon. Alex Padilla
The Hon. Jon Ossoff
The Hon. Lindsey Graham
The Hon. John Cornyn
The Hon. Mike Lee
The Hon. Ted Cruz
The Hon. Ben Sasse
The Hon. Josh Hawley
The Hon. Tom Cotton
The Hon. John Kennedy
The Hon. Thom Tillis
The Hon. Marsha Blackburn

Exhibit C

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

May 17, 2022

The Honorable Carolyn B. Maloney, Chairwoman
Committee on Oversight and Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Bennie G. Thompson, Chairman
Committee on Homeland Security
U.S. House of Representatives
H2-176 Ford House Office Building
Washington, DC 20515

Re: Your letter of May 10, 2022

Dear Chairwoman Maloney and Chairman Thompson:

Thank you for your letter of May 10, 2022, in which you ask for information surrounding two projects at the Department of Homeland Security (DHS) Office of Inspector General (OIG).

As a partial response, I am transmitting herewith a copy of a letter that I sent to Chairman Durbin and Ranking Member Grassley of the Senate Committee on the Judiciary on May 13, 2022. In that letter, I discuss the projects about which you have inquired. As you can see from the letter, some DHS OIG inspectors resisted making changes to draft reports recommended by multiple career civil servants who are experts in federal employment law. Those inspectors instead insisted on criticizing DHS components based on their own subjective preferences, which were contrary to basic principles of federal law and associated best practices and inconsistent with applicable standards promulgated by the Council of the Inspectors General on Integrity and Efficiency.

I have distributed a redacted version of my May 13, 2022 letter to the DHS OIG workforce, and I intend to release the same version to the public. The redactions conceal the names and initials of career DHS OIG employees who were involved in drafting and reviewing the subject reports. Because you have requested information about the same reports, I am

providing you with an unredacted version of my May 13, 2022 letter. *See* 5 U.S.C. § 552a(b)(9).

Please contact me with any questions at [redacted]

Sincerely,

JOSEPH V CUFFARI [redacted]

Joseph V. Cuffari, Ph.D.
Inspector General

cc: The Honorable James Comer, Ranking Member
Committee on Oversight and Reform

The Honorable John Katko, Ranking Member
Committee on Homeland Security

Exhibit D

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

August 8, 2022

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Your June 27, 2022 letter

Dear Chairman Durbin and Ranking Member Grassley:

I am writing in response to your letter of June 27, 2022, in which you pose further questions about draft reports authored by staff of the Office of Inspections & Evaluations (OIE), Department of Homeland Security (DHS) Office of Inspector General (OIG), that were released to the Project on Government Oversight (POGO) and the New York Times without authorization.

Before turning to your questions, however, I want to address two preliminary matters.

The suggestion in the media that I am inclined to protect law enforcement officers who engage in violent off-duty conduct is misplaced.

Approximately three months after my confirmation and after repeated attempts to learn particulars about internal DHS OIG investigations, prior DHS OIG senior leadership eventually disclosed to me that two DHS OIG Criminal Investigators were alleged to have engaged in violent and/or menacing behavior off-duty. One of the episodes involved a domestic dispute between a [redacted] I further learned that under prior DHS OIG leadership, both [redacted] had been placed on open-ended, *paid* leave for more than six months with no clear

plan to discipline them (if the allegations were substantiated) or return them to duty (if the allegations were not substantiated). After repeated attempts to seek resolution of those matters, I subsequently instructed the head of DHS OIG's Office of Investigations to resolve the allegations and ensure that discipline was imposed, if warranted.[1] As a result of my instructions, [redacted] was demoted and the other was removed from federal service. Thus, my own actions demonstrate that I follow the law, respect employee's due process rights, and hold law enforcement officers who engage in violent off-duty conduct accountable for their actions.

I am unable to respond to all of the questions in your June 27, 2022, letter at this time.

The questions in your June 27, 2022, letter concern two projects at DHS OIG. The first project, which is now concluded, concerns implementation of the Lautenberg Amendment in DHS. The second project, which is ongoing, concerns sexual harassment in DHS law enforcement components.

Authorities such as *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020), *Assertion of Executive Privilege over Documents Generated in Response to Congressional Investigation into Operation Fast and Furious*, 36 Op. O.L.C. 1, 4-5 (2012), *Letter from Assistant Attorney General Raben to Chairman Linder, Subcommittee on Rules and Organization of House, House Committee on Rules* (Jan. 27, 2000), *Assertion of Executive Privilege in Response to Congressional Demands for Law Enforcement Files*, 6 Op. O.L.C. 27 (1982), and *United States v. American Tel. & Tel. Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977), establish these following principles: Congress may obtain information only as an adjunct to the legislative process; the Executive Branch has a legitimate, constitutionally-recognized interest in protecting the confidentiality of its internal deliberations, including those below the cabinet and subcabinet level; Congress may obtain deliberative materials from the Executive Branch only in the most unusual circumstances; Congress' request for deliberative materials that are part of an ongoing matter would intrude into Executive Branch decision-making

[1] Prior DHS OIG leadership had transferred the Human Resources Division (HRD) staff into the Personnel Law Division (PLD) of the Office of Counsel (OC). At the time, PLD attorneys and HRD staff were responsible for not only conducting the investigations into the underlying allegations but were also responsible for advising OIG management of appropriate adverse action, and representing the OIG in any corresponding litigation. In 2020, I corrected the inherent conflict-of-interest that was unnecessarily created in that then-current arrangement and returned HRD back to the Office of Management.

and interfere with the execution of the laws; and disputes between Congress and the Executive Branch over congressional demands for information should be resolved by negotiation and compromise aimed at accommodating the respective legitimate interests of Congress and the Executive Branch.

With respect to the Lautenberg Amendment project, I can describe internal DHS OIG deliberations as a compromise between the extremes of declining to provide any information about internal deliberations and providing the Committee with the primary-source deliberative materials themselves. With respect to the sexual harassment project, the authorities set forth above indicate that I may not provide the Committee any information about DHS OIG deliberations because the project is ongoing.

To confirm my understanding of the limits of my authority to furnish deliberative records and information to Congress, on June 10, 2022, I sought guidance from the Executive Office of the President (EOP). On July 11, 2022, attorneys in EOP informally advised DHS OIG staff that this Administration's policy is to follow the approach outlined in the November 4, 1982, Memorandum from the President to the Heads of Executive Departments and Agencies entitled *Procedures Governing Responses to Congressional Requests for Information.* On July 28, 2022, EOP indicated that the informal advice supplied to DHS OIG represented the official position of EOP.

The November 4, 1982, Memorandum from the President instructs agency heads to seek the advice of the Office of Legal Counsel (OLC), Department of Justice, when faced with congressional requests for deliberative records and information. On August 3, 2022, I requested an opinion from OLC concerning whether I am permitted to release deliberative records and information to Congress.

Responses to the questions in your June 27, 2022, letter

1. **You state that "[a]n Inspector General is in no position to substitute the subjective preferences of an inspector for the considered strategic judgments of agency attorneys and managers."**

a. **What is the basis for this assertion that an OIG is in no position to question agency decision-making?**

I have never claimed that "an OIG is in no position to question agency decision-making."

Rather, in my May 13, 2022, letter to you, I stated that when agency attorneys and managers decide to propose discipline against an employee based on a generic charge such as "inappropriate conduct," an OIG should not criticize the agency merely because some OIG staff subjectively prefer that the agency levy specific charges with technical elements such as "domestic violence." As explained in my May 13 letter, this is because the agency's approach: Follows the official guidance of the Office of Personnel Management (OPM); is consistent with best practices endorsed by experts in federal employment law; and eliminates the risk that an arbitrator or the Merit Systems Protection Board (MSPB) will reverse the discipline on the ground that, although the employee committed misconduct, the agency failed to prove each and every technical element of a specific charge. In short, an agency's decision to base discipline on a generic charge is objectively reasonable.

By contrast, the analysis in draft reports recommending that DHS components should not use generic charges but instead should employ charges such as "domestic violence" is: Contrary to OPM's official guidance; inconsistent with best practices endorsed by experts in federal employment law; and creates the risk that an arbitrator or the MSPB will reverse the discipline on the ground that, although the employee committed misconduct, the agency failed to prove each and every technical element of a specific charge. The draft reports criticizing DHS components for using generic disciplinary charges do not identify an objective criterion to support such criticism.

Put differently, the decision of DHS components to impose discipline based on generic charges instead of charges such as "domestic violence" is not contrary to law, regulation, or policy; is not an abuse of authority or mismanagement; does not result in waste, fraud, or a danger to the public; and does not represent any other form of maladministration of a DHS program. Therefore, there is no basis for an OIG report to criticize DHS components for using generic charges.

As I explained in my May 13 letter, an agency official who is responsible for determining what level of discipline (if any) to impose on an employee must make an individualized decision after considering the 12 factors identified in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981). An agency would be subject to warranted criticism if it had a policy or a discernible practice of systematically underweighting those *Douglas* factors that supported severe penalties for misconduct and/or systematically overweighting those *Douglas* factors that supported leniency. The draft reports discussed in the New York Times and POGO articles,

however, did not identify any evidence of systematic misapplication of *Douglas* by DHS components.

The most that can be said is that if some DHS OIG staff had stood in the shoes of component managers in certain cases examined in the draft reports, they might have weighed the *Douglas* factors differently and imposed more severe penalties than component managers imposed. The DHS OIG staff who drafted the reports do not supervise law enforcement officers; would never be called to explain, under oath, their decisions before the MSPB or an arbitrator; and would not face any risk that their decisions would be overturned in litigation. In short, there is every reason to believe that the draft reports, if issued as written, would not have been taken seriously by DHS components. In the report that was ultimately issued, we made three recommendations in that report to assist DHS in strengthening its process. DHS agreed with all of our recommendations.

b. The Department of State and Department of Justice OIGs have issued similar reports on sexual harassment in recent years, albeit with slightly different scopes and methodologies. Please explain how the conclusions reached and recommendations made in those reports are substantively different than those reached in the draft DHS OIG report, and why DHS OIG would be stopped from evaluating agency disciplinary decisions in this instance.

Pending guidance from OLC, I cannot comment on deliberations in an ongoing project.

c. When did you and/or your staff develop this theory? How does this theory guide OIG's approach to the preparation of reports in general?

I do not subscribe to the "theory" that "an OIG is in no position to question agency decision-making." An OIG *should* question agency decision-making when it is contrary to law, regulation, or policy; leads to waste, fraud, or a danger to the public; amounts to an abuse of authority or mismanagement; or represents some other form of maladministration of a DHS program. I also believe, though, that an Inspector General needs a justification for questioning decisions made by agency officials in anticipation of litigation.

A non-probationary career federal employee has the right to appeal a disciplinary action to the MSPB, before which the agency must prove, by

preponderant evidence, that the employee committed the conduct charged and that the penalty is reasonable. The MSPB is empowered to reverse or mitigate a disciplinary action on the ground that the agency failed to meet its burden of proving that the charged conduct occurred and that the penalty is reasonable; committed harmful procedural error or violated the employee's right to due process; or took the action because of an improper motivation such as discrimination or whistleblower reprisal. *See* 5 U.S.C. §§ 1221, 2302, 7511 – 7513, 7701.

An employee covered by a collective bargaining agreement has the option of appealing a disciplinary action to the MSPB or instituting a grievance that is ultimately resolved by an arbitrator. *See* 5 U.S.C. § 7121. Arbitration procedures differ somewhat from MSPB's procedures, but an arbitrator applies the same substantive law as the MSPB and has the same remedial powers as the MSPB. *Cornelius v. Nutt*, 472 U.S. 648 (1985).

As the MSPB stated in *Otero v. U.S. Postal Service*, 73 M.S.P.R. 198, 202 (1997):

> Nothing in law or regulation requires that an agency affix a label to a charge of misconduct. If it so chooses, it may simply describe actions that constitute misbehavior in a narrative form, and have its discipline sustained if the efficiency of the service suffers because of the misconduct.

Manifestly, an agency's decision on how to frame a disciplinary charge is a decision made in anticipation of litigation before either the MSPB or an arbitrator. When an agency chooses to impose discipline based on a generic charge rather than a specific charge with technical elements, it is choosing to avoid the risk of outright reversal of the discipline by the MSPB or an arbitrator based on the agency's failure to prove each and every element of a technical charge. Although an Inspector General receives legal advice from attorneys who report to him or her and not to the agency head, this does not give an Inspector General license to criticize an agency's legal strategy where, as here, the agency's strategy is an objectively reasonable measure aimed at reducing the risk of an adverse outcome in litigation and is expressly authorized by MSPB precedent.

2. Regarding the November 2020 report on domestic violence by DHS personnel, you state that "the approved objective of this project was to 'determine whether DHS agencies with law enforcement officers and agents are complying with the requirements of the Lautenberg Amendment.'"

a. Why does this objective, which you state was approved on December 13, 2018, differ from the objective listed in the draft report from May 2020? If the scope of the report was changed between December 13, 2018 and November 13, 2020, please provide an explanation of any changes along with the relevant documentation.

The original project objective, approved December 13, 2018, was: "Determine whether DHS agencies with law enforcement officers and agents are complying with requirements of the Lautenberg Amendment." According to Office of Inspections and Evaluations (OIE)[2] staff, initial fieldwork revealed that there was a "low number of related convictions," which I take to mean a "low number" of law enforcement officers in DHS covered by the Lautenberg Amendment during the period studied. It is my understanding that DHS components removed all of these law enforcement officers. Thus, DHS OIG set out to examine whether DHS components that employ law enforcement officers were in compliance with the Lautenberg Amendment and found that the components were in compliance.

The OIE team proposed to change the project objective to the following: "To determine whether DHS agencies (CBP/ICE/TSA/USSS) with law enforcement officers and agents effectively identify, report, investigate and discipline employees arrested and/or convicted of domestic violence offenses." Acting Inspector General John Kelly approved this change on or about April 22, 2019.

I was confirmed as Inspector General of DHS on July 25, 2019.

b. What OIG standards or best practices pertain to changing the scope or objective of a report after the work on that report has been completed?

DHS OIG's inspections must adhere to CIGIE's *Quality Standards for Inspection and Evaluation* (2020), also known as the *Blue Book*.[3] Section 3.5g of the *Blue Book* states that "[i]nspectors should adjust the [project] plan, as appropriate, based on new information and document any significant changes to the plan in the inspection documentation." In a

[2] OIE was previously known as the Office of Special Reviews and Evaluations (SRE). For purposes of this letter, we refer to that office by its current name.

[3] The previous version of the *Blue Book*, issued in 2012 and in effect when the two projects that are discussed in this letter were approved, was substantially similar to the portions of the current version of the *Blue Book* that I discuss below.

similar vein, DHS OIG's *OIE Manual* (2021) provides that after a project is approved, the Chief Inspector "must review and approve the work plan" prior to the initiation of fieldwork. Further, "the team may change direction or make adjustments" as fieldwork progresses. However, a "formal change in objective requires IG approval and documentation."

As shown in my response to subpart c of this question below, the scope of Lautenberg Amendment project, as originally approved, was limited to whether DHS removed law enforcement officers who automatically became ineligible for their positions because they were convicted of an MCDV or were subject to a domestic violence restraining order.

The project, as expanded, included an examination of how DHS deals with law enforcement officers who are *not* convicted of an MCDV and are *not* subject to a domestic violence restraining order -- and who therefore are not covered by the Lautenberg Amendment -- but who are alleged to have engaged in off-duty conduct that OIE staff characterized as "domestic violence." I am not opposed to modifying the scope of a project when the fieldwork reveals a systemic problem that should be corrected, but in this case, the portions of the May 2020 draft report that addressed the expanded scope were unpersuasive.

Again, the May 2020 report criticized DHS for using generic disciplinary charges. I did not find these criticisms persuasive, as they were contrary to OPM guidance, inconsistent with best practices endorsed by experts in federal employment law, and increased the risk that a disciplinary action would be overturned by the MSPB or an arbitrator. I was not alone. DHS OIG attorneys who are career civil servants and experts in federal employment law also disagreed with the criticisms in the draft, as did the career senior executive in charge of OIE. It was within the discretion of the career senior executive in charge of OIE to eliminate portions of the draft report that pertained to the expanded scope. Although I could have overruled the career senior executive's decision, I had no objective reason for doing so.

c. Please provide the original scope language that was approved on December 13, 2018.

The DHS OIG New Project Request Form, approved on December 13, 2018, provided in relevant part as follows:

Project Objectives	Determine whether DHS agencies with law enforcement officers and agents are complying with requirements of the Lautenberg Amendment.
Project Background	Studies have found that law enforcement officer families experience a higher rate (40 percent) of domestic violence than the general population (10 percent). The Lautenberg Amendment (18 USC Section 921 and 922) prohibits anyone, including Federal law enforcement officers and agents, convicted of a misdemeanor crime of domestic violence (MCDV) or subject to a restraining order from possessing any firearm or ammunition. Because lawfully carrying a firearm is considered a condition of employment, any such officer or agent convicted of domestic violence or with a restraining order filed against him/her is ineligible to remain in such a position. Employees are required to report incidents of domestic violence investigations, prosecutions and convictions to their agency. DHS agencies may also receive reports directly from State/Local authorities. When DHS agencies become aware that one of their law enforcement officers has been convicted of an MCDV or been subject to a restraining order, the agencies must comply with the requirements of the Lautenberg Amendment and take appropriate personnel actions, including removing the individual from his/her position.
Expected Focus of Engagement	Determine whether DHS agencies with law enforcement officers and agents are complying with requirements of the Lautenberg Amendment.
Areas of Concern/Issues to Address	Component law enforcement officers and agents convicted of a misdemeanor crime of domestic violence (MCDV) who are still employed by the Department as a law enforcement officer, even though they are ineligible to remain in such a position because they are prohibited from possessing a firearm or ammunition.

Potential Engagement Impact	This review would identify whether law enforcement officers convicted of MCDVs are still employed as such by the Dept. It would also determine whether DHS has policies and procedures in place to identify and take appropriate personnel/disciplinary action for those law enforcement officers with qualifying convictions.

The detailed descriptions of the scope of the Lautenberg Amendment project, set forth above, make clear that the project was not originally intended to stray into the topic of how DHS treats employees who are alleged to have engaged in certain forms of off-duty conduct but are *not* covered by the Lautenberg Amendment.

3. **You provide two explanations for the unreleased sexual harassment and misconduct report that was delayed: (1) "DHS OIG staff withheld information about the survey"; and (2) "[t]he report has been delayed further by some OIE staff members' refusal to accept input from subject matter experts."**

a. **Did you at any point after December 3, 2020 request a staff briefing on the draft report?**

Pending guidance from OLC, I cannot comment on deliberations in an ongoing project.

b. **You state that you did report the survey to DHS leadership on the day you transmitted the response to Congress. However, it is unclear why the reporting requirement was not triggered upon your learning of the existence of the survey. Please explain why this survey did not meet the reporting requirement of the IG Act, which states that an IG "shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment."**

Pending guidance from OLC, I cannot comment on deliberations in an ongoing project.

c. Please provide a description of the changes that were made by OIE staff members in response to input from subject matter experts. Please also provide all finalized versions of the draft report including comments from OIE staff members and subject matter experts?

Pending guidance from OLC, I cannot comment on deliberations in an ongoing project.

4. You state that you are "considering closing the review without issuing a report" and that you have approved a new survey.

a. When did you first consider not releasing a report?

Pending guidance from OLC, I cannot comment on deliberations in an ongoing project.

b. Please explain the "currency criterion" you noted in your response and why you believe that the survey results do not currently meet this standard. Given that the survey results covered a period of seven years, please explain why OIG analysis of these results would not be relevant for DHS leadership.

Although this question deals with an ongoing project, I am responding because it is directed toward survey data and quality standards rather than internal DHS OIG deliberations.

Among the three purposes of an Office of Inspector General is "to provide a means for keeping the head of the establishment and the Congress fully and *currently* informed about problems and deficiencies relating to the administration of [agency] programs and operations." Inspector General Act, § 2(3) (emphasis supplied). In like fashion, section 5.1b of the *Blue Book* provides that inspection reports should be "timely," among other things. As I stated in my May 13, 2022 letter to you, OIE first forwarded a draft report to DHS OIG front office staff in December 2020, 2-1/2 years after the survey was administered in mid-2018. As noted in this question, the survey asked respondents about their experiences going back seven years, *i.e.*, back to 2011. A report issued in 2020 describing employee experiences going back to 2011 would not have been "current" or "timely."

It is worth noting that MSPB, which embarked on a longitudinal examination of sexual harassment in the federal workplace decades ago and

is considered an expert in the field, asks respondents in periodic MSPB surveys to describe their experiences "during the preceding 2 years." *See, e.g., Update on Sexual Harassment in the Federal Workplace*, at 3 (Merit Systems Protection Board March 2018).[4] It is unclear why the DHS OIG survey, which was designed and administered a year before I was confirmed as Inspector General, covered a period 3-1/2 times longer than an MSPB survey on the same subject. This question contains the implicit, but unwarranted, assumption that the 2018 DHS OIG survey was based on best practices among industrial organization psychologists.

c. What was the status of the draft report on April 7, 2022?

Pending guidance from OLC, I cannot comment on deliberations in an ongoing project.

d. What is the scope of the new project proposal which you have approved? Does it differ in scope from the original project scope? And if it does, how so?

The objective of the new project is: "To gather information about allegations of sexual harassment and how they are addressed within the Department of Homeland Security."

e. When did you approve this new project proposal?

I approved this new project on May 13, 2022.

f. How will you determine whether to issue a report based on the proposed project proposal?

Pending guidance from OLC, I cannot comment on deliberations in an ongoing project.

g. Please provide the proposal and any accompanying documentation.

See attachment.

[4] The 2018 MSPB report is available at: https://mspb.gov/studies/researchbriefs/Update_on_Sexual_Harassment_in_the_Federal_Workplace_1500639.pdf (last visited August 6, 2022).

I would be happy to testify before the Committee about DHS OIG's important oversight work. Please call me with any questions at [redacted].

Sincerely,

JOSEPH V CUFFARI [redacted]

Joseph V. Cuffari, Ph.D.
Inspector General

Attachment

cc: The Hon. Patrick J. Leahy
The Hon. Dianne Feinstein
The Hon. Sheldon Whitehouse
The Hon. Amy Klobuchar
The Hon. Chris Coons
The Hon. Richard Blumenthal
The Hon. Mazie K. Hirono
The Hon. Cory Booker
The Hon. Alex Padilla
The Hon. Jon Ossoff
The Hon. Lindsey Graham
The Hon. John Cornyn
The Hon. Mike Lee
The Hon. Ted Cruz
The Hon. Ben Sasse
The Hon. Josh Hawley
The Hon. Tom Cotton
The Hon. John Kennedy
The Hon. Thom Tillis
The Hon. Marsha Blackburn

Exhibit E

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

August 23, 2022

The Honorable Carolyn B. Maloney, Chairwoman
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Bennie G. Thompson, Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

Re: Your August 16, 2022 letter

Dear Chairwoman Maloney and Chairman Thompson:

I write to respond to your August 16, 2022, letter and to clarify the record in this matter. As explained below, your letter incorrectly characterizes my responses to your previous letters as a "refusal" to comply with your requests for information. Your letter also uncritically accepts anonymously-sourced media reporting. The attention that has been lavished upon my organization, the Department of Homeland Security (DHS) Office of Inspector General (OIG), more properly belongs with DHS.

As Inspector General of DHS, I have reported that DHS has destroyed evidence related to the events of January 6, 2021 in violation of multiple preservation notices, concealed that destruction from Congress, and unreasonably delayed OIG's access to other DHS records.

Beginning just 10 days after the assault on the Capitol, OIG and multiple committees of Congress issued five separate notifications to DHS that it must preserve all electronic communications related to the events of January 6.[1] By letter dated July 13, 2022, I informed you that DHS --

[1] A January 16, 2021 notice issued by Chairs Adam Schiff, Bennie Thompson, Carolyn Maloney, and Jerrold Nadler, on behalf of their respective committees, to senior officials of the Federal Bureau of Investigation, National Counterterrorism Center, DHS, and the Directorate of National Intelligence, mandated the preservation of "[a]ll documents or materials that refer or relate to events that could or ultimately did transpire on January 6, or refer or relate to threats in connection with the US presidential inauguration." On February 9, 2021, DHS OIG issued an engagement letter for inspection of "*DHS Law Enforcement Preparation for and Response to the January 6, 2021 Events at the U.S. Capitol.*" About two weeks later, OIG formally requested

specifically, the Secret Service -- had deleted texts from DHS-owned phones after receiving OIG's preservation notice. On July 15, 2022, at Chairman Thompson's request, I briefed the House Select Committee to Investigate the January 6 Attack on the United States Capitol concerning OIG's issues with access to DHS records. During that briefing, I, along with career OIG staff, who were conducting the administrative review of DHS's preparation for and response to the events of January 6, described three major problems that OIG had encountered in connection with that review:

- DHS delayed producing requested e-mails for seven months, without ever identifying a legal justification for the delay;

- DHS personnel repeatedly told OIG personnel that they were not allowed to provide records directly to OIG and that instead such records had to undergo pre-disclosure review, leading to weeks-long delays and confusion over whether all records requested by OIG had been produced; and

- DHS deleted text messages from DHS-issued phones used by Secret Service personnel on January 6, 2021, after OIG and multiple committees of Congress had issued notices for DHS to preserve electronic communications related to January 6.

During the briefing, I emphasized that the Secretary sent Congress a transmittal letter, dated June 14, 2022 (attached), which accompanied OIG's Semi-Annual Report (SAR) to Congress for the period October 1, 2021 – March 31, 2022. In his letter, the Secretary inaccurately stated that OIG had not had any access problems.

Shortly thereafter, I was criticized for not informing Congress about the deletion of texts earlier than I did. To my knowledge, I am the only Inspector General to report these issues to Congress.

I respectfully suggest that this criticism is misdirected. DHS senior managers had the greatest contemporaneous fidelity about what the Secret

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from DHS all electronic communications related to the events of January 6. On March 25, 2021, Chairwoman Maloney, Chairman Thompson, Chairman Schiff, Chairman Nadler, and five other members requested documents and communications received, prepared, or sent by DHS employees related to the events of January 6. On August 11, 2021, a notice issued by Chairman Thompson of the January Select Committee joined in both referenced Congressional requests. On August 25, 2021, a preservation notice issued by Chairman Thompson for the January 6 Select Committee requested all documents and communications received or shared relating to events that occurred on January 6. This notice directed DHS to provide the January 6 Select Committee with all documents DHS produced to other investigatory bodies, to include the OIG, relating to the January 6 attack.

Service was undertaking (and had allowed to occur) with their data and cellular telephones.

I came forward and told the January 6 committee about the deletion of texts. I did so only after it became clear, from the Secretary's June 14, 2022 letter, that the Secretary was intent on denying that there was a problem with OIG access.[2] DHS was subject to multiple notices to preserve electronic communications related to January 6, it deleted the texts anyway, it concealed that information from Congress and the OIG for more than a year, and it continued to dissemble as late as June 14, 2022 (in the Secretary's letter accompanying the SAR).

I share your and your colleagues' concerns about the denial of access to DHS' records, communications, and other materials.[3] Typically, when an Inspector General notifies Congress that he or she is having trouble obtaining access to agency records and information, Congress demands that the agency explain why it is not cooperating with the Inspector General.

DHS has engaged in sustained resistance to OIG oversight, destroyed evidence requested by Congress and the OIG, concealed that destruction of evidence from Congress and the OIG, and finally, after OIG staff confronted a high-level DHS official about the destruction of texts in a May 23, 2022 meeting, denied that anything was amiss in a letter to Congress. Moreover, yesterday, the media published a July 2022 Customs & Border Protection (CBP) memo that describes guidance from the DHS' Office of General Counsel and CBP's Office of Chief Counsel and advises CBP senior leadership about how to interfere with and prevent OIG oversight.[4] That advice, which misinterprets the Inspector General Act, is further

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[2] Prior to receiving a copy of the Secretary's June 14, 2022 letter, I continued to believe that DHS leadership would support OIG's oversight work related to the events of January 6 and other OIG oversight projects. I personally met with the Secretary in October 2021 and described to him the months-long delay in obtaining e-mails that OIG had requested. The Secretary agreed that OIG should have access to the records it needs to conduct its oversight work. Shortly thereafter, the Secretary issued a memorandum to all DHS employees reminding them of their obligation to cooperate with OIG. Not long after that, DHS produced a large trove of e-mails that it had been withholding for seven months. Criticizing me for not informing Congress about the deleted texts before I reviewed the Secretary's June 14, 2022, letter amounts to saying that I should not have trusted the Secretary to follow through on the commitments he made to me when I met with him in October 2021.

[3] Herridge, Catherine, and Sganga, Nicole, CBS News, *DHS watchdog says department's lawyers are slowing down Secret Service Jan. 6 text probe*, August 10, 2022.

[4] Klippenstein, Ken, The Intercept, *DHS Jan. 6 Investigators Raised Alarm About Being Stonewalled Last Year*, August 22, 2022.

documentation, at the highest levels of DHS, of the Department's misguided and orchestrated interference with OIG's mission.[5]

I have not "refus[ed]" to provide the committees with information. Instead, I have provided information in the spirit of compromise aimed at balancing the Executive branch's legitimate interests with those of the Legislative branch. I have also been careful to adhere to Administration policy.

By letter dated June 13, 2022, I responded to your May 10, 2022 letter requesting information related to internal deliberations and unpublished reports. I highlighted the established principle that the Executive branch has a legitimate, constitutionally-recognized interest in protecting the confidentiality of its internal deliberations, to include deliberations conducted below the cabinet and subcabinet levels. I further explained that when Congress seeks deliberative materials, the two branches should negotiate in an effort to reach a compromise that accommodates the interests of the Executive branch and Congress.[6]

In that vein, as a compromise between refusing to provide any deliberative materials and producing the deliberative records themselves, I provided the committees with detailed descriptions of edits made to draft reports and the reasons for those edits. I also provided the committees with a survey that DHS OIG administered in connection with one of the projects at issue, as well as the results of the survey.

By letter dated August 8, 2022, I explained that based on guidance from attorneys in the Executive Office of the President (EOP), I had requested an opinion from the Office of Legal Counsel (OLC) concerning the production of deliberative materials sought by the committees. Contrary to the suggestion in your August 16, 2022 letter, my request to OLC was not a "delay tactic." Rather, EOP attorneys informed OIG that the official policy of the current Administration is found in the

[5] Although the CBP memo is in the public domain, the memo contains what appears to be attorney work product and it is not clear that DHS authorized public release of the memo. OIG is seeking the Department's consent to disclose the CBP memo to Congress. If that consent is obtained, OIG will demonstrate that the Department's interpretation of the Inspector General Act is incorrect.

[6] *See Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020); *Assertion of Executive Privilege over Documents Generated in Response to Congressional Investigation into Operation Fast and Furious*, 36 Op. O.L.C. 1, 4-5 (2012); Letter from Assistant Attorney General Raben to Chairman Linder, Subcommittee on Rules and Organization of House, House Committee on Rules (Jan. 27, 2000); *Assertion of Executive Privilege in Response to Congressional Demands for Law Enforcement Files*, 6 Op. O.L.C. 27 (1982); and *United States v. American* Tel. & Tel. Co., 567 F.2d 121, 127 (D.C. Cir. 1977).

November 4, 1982 Memorandum from the President to the Heads of Executive Departments and Agencies entitled *Procedures Governing Responses to Congressional Requests for Information.* According to that Memorandum, when an agency head is in doubt about the propriety of disclosing records of internal Executive branch deliberations to Congress, he or she should seek the opinion of OLC. Although the Inspector General Act gives an Inspector General considerable independence from the department or agency he oversees, I am not a free agent. To my knowledge the current Administration has not provided Congress with records of internal Executive branch deliberations, and it is not for me to set a precedent. If the Administration directs OIG to produce records of internal OIG deliberations to Congress, OIG will comply. Likewise, if the Administration directs OIG to produce records or witnesses related to the deletion of texts by DHS, OIG will comply.

As I stated in my August 8, 2022, letter, and as I explained during our July 15, 2022, briefing to the January 6 committee members, OIG does not confirm or comment on criminal investigations. We also do not comment on ongoing administrative reviews. Once any ongoing work is completed, OIG will examine Executive branch equities while considering any outstanding Congressional requests for documents, briefings, and transcribed interviews.

Contrary to your letter, I did not learn that the texts had been deleted 14 months before I notified Congress.

Your letter appears to credit inaccurate, anonymously-sourced reporting insofar as it suggests that I knew the Secret Service texts had been deleted 14 months before my July 13, 2022 notification to Congress. In fact, the Secret Service did not tell OIG that the texts had been deleted until on or about February 23, 2022. A draft management alert (disclosed without authorization) prepared by career staff in October 2021 refutes any claim that OIG knew about the deleted texts 14 months prior to July 13, 2022.[7] That draft document describes DHS's unjustified seven-month delay in providing e-mails that OIG requested, and also describes lengthy delays in OIG's receipt of other records stemming from the widespread belief among DHS personnel that records cannot be produced directly to OIG but instead must first undergo internal review. The draft management alert says nothing about the deletion of texts. In fact, the draft management alert states that text messages are "relevant" to OIG's inquiry and that OIG might "reinstitute" its request for texts (which OIG did). It is

[7] Although normally I would not discuss a draft OIG document, the draft management alert has already been released or described to the media.

virtually inconceivable that the career OIG staff who drafted the management alert concerning access issues, and who I know were strongly opposed to DHS's persistent restrictions on OIG access, would have left out any mention of deleted Secret Service texts had they been aware of the deletion.

Please call me with questions, or a member of your staff may contact [redacted]

Sincerely,

JOSEPH V [redacted]
CUFFARI

Joseph V. Cuffari, Ph.D.
Inspector General

Attachment

cc: The Honorable James Comer, Ranking Member
Committee on Oversight and Reform

The Honorable John Katko, Ranking Member
Committee on Homeland Security

Exhibit F

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

September 30, 2021

MEMORANDUM FOR: All DHS Personnel

FROM: Alejandro N. Mayorkas
Secretary

SUBJECT: Cooperation with the Office of Inspector General

The Office of Inspector General (OIG) plays a critical role in helping the Department prevent and detect fraud, waste, abuse, and mismanagement. By doing so, the OIG helps improve the economy, effectiveness, and efficiency of DHS programs and activities. The OIG does this through independent and objective audits, investigations, evaluations, and inspections. It cannot do so alone. To carry out this important mission, the OIG needs certain information (for example, facts, reports, statistics, and data) from the Department and our Components.

Accordingly, I expect DHS employees to respond to OIG requests for information in a timely manner. This expectation extends to requests from any contractor hired by the OIG, including, but not limited to, firms with which the OIG contracts to audit the Department's financial statements. Such cooperation includes:

1) providing information responsive to the OIG's work, including making DHS employees (for example, program officials, subject matter experts, and others) available to the OIG for interviews;

2) respecting employees' rights to speak directly and confidentially with the OIG in accordance with legal requirements; and,

3) refraining from any activity that might inhibit an employee's or contractor's communication or cooperation with the OIG.

Information related to an OIG request may be provided directly to the OIG. DHS employees should, however, advise the OIG when information provided contains classified national security information, privacy-protected materials, attorney-client or deliberative (in other words, pre-decisional and draft) communications, other sensitive information, or information from agencies outside the Department. DHS employees must ensure that all information provided to the OIG is properly identified, marked, and treated. It is important to note that when providing information to the OIG, DHS does not waive applicable privileges or other protections.

The Department is committed to supporting the OIG's mission. DHS employees are expected to cooperate with OIG audits, inspections, investigations, and other inquiries. Any effort to conceal information or obstruct the OIG in carrying out its critical work is against Department directives and can lead to serious consequences.

For its part, the OIG is likewise expected to operate with integrity and meet important obligations in the conduct of its work. Specifically, I expect OIG employees to:

1) honor requests for confidentiality consistent with the law;

2) coordinate with Department and Component managers and supervisors to avoid disrupting DHS programs and activities; and,

3) safeguard sensitive information received and be watchful for information that may not have been properly identified with restrictive markings, thereby ensuring that privileges and other obligations are not compromised. These important precautions protect the Department's ability to assert applicable claims prior to sharing the information externally.

If you have any questions regarding these expectations, you should consult your Component's counsel, the Office of the General Counsel, or the Departmental GAO-OIG Liaison Office.

Thank you for your service to our Department and our Nation.

Exhibit G

Secretary

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

June 14, 2022

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20510

Dear Chairman Thompson:

Pursuant to Section 5 of the *Inspector General Act of 1978*, as amended, Public Law 95-452, I hereby transmit to Congress the enclosed U.S. Department of Homeland Security (DHS or the Department) Office of Inspector General's (OIG) Semiannual Report for the period October 1, 2021 to March 31, 2022 (reporting period). This is the 39th Semiannual Report since the OIG was established on March 1, 2003.

This Semiannual Report outlines the OIG's work during this reporting period. While much of that work added significant value to the Department, the OIG continued to face challenges. For example, in a June 3, 2021 report, the U.S. Government Accountability Office (GAO) concluded that the OIG suffered from long-standing management and operational weaknesses.[1] Of particular concern, the GAO report indicated that the OIG lacked a consistent process for coordinating with DHS agencies to receive and respond to technical and management comments, contributing to increased risk of miscommunication and misunderstanding. The OIG has acknowledged the challenges identified in the GAO report and begun to address the report's 21 related recommendations. This is of critical importance, given the OIG's mission. However, as of the end of this reporting period, GAO had not closed any of the 21 recommendations made in its 2021 report.

Further, in this Semiannual Report, the OIG once again erroneously suggests that the Department restricted and significantly delayed the OIG's access to information regarding the January 6, 2021 attack on the U.S. Capitol. It is particularly disturbing that the OIG does not provide any specifics concerning this unfounded assertion, with which DHS strongly disagrees.

As I noted in my November 20, 2021 transmittal letter to Congress enclosing the previous OIG Semiannual Report (for the period ending September 30, 2021), understanding what led to and occurred on January 6, 2021 is one of our Department's top priorities. To this end, DHS has made every effort to coordinate with the OIG on its reviews related to the January 6, 2021 attack on the U.S. Capitol, including by providing timely access to relevant information. At no time did the Department refuse access to relevant information or impede progress on

[1] GAO Report 21-316, "DHS Office of Inspector General; Actions Needed to Address Long-Standing Management Weaknesses," June 2021.

either of the OIG's January 6-related reviews.[2] This has not changed. To the contrary, throughout these reviews, the U.S. Secret Service and other DHS agencies have made available countless documents and hundreds of personnel to be interviewed by the OIG, often within days of an initial request. The breadth and scope of the OIG's requests have been extensive, and often required discussion to ensure proper handling of highly sensitive information, much of which was not relevant to the events of January 6, 2021. The Department has worked diligently with OIG to provide broad access to information, and to minimize any delays in accommodating OIG's sweeping requests, subject to the Department's legal obligations. The Department will continue to ensure the OIG has timely access to all relevant information needed to conduct a full and accurate evaluation of January 6-related events.

In addition, I am concerned that the OIG Semiannual Report does not always provide sufficient context regarding relevant underlying reports and their related issues and findings. For example, the OIG's reference to the Torrance County Detention Facility Management Alert[3] does not mention ICE's disagreement with the OIG's unprecedented recommendation that ICE "immediately relocate all detainees" from the facility, nor that ICE's disagreement was based, in part, on concerns about the accuracy and integrity of the report and whether it met the "Quality Standards for Inspection and Evaluation" issued by the Council of Inspectors General on Integrity and Efficiency.

The Department is committed to working with the OIG and our other oversight entities in a transparent and open manner, and I have emphasized the importance of doing so to our Department's leadership and workforce. Of note, during this reporting period, the Department closed 135 open recommendations from the OIG. The Department also continues its self-imposed practice of communicating with and reaching agreement with OIG staff before closing any OIG recommendations, ensuring appropriate and responsive actions are taken. DHS leaders remain committed to cultivating a culture across the Department that facilitates open and transparent interactions with the OIG.

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[2] DHS Project Nr. 21-023-SRE-I&A: "I&A Intelligence Prior to the January 6, 2021 Events at the U.S. Capitol and DHS Project Nr. 21-025-SRE-DHS: "DHS Law Enforcement Preparation for and Response to the January 6, 2021 Events at the U.S. Capitol."

[3] OIG Report 22-31, "Management Alert – Immediate Removal of all Detainees from the Torrance County Detention Facility," dated March 16, 2022.

The OIG has a unique and independent status within our Department, with the charge of helping to prevent and detect waste, fraud, abuse, and mismanagement, and promote integrity and accountability at every level. Its work helps strengthen our Department's ability to execute our critical mission. We look forward to continuing to work closely with the OIG on these matters. Should you wish to discuss this report further, please contact IG Joseph Cuffari or me directly. Thank you.

Sincerely,



Alejandro N. Mayorkas
Secretary

Enclosure

Exhibit H

Congressional Requests for Information from Inspectors General Concerning Open Criminal Investigations

Long-established executive branch policy and practice, based on consideration of both Congress' oversight authority and principles of executive privilege, require that in the absence of extraordinary circumstances an Inspector General must decline to provide confidential information about an open criminal investigation in response to a request pursuant to Congress' oversight authority

The reporting provisions of the Inspector General Act do not require Inspectors General to disseminate to Congress confidential information pertaining to open criminal investigations.

March 24, 1989

MEMORANDUM OPINION FOR THE CHAIRMAN
INVESTIGATIONS/LAW ENFORCEMENT COMMITTEE
PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

Introduction and Summary

This memorandum is in response to your request for the opinion of this Office on the obligations of Inspectors General ("IGs") with respect to congressional requests for confidential information about open criminal investigations. Specifically, you have asked this Office to advise you as to the obligations of the IGs with respect to (1) requests based on Congress' oversight authority and (2) requests based on the reporting requirements of the Inspector General Act of 1978 ("the Act"), Pub. L. No. 95-452, 92 Stat. 1101 (1978) (codified at 5 U.S.C. app. 3).[1]

As discussed below, when pursuant to its oversight authority Congress seeks to obtain from an IG confidential information about an open criminal investigation, established executive branch policy and practice, based on consideration of both Congress' oversight authority and principles of executive privilege, require that the IG decline to provide the information, absent extraordinary circumstances. With respect to congressional requests based on the congressional reporting requirements of the Act, we have concluded as a matter of statutory construction that Congress did not intend those provisions to require production of confi-

[1] On March 8, 1989, Larry Elston of your staff orally confirmed to Paul Colborn of this Office that these are the questions on which you seek our opinion

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dential information about open criminal investigations. Accordingly, IGs are under no obligation under the Act to disseminate confidential law enforcement information.

I. Congressional Requests Based on Oversight Authority

The decision on how to respond to a congressional request for information from an IG based on Congress' oversight authority requires the weighing of a number of factors arising out of the separation of powers between the executive and legislative branches. The principal factors to be weighed are the nature of Congress' oversight interest in the information and the interest of the executive branch in maintaining confidentiality for the information.

A. Congress' Oversight Authority

The constitutional role of Congress is to adopt general legislation that will be implemented — "executed" — by the executive branch. "It is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments." *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 136 (1810). The courts have recognized that this general legislative interest gives Congress investigatory authority. Each House of Congress has power, "through its own process, to compel a private individual to appear before it or one of its committees and give testimony needed to enable it efficiently to exercise a legislative function belonging to it under the Constitution." *McGrain v. Daugherty*, 273 U.S. 135, 160 (1927). The issuance of subpoenas in aid of this function "has long been held to be a legitimate use by Congress of its power to investigate," *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 504 (1975), provided that the investigation is "related to, and in furtherance of, a legitimate task of the Congress." *Watkins v. United States*, 354 U.S. 178, 187 (1957). The inquiry must pertain to subjects "on which legislation could be had." *McGrain v. Daugherty*, 273 U.S. at 177.

In short, Congress' oversight authority

> is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.
>
> Broad as it is, the power is not, however, without limitations. Since Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters *which are within the exclusive province of one of the other branches of the Government.*

Barenblatt v. United States, 360 U.S. 109, 111-12 (1959) (emphasis added).

The execution of the law is one of the functions that the Constitution makes the exclusive province of the executive branch. Article II, Section 1 provides that "the executive Power shall be vested in a President of the United States of America." Article II, Section 3 imposes on the President the corresponding duty to "take Care that the Laws be faithfully executed."[2] In particular, criminal prosecution is an exclusively executive branch responsibility. *Heckler v. Chaney*, 470 U.S. 821, 832 (1985); *Buckley v. Valeo*, 424 U.S. 1, 138 (1976); *United States v. Nixon*, 418 U.S. 683, 693 (1974). Accordingly, neither the judicial nor legislative branches may directly interfere with the prosecutorial discretion of the executive branch by directing it to prosecute particular individuals.[3] Indeed, in addition to these general constitutional provisions on executive power, the Framers specifically demonstrated their intention that Congress not be involved in prosecutorial decisions or in questions regarding the criminal liability of specific individuals by including in the Constitution a prohibition against the enactment of bills of attainder. U.S. Const. art. I, § 9, cl. 3. *See United States v. Lovett*, 328 U.S. 303, 317-18 (1946); *INS v. Chadha*, 462 U.S. 919, 961-62 (1983) (Powell, J., concurring).

On the other hand, Congress' oversight authority does extend to the evaluation of the general functioning of the Inspector General Act and relevant criminal statutes, as well as inquiring into potential fraud, waste and abuse in the executive branch. Such evaluations may be seen to be necessary to determine whether the statutes should be amended or new legislation passed. *See Watkins v. United States*, 354 U.S. at 187. Given the general judicial reluctance to look behind congressional assertions of legislative purpose, an assertion that Congress needed the information for such evaluations would likely be deemed sufficient in most cases to meet the threshold requirement for congressional inquiry. This general legislative interest, however, does not provide a compelling justification

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[2] One of the fundamental rationales for the separation of powers is that the power to enact laws and the power to execute laws must be separated in order to forestall tyranny As James Madison stated in Federalist No 47

> The reasons on which Montesquieu grounds his maxim [that the legislative, executive and judicial departments should be separate and distinct] are a further demonstration of his meaning "When the legislative and executive powers are united in the same person or body," says he, "there can be no liberty, because apprehensions may arise lest *the same* monarch or senate should *enact* tyrannical laws to *execute* them in a tyrannical manner "

The Federalist No 47, at 303 (James Madison) (Clinton Rossiter ed., 1961).

[3] *See Heckler v Chaney*, 470 U.S at 832 ("[T]he decision of a prosecutor in the Executive Branch not to indict ... has long been regarded as the special province of the Executive Branch, inasmuch as it is the Executive who is charged by the Constitution to 'take Care that the Laws be faithfully executed '"), *United States v Nixon*, 418 U S. at 693 ("[T]he Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case.")

for looking into particular ongoing cases.[4] Accordingly, we do not believe that as a general matter it should weigh heavily against the substantial executive branch interest in the confidentiality of law enforcement information. We discuss that interest next.

B. Executive Privilege

Assuming that Congress has a legitimate legislative purpose for its oversight inquiry, the executive branch's interest in keeping the information confidential must be assessed. This subject is usually discussed in terms of "executive privilege," and we will use that convention here.[5] Executive privilege is constitutionally based. To be sure, the Constitution nowhere expressly states that the President, or the executive branch generally, enjoys a privilege against disclosing information requested by the courts, the public, or the legislative branch. The existence of such a privilege, however, is a necessary corollary of the executive function vested in the President by Article II of the Constitution, has been asserted by numerous Presidents from the earliest days of our Nation, and has been explicitly recognized by the Supreme Court. *United States v. Nixon*, 418 U.S. at 705-06. There are three generally-recognized components of executive privilege: state secrets, law enforcement, and deliberative process. Since congressional requests for information from IGs will generally implicate only the law enforcement component of executive privilege, we will limit our discussion to that component.

It is well established and understood that the executive branch has generally limited congressional access to confidential law enforcement information in order to prevent legislative pressures from impermissibly influencing its prosecutorial decisions. As noted above, the executive branch's duty to protect its prosecutorial discretion from congressional interference derives ultimately from Article II, which places the power to enforce the laws exclusively in the executive branch. If a congressional committee is fully apprised of all details of an investigation as the investigation proceeds, there is some danger that congressional pressures will influence, or will be perceived to influence, the course of the investigation. Accordingly, the policy and practice of the executive branch throughout our Nation's history has been to decline, except in extraordinary circumstances, to provide committees of Congress with access to,

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[4] For instance, Congress' interest in evaluating the functioning of a criminal statute presumably can be satisfied by numerical or statistical analysis of closed cases that had been prosecuted under the statute, or (at most) by an analysis of the closed cases themselves.

[5] The question, however, is not strictly speaking just one of executive privilege. While the considerations that support the concept and assertion of executive privilege apply to any congressional request for information, the privilege itself need not be claimed formally vis-a-vis Congress except in response to a lawful subpoena. In responding to a congressional request for information, the executive branch is not necessarily bound by the limits of executive privilege.

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or copies of, open law enforcement files. No President, to our knowledge, has departed from this position affirming the confidentiality and privileged nature of open law enforcement files.[6]

Attorney General Robert H. Jackson well articulated the basic position:

> It is the position of this Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to "take care that the Laws be faithfully executed," and that congressional or public access to them would not be in the public interest.
>
> Disclosure of the reports could not do otherwise than seriously prejudice law enforcement. Counsel for a defendant or prospective defendant, could have no greater help than to know how much or how little information the Government has, and what witnesses or sources of information it can rely upon. This is exactly what these reports are intended to contain.

40 Op. Att'y Gen. 45, 46 (1941).

Other grounds for objecting to the disclosure of law enforcement files include the potential damage to proper law enforcement that would be caused by the revelation of sensitive techniques, methods, or strategy; concern over the safety of confidential informants and the chilling effect on other sources of information; sensitivity to the rights of innocent individuals who may be identified in law enforcement files but who may not be guilty of any violation of law; and well-founded fears that the perception of the integrity, impartiality, and fairness of the law enforcement process as a whole will be damaged if sensitive material is distributed beyond those persons necessarily involved in the investigation and prosecution process.[7] *See generally Congressional Subpoenas of Department of Justice Investigative Files*, 8 Op. O.L.C. 252, 262-66 (1984).

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[6] *See generally Assertion of Executive Privilege in Response to Congressional Demands for Law Enforcement Files*, 6 Op O L.C. 31 (1982) (regarding request for open law enforcement investigative files of the Environmental Protection Agency); Memorandum for the Deputy Attorney General from Robert B. Shanks, Deputy Assistant Attorney General, Office of Legal Counsel, *Re. Refusals by Executive Branch to Provide Documents from Open Criminal Investigative Files to Congress* (Oct. 30, 1984).

[7] In addition, potential targets of enforcement actions are entitled to protection from premature disclosure of investigative information It has been held that there is "no difference between prejudicial publicity instigated by the United States through its executive arm and prejudicial publicity instigated by the United States through its legislative arm." *Delaney v United States*, 199 F2d 107, 114 (1st Cir. 1952). Pretrial publicity originating in Congress, therefore, can be attributed to the government as a whole and can require postponement or other modification of the prosecution on due process grounds *Id*

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C. Accommodation with Congress

The executive branch should make every effort to accommodate requests that are within Congress' legitimate oversight authority, while remaining faithful to its duty to protect confidential information.[8] *See generally United States v. AT&T*, 567 F.2d 121, 127-30 (D.C. Cir. 1977); *Assertion of Executive Privilege in Response to a Congressional Subpoena*, 5 Op. O.L.C. 27, 31 (1981) ("The accommodation required is not simply an exchange of concessions or a test of political strength. It is an obligation of each branch to make a principled effort to acknowledge, and if possible to meet, the legitimate needs of the other branch.").

The nature of the accommodation required in responding to a congressional request for information clearly depends on the balance of interests between the Executive and Congress. For its part, Congress must be able to articulate its need for the particular materials — to "point[] to ... specific legislative decisions that cannot responsibly be made without access to materials uniquely contained" in the presumptively privileged documents (or testimony) it has requested, and to show that the material "is demonstrably critical to the responsible fulfillment of the Committee's functions." *Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731, 733 (D.C. Cir. 1974). The more generalized the executive branch interest in withholding the disputed information, the more likely it is that this interest will yield to a specific, articulated need related to the effective performance by Congress of its legislative functions. Conversely, the more specific the need for confidentiality, and the less specific the articulated need of Congress for the information, the more likely it is that the Executive's need for confidentiality will prevail. *See Nixon v. Administrator of General Services*, 433 U.S. 425, 446-55 (1977) (discussion of balance of

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[8] President Reagan's November 4, 1982 Memorandum for the Heads of Executive Departments and Agencies on "Procedures Governing Responses to Congressional Requests for Information" states:

> The policy of this Administration is to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch . .. [E]xecutive privilege will be asserted only in the most compelling circumstances, and only after careful review demonstrates that assertion of the privilege is necessary Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodation should continue as the primary means of resolving conflicts between the Branches

Only rarely do congressional requests for information result in a subpoena of an executive branch official or in other congressional action. In most cases the informal process of negotiation and accommodation recognized by the courts, and mandated for the executive branch by President Reagan's 1982 memorandum, is sufficient to resolve any dispute. On occasion, however, the process breaks down, and a subpoena is issued by a congressional committee or subcommittee. At that point, it would be necessary to consider asking the President to assert executive privilege. Under President Reagan's memorandum, executive privilege cannot be asserted vis-a-vis Congress without specific authorization by the President, based on recommendations made to him by the concerned department head, the Attorney General, and the Counsel to the President. We have no reason to believe that President Bush envisions a different procedure.

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interests); *United States v. Nixon*, 418 U.S. at 707-13 (same); *United States v. AT&T*, 567 F.2d at 130-33 (same).

In light of the limited and general congressional interest in ongoing criminal investigations and the specific and compelling executive branch interest in protecting the confidentiality of such investigations, the executive branch has generally declined to make any accommodation for congressional committees with respect to open cases: that is, it has consistently refused to provide confidential information. However, on occasion after an investigation has been closed, and after weighing the interests present in the particular case, the executive branch has briefed Congress on prosecutorial decisions and has disclosed some details of the underlying investigation.[9]

In conclusion, although in the absence of a concrete factual setting we cannot analyze the case for withholding any particular document or information in response to a congressional oversight request, we can advise that as a general matter Congress has a limited oversight interest in the conduct of an ongoing criminal investigation and the executive branch has a strong interest in preserving the confidentiality of such investigations. Accordingly, in light of established executive branch policy and practice, and absent extraordinary circumstances, an IG should not provide Congress with confidential information concerning an open criminal investigation.

II. Congressional Requests Based on the Inspector General Act

The second question raised by your opinion request is whether the reporting provisions of the Inspector General Act require that IGs provide Congress with confidential information on open criminal investigations that is not normally shared with Congress under established executive branch policy and practice with respect to oversight requests. We believe that both the text and legislative history of these provisions demonstrate that they do not impose such a requirement.

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[9] Once an investigation has been closed without further prosecution, some of the considerations previously discussed lose their force Access by Congress to details of closed investigations does not pose as substantial a risk that Congress will be a partner in the investigation and prosecution or will otherwise seek to influence the outcome of the prosecution, likewise, if no prosecution will result, concerns about the effects of undue pretrial publicity on a jury would disappear. Still, such records are not automatically disclosed to Congress. Obviously, much of the information in a closed criminal enforcement file — such as unpublished details of allegations against particular individuals and details that would reveal confidential sources and investigative techniques and methods — would continue to need protection

In addition, the executive branch has a long-term institutional interest in maintaining the confidentiality of the prosecutorial decisionmaking process The Supreme Court has recognized that "human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process " *United States v Nixon*, 418 U S at 705. It is therefore important to weigh the potential "chilling effect" of a disclosure of details of the prosecutorial deliberative process in a closed case against the immediate needs of Congress

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The Act establishes a number of congressional reporting requirements with respect to the activities of the IGs. Most generally, section 4(a)(5) requires each IG

> to keep the head of [the agency within which his office is established] and the Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such [agency], to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

Section 5(a) requires each IG to prepare semi-annual reports summarizing the activities of his office, and section 5(b) requires that the head of the IG's agency submit these reports to the appropriate committees or subcommittees of Congress within 30 days of receiving them. Section 5(d) requires each IG to

> report immediately to the head of the [agency] whenever the [IG] becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such [agency]. The head of the [agency] shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the agency containing any comments such head deems appropriate.

Finally, section 5(e) provides in subsection (1) that none of the reporting requirements "shall be construed to authorize the public disclosure" of certain information, while also providing in subsection (3) that neither the reporting requirements nor any other provision of the Act "shall be construed to authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof."

In our judgment, nothing in the text of these provisions provides that confidential law enforcement materials pertaining to ongoing cases must be transmitted to Congress. To the contrary, the statutory scheme set out in section 5 of the Act merely envisions that the periodic reports from each IG to Congress will be a general "description" and "summary" of the work of the IG. This view of section 5 is supported by the Act's legislative history. In proposing the congressional reporting requirements that were ultimately enacted into law,[10] the Senate committee made it clear that it did not contemplate that reports from the IGs would be so specific that

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confidential investigative information would fall within the scope of the report and, in any event, it was not intended that such information would be required. For example, with respect to section 5(a)(4)'s requirement that semi-annual reports contain "a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted," the committee indicated:

> By using the word "summary" in subsection (a)(4), the committee intends that Congress would be given an overview of those matters which have been referred to prosecutive authorities. It would be sufficient, for instance, for an [IG] at HUD to include in his report the fact that he had referred 230 cases of fraud in FHA programs to the Justice Department for further investigation and prosecution. It would be highly improper and often a violation of due process for an IG's report to list the names of those under investigation or to describe them with sufficient precision to enable the identities of the targets to be easily ascertained. However, once prosecutions and convictions have resulted, the IG could certainly list those cases, if he deems such a listing appropriate.

S. Rep. No. 1071 at 30.

The committee noted that section 5(b)'s requirement that semi-annual reports be submitted to Congress "contemplates that the IG's reports will ordinarily be transmitted to Congress by the agency head *without alteration or deletion.*" *Id.* at 31 (emphasis added). The committee went on to stress, however, that

> nothing in this section authorizes or permits an [IG] to disregard the obligations of law which fall upon all citizens and with special force upon Government officials. The Justice Department has expressed concern that since an [IG] is to report on matters involving possible violations of criminal law, his report might contain information relating to the identity of informants, the privacy interest of people under investigations, or other matters which would impede law

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[10] The Act was originally considered by the House of Representatives as H.R. 8588, which contained similar reporting requires to those of the Senate bill *Compare* House version, sections 3-4, 124 Cong Rec. 10,399 (1978), *with* Senate version, sections 4-5, 124 Cong. Rec 32,029-30 (1978). The legislative history regarding the House provisions is much less extensive than that for the Senate provisions. *See generally* H.R. Rep. No. 584, 95th Cong., lst Sess 13-14 (1977) H R 8588 passed the House, but failed in the Senate, which considered instead a substitute bill reported from the Senate Committee on Governmental Affairs *See* 124 Cong Rec. 30,949 (1978), S. Rep. No. 1071, 95th Cong., 2d Sess (1978) The House accepted the substitute Senate bill and it was enacted into law

> enforcement investigations. *As noted above, the committee does not envision that a report by the [IG] would contain this degree of specificity. In any event, however, the intent of the legislation is that the [IG] in preparing his reports, must observe the requirements of law which exist today under common law, statutes, and the Constitution, with respect to law enforcement investigations....*
>
> The committee recognizes, however, that in rare circumstances the [IG], through inadvertence or design, may include in his report materials of this sort which should not be disclosed even to the Congress. The inclusion of such materials in an [IG's] report may put a conscientious agency head in a serious bind. The obligation of an agency head is to help the President "faithfully execute the laws." Faithful execution of this legislation entails the timely transmittal, without alteration or deletion, of an [IG's] report to Congress. However, *a conflict of responsibilities may arise when the agency head concludes that the [IG's] report contains material, disclosure of which is improper under the law. In this kind of rare case, section 5(b) is not intended to prohibit the agency head from deleting the materials in question.*[11]

Id. at 31-32 (emphasis added).[12]

The committee also made it clear that the same principles apply with equal force to the requirement of section 5(d) that the IG reports to agency heads on "particularly serious or flagrant problems" also be submitted to Congress. In stating with respect to this section that "as in subsection (b), the agency head has no general authority or right to delete or alter certain provisions of the report" *id.* at 33, the committee clearly

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[11] "In the rare cases in which alterations or deletions have been made, the committee envisions that an agency head's comments on an [IG's] report would indicate to the Congress that alterations or deletions had been made, give a description of the materials altered or deleted, and the reasons therefore." *Id.* at 32.

[12] In addition to thus stating its intention with respect to the confidentiality of law enforcement information, the committee also expressed its understanding that section 5(b) cannot override executive privilege with respect to deliberative process information

> [T]he committee is aware that the Supreme Court has, in certain contexts, recognized the President's constitutional privilege for confidential communications or for information related to the national security, diplomatic affairs, and military secrets *Insofar as this privilege is constitutionally based, the committee recognizes that subsection 5(b) cannot override it In view of the uncertain nature of the law in this area, the committee intends that subsection 5(b) will neither accept nor reject any particular view of Presidential privilege but only preserve for the President the opportunity to assert privilege where he deems it necessary.* The committee intends that these questions should be left for resolution on a case-by-case basis as they arise in the course of implementing this legislation

Id. at 32 (emphasis added) (citations omitted)

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implied that the agency head retained the ability — as in the "rare case" identified with respect to subsection (b) — to delete "materials ... which should not be disclosed even to the Congress." *Id.* at 32.

Conclusion

Long-established executive branch policy and practice, based on consideration of both Congress' oversight authority and principles of executive privilege, require that in the absence of extraordinary circumstances an IG must decline to provide confidential information about an open criminal investigation in response to a request pursuant to Congress' oversight authority. With respect to congressional requests based on the reporting requirements of the Inspector General Act, we similarly conclude that the reporting provisions of the Inspector General Act do not require IGs to disseminate confidential information pertaining to open criminal investigations.

DOUGLAS W. KMIEC
Assistant Attorney General
Office of Legal Counsel

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From: [redacted]
To: Integrity-WG
Subject: {EXTERNAL} [redacted] Response to Request in Integrity Committee Case 22-069
Date: Monday, December 5, 2022 5:29:01 PM
Attachments: 2022.12.05 [redacted] Response to Integrity Committee in Case 22 069.pdf

This email originated from outside of CIGIE. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I write on behalf of my client, [redacted], to provide the attached response to the Integrity Committee's October 26, 2022 letter to [redacted] in connection with IC Case 22-069.

Please let me know if you have any questions regarding the attached response.

Sincerely,

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

December 5, 2022

VIA ELECTRONIC MAIL

Kevin H. Winters
Chairperson
Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
Integrity-WG@CIGIE.GOV

Re: [redacted] Response to Request in Integrity Committee Case 22-069

Dear Mr. Winters:

I write on behalf of my client, [redacted], in response to your October 26, 2022 letter requesting a response to allegations made in Integrity Committee (IC) Case 22-069.

The October 26, 2022 letter to [redacted] states that the IC has "has received allegations against [redacted] for abuse of authority, gross mismanagement, and conduct undermining independence or integrity." Oct. 26, 2022 Letter from K. Winters ("IC letter") at p. 1. The allegations at issue involve "DHS OIG's purported failure to timely and/or adequately disclose the U.S. Secret Service's deletion of text messages potentially relevant to the January 6th investigation." *Id*. Those allegations are without merit for the reasons set forth below.

I. [redacted] Helped to Ensure that Congress Received Appropriate Information About the Secret Service's Resistance to OIG Oversight

The allegations set forth in the IC letter relate to the Spring 2022 semiannual report to Congress from the Department of Homeland Security Office of Inspector General ("OIG"). That report disclosed that the U.S. Secret Service continued to impede access to records sought by OIG. *See Semiannual Report to the Congress: Oct. 1, 2021 – Mar. 31, 2022* at p. 15.[1] The Spring 2022 semiannual report first states that "Section 5(a)(21)(B) of the Inspector General Act of 1978 (IG Act) requires OIG to report 'incidents where the establishment has resisted or objected to oversight activities of the Office or restricted or significantly delayed access to information, including the justification of the establishment for such action.'" *Id*. The report then explains that "[d]uring the previous reporting period, we included information about Secret Service's significant delay of OIG's access to Secret Service records, impeding the progress of our January 6, 2021 review. We continue to discuss this issue with Secret Service." *Id.*

[1] Available at https://www.oig.dhs.gov/sites/default/files/assets/SAR/2022/oig-sar-oct21-mar22.pdf

The Spring 2022 semiannual report references earlier disclosures contained in OIG's Fall 2021 semiannual report to Congress. Among other things, the Fall 2021 report disclosed that:

> During this reporting period, the Department significantly delayed OIG's access to Department records, thereby impeding the progress of OIG's review of the January 6 events at the Capitol. The Department repeatedly suggested that OIG might not have a right of access to the records sought, but during the months-long period in which access was delayed the Department did not cite any legal authority consistent with section 6(a)(1)(B) of the IG Act that would have justified withholding the information.

Semiannual Report to the Congress: Apr. 1, 2021 – Sep. 30, 2021 at p. 19.[2] The Spring 2022 report added to the disclosures already made in the Fall 2021 report by identifying the Secret Service specifically and informing Congress that the issues described in the Fall 2021 report had yet to be resolved. *See Semiannual Report: Oct. 1, 2021 – Mar. 31, 2022* at p. 15.

The statements included in the Fall 2021 and Spring 2022 semiannual reports disclose that the Secret Service was impeding OIG's review of the devastating events that took place at the Capitol on January 6, 2021. And that was not the only information that DHS OIG provided to Congress about the improper actions taken by the Secret Service in response to OIG inquiries. On July 13, 2022, for example, Inspector General Cuffari told congressional leaders that according to DHS "many U.S. Secret Service (USSS) text messages from January 5 and 6, 2021, were erased as part of a device-replacement program. The USSS erased those text messages *after* OIG requested records of electronic communication from the USSS, as part of our evaluation of events at the Capitol on January 6." July 13, 2022 letter from IG Cuffari (emphasis in the original).[3]

The disclosures made by OIG are pointed and direct. They describe serious misconduct by the Secret Service that impeded OIG's critical review of the events of January 6, 2021.

Despite those detailed disclosures, on August 11, 2022, the Project on Government Oversight (POGO) published an article complaining that the Spring 2022 semiannual report did not include additional language contained in a draft of the report, which POGO obtained from an unidentified source. *See* N. Schwellenbach & A. Zago, *DHS Watchdog Nixed Alert to Congress About Purged January 6 Texts, New Docs Show*, POGO (Aug. 11, 2022).[4] The August 11, 2022 POGO article quotes "a key paragraph" of the draft report as follows:

> On February 23, 2022—more than 2 months after OIG renewed its requests for select Secret Service employees' text messages—Secret

[2] Available at https://www.oig.dhs.gov/sites/default/files/assets/SAR/2021/oig-sar-apr21-sept21.pdf

[3] Available at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-07-13-DHS-OIG-Letter-to-HSGAC-CHS.pdf

[4] Available at https://www.pogo.org/investigation/2022/08/dhs-watchdog-nixed-alert-to-congress-about-purged-january-6-texts-new-docs-show

> Service claimed inability to extract text message content due to an April 2021 mobile phone system migration, which wiped all data.

That unsent paragraph continues:

> Secret Service caused significant delay by not clearly communicating this highly relevant information at the outset of its exchanges with OIG during this reporting period. Moreover, Secret Service has not explained why it did not preserve the texts prior to the migration.

Id.

The IC's October 26, 2022 letter to [redacted] includes the exact same quotation used in the POGO article. *See* IC Letter at 1. The IC letter states that "it is alleged that, as of April 1, 2022, DHS OIG staff had prepared language for the draft semiannual report to Congress that offered additional details about the Secret Service text message deletions, but that those details were not ultimately included after the draft was sent to you and IG Cuffari." *Id.* While the IC letter does not contain any specific questions for [redacted] it requests a response to the allegations contained in the letter. *Id.* at 2.

[redacted] is not authorized to disclose OIG's internal discussions regarding the language used in the Spring 2022 semiannual report in [redacted] personal capacity. Despite that limitation, a wealth of public information belies any suggestion that [redacted] engaged in misconduct in connection with the language chosen for inclusion in OIG's report to Congress.

The semiannual report did not minimize OIG's concerns with the conduct of the Secret Service. *See Semiannual Report: Oct. 1, 2021 – Mar. 31, 2022* at p. 15 (explaining that the "Secret Service's significant delay of OIG access to Secret Service records" was "impeding the progress of [OIG's] January 6, 2021 review"). OIG provided a great deal of additional information to congressional leaders in other communications as well. As Inspector General Cuffari explained in an August 8, 2022 letter to House committee leaders, for example:

> Consistent with the law, I have reported to Congress various access issues that my office has experienced since 2021. As you note, this includes public reporting as early as our Semi-Annual Report to Congress (April 1, 2021–September 30, 2021). Additionally, since 2021, my staff and I have provided numerous briefings to Members and congressional staff about the wide-spread access issues that we have faced at every level of DHS.

August 8, 2022 letter from IG Cuffari at p. 1.[5]

Inspector General Cuffari also "briefed Members of the January 6 Select Committee about the impediments to access that we have experienced in our January 6 reviews[.]" *Id*. at p. 2.

[5] Available at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DHS-OIG.220808.Response%20to%20CBM%20BGT%20re%20Document%20Request.pdf

According to public reporting, the Select Committee was told, for example, that "the Secret Service has not been fully cooperative with [OIG's] probe." *DHS Inspector General Told Jan. 6 Panel He Went to Mayorkas About Secret Service Cooperation*, CNN (July 15, 2022).[6] IG Cuffari also told the Select Committee that "he brought the issue to Homeland Security Secretary Alejandro Mayorkas more than once and was told to keep trying to get the information. Ultimately, Cuffari decided to go to Congress because he could not get anywhere within DHS with his concerns." *Id*.

Nothing in OIG's decision to include less detail than some may wish in the Spring 2022 semiannual report suggests any effort to improperly protect the Secret Service, or anyone else, given that context. Instead, the public record shows that OIG ensured Congress was informed of the troubling actions taken by the Secret Service, while remaining mindful of the need to limit public disclosures regarding the details of an ongoing investigation. *See*, *e.g.*, *Congressional Requests for Information from Inspectors General Concerning Open Criminal Investigations*, 13 Op. O.L.C. 77 (1989) ("The reporting provisions of the Inspector General Act do not require Inspectors General to disseminate to Congress confidential information pertaining to open criminal investigations").

II. The Allegations Against [redacted] are Unfounded

OIG's multiple disclosures to Congress undermine any suggestion that [redacted] engaged in "abuse of authority, gross mismanagement, and conduct undermining independence or integrity" based on the language used in OIG's Spring 2022 semiannual report to Congress, as alleged in the IC letter.

More specifically, the Integrity Committee Policies and Procedures define "abuse of authority" as the "arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to her/him or to preferred other persons." IC Policies and Procedures at p. 16.[7] The IC further defines "gross mismanagement" as "action or inaction that creates a substantial risk of significant adverse impact on the OIG's ability to accomplish its mission." *Id*. Importantly, gross mismanagement "does not include discretionary management decisions, or action or inaction that constitutes simple negligence or wrongdoing." *Id.*

Differences in opinion about how exactly to word disclosures to Congress cannot support a finding of wrongdoing by the IC. The drafting decisions discussed in the IC's letter are discretionary management decisions that do not fall within the definition of "gross mismanagement." *See Id*. ("gross mismanagement . . . does not include discretionary management decisions"). Nor is there any reason to conclude that the decision about what language to include in OIG's semiannual report to Congress was an arbitrary or capricious abuse of authority. OIG did

[6] Available at https://www.cnn.com/2022/07/15/politics/homeland-security-inspector-general-deleted-text-message/index.html

[7] Available at https://www.ignet.gov/sites/default/files/files/ICP%26PRevised_Jan-2018_Rev1_Finalx.pdf

not hide its concerns about the Secret Service from Congress, and the exact language used in the Spring 2022 semiannual report was reasonable, particularly given the challenge of balancing the importance of Congressional disclosures with the need to protect the details of an ongoing investigation.

The allegations set forth in the IC letter likewise cannot support a finding that [redacted] engaged in "conduct undermining [the] independence or integrity" of [redacted] office. IC Letter at p. 1. [redacted] is committed to ensuring the integrity and independence of the Office of Inspector General, as [redacted] has demonstrated during [redacted] many years as a dedicated civil servant working under multiple different Inspectors General. Over the last [redacted] has worked diligently to advance DHS OIG's mission during an extraordinarily difficult time. [redacted] supported OIG's efforts to obtain critical records from the Secret Service and [redacted] helped to ensure that Congress was made aware of the impediments OIG faced in seeking documents from that agency and DHS writ large.

In sum, the allegations set forth in the IC letter are unfounded. [redacted] did not engage in any misconduct in connection with the preparation of OIG's Spring 2022 semiannual report to Congress, let alone any misconduct that meets the threshold standards established by the IC. *See* IC Policies and Procedures at p. 6. The allegations against [redacted] should accordingly be rejected, and this matter should be closed. *See id.* at p. 7 (after receiving a response the IC may "[d]etermine that the written response sufficiently answers or refutes the allegation(s) and that further inquiry or investigation is not warranted, and close the matter").

Please let me know if you have any additional questions for [redacted] and thank you for your consideration.

Sincerely,

[redacted]

February 1, 2023

Via Email
[redacted]

Integrity Committee Case 22-069: Request for Further Clarification and Response

Dear [redacted]:

The Integrity Committee (IC) is in receipt of your letter, on behalf of your client, [redacted] for the U.S. Department of Homeland Security's Office of Inspector General (DHS OIG), dated December 5, 2022, responding to allegations related to IC 22-069. The IC writes to seek further clarification.

In your letter, you state, "[redacted] is not authorized to disclose OIG's internal discussions regarding the language used in the Spring 2022 semiannual report in [redacted] personal capacity…" Please clarify whether this is [redacted] position or if [redacted] was asked or directed not to provide this information to the IC by anyone at DHS OIG. If it is the latter, please identify the individual(s) who made such a request or provided such direction.

The IC does not concur with [redacted] position and does not believe it is defensible. [redacted] can share all relevant information regarding IC 22-069 with the IC. As has previously been explained to [redacted], while the IC is investigating individual misconduct allegedly undertaken by [redacted], such individual misconduct is alleged to have occurred during the course of [redacted] conducting [redacted] duties as [redacted] for DHS OIG.

On October 26, 2022, [redacted] wrote to IC staff to confirm that the IC's request for information was sent to her in [redacted] "personal capacity." IC staff wrote to clarify. In pertinent part, IC staff responded on November 1, 2022, as follows:

> *[t]he allegations we received were directed at you individually, not at DHS-OIG as an office. Therefore, the IC has requested a response to these allegations from you. As the IC advises on its website under frequently asked questions, '…attorneys working for the Federal government cannot provide representation of a Subject for purposes of an IC*

> *matter.' (https://www.ignet.gov/content/guidance-and-faqs). Doing otherwise could create conflicts of interest. For example, there may be instances when the Subject's interest in defending themselves against an allegation diverges from the interests of their OIG. In other words, while OIG counsel is of course free to represent the OIG's interest in an IC matter, it would not be appropriate for OIG counsel to represent your interests.*

Therefore, the IC has made clear that it is inquiring into individual actions [redacted] undertook as [redacted] for DHS OIG.

In any event, asserting a "personal capacity" bar to providing official information relevant to an IC investigation is misplaced. For the public to maintain confidence in the independence and integrity of IGs and their senior staff, they must be accountable and allegations about their misconduct must be subject to independent investigation. In short, IGs and their senior staff must be subject to the same degree of oversight that they exercise over their agencies and their own subordinate personnel.

Congress created the IC to provide this oversight because no OIG staff can credibly investigate their own leadership. Any such investigation would lack, or would appear to lack, impartiality. For this reason, section 11(d) of the IG Act strips an OIG of the authority to conduct an internal investigation, vests such authority in the IC, and requires the IC Chairperson to conduct a "thorough and timely" investigation. The IC has no doubt that Congress expects it to conduct precisely the same type of comprehensive investigations that OIGs conduct within their own agencies and their own offices (when appropriate). Just as a junior DHS OIG employee accused of individual misconduct would not be able to claim that they are unable to share official information with a DHS OIG investigator in an official internal investigation, a senior DHS OIG employee cannot make such a claim in the course of an official IC investigation.[1]

The IC trusts this addresses your concerns and looks forward to [redacted] supplemental response.

Sincerely,

/s/

[redacted]
Council of Inspectors General on Integrity and Efficiency

[1] Similarly, the IC does not consider the provision of access to OIG records, documents, witnesses, or other information to constitute a waiver of any applicable privilege or similar doctrine as to third parties, as they are not disclosures outside of the executive branch.

[redacted]

[redacted]

February 21, 2023

Kevin H. Winters, Chairperson
Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
Integrity-WG@CIGIE.GOV

Re: [redacted] Response to Request for Further Clarification in Integrity Committee Case 22-069

Dear Mr. Winters:

I write in response to your February 1, 2023 letter requesting additional information from my client, [redacted], in connection with Integrity Committee (IC) Case 22-069.

Your initial request to [redacted] sought [redacted] perspective on allegations relating to "DHS OIG's purported failure to timely and/or adequately disclose the U.S. Secret Service's deletion of text messages relevant to the January 6th investigation." October 26, 2022 IC Letter to [redacted] at 1; *Id.* at 2 (suggesting [redacted] "might offer any background, context, or supporting evidence (if available) prior to the IC's deliberations").

After receiving your October 26, 2022 request, [redacted] emailed the IC Working Group to ask if [redacted] could seek comments or legal help from DHS OIG counsel when responding to your request. *See* Exhibit A (email exchange with [redacted]) at 2. In response, the IC Working Group stated that:

> The allegations we received were directed at you individually, not at DHS-OIG as an office. Therefore, the IC has requested a response to these allegations from you. As the IC advises on its website under frequently asked questions, "…attorneys working for the Federal government cannot provide representation of a Subject for purposes of an IC matter."

Exhibit A at 1. As a result of those instructions, [redacted] had to retain private counsel to assist [redacted] in responding to your inquiries, instead of working with DHS OIG counsel.

I. [redacted] Has Already Provided the IC with a Detailed Response to the Allegation at Issue.

[redacted] retained me to represent [redacted] in this matter because the IC would not allow [redacted] to be represented by DHS OIG counsel. While that restriction put additional burdens on [redacted] and [redacted] counsel it did not prevent us from addressing the substance of the allegation at issue.

On December 5, 2022, I sent a detailed response to the IC on behalf of [redacted]. In that response, I explained that DHS OIG had not hidden its concerns about the Secret Service from Congress. *See* December 5, 2022 Letter from [redacted] at 1-2. In fact, DHS OIG repeatedly informed Congress that the Secret Service was impeding its review of the devastating events of January 6, 2021. For example, DHS OIG's Spring 2022 Semiannual Report to Congress stated that "Secret Service's significant delay of OIG access to Secret Service records" was "impeding the progress of [OIG's] January 6, 2021 review." DHS OIG Semiannual Report: October 1, 2021 – March 31, 2022 at p. 15. DHS IG Joseph Cuffari also specifically told congressional leaders that "many U.S. Secret Service (USSS) text messages from January 5 and 6, 2021, were erased" by the Secret Service "*after* OIG requested records of electronic communication from the USSS, as part of our evaluation of events at the Capitol on January 6." July 13, 2022 Letter from IG Cuffari (emphasis in the original).[1] As I explained in my December 5, 2022 letter, those disclosures and others like them belie any suggestion that DHS OIG sought to shield the Secret Service from oversight. *See* December 5, 2022 Letter from [redacted] at 1-4.

Despite those disclosures, the IC sought [redacted] response to an allegation complaining that DHS OIG did not include three additional sentences from a draft report in the final Spring 2022 Semiannual Report to Congress. *See* October 26, 2022 IC Letter to [redacted] at 1-2 (repeating an allegation first made in an article published by the Project on Government Oversight[2]). In response, I explained that differences in opinion about how exactly to word a disclosure to Congress cannot support a finding of wrongdoing by the IC given. *See* December 5, 2022 Letter from [redacted] at 4-5. Notably, the IC's own Policies and Procedures explain that "gross mismanagement," which can support an investigation by the IC, "does not include discretionary management decisions." IC Policies and Procedures at Appendix A. Drafting choices like the one at issue here are quintessential discretionary management decisions, which are not subject to second guessing by the IC.

I believe that the response I provided to the IC on December 5, 2022 thoroughly addressed the substance of the allegation at issue for those reasons.

II. The IC Points to No Authority That Permits [redacted] to Disclose Confidential DHS OIG Communications to the IC.

The IC's February 1, 2023 letter does not address any of the substantive arguments set forth in my December 5, 2022 letter. Instead, the IC now asks [redacted] to respond to its assertion that [redacted] must disclose the substance of confidential DHS OIG communications to the IC.

[1] Available at https://s3.documentcloud.org/documents/22087607/dhs-oig-letter-to-hsgac-chs-071322.pdf.

[2] *See* N. Schwellenbach & A. Zago, *DHS Watchdog Nixed Alert to Congress About Purged January 6 Texts, New Docs Show*, POGO (Aug. 11, 2022).

[redacted] was instructed to respond to the IC in [redacted] personal capacity, without the assistance of DHS OIG counsel. *See* Exhibit A at 1-2. Since [redacted] could not rely on the advice of DHS OIG counsel, [redacted] sought my counsel instead. And I am not aware of any legal authority that permits [redacted] to disclose confidential DHS OIG communications to other government entities.

The IC's February 1, 2023 letter argues that the IC should be permitted to access internal DHS OIG records as a matter of public policy, but the IC does not cite any authority that alleviates my concerns. The IC asserts that "[j]ust as a junior DHS OIG employee accused of individual misconduct would not be able to claim that they are unable to share official information with a DHS OIG investigator in an official internal investigation, a senior DHS OIG employee cannot make such a claim in the course of an official IC investigation." February 1, 2023 IC Letter at 2. But [redacted] is not in the same position as a junior DHS OIG employee who is asked to respond to a DHS OIG investigator, because [redacted] is being asked to share information outside of [redacted] agency.

The IC states that it "has no doubt that Congress expects it to conduct precisely the same type of comprehensive investigations that OIGs conduct within their own agencies and their own offices" (*id*.), but the statutory language chosen by Congress does not support that view. Courts "presume that the legislature says in a statute what it means and means in a statute what it says." *BedRock Ltd. v. United States*, 541 U.S. 176, 183 (2004) (quotation marks and citation omitted). When Congress addressed the authority of an Inspector General to obtain records from its own agency, Congress spoke clearly. Section 6(a) of the Inspector General Act of 1978 gives inspectors general the authority to access "all records, reports, audits, reviews, documents, papers, recommendations, or other materials available to the applicable establishment which relate to the programs and operations with respect to which that Inspector General has responsibilities under this Act." 5 U.S.C. app. 3 § 6(a)(1)(A). When Congress established the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency, in contrast, it granted no similar authority. *See* 5 U.S.C. App. 3 § 11(d) (establishing the Integrity Committee). By writing specific rules for intra-agency investigations conducted by an agency's own IG, and different rules for IC investigations into the actions of IGs at other government agencies, Congress confirmed that "it recognizes the differences between" the two. *Gutierrez v. Ada*, 528 U.S. 250, 256 (2000).

The IC's privilege assurances likewise fail to distinguish communications shared within DHS from communications provided to outside entities like CIGIE. The IC asserts that it "does not consider the provision of access to OIG records, documents, witnesses, or other information to constitute a waiver of any applicable privilege or similar doctrine as to third parties, as they are not disclosures outside of the executive branch." February 1, 2023 IC Letter at 2 n.1. But the IC cannot bind any other agency through those words, let alone the Article III courts that would ultimately rule on whether providing confidential internal agency communications to the IC acts as a privilege waiver.

The IC's February 1, 2023 letter cites no authority to support its position that [redacted] can share confidential internal DHS OIG communications with the IC without risking a waiver of privilege, and I know of no authority that supports that position. When considering the scope of the attorney-client privilege, for example, courts hold that "[i]n the governmental context, the 'client' may be the agency and the attorney may be an agency lawyer." *Tax Analysts v. I.R.S.*, 117 F.3d 607, 618 (D.C. Cir. 1997). Communications between agency lawyers and agency leaders are thus generally protected by the attorney-client privilege. But when privileged communications are shared outside of an agency, or even between distinct agency components, that privilege can be lost. *See Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 863 (D.C. Cir. 1980) (rejecting agency argument "that circulation limited to the confines of the agency of a document otherwise entitled to protection under the attorney-client privilege should not defeat the privilege" as "far too broad" when a document had been broadly shared across different parts of the agency).

Courts do not treat the entire Executive Branch as a single client when addressing privilege claims. Indeed, "different parts of the government may find themselves squaring off against each other as opposing parties in litigation" *Menasha Corp. v. U.S. Dep't of Justice*, 707 F.3d 846, 852 (7th Cir. 2013); s*ee also*, *SEC v. Fed. Labor Relations Auth.*, 568 F.3d 990, 997 (D.C. Cir. 2009) (Kavanaugh, J., concurring) ("Both the SEC and the FLRA are agencies in the Executive Branch," "yet one [has sued] the other in an Article III court."). When otherwise privileged communications are shared between two components of the Executive Branch that are on opposite sides of a dispute, privilege will be lost, just as it would be in the private sector.

The IC has not cited any authority that alleviates these concerns. Indeed, even the IC's own rules do not support the demands the IC has made to [redacted]. The IC specifically addresses its right to access OIG information in a 2021 addendum to its policies and procedures. The addendum states that:

> Upon request by the IC under section 7(B) or 7(C) of these Policies, *an IG or other person with full and final authority to provide access under this section* (Authorized Person) must provide and direct the staff of the OIG to provide the IC or its designated investigators with full and timely access to all OIG records, documents, witnesses, and other information that the IC or its designee deems necessary to carry out the IC's duties and responsibilities[.]

Integrity Committee Policies and Procedures Addendum A, §A (emphasis added).

The IC's own rules thus limit the IC's purported authority to request OIG records to requests made to an IG and those "with full and final authority to provide access under this section." *Id*. [redacted] is not an IG, nor does [redacted] have full and final authority to provide access to DHS OIG records. [redacted] should not be pressured to disclose the substance of confidential agency communications to the IC given [redacted] role, particularly when [redacted] was explicitly instructed to respond to the IC in [redacted] individual capacity, without representation by DHS OIG counsel. *See* Exhibit A.

I hope this letter has helped explain the approach I took when responding to the IC's request on behalf of [redacted]. The response I provided to the IC on December 5, 2022 addressed the substance of the allegation at issue without forcing [redacted] to make impossible decisions about the disclosure of confidential OIG communications. While I believe that we have now answered both of your requests thoroughly, I am always happy to consider any additional authority you would like to provide.

Sincerely,

[redacted]

EXHIBIT A

(IC Working Group email exchange with [redacted])

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Tuesday, November 1, 2022 9:52 AM
To: [redacted] Integrity-WG <Integrity-WG@cigie.gov>
Subject: RE: {EXTERNAL} RE: IC22-069 Request for Response [redacted]

Dear [redacted]

We are able to grant your request for an extension. A 20-day extension will make your response due on December 5, 2022.

The allegations we received were directed at you individually, not at DHS-OIG as an office. Therefore, the IC has requested a response to these allegations from you. As the IC advises on its website under frequently asked questions, "…attorneys working for the Federal government cannot provide representation of a Subject for purposes of an IC matter." (https://www.ignet.gov/content/guidance-and-faqs). Doing otherwise could create conflicts of interest. For example, there may be instances when the Subject's interest in defending themselves

against an allegation diverges from the interests of their OIG. In other words, while OIG counsel is of course free to represent the OIG's interest in an IC matter, it would not be appropriate for OIG counsel to represent your interests.

Should you have other questions, the IC Working Group is available to assist you.

Sincerely,

Integrity Committee Working Group

From: [redacted]
Sent: Monday, October 31, 2022 12:35 PM
To: Integrity-WG <Integrity-WG@cigie.gov>
Subject: {EXTERNAL} RE: IC22-069 Request for Response [redacted]

This email originated from outside of CIGIE. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Integrity Committee Working Group,

I am checking in to make sure you received my October 26 email.

If you require additional information to make a decision, please know that I am asking for the maximum extension because I have multiple competing priorities. For example, I have [redacted] the week of 11/14. I also will need to coordinate with my attorney, if indeed, your rules remain unchanged, as per my request for confirmation that:

- This a request for information "in my personal capacity."
- Therefore, the IC does not permit DHS OIG Counsel to provide comments or represent DHS OIG's interests in this matter.

I appreciate your consideration of my extension request and assistance confirming your rules.

V/r,

[redacted]

From: [redacted]
Sent: Wednesday, October 26, 2022 5:27 PM
To: Integrity-WG <Integrity-WG@cigie.gov>
Subject: RE: IC22-069 Request for Response ([redacted]

Dear Integrity Committee Working Group,

I am acknowledging receipt, and respectfully asking for the additional maximum extension to provide a response, which I believe would make the due date December 6, 2022.

Please also confirm my understanding of IC rules as they relate to these inquires:

- This a request for information "in my personal capacity."
- Therefore, the IC does not permit DHS OIG Counsel to provide comments or represent DHS OIG's interests in this matter.

V/r,

[redacted]

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Wednesday, October 26, 2022 4:24 PM
To: [redacted]
Cc: Integrity-WG <Integrity-WG@cigie.gov>
Subject: IC22-069 Request for Response ([redacted]

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact your component SOC with questions or concerns.

Dear [redacted]

Please see the attached request from the Integrity Committee. Please submit your response and any supporting documents to this email address by **November 15, 2022.**

Sincerely,

Integrity Committee Working Group

March 3, 2023

Via Email
The Honorable Joseph V. Cuffari
Inspector General
U.S. Department of Homeland Security
Office of Inspector General
[redacted]

Integrity Committee Cases 22-046 and 22-069: Second Request for Response

Dear Inspector General Cuffari:

Thank you for your letter, through your counsel, dated December 5, 2022. After reviewing your letter, the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) has additional questions, the answers to which, we believe will inform our deliberations regarding IC 22-046 and 22-069. As previously described in our letter to you dated October 26, 2022, the first allegation deals with an unpublished Department of Homeland Security (DHS) Office of Inspector General (OIG) report regarding sexual harassment at DHS and a related DHS OIG survey on the subject (Allegation 1); the second allegation pertains to the scope of a report issued by your office entitled, "DHS Components Have Not Fully Complied with the Department's Guidelines for Implementing the Lautenberg Amendment" (Allegation 2); and the third allegation concerns whether you promptly and fully reported to Congress that the Secret Service had deleted text messages potentially relevant to the January 6, 2021 attack on the U.S. Capitol (Allegation 3). The IC's questions are as follows:

Allegation 1

a. Were you aware of any specific information at the time you learned of the survey, or as the report drafting continued thereafter, that caused you to believe that the survey data was not accurate? For instance, did you doubt the validity of the sexual harassment survey results based on how the survey was designed or conducted? Had DHS's policies or practices changed with respect to dealing with allegations of sexual harassment after the survey was completed? Can you explain how reporting DHS agencies' alleged use of

cash payments in the hundreds of thousands of dollars to settle harassment cases would compromise OIG independence or otherwise not be appropriate in an OIG product?

b. In your May 13, 2022, letter to the Senate Committee on the Judiciary's Chair and Ranking Member, you cite "the failure of senior DHS OIG officials who preceded [you] to appreciate the significance of the survey results" and that you had found no indication that they had considered issuing a 7-day letter to alert DHS of "particularly serious or flagrant problems, abuses or deficiencies" under Section 5d of the Inspector General Act. However, when you learned of the survey results, did you consider a 7-day letter to inform DHS of the results? Did you consider other means, such as a management advisory letter, briefings, etc., to inform DHS of the results?

Allegation 2

a. It appears from your correspondences with Congress, that were attached as exhibits to your December 5, 2022, letter to the IC, that the scope of the report entitled, "DHS Components Have Not Fully Complied with the Department's Guidelines for Implementing the Lautenberg Amendment" changed over time. Based on your letter and its attachments, it appears that the original scope of the project was solely related to DHS' implementation of the Lautenberg Amendment, where a criminal conviction for domestic violence was present,[1] was expanded (prior to your involvement) to include DHS' handling of domestic violence where no criminal conviction was present,[2] and then was reduced, with your concurrence, back to the original scope. Is the IC's understanding of events accurate?

b. Did you, or DHS OIG at your direction/concurrence, consider ways to clearly delineate between the Lautenberg Amendment issues and other evidence developed during the project such that both might be presented to DHS while also complying with CIGIE's Quality Standards for Inspection and Evaluation?[3]

[1] In your May 13, 2022, letter to the Senate Committee on the Judiciary's Chair and Ranking Member, you state that you, "...found the report confusing inasmuch as it blurred the distinction between a criminal conviction for a domestic violence offense and administrative discipline by the employing agency for 'domestic violence.' *The latter topic was beyond the scope of the project as originally approved and the conclusions in the draft report were unpersuasive*." [emphasis added.]

[2] In your August 8, 2022, response to the Senate Committee on the Judiciary's June 27, 2022, letter, you acknowledge that the project had been expanded by DHS OIG staff prior to your involvement. In particular, "[t]he project, as expanded, included an examination of how DHS deals with law enforcement officers who are not convicted of an MCDV and are not subject to a domestic violence restraining order -- and who therefore are not covered by the Lautenberg Amendment -- but who are alleged to have engaged in off-duty conduct that OIE staff characterized as 'domestic violence.' *I am not opposed to modifying the scope of a project when the fieldwork reveals a systemic problem that should be corrected, but in this case, the portions of the May 2020 draft report that addressed the expanded scope were unpersuasive.*"

[3] For instance, CIGIE's Quality Standards for Inspection and Evaluation, Section 3.5g, reads, "Inspectors should adjust the plan [for the inspection], as appropriate, based on new information and document any significant changes to the plan in the inspection documentation."

c. In your August 8, 2022, response to the Senate Committee on the Judiciary's June 27, 2022, letter you state, "I am not opposed to modifying the scope of a project when the fieldwork reveals a systemic problem that should be corrected, but in this case, the portions of the May 2020 draft report that addressed the expanded scope were unpersuasive." What specifically within the portions of the report that addressed the expanded scope did you find unpersuasive, and why?

d. Can you also explain the specific rules you believe would have been violated and the bias that would have been revealed if DHS OIG were to have included findings concerning DHS's failure to adequately investigate or discipline personnel alleged to have committed domestic violence?

e. Did you, or DHS OIG at your direction or with your concurrence, provide the factual information removed from the final report to DHS management through another vehicle such as a briefing or management advisory letter at or near the time of report issuance?

Allegation 3

a. Your December 5, 2022, letter states, "On February 23, 2022, the Secret Service told DHS OIG that text messages had been deleted, during the period from January 2021 to April 2021, as part of a planned cellphone replacement project." Later, your letter states that, "on July 13, 2022, IG Cuffari informed Congress that the Secret Service had deleted text messages after receiving multiple preservation notices. Please explain why the notification to Congress took nearly five months.

b. Please explain your involvement, if any, in, and the rationale for, the decision to remove language drafted for a DHS OIG semiannual report that read:

> *On February 23, 2022—more than 2 months after OIG renewed its requests for select Secret Service employees' text messages—Secret Service claimed inability to extract text message content due to an April 2021 mobile phone system migration, which wiped all data.*
>
> *Secret Service caused significant delay by not clearly communicating this highly relevant information at the outset of its exchanges with OIG during this reporting period. Moreover, Secret Service has not explained why it did not preserve the texts prior to the migration.*

c. Did you consider sending a 7-day letter to DHS regarding their deletion of Secret Service text messages? If so, why did you decide not to do so?

The IC respectfully requests your response to these questions within 20 days of receipt of this letter. While the IC recognizes that you may need some assistance in gathering this information, please be advised that seeking assistance from fact-witnesses in your response to the

IC may raise questions about the intent or effect of such contacts, which may lead to other issues. Therefore, please feel free to reach out to the IC Working Group should you have any questions regarding responding to this request. You may submit your response and any questions you have regarding this request to Integrity-WG@CIGIE.GOV.

Sincerely,



Kevin H. Winters
Chairperson
Integrity Committee

April 3, 2023

Via Email
[redacted],
U.S. Department of Homeland Security
Office of Inspector General
45 Murray Dr.; Building 410
Washington, DC 20528
[redacted]

Re: Disclosure of Information Related to IC22-046.069

Dear [redacted]:

The IC seeks your assistance with permitting disclosure of DHS OIG information related to IC22-046.069. The IC issued a request for response to allegations to DHS OIG [redacted] on October 26, 2022. [redacted] responded through counsel to the IC on December 5, 2022. In that letter, and a subsequent letter dated February 21, 2023, [redacted] counsel argued that "[redacted] is not authorized to disclose OIG's internal discussions regarding the language used in the Spring 2022 semiannual report in [redacted] personal capacity." The IC explained to [redacted], through [redacted] counsel, that [redacted] is able to fully respond to the IC's request. To date, [redacted] has not done so.

We seek your assistance with clarifying for [redacted] that [redacted] does have permission from DHS OIG to fully respond to the IC's request. We appreciated your willingness to provide a similar memorandum to staff for IC20-059, dated May 17, 2022. As before, we base our request to you on Addendum A to the IC's Policies and Procedures (date March 25, 2021), which, in pertinent part, reads:

> *Upon request by the IC under section 7(B) or 7(C) of these Policies, an IG or other person with full and final authority to provide access under this section (Authorized Person) must provide and direct the staff of the OIG to provide the IC or its designated investigators with full and timely access to all OIG records, documents, witnesses, and other information that the IC or its designee deems necessary to carry out the IC's duties and responsibilities under section 11(d) of the IG Act. In reviewing or investigating an allegation of wrongdoing against a Covered Person in a particular OIG, the IC shall have access to OIG records, documents, witnesses, and other information to the same extent, and under the same terms, that section 6 of the IG Act provides each IG with such*

access with respect to its establishment. Any Authorized Person shall be considered to be a Covered Person pursuant to section 2(D) of these Policies.

***

IC Requests for Assistance – Other Entities and Agencies. Upon request, an OIG, including the IG, Authorized Person, and its senior leadership, will assist the IC or its designated investigators in obtaining records, documents, witnesses, or information from any establishment, entity, or agency. An OIG, including the IG, Authorized Person, and its senior leadership will, upon request, assist the IC in resolving any disputes arising from any such requests.

Once you have provided the memorandum to [redacted], please forward a copy to IC staff at Integrity-WG@cigie.gov. Thank you in advance for your assistance with this matter. Should you have questions, please contact IC staff for assistance.

Sincerely,

K. H. Winters

Kevin H. Winters
Chairperson
Integrity Committee

April 3, 2023

Via Email
The Honorable Joseph V. Cuffari
Inspector General
U.S. Department of Homeland Security
Office of Inspector General
[redacted]

Integrity Committee Cases 22-046 and 22-069: Third Request for Response

Dear Inspector General Cuffari:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged with receiving, reviewing, and investigating, where appropriate, allegations of misconduct made against an Inspectors General (IG) and designated members of an IG's staff. The IC takes action on allegations of wrongdoing that involve abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such persons.

The IC has received allegations against you for an alleged substantial violation of law, and conduct undermining independence or integrity. These allegations were outlined in a complaint the IC recently received.[1] The allegations are that:

1. During November 2022, a Department of Homeland Security, Office of Inspector General (DHS OIG) attorney asked you to produce text messages from your government issued iPhone in order to respond to a FOIA request. You then "indicated the text messages were deleted, in their entirety, from [your] government issued iPhone, and that the relevant policy for capturing such messages was not followed." The complaint alleges that the attorney in question concluded that those deleted text

[1] The IC has incorporated these new allegations into our existing open matter IC22-046/069, as they are factually related.

messages "very likely contained federal records, and therefore that the destruction of these was required to be reported to the National Archives and Records Administration."

2. As of mid-March 2023, you have made no report to the National Archives and Records Administration (NARA) "concerning the destruction of these records, as legally required."

3. You "broke the law by intentionally deleting messages" and you failed to follow the "relevant" DHS OIG policy on preserving text messages.[2]

Pursuant to IC procedures, we are reaching out to you to seek your perspective on the issues raised above. The IC has yet to fully deliberate on the merits of this matter and believes it would be helpful to provide you the opportunity to respond to these allegations, so you might offer any background, context, or supporting evidence (if available) prior to the IC's deliberations. The IC notes that there appears to be a legal obligation to report the destruction of government information to NARA.[3] In addition to explaining the full context surrounding this alleged event, the IC would like you to specifically address the following issues in your response:

1. Do you agree with the allegation #1's assertion that you had a government issued iPhone during the time period alleged and that your phone contained text messages? Do you agree that the text messages were government records as defined by applicable law and regulation?[4] Please also explain whether the events described in allegation #1 above are accurate, or to the extent they are inaccurate please provide additional information to correct or supplement the above-listed version of events. In sum, please provide clarifying information to correct or supplement the above-listed version of events. Finally, please describe the nature of the FOIA request and the content of the text messages that were allegedly deleted.

2. If your text messages were deleted, please explain whether you deleted them manually, to include whether you did so upon advice, and if so, who gave that advice. If the deletion of the text messages was pursuant to advice from staff or counsel at

[2] See 44 U.S.C. 3105 and 36 CFR 1230.12, explaining the potential penalties for "the unlawful or accidental removal, defacing, alteration, or destruction of Federal records or the attempt to do so…"
[3] See 44 U.S.C. 3106 and 36 CFR 1230.14, stating "[t]he agency must report promptly any unlawful or accidental removal, defacing, alteration, or destruction of records in the custody of that agency to NARA…" and spelling out what details must be included in such a report. Note your specific obligation under 36 CFR 1230.10 (d) to "[d]irect that any unauthorized removal, defacing, alteration or destruction be reported to NARA."
[4] See 44 U.S.C. 3301 and 36 CFR 1220.18, stating that a record or Federal record includes "all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of the data in them."

DHS OIG, please provide all documents that memorialize or contain that advice or communications from staff or counsel. If you did not delete them personally, please explain how the text messages came to be deleted.

3. If your text messages were deleted, were you advised by anyone to report this deletion to NARA? If so, please fully explain, to include who, when, and in what format was this advisory communication(s) made? If written, please provide the documents and communications.

4. Provide any and all DHS OIG policies and procedures, and any rules, regulations or guidance, regarding retention, handling or deletion of text messages on DHS OIG government issued phones.

5. If text messages that qualified as federal records were deleted from your government issued iPhone as alleged, please explain how your deletion of text messages and subsequent reporting actions was or was not in compliance with the relevant reporting requirements, DHS OIG policies and procedures, rules, regulations or guidance documents, including, but not limited to, your obligations under 44 U.S.C. 3105 and 36 CFR 1230.10 to prevent unlawful or accidental destruction of records.[5] Further, whether or not you have made the necessary report to NARA to date. And if you have not made such a report, please explain why.

The IC respectfully requests your response to these allegations within 20 days of receipt of this letter.

While the IC recognizes that you may need some assistance in gathering this information, please be advised that seeking assistance from fact-witnesses in your response to the IC may raise questions about the intent or effect of such contacts, which may lead to other issues. Therefore, we recommend reaching out to the IC Working Group should you have any questions regarding this request. You may submit your response and any questions you have regarding this request to Integrity-WG@CIGIE.GOV.

Sincerely,

K. H. Winters

Kevin H. Winters
Chairperson
Integrity Committee

[5] See 44 U.S.C. 3105 and 36 CFR 1230.10, stating "[t]he heads of Federal agencies must: (a) prevent the unlawful or accidental removal, defacing, alteration, or destruction of records… (b) Take adequate measures to inform all employees and contractors of the provisions of the law relating to unauthorized destruction, removal, alteration or defacement of records (c) Implement and disseminate policies and procedures to ensure that records are protected against unlawful or accidental removal, defacing, alteration and destruction; and (d) Direct that any unauthorized removal, defacing, alteration or destruction be reported to NARA."

April 3, 2023

Via Email
[redacted]
U.S. Department of Homeland Security
Office of Inspector General
[redacted]

Integrity Committee Cases 22-046 and 22-069: Request for Response

Dear [redacted]:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged with receiving, reviewing, and investigating, where appropriate, allegations of misconduct made against an Inspectors General (IG) and designated members of an IG's staff. The IC takes action on allegations of wrongdoing that involve abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such persons.

The IC has received allegations against you for an alleged substantial violation of law, and conduct undermining independence or integrity. These allegations were outlined in a complaint the IC recently received.[1] The allegations are that:

1. During November 2022, a Department of Homeland Security, Office of Inspector General (DHS OIG) attorney asked IG Cuffari to produce text messages from his government issued iPhone in order to respond to a FOIA request. He then allegedly "indicated the text messages were deleted, in their entirety, from [his] government issued iPhone, and that the relevant policy for capturing such messages was not followed." The complaint alleges that the attorney in question concluded that those deleted text messages "very likely contained federal records, and therefore that the

[1] The IC has incorporated these new allegations into our existing open matter IC22-046/069, as they are factually related.

destruction of these was required to be reported to the National Archives and Records Administration." The complaint alleges that you were "notified in writing about this records deletion in January 2023 by one of [your] attorneys and took no action to investigate this matter further, or to report the incident to the National Archives and Records Administration, as required."

2. As of mid-March 2023, you have made no report to the National Archives and Records Administration (NARA) "concerning the destruction of these records, as legally required."

Pursuant to IC procedures, we are reaching out to you to seek your perspective on the issues raised above. The IC has yet to fully deliberate on the merits of this matter and believes it would be helpful to provide you the opportunity to respond to these allegations, so you might offer any background, context, or supporting evidence (if available) prior to the IC's deliberations. The IC notes that there appears to be a legal obligation to report the destruction of government information to NARA.[2] In addition to explaining the full context surrounding this alleged event, to include your role in it, if any, the IC would like you to specifically address the following issues in your response:

1. Do you agree with the allegation #1's assertion that IG Cuffari had a government issued iPhone during the time period alleged and that his phone contained text messages? Do you agree that the text messages were government records as defined by applicable law or regulation?[3] Please also explain whether the events described in allegation #1 above are accurate, to the best of your knowledge, or to the extent they are inaccurate. In sum, please provide clarifying information to correct or supplement the above-listed version of events. Finally, please describe the nature of the purported FOIA request and the content of the text messages that were allegedly deleted.

2. If IG Cuffari's text messages were deleted, please explain (to the best of your knowledge) who deleted them, if they were deleted manually, to include whether IG Cuffari did so upon advice, and if so, who gave that advice. If the deletion of the text messages was pursuant to advice to IG Cuffari from staff or counsel at DHS OIG, please provide all documents that memorialize or contain that advice or a summary of the verbal communications from staff or counsel on that topic. If IG Cuffari did not delete them personally, please explain how the text messages came to be deleted.

[2] See 44 U.S.C. 3106 and 36 CFR 1230.14, stating "[t]he agency must report promptly any unlawful or accidental removal, defacing, alteration, or destruction of records in the custody of that agency to NARA…" and spelling out what details must be included in such a report.
[3] See 44 U.S.C. 3301 and 36 CFR 1220.18, stating that a record or Federal record includes "all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of the data in them."

3. If IG Cuffari's text messages were deleted, was he advised by anyone to report this deletion to NARA? If so, please fully explain, to include who, when, and in what format was this advisory communication(s) made? If written, please provide the communications.

4. Provide any and all DHS OIG policies and procedures, and any rules, regulations or guidance, regarding retention, handling or deletion of text messages on DHS OIG government issued phones.

5. If text messages that qualified as federal records were deleted from IG Cuffari's government issued iPhone as alleged, please explain how the deletion of text messages and subsequent reporting actions was or was not in compliance with the relevant reporting requirements, DHS OIG policies and procedures, rules, regulations or guidance documents, including, but not limited to, your obligations under 44 U.S.C. 3105 and 36 CFR 1230.10 to prevent unlawful or accidental destruction of records.[4] Further, whether or not you have made the necessary report to NARA to date. And if you have not made such a report, please explain why.

The IC respectfully requests your response to these allegations within 20 days of receipt of this letter.

While the IC recognizes that you may need some assistance in gathering this information, please be advised that seeking assistance from fact-witnesses in your response to the IC may raise questions about the intent or effect of such contacts, which may lead to other issues. Therefore, we recommend reaching out to the IC Working Group should you have any questions regarding this request. You may submit your response and any questions you have regarding this request to Integrity-WG@CIGIE.GOV.

Sincerely,

K. H. Winters

Kevin H. Winters
Chairperson
Integrity Committee

[4] See 44 U.S.C. 3105 and 36 CFR 1230.10, stating "[t]he heads of Federal agencies must: (a) prevent the unlawful or accidental removal, defacing, alteration, or destruction of records… (b) Take adequate measures to inform all employees and contractors of the provisions of the law relating to unauthorized destruction, removal, alteration or defacement of records (c) Implement and disseminate policies and procedures to ensure that records are protected against unlawful or accidental removal, defacing, alteration and destruction; and (d) Direct that any unauthorized removal, defacing, alteration or destruction be reported to NARA."

April 3, 2023

Via Email
[redacted]
U.S. Department of Homeland Security
Office of Inspector General
[redacted]

Integrity Committee Cases 22-046 and 22-069: Third Request for Response

Dear [redacted]:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged with receiving, reviewing, and investigating, where appropriate, allegations of misconduct made against an Inspectors General (IG) and designated members of an IG's staff. The IC takes action on allegations of wrongdoing that involve abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such persons.

The IC has received allegations against you for an alleged substantial violation of law, and conduct undermining independence or integrity. These allegations were outlined in a complaint the IC recently received.[1] The allegations are that:

1. During November 2022, a Department of Homeland Security, Office of Inspector General (DHS OIG) attorney asked IG Cuffari to produce text messages from his government issued iPhone in order to respond to a FOIA request. He then allegedly "indicated the text messages were deleted, in their entirety, from [his] government issued iPhone, and that the relevant policy for capturing such messages was not followed." The complaint alleges that the attorney in question concluded that those

[1] The IC has incorporated these new allegations into our existing open matter IC22-046/069, as they are factually related.

deleted text messages "very likely contained federal records, and therefore that the destruction of these was required to be reported to the National Archives and Records Administration." The complaint alleges that you were likely "made aware and took no action."

2. As of mid-March 2023, you have made no report to the National Archives and Records Administration (NARA) "concerning the destruction of these records, as legally required."

Pursuant to IC procedures, we are reaching out to you to seek your perspective on the issues raised above. The IC has yet to fully deliberate on the merits of this matter and believes it would be helpful to provide you the opportunity to respond to these allegations, so you might offer any background, context, or supporting evidence (if available) prior to the IC's deliberations. The IC notes that there appears to be a legal obligation to report the destruction of government information to NARA.[2] In addition to explaining the full context surrounding this alleged event, to include your role in it, if any, the IC would like you to specifically address the following issues in your response:

1. Do you agree with the allegation #1's assertion that IG Cuffari had a government issued iPhone during the time period alleged and that his phone contained text messages? Do you agree that the text messages were government records as defined by applicable law or regulation?[3] Please also explain whether the events described in allegation #1 above are accurate, to the best of your knowledge, or to the extent they are inaccurate please provide additional information to correct or supplement the above-listed version of events. In sum, please provide clarifying information to correct or supplement the above-listed version of events. Finally, please describe the nature of the purported FOIA request and the content of the text messages that were allegedly deleted.

2. If IG Cuffari's text messages were deleted, please explain (to the best of your knowledge) who deleted them, if they were deleted manually, to include whether IG Cuffari did so upon advice, and if so, who gave that advice. If the deletion of the text messages was pursuant to advice to IG Cuffari from staff or counsel at DHS OIG, please provide all documents that memorialize or contain that advice or a summary of the verbal communications from staff or counsel on that topic. If IG Cuffari did not delete them personally, please explain how the text messages came to be deleted.

[2] See 44 U.S.C. 3106 and 36 CFR 1230.14, stating "[t]he agency must report promptly any unlawful or accidental removal, defacing, alteration, or destruction of records in the custody of that agency to NARA…" and spelling out what details must be included in such a report.

[3] See 44 U.S.C. 3301 and 36 CFR 1220.18, stating that a record or Federal record includes "all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of the data in them."

3. If IG Cuffari's text messages were deleted, was he advised by anyone to report this deletion to NARA? If so, please fully explain, to include who, when, and in what format was this advisory communication(s) made? If written, please provide the communications.

4. Provide any and all DHS OIG policies and procedures, and any rules, regulations, or guidance, regarding retention, handling or deletion of text messages on DHS OIG government issued phones.

5. If text messages that qualified as federal records were deleted from IG Cuffari's government issued iPhone as alleged, please explain how the deletion of text messages and subsequent reporting actions was or was not in compliance with the relevant reporting requirements, DHS OIG policies and procedures, rules, regulations or guidance documents, including, but not limited to, your obligations under 44 U.S.C. 3105 and 36 CFR 1230.10 to prevent unlawful or accidental destruction of records.[4] Further, whether or not you have made the necessary report to NARA to date. And if you have not made such a report, please explain why.

The IC respectfully requests your response to these allegations within 20 days of receipt of this letter.

While the IC recognizes that you may need some assistance in gathering this information, please be advised that seeking assistance from fact-witnesses in your response to the IC may raise questions about the intent or effect of such contacts, which may lead to other issues. Therefore, we recommend reaching out to the IC Working Group should you have any questions regarding this request. You may submit your response and any questions you have regarding this request to Integrity-WG@CIGIE.GOV.

Sincerely,

K. H. Winters

Kevin H. Winters
Chairperson
Integrity Committee

[4] See 44 U.S.C. 3105 and 36 CFR 1230.10, stating "[t]he heads of Federal agencies must: (a) prevent the unlawful or accidental removal, defacing, alteration, or destruction of records… (b) Take adequate measures to inform all employees and contractors of the provisions of the law relating to unauthorized destruction, removal, alteration or defacement of records (c) Implement and disseminate policies and procedures to ensure that records are protected against unlawful or accidental removal, defacing, alteration and destruction; and (d) Direct that any unauthorized removal, defacing, alteration or destruction be reported to NARA."

[redacted]

April 12, 2023

VIA EMAIL

Kevin H. Winters
Integrity Committee (IC) Chairperson
Council of the Inspectors General on Integrity and Efficiency (CIGIE)
1717 H Street NW | Suite 825 | Washington, DC 20006
Integrity-WG@cigie.gov

RE: Correspondence on Behalf of Inspector General Joseph Cuffari
Second Request - CIGIE Integrity Committee Cases 22-046 and 22-069

Dear Chairperson Winters:

On behalf of Department of Homeland Security (DHS) Inspector General (IG) Joseph Cuffari, we write in response to your March 3, 2023 letter requesting that IG Cuffari respond to additional questions about the allegations in the above referenced CIGIE IC cases.[1]

IG Cuffari has continued to cooperate in these cases and has reviewed your supplemental questions. IG Cuffari's knowledge and understanding related to your inquires is detailed in his December 5, 2022 letter addressing these matters.

Sincerely,

[redacted]

[1] CIGIE IC cases 22-046 and 22-069 relate to purported decisions and actions by IG Cuffari in his official role as DHS IG. However, the framework of your inquiries requires that IG Cuffari respond based upon his own personal and individual knowledge rather than in his official capacity representing the DHS Office of Insepctor General. First, IG Cuffari engaged the undersigned counsel since the CIGIE IC rules prohibit government attorneys from representing or assisting the subject of a CIGIE IC inquiry for purposes of responding to the CIGIE IC. *See* CIGIE IC Guidelines, "Frequently Asked Questions & Guidance for Communicating with the Integrity Committee (IC)" (available on the CIGIE IC website at https://www.ignet.gov/content/guidance-and-faqs). Second, your letter discourages IG Cuffari from seeking assistance from DHS OIG staff, who may be able to provide IG Cuffari with materials and information he needs to aid in his response. Therefore, this response reflects the best of IG Cuffari's own knowledge and understanding while maintaining the integrity of ongoing matters.

[redacted]

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

April 18, 2023

Kevin H. Winters
Chairperson, Integrity Committee
1717 H Street, NW, Suite 825
Washington, DC 20006-3900

Re: Your April 3, 2023 Letter in IC22-046.069

Dear Chairperson Winters,

I am writing in response to your letter dated April 3, 2023, sent on behalf of the Council of the Inspectors General on Integrity and Efficiency (Integrity Committee). Your correspondence notes that in May 2022, I advised OIG employees to cooperate generally with the Integrity Committee's requests for documentation and information in IC 20-059. As such, you are requesting assistance with permitting disclosure of DHS OIG information related to a matter styled as "IC22-046.069."

The current request differs quite dramatically from the request in IC 20-059. In IC 20-059, I was authorizing disclosure in my delegated role as the institutional representative for the DHS OIG organization. The issues in 20-059 had been well-defined. Whereas in IC22-046.069, the IC has not notified DHS OIG of a pending investigation, the allegation(s), or the scope of the investigation. I note that IC22-046.069 appears to charge [redacted] in [redacted] personal capacity. I am unclear as to how DHS OIG can honor your request at this time.

Please feel free to contact me if you have any questions.

Sincerely,

[redacted]

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

April 28, 2023

Sent Via Electronic Mail

[redacted]
Special Counsel's Office
Department of Justice
[redacted]

Re: Risk of Disclosure of January 6th Records to Third Party

Dear [redacted]:

I write out of concern that January 6th documents and information may be released from DHS OIG without authorization. As a follow-up to last week's discussion with our Office of Counsel, the Integrity Committee of the Council of Inspectors General (Integrity Committee) appears to seek information from our DHS OIG [redacted] regarding January 6th texts and information. The Integrity Committee claims that our [redacted] will not provide information (which appears to be about events at the Capitol on January 6th) to them without specific authorization from me. To date, I have declined to provide such authorization. (Attached, please see my April 18, 2023, response to Chairperson Winters of the Integrity Committee).

Historically, the Integrity Committee has taken the position that they may request information from anyone within DHS OIG. I note that the Integrity Committee's access rule may apply and they may deem OIG employees to be committing misconduct for not turning over January 6th texts and information. I am also concerned that the Integrity Committee may opt to contact additional DHS OIG employees in an effort to secure such information.

Please feel free to reach out to me if you wish to discuss further.

Sincerely,

[redacted]

cc: [redacted]

Attachment

[redacted]

May 12, 2023

VIA EMAIL

Kevin H. Winters
Integrity Committee (IC) Chairperson
Council of the Inspectors General on Integrity and Efficiency (CIGIE)
1717 H Street NW | Suite 825 | Washington, DC 20006
Integrity-WG@cigie.gov

RE: Correspondence on Behalf of Inspector General Joseph Cuffari
Third Request - CIGIE Integrity Committee Cases 22-046 and 22-069

Dear Chairperson Winters:

On behalf of Department of Homeland Security (DHS) Inspector General (IG) Joseph Cuffari, we write in response to your April 3, 2023 letter requesting that IG Cuffari respond to a third series questions in CIGIE IC cases 22-046 and 22-069.[1] The CIGIE IC has expanded the scope of these cases to include an allegation regarding text messages on IG Cuffari's government cell phone. As detailed below, IG Cuffari has no recollection of deleting any text messages that would constitute federal records from his government cell phone.

By way of background, IG Cuffari maintains a government iPhone for official DHS business. IG Cuffari has no recollection of conducting substantive official government business through text messages on his government cell phone. To the extent IG Cuffari sent or received text messages on his government cell phone, his best recollection is that those messages generally reflected administrative notes and reminders meant to serve as references and memory aids for IG Cuffari to navigate his daily schedule. IG Cuffari does recall periodically manually deleting such administrative messages from his government phone.

In approximately November 2022, on behalf of the DHS OIG Freedom of Information Act (FOIA) team, an information technology specialist from the DHS Office of Management came to IG Cuffari's office collect information from IG Cuffari's government cell phone in response to a FOIA request. IG Cuffari does not recall being informed of the specific nature of the FOIA request or discussing the FOIA request or his text messages with a DHS attorney. IG Cuffari also does

[1] CIGIE IC cases 22-046 and 22-069 relate to purported decisions and actions by IG Cuffari in his official role as DHS IG. However, the framework of your inquiries requires that IG Cuffari respond based upon his own personal and individual knowledge rather than in his official capacity representing the DHS Office of Insepctor General. First, IG Cuffari engaged the undersigned counsel since the CIGIE IC rules prohibit government attorneys from representing or assisting the subject of a CIGIE IC inquiry for purposes of responding to the CIGIE IC. *See* CIGIE IC Guidelines, "Frequently Asked Questions & Guidance for Communicating with the Integrity Committee (IC)" (available on the CIGIE IC website at https://www.ignet.gov/content/guidance-and-faqs). Second, your letter discourages IG Cuffari from seeking assistance from DHS OIG staff, who may be able to provide IG Cuffari with materials and information he needs to aid in his response. Therefore, this response reflects the best of IG Cuffari's own knowledge and understanding while maintaining the integrity of ongoing matters.

[redacted]

not recall indicating that any text messages on his phone constituted official government records or that any text messages were deleted in violation of any policy, regulation, or law.

Materials that may refer to official government business but are not directly used to carry out official business, including diaries, notes, journals, calendar entires, appointment schedules, memory aids, and observations about official matters that are intended only for an individual's own use and reference, are not federal records. *See* 36 CFR § 1220.18 (reflecting that files or papers that are not used to conduct agency business are not federal records); National Archives Publication - Identification of Records, Nonrecord Materials, and Personal Papers (www.archives.gov/records-mgmt/scheduling/id?_ga=2.49446118.1573395362.1683037861-1183475209.1683037861). IG Cuffari has no recollection of conducting substantive government business through text messages on his government cell phone. To the best of IG Cuffari's recollection, any text messages on his government phone generally constituted administrative reminders and memory aids for his own individual reference. Therefore, IG Cuffari did not understand the text messages on his government iPhone to constitute government records.

Soon after he joined DHS OIG, IG Cuffari recalls asking his staff to provide him with any applicable document/data preservation policies and recordkeeping requirements and policies. As IG Cuffari understands it, DHS OIG maintains a records management program that requires DHS OIG staff to maintain official federal records, as defined by law and regulation, in accordance with agency records retention schedules.

IG Cuffari did not understand any policy, regulation, or law to require him to maintain the administrative text messages on his government cell phone or to report any deletion of those administrative messages to the National Archives and Records Administration because he did not understand those messages to constitute federal records.[2]

Thank you for your consideration and the opportunity to submit this letter to ensure that any allegations CIGIE IC investigates against IG Cuffari are based upon complete and accurate information. We are available at your convenience to address this matter further. We respectfully request a meeting to discuss this matter in person prior to any further adverse action or decision.

[redacted]

[2] Beginning in late April 2023, DHS OIG implemented a text message archiving program through which DHS OIG will automatically retain all text and picture messages on cell phones issued by DHS OIG. This program was not yet in place during the relevant period referenced in your April 3, 2023 letter.

[redacted]

May 12, 2023

Sent via Electronic Mail to Integrity-WG@cigie.gov

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street NW
Suite 825
Washington, DC 20006

Re: Integrity Committee Cases 22-046 & 22-069

Dear Chair Winters:

We provide this response on behalf of [redacted] to the Integrity Committee's (IC) April 3, 2023 letter.

Introduction

[redacted] submission of a substantive response to the allegations in the IC's April 3, 2023 letter is not a concession by [redacted] that the IC's structure and processes are lawful. Rather, in the spirit of the obey-now-grieve-later principle, *see Garrison v. Department of Justice*, 72 F.3d 1566, 1576 (Fed. Cir. 1995), and with the aim of avoiding a full investigation, [redacted] is cooperating with the IC's inquiry. This cooperation is not a waiver of any right or remedy [redacted] may have in any other forum.

[redacted] Background

[redacted]

[redacted]

[redacted]

Timeline of Relevant Events

For ease of review, below is a timeline of relevant events related to IG Cuffari's text messages.

Date	Event
February 2, 2021	Alejandro Mayorkas is confirmed by the U.S. Senate to the position of Secretary, Department of Homeland Security.
July 5, 2022	The Project on Government Oversight (POGO) files a request under the Freedom of Information Act (FOIA) seeking e-mails and text messages from IG Cuffari and other DHS OIG personnel related to 18 topics.
August - October 2022	The controversy surrounding the Secret Service's deletion of text messages spurs several conversations between IG Cuffari and [redacted] about the rules governing retention of text messages sent or received on government phones. In those conversations, [redacted] reminded IG Cuffari that under DHS policy, agency business should not be conducted by text; that unlike other electronic communications, such as e-mail and Teams chats, text messages are not automatically captured on DHS OIG servers; and that if a unique record is inadvertently created by text, it should be preserved in some other format, such as by screenshotting the text and saving the screenshot to the network.[1]
December 15, 2022	An IT Specialist extracts data from IG Cuffari's phone.
December 16, 2022	[redacted] who oversees DHS OIG's P[redacted] sends [redacted] a Teams message stating, "Hi [redacted] I need to urgently speak with you about the retention of text messages in POGO. I have some very serious concerns."
December 16, 2022	At a meeting following [redacted] Teams message, [redacted] tells [redacted] that the IT Specialist determined that there were no text messages on IG Cuffari's phone. [redacted] asks [redacted] whether IG Cuffari uses the text feature on his phone, and [redacted] responds in the affirmative.
Week of December 19, 2022	[redacted] and IG Cuffari meet to discuss the IT Specialist's determination. IG Cuffari states that he deleted texts from his phone. IG Cuffari further states that he does not conduct DHS OIG business by text and describes his typical texts as dealing with things such as suggesting to a colleague that they meet for coffee, telling someone that he is running late, or sending best wishes to an employee who has fallen ill.
December 21, 2022	[redacted] meets with [redacted].[2] [redacted] explains the DHS OIG policies concerning conducting agency business by text and retention of electronic records. [redacted] opines that IG Cuffari's phone likely contained texts that constituted federal records, and further states that a destruction of federal records must be reported to the National Archives & Records Administration (NARA).

[1] In March 2023, DHS OIG deployed software that automatically captures texts on DHS OIG phones. However, that software was not in use during the period that gave rise to the events in this matter.
[2] The calendar invite for this meeting includes [redacted] does not recall whether [redacted] attended the meeting that day.

Applicable Law, Regulation, and Policy

Relevant to the IC's inquiry are several statutes and regulations, as well as other policy guidance.

Definition of a "Record"

Section 3301 of Title 44 defines federal records as only those materials that are "appropriate for preservation . . . as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them." DHS Policy Directive 141-03 (Feb. 23, 2018), *Electronic Records Management Updates for Chat, Text, and Instant Messaging*, advises employees that a "record" is "[a]ny communication in which an Agency decision or commitment is made or where an action is committed to, that is not otherwise documented, needs to be captured." (Attached as Exhibit A.)

Preservation of Records

Federal regulations require that the heads of Federal agencies must "[p]revent the unlawful or accidental removal, defacing, alteration, or destruction of records. . . Records must not be destroyed except under the provisions of NARA–approved agency records schedules or the General Records Schedules issued by NARA." 36 C.F.R. § 1230.10(a).

However, NARA guidance contains an exception for "transitory" records. NARA's General Records Schedule 5.2: Transitory and Intermediary Records permits the destruction of "[t]ransitory records," including "messages coordinating schedules, appointment, and events" when they are "no longer needed for business use." (Attached as Exhibit B.)

Related to the NARA guidance, DHS OIG Directive No. OIG-140-00 (Nov. 4, 2015), Section IV.B.2, *Records and Information Management Program*, advisees that DHS OIG employees should "not use instant messaging (e.g., text or Lync) to document business decisions and activities." It mandates that "if instant messaging is inadvertently used for this purpose, [the user] should maintain the message in another electronic format." (Attached as Exhibit C.)

Reporting of Destruction of Records

Federal law mandates reporting of certain matters to NARA, providing that the "head of each Federal Agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency." 44 U.S.C. § 3106(a). Likewise, the regulations state that the "heads of Federal Agencies must . . . [d]irect that any unauthorized removal, defacing, alteration, or destruction [of records] be reported to NARA." 36 C.F.R. § 1230.10(d).

Discussion

As explained below, [redacted] cannot be faulted for not reporting an alleged destruction of records.[3]

I.

[redacted] reasonably believes that IG Cuffari's phone did not contain federal records that must be preserved.

Based on [redacted] conversations with IG Cuffari in 2022, several months before the IC issued its April 3, 2023 letter, [redacted] reasonably believes that IG Cuffari's deleted text messages did not constitute federal records that must be preserved under any federal law or regulation, including 44 U.S.C. Chapter 31 and its accompanying regulations, or under the pertinent DHS OIG policies and procedures. [redacted] believes that IG Cuffari understood DHS OIG Directive No. OIG-140-00 (Nov. 4, 2015), and DHS Policy Directive 141-03 (Feb. 23, 2018), and his obligation not to conduct official agency business by text message.

[redacted] has no reason to doubt IG Cuffari's description of the types of messages he sends and receives by text. Based on IG Cuffari's description, these messages would not constitute "evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government," *see* 44 U.S.C. § 3301, or "communication in which an Agency decision or commitment is made or where an action is committed to," *see* DHS Policy Directive 141-03 (Feb. 23, 2018). As noted above, IG Cuffari described his texts as dealing with things such as suggesting to a colleague that they meet for coffee, telling someone that he is running late, or sending best wishes to an employee who has fallen ill.

In [redacted] experience, OIG decisions, actions, and commitments are documented in files maintained by auditors, inspectors, the budget office, procurement personnel, HR staff, attorneys, criminal investigators, and others. None of these decisions, commitments, or actions are accomplished by or recorded in text messages. [redacted] cannot recall any circumstance where [redacted] personally observed IG Cuffari making any decision, commitment, or action in a text message. On the contrary, [redacted] recollection is that IG Cuffari would communicate about agency business by e-mail or via documents that [redacted] personally reviews and approves. As a result, [redacted] did not have any personal knowledge that IG Cuffari deleted a text message containing a federal record as defined by 44 U.S.C. § 3301.

[3] DHS OIG Directive OIG-140-00 provides at section IV.C. that a destruction of records should be reported to the DHS Headquarters Records Officer, who will then notify NARA.

II.

[redacted] reasonably believed that the text message at issue was "otherwise documented" within the agency.

[redacted] told [redacted] in late 2022 that [redacted] believed IG Cuffari's phone contained "records" in texts and that the texts had been deleted. [redacted] understanding seems to be based on [redacted] review of texts from another phone, one of which was a message from that user to IG Cuffari suggesting that DHS OIG should apply more pressure on a DHS component to make a particular named individual available for an interview in connection with an inspection. For two reasons, [redacted] disagrees with [redacted] conclusion.

First, according to DHS policy, an electronic message should be preserved if it is evidence of where "an Agency decision or commitment is made or where an action is committed to." DHS Policy Directive 141-03 (Feb. 23, 2018), at 2. It is far from clear that an employee's suggestion that DHS OIG should apply more pressure to a DHS component to make someone available for an interview is an agency "decision or commitment." Nor would this suggestion be considered the agency committing to an "action."

Second, DHS policy requires that a text message be preserved *only if* the decision or commitment is "not otherwise documented." *Id*. In the one example of a possible "record" identified by [redacted], there existed separate e-mail traffic among DHS OIG senior staff (including [redacted]) that discussed the need to secure the individual's cooperation in an interview. This discussion culminated in a letter from IG Cuffari to the component head — also preserved in appropriate files — stating that under the IG Act, the component is required to make its employee available for an interview. Thus, the decision, commitment, or action at issue in the supposedly deleted "record" is "otherwise documented"; there is no separate legal obligation to preserve the text message.

To be clear, [redacted] was not aware of the content of any text message that IG Cuffari may have deleted before [redacted] brought this one particular message to [redacted] attention.[4] Even after [redacted] identified the potential issue, [redacted] had only second-hand information about it. [redacted] thus reasonably concluded that [redacted] need not report the possible deletion because DHS policy implementing federal records laws does not require that this particular text message be preserved.

[4] [redacted] knowledge of the contents of IG Cuffari's phone is limited. [redacted] does not recall ever viewing a text on IG Cuffari's phone documenting agency business that was not otherwise documented.

III.

Applicable law and regulations do not require [redacted] to report every time [redacted] hears about an allegation of record destruction.

By statute and regulation, an agency is required to report an unauthorized destruction of records to NARA. 44 U.S.C. § 3106(a); 36 C.F.R. § 1230.10(d). An agency is not required to report a *possible* destruction of records or the destruction of something that *might* have been a record concerning agency business that *might* not have been "otherwise documented." Simply put, [redacted] has no direct knowledge that any text on IG Cuffari's phone was an agency "record" that must be preserved. [redacted] therefore is not required to report the deletion of texts to the DHS Headquarters Records Officer for reporting to NARA.

Responses to the IC's Specific Questions

The IC posed several questions in its letter, each of which is addressed below.

1. Do you agree with the allegation #1's assertion that IG Cuffari had a government issued iPhone during the time period alleged and that his phone contained text messages?

Answer: Yes, IG Cuffari had a government-issued iPhone during this time. [redacted] would occasionally receive text messages from IG Cuffari and so [redacted] knew that IG Cuffari would send text messages from this phone. [redacted] cannot answer the question about whether the phone "contained" text messages at any point in time.

2. Do you agree that the text messages were government records as defined by applicable law or regulation? Please also explain whether the events described in allegation #1 above are accurate, to the best of your knowledge, or to the extent they are inaccurate. In sum, please provide clarifying information to correct or supplement the above-listed version of events.

Answer: This question is addressed above in Section I.

3. Please describe the nature of the purported FOIA request and the content of the text messages that were allegedly deleted.

Answer: [redacted] does not have any knowledge about the content of the text messages that were allegedly deleted, other than what [redacted] told [redacted]

4. If IG Cuffari's text messages were deleted, please explain (to the best of your knowledge) who deleted them, if they were deleted manually, to include whether IG Cuffari did so upon advice, and if so, who gave that advice. If the deletion of the text messages was pursuant to advice to IG Cuffari from staff or counsel at DHS OIG, please provide all documents that memorialize or contain that advice or a summary of the verbal communications from staff or counsel on that topic. If IG Cuffari did not delete them personally, please explain how the text messages came to be deleted.

Answer: [redacted] does not know who or how any text messages were deleted. [redacted] did not advise IG Cuffari to delete any text messages. As explained above, however, IG Cuffari explained during a meeting in mid-December 2022 that he deleted texts from his phone and that he did not conduct DHS OIG business by text. He also described the type of matters that would be discussed in text messages.

5. If IG Cuffari's text messages were deleted, was he advised by anyone to report this deletion to NARA? If so, please fully explain, to include who, when, and in what format was this advisory communication(s) made? If written, please provide the communications.

Answer: [redacted] did not know about the possible deletion of any text messages until [redacted] heard about these allegations from [redacted] did not have sufficient facts to advise IG Cuffari about reporting anything to NARA and does not know if anyone else advised IG Cuffari with respect to reporting it to NARA.

6. Provide any and all DHS OIG policies and procedures, and any rules, regulations or guidance, regarding retention, handling or deletion of text messages on DHS OIG government issued phones.

Answer: The relevant policies are quoted above and attached to this letter.

7. If text messages that qualified as federal records were deleted from IG Cuffari's government issued iPhone as alleged, please explain how the deletion of text messages and subsequent reporting actions was or was not in compliance with the relevant reporting requirements, DHS OIG policies and procedures, rules, regulations or guidance documents, including, but not limited to, your obligations under 44 U.S.C. § 3105 and 36 CFR § 1230.10 to prevent unlawful or accidental destruction of records. Further, whether or not you have made the necessary report to NARA to date. And if you have not made such a report, please explain why.

Answer: As explained above, based on [redacted] limited first-hand knowledge, [redacted] did not know that there had been an actual deletion of any agency records that required reporting to NARA. This question assumes that such a report is "necessary," and [redacted] does not have sufficient information to draw that conclusion.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

[redacted]

Enclosures: Exhibits A-C

Exhibit A

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

Issue Date: 02/23/2018

Policy Directive 141-03

MEMORANDUM FOR: Component Heads

FROM: Claire M. Grady 2/23/18
Under Secretary for Management

SUBJECT: Electronic Records Management Updates for Chat, Text, and Instant Messaging

The Presidential and Federal Records Act Amendments of 2014 (Public Law 113-187) enacted on November 26, 2014, expands the definition of federal records to include all recorded information, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form.

Much like in-person or telephonic conversations, business communications created and transmitted between Department employees that include substantive information about agency business, policies, and activities made via chat, text, or instant message may be considered federal records and must be preserved. DHS employees must take appropriate steps to establish and maintain a separate record of the communication that may be considered federal records. All DHS business transactions by electronic means are required to comply with the Department's records management policies. For more information about what constitutes a federal record, please refer to Title 44, United States Code, Chapter 33, Section 3301 and the Records and Information Management Program's Frequently Asked Questions page and the enclosed attachment, "Documenting Electronic Messages and Verbal Communications."

In order to comply with federal law, applicable regulations, policy, and DHS Directive 141-01, the Department has implemented the following electronic records management guidance for the use of chat, text, or instant messaging:

- All DHS business transactions by electronic means are required to comply with the Department's records management policies. DHS employees should take steps to establish and maintain federal records when conducting business using chat, text, or instant messaging.
- All internal DHS chat/messaging systems (i.e., Lync, Skype, or other tools) must display a banner/disclaimer prohibiting the system to be used to formally transact agency business or to document the activities of the organization.

If you have any questions, visit the DHS Records and Information Management (RIM) site or, contact [redacted]

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Attachment: Documenting Electronic Messages and Verbal Communications

What is an "electronic message"?
Electronic messages include a range of communications from text to chat to IM (instant messages). They reside and are exchanged on agency networks and devices, on personal devices, or they can be hosted by third-party providers.

What is a "verbal communication"?
Verbal communications include telephone conversations, voicemail messages (or series of voicemails), a formal meeting, or even an informal chat with a coworker in the hallway.

The Department must capture and manage these records in compliance with Federal records management laws, regulations, and policies.

What kind of verbal communications or electronic messages might be considered a record?
Any communication in which an Agency decision or commitment is made or where an action is committed to, that is not otherwise documented, needs to be captured. For example:

- A meeting or conference call where a decision is made, if formal meeting minutes or notes are not taken.
- A text or telephone call giving guidance to a member of the regulated community.
- A telephone call responding to a member of the public about DHS policy.

What is the best way to capture conversations that are records?

- Write a memo to the file. Be sure to include:
  - Date and time of the communication
  - Type of communication (e.g., text, voicemail, telephone call)
  - Context of the message or conversation (electronic messages)
  - Participants
  - Subject
  - Details on any decisions or commitments (verbal communications)
  - Corresponding threads that precede a communication and provide more background

Does this mean that I have to write a transcript of every conversation or copy every text message?
No, not all electronic messages or verbal communications are records. Only write a memo to the file if one is needed to document your activities as a federal employee, contractor, and not otherwise captured.

How can I get additional guidance?
If you have policy questions about electronic messages or verbal communication records, contact your Component or the DHS Records Officer. You can find additional guidance in the following publications:

- DHS Instruction 141-01-001, "Records and Information Management"
- Documenting Your Public Service, National Archives and Records Administration

Exhibit B

GENERAL RECORDS SCHEDULE 5.2: Transitory and Intermediary Records

This schedule covers records of a transitory or intermediary nature. Transitory records are routine records of short term value (generally less than 180 days). Intermediary records are those involved in creating a subsequent record. These records do not document significant decisions or actions an agency takes.

Note that this schedule does not cover original hardcopy still pictures, graphic materials or posters, aerial film, maps, plans, charts, sound recordings, motion picture film, or video recordings that are scheduled as permanent or unscheduled and that have been converted to an electronic format. Electronic versions of special media records such as these often do not adequately replace the original and therefore the original records may not be destroyed as "input records."

Item	Records Description	Disposition Instruction	Disposition Authority
010	**Transitory records.** Records required only for a short time (generally less than 180 days) **and** that are not required to meet legal or fiscal obligations, or to initiate, sustain, evaluate, or provide evidence of decision-making. Records include, but are not limited to: • messages coordinating schedules, appointments, and events • transmittal documents such as e-mail, letters, cover memos, and facsimile cover sheets that do not provide evidence of approval, concurrence, or decision-making, or include substantive comments • received copies of circulated internal information such as agency instructions, notifications, circulars, newsletters, and email blasts to employees • messages received from agency distribution lists or listservs • "to-do" or task lists and assignments	**Temporary.** Destroy when no longer needed for business use, or according to agency predetermined time period or business rule.	DAA-GRS-2017-0003-0001
020	**Intermediary records.** Records of an intermediary nature, meaning that they are created or used in the process of creating a subsequent record. To qualify as an intermediary record, the record must also not be required to meet legal or fiscal obligations, or to initiate, sustain, evaluate, or provide evidence of decision-making. Records include: • non-substantive working files: collected and created materials not coordinated or disseminated outside the unit of origin that do not contain information documenting significant policy development, action, or decision making. These working papers do not result directly in a final product or an approved finished report. Included are such materials as rough notes and	**Temporary.** Destroy upon verification of successful creation of the final document or file, or when no longer needed for business use, whichever is later.	DAA-GRS-2017-0003-0002

	calculations and preliminary drafts produced solely for proof reading or internal discussion, reference, or consultation, and associated transmittals, notes, reference, and background materials. • audio and video recordings of meetings that have been fully transcribed or that were created explicitly for the purpose of creating detailed meeting minutes (once the minutes are created) • dictation recordings • input or source records, which agencies create in the routine process of creating, maintaining, updating, or using electronic information systems and which have no value beyond the input or output transaction: o hardcopy input source documents where all information on the document is incorporated in an electronic system (See Exclusion 1 and Note 1) o electronic input source records such as transaction files or intermediate input/output files • ad hoc reports, including queries on electronic systems, whether used for one-time reference or to create a subsequent report • data files output from electronic systems, created for the purpose of information sharing or reference (see Exclusion 2) **Exclusion 1:** This item does not allow destruction of original hardcopy still pictures, graphic materials or posters, aerial film, maps, plans, charts, sound recordings, motion picture film, or video recordings once they are digitized. Agencies must follow agency-specific schedules for these records. If the records are unscheduled, the agency must submit a schedule for them. **Exclusion 2:** This item does not include the following data output files (agencies must follow agency-specific schedules for these records, except for the final bullet, which the GRS covers in another schedule): • files created only for public access purposes • summarized information from unscheduled electronic records or inaccessible permanent records • data extracts produced by a process that results in the content of the file being significantly different from the source records. In other words, the process effectively creates a new database file significantly different from the original • data extracts containing Personally Identifiable Information (PII). Such records require additional tracking and fall under GRS 4.2, item 130 (DAA-GRS-2013-0007-0012)		

	Note 1: An agency must submit a notification to NARA per 36 CFR 1225.24(a)(1) prior to destroying hardcopy input records previously scheduled as permanent. An agency must schedule the electronic version of unscheduled hardcopy input records prior to destroying the input record. **Legal citations:** 36 CFR 1225.22 (h)(2); 36 CFR 1225.24 (a)(1)		

Exhibit C

DIRECTIVE

SUBJECT:	DIRECTIVE NUMBER:
Records and Information Management Program	OIG-140-00
DISTRIBUTION:	DATE ISSUED:
All DHS OIG Employees and Contractors	**November 04, 2015**

I. Purpose

This directive establishes the Department of Homeland Security (DHS) Office of Inspector General (OIG) Records and Information Management (RIM) Program and the policies governing the program and DHS OIG records.

DHS OIG records are critical information assets that belong to the public and ensure the organization functions efficiently and effectively. DHS OIG's RIM Program serves a number of purposes including:

- Supports DHS OIG program and administrative missions by documenting its organizational structure, actions, decisions, and essential business transactions.
- Enables DHS OIG to respond to Freedom of Information Act (FOIA) requests, Congressional inquiries, and litigation discovery requirements.
- Preserves organizational memory and assists DHS OIG officials and their successors in making informed decisions.
- Ensures controls are implemented to safeguard against the unauthorized destruction and removal of records, which can result in disciplinary action.
- Protects essential/vital information and provides continuity in the event of a disaster.

II. Scope

This directive applies to all records created or received by DHS OIG employees and contractors (together referred to as "personnel" here after) regardless of medium.

III. Authorities

A. 44 USC Chapters 21, 29, 31, 33, 35, and 36; *Federal Records Act of 1950, as amended*

B. 36 CFR, Chapter XII, Subchapter B, Records Management

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C. 36 CFR Part 1223, Managing Vital and Essential Records 41 CFR, Subtitle C, Chapter 102, Part 102 – 193 "Creation, Maintenance, and Use of Records

D. OMB/NARA Memorandum M-14-16, *Guidance on Managing Email,* 9/15/2014

E. OMB/NARA Memorandum M-12-18, *Managing Government Records,* 8/24/2012

F. OMB Circular A-130, *Management of Federal Information Resource*, 11/28/2000

G. DHS Directive 141-01, *Records and Information Management*, 8/11/2014.

H. DHS OIG –Disposition Authority for Investigative Case Files and Electronic Data System, job number N1-563-07-5, 10/11/2007

I. DHS OIG –Disposition Authority for Reports, Work papers, Correspondence, and Other Records, job number N1-563-09-10, 4/30/2009.

J. 5 USC § 552a, *Privacy Act of 1974, as amended*

K. 5 USC § 552, *The Freedom of Information Act*, as amended

L. 44 USC § 35, *Paperwork Reduction Act*, as amended

IV. Policy

A. DHS OIG records must be managed, safeguarded, and maintained throughout their lifecycle according to:

1. Applicable statutory and regulatory requirements,
2. National Archives and Records Administration (NARA) records disposition schedules, and other applicable NARA guidance,
3. DHS and DHS OIG policy and procedures.

B. The DHS OIG RIM Program is intended to promote efficient and effective RIM practices and to ensure personnel preserve records that document the execution of DHS OIG's mission, activities, and business decisions. As such, DHS OIG personnel must:

1. Adequately and properly document DHS OIG programs, activities and decisions, and maintain the records in accessible paper files or designated shared electronic drives, information systems, and electronic records management systems (ERMS).
2. Not use instant messaging (e.g., text or Lync) to document business decisions and activities. If instant messaging is inadvertently used for this purpose, maintain the message in another electronic format (e.g., as an email or Microsoft Word document) for record keeping purposes.
3. Follow approved DHS OIG File Plans to group, maintain, store, and archive Federal records in an organized and uniform manner to ensure records can be easily accessed.

The current DHS OIG File Plan aligns with DHS OIG records schedules that govern (1) audit and inspection reports, supporting documentation and work papers, correspondence, policy and procedural guidance, and other records maintained by various DHS OIG offices; and (2) investigative files and information maintained in the Office of Investigation's Enforcement Data Systems, (EDS).

The DHS OIG File Plan will be expanded as needed to incorporate all DHS OIG records (paper and electronic).

You may access the DHS OIG File Plan by clicking on the link below.
DHS OIG File Plan

4. Permanently preserve records designated as historically significant by NARA and temporarily preserve all other records according to the timeframes established in NARA records schedules.
5. Not destroy Federal records prematurely.
6. Maintain unscheduled records until NARA approves a records retention (disposition) schedule. Unscheduled records must be treated as permanent until a final disposition is approved.
7. Secure and safeguard records to protect the legal interest of the Federal Government and individuals affected by its activities, and to prevent unauthorized use.
8. Segregate non-records and personal papers from Federal records for storage purpose (i.e., non-records/personal papers should not be preserved with Federal records or filed according to the DHS OIG File Plan).
9. Keep personal papers to a minimum and destroy them when convenient.
10. Identify, preserve, and protect records to include temporary, permanent, and vital records (as defined in 36 CFR).
11. Take mandatory RIM training annually and other RIM training as deemed necessary by DHS OIG Office Heads.
12. When departing DHS OIG, only remove Federal records with DHS OIG Office of Counsel's prior permission. (Please see DHS OIG RIM Program Handbook, 140-00-01, for procedures and instructions on how to request Counsel's permission. Personnel should also notify their supervisor when seeking permission to remove records.)
13. By December 31, 2016, store and manage all emails that are Federal records (permanent and temporary) electronically.
14. Not use unauthorized personal, non-government email or text accounts to conduct DHS OIG business. Exception: Non-government emails and text accounts may be used in authorized undercover operations.

15. By December 31, 2019, store and manage all permanent Federal records (i.e., electronic and those converted to electronic medium) in designated DHS OIG ERMS. (This may require records to be printed to transfer them from one system to the ERMS.)

16. Be subjected to criminal penalties under 18 USC § 2071 for the willful and unlawful concealment, destruction, damage, removal, or mutilation of Federal records. The maximum penalty is a $250,000 fine, 3 years in prison, or both. These penalties also apply for attempts at such actions.

C. DHS OIG must report incidents of unauthorized destruction of Federal records to the DHS Headquarters Records Officer, who will notify NARA's Office of the Chief Records Officer for the U.S. Government.

V. Responsibilities

A. The **Inspector General** has delegated authority for DHS OIG's RIM Program to the **Assistant Inspector General for Management (AIGM)** and the Office of Management (OM).

B. The **AIGM** has delegated responsibility for the program to the DHS OIG-wide Records Officer and the OM Planning and Compliance Division.

C. The **DHS OIG-wide Records Officer**, also known as the Chief Records Officer, shall oversee and coordinate all aspects of the DHS OIG RIM Program on behalf of the AIGM, and work with all OIG offices, Office-wide Records Coordinators, and subject matter experts to implement the program and issue policy and guidance. The OIG-wide Records Officer shall also assess DHS OIG offices' compliance with program requirements annually including training requirements.

D. **DHS OIG Office Heads** shall:

1. Ensure the DHS OIG RIM Program is implemented by their office,
2. Monitor their office's compliance with program requirements by ensuring periodic records reviews are conducted,
3. Designate an Office-wide Records Coordinator to work with the DHS OIG-wide Records Officer to execute the program, and
4. For each field office location, designate Office Records Custodians to aid the Office-wide Records Coordinator execute the program. Offices may decide not to designate Records Custodian(s) if they do not have field offices.

E. **Office-wide Records Coordinators** shall work directly with the DHS OIG-wide Records Officer to implement the DHS OIG RIM Program for their respective office including ensuring records are properly accounted for, filed, archived, and transferred to NARA, and periodic records reviews are conducted.

F. **Office Records Custodians** shall work directly with their office's Office-wide Records Coordinator to implement the DHS OIG RIM Program for their field office or location.

G. The **Director of the OM Information Technology Division** or **a designee** shall:

1. Work with the DHS OIG-wide Records Officer to implement and maintain an ERMS that complies with NARA's requirements for electronic recordkeeping systems;
2. Implement and maintain proper recordkeeping procedures for existing information systems and daily backups of electronic records stored in DHS OIG information systems, network drives, and other electronic data collecting mechanisms;
3. Notify the OIG-wide Records Officer of proposed or anticipated change to DHS OIG systems, networks, and other mechanisms that store electronic records; and
4. Provide guidance to the OIG-wide Records Officer on information system security for storing and transferring electronic records

H. The **Counsel to the Inspector General** or **a designee** shall:

1. Upon request by a departing employee, advise the OIG-wide Records Officer whether identified Federal records can be removed by DHS OIG personnel.
2. Provide guidance to the OIG-wide Records Officer on protecting records that include Personally Identifiable Information. (Privacy guidance is posted on OIGCentral under Policy and Guidance, Management, Privacy & Information Safeguards.)

I. The **OIG Security Officer** shall work with the OIG-wide Records Officer to implement essential/vital records plans and to ensure that these records are accessible from designated continuity of operations locations.

J. All **DHS OIG offices and personnel** shall create, maintain, and preserve records that document DHS OIG's organizational structure, functions, policies, decisions, procedures, and business transactions according to established requirements outlined in this policy and related procedures; and shall not permanently remove Federal records unless granted permission by DHS OIG Office of Counsel.

VI. Procedures

Related procedures are posted on OIGCentral under Policy and Guidance, Management, Records Management & FOIA or Privacy & Information Safeguards.

VII. Definitions

A. **National Archives and Records Administration**. NARA is an independent agency of the United States Government charged with preserving and documenting government and historical records. Also, DHS OIG's assigned Archivist approves records retention schedules.

B. **Record** or **Federal Record**. 44 USC § 3301 defines the term "record" as:

1. Including all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them, and

2. Not including

(i) library and museum material made or acquired and preserved solely for reference or exhibition purposes; or

(ii) duplicate copies of records preserved only for convenience.

Records include but are not limited to paper, e-mails, text and instant messages, tweets, databases, shared drive files, video/audio recordings, photographs, or websites. Examples of DHS OIG records include, but are not limited to:

- Final DHS OIG reports and all supporting documentation/work papers
- Audit/Inspection Report Follow-up documents (e.g., corrective action plans, DHS recommendation closure requests, and DHS OIG responses)
- Briefing Books/materials prepared for the Inspector General or the DHS Secretary
- Correspondence signed by the Inspector General and other DHS OIG officials
- Electronic information in DHS OIG's Enforcement Data System, TeamMate, Project Tracking System or other electronic systems
- E-mails, text/Lync, and instant messages documenting the rationale for DHS OIG policy, decisions, or actions
- Organization Charts (DHS OIG-wide and those for a single office/group)
- Policy and Procedures (DHS OIG-wide and office-specific)

C. **File Plan**. A comprehensive list of applicable records created or received by DHS OIG including how the records are organized and maintained, regardless of format, and where they are stored. Typically, like records are assigned a unique numerical file code to facilitate the daily management, filing, storage, and retrieval of Federal records in an organized manner.

D. **DHS OIG Office Heads**. Inspector General (front office), Assistant Inspectors General, and others that lead the following offices: Audits, Counsel, Emergency Management Oversight, Information Technology Audits, Inspections and Evaluations, Integrity and Quality Oversight, Investigations, Legislative Affairs, Management, and Public Affairs.

E. **Electronic Records Management System**. ERMS is an electronic information management system that is used by personnel to manage, file, store, safeguard, and retrieve electronic Federal records, which are filed according to an approved file plan, before they are transferred to NARA for permanent storage or are destroyed at the end of the record's useful life, in accordance with records schedules.

F. **Record Retention Schedules or Record Schedule**. A legal document approved/signed by NARA's U.S. Archivist that describes categories or types of records and mandates how long the records are kept (retention) and what happens to them at the end of the retention time period (disposition). NARA issues General Records Schedules (GRS) that govern common categories of records and approves records schedules drafted by agency Records Officers for unique records that are not covered by GRS or other schedules, in accordance with records schedules.

G. **Essential/Vital Records**. Records essential to DHS OIG's continued functioning or reconstitution during and after an emergency. Also those records essential to protecting the legal and financial rights of DHS OIG and individuals directly affected by its activities.

H. **Non-Records**. Federally owned documentary or informational materials that are excluded from the statutory definition of a record (44 USC § 3301). Non-records are duplicate copies of documents kept **strictly** for convenience and library or museum materials made or acquired and preserved for reference or exhibition purposes.

I. **Personal Papers**. Documentary or informational materials, regardless of format, belonging to an individual that are not used to conduct agency business. Personal files and papers are not owned by the Federal Government. Personnel should seek legal counsel when there is a question of whether a document is a record or a personal paper.

VIII. Questions

For questions about this directive, please contact the DHS OIG-wide Records Officer in the Planning and Compliance Division, Office of Management at OIGRecords@oig.dhs.gov.

APPROVED BY: [redacted]

[redacted]

May 13, 2023

Kevin H. Winters, Chairperson
Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
Integrity-WG@CIGIE.GOV

Re: [redacted] Response to Third Request in Integrity Committee Case 22-069

Dear Mr. Winters:

I write in response to the Integrity Committee's April 3, 2023 letter requesting a third response from my client, [redacted], in connection with Integrity Committee Case 22-069.

The IC's first request to [redacted] explained that the IC was investigating "DHS OIG's purported failure to timely and/or adequately disclose the U.S. Secret Service's deletion of text messages relevant to the January 6th investigation." First IC Request to [redacted] (October 26, 2022) at 1. The basis of that investigation was a complaint about the language used in DHS OIG's Spring 2022 Semiannual Report to Congress.

The allegation set forth in the IC's initial request cannot support a finding of wrongdoing against [redacted], as our December 5, 2022 response explained.

To recap, in its Spring 2022 Semiannual Report to Congress, DHS OIG disclosed that the Secret Service continued to impede its review of the events of January 6, 2021 by preventing DHS OIG from accessing Secret Service records. *See* Response to First IC Request (December 5, 2022) at 1-2. DHS OIG disclosed a great deal of information about its concerns with the Secret Service to Congress in multiple reports starting in the Fall of 2021, and in letters and meetings with congressional leaders. *Id.* at 2-3.

IC Case 22-069 is based on an allegation that the Spring 2022 Semiannual Report to Congress should have included additional language about the Secret Service that was contained in an earlier draft of the report. But differences in opinion about how to word one of many related disclosures to Congress cannot support a finding of wrongdoing by the IC. *Id.* at 4-5. The threshold standard established by the IC requires allegations of wrongdoing that rise to the level of abuse of authority, substantial misconduct, or conduct that undermines the independence or integrity of the OIG. *See* Integrity Committee Policies and Procedures § 7(A). None of those threshold standards are supported by the allegations set forth in the IC's initial request. *See* Response to First IC Request at 4-5.

Complaints about discretionary management decisions do not fall within the IC's definition of substantial misconduct. *See* Integrity Committee Policies and Procedures, Appendix A ("Gross mismanagement. . . does not include discretionary management decisions, or action or inaction that constitutes simple negligence or wrongdoing"). Nor can that allegation meet the IC's definition of an abuse of authority, or conduct that undermines the independence or integrity of the office. *Id.* ("'Abuse of authority' means arbitrary or capricious exercise of power. . . that adversely affects the rights of any person or that results in personal gain or advantage to her/him or to preferred other persons."). There is no self-dealing involved in the allegation set forth in the IC's first request, and no favoritism shown.

A difference in opinion about the edits made to a draft report cannot support action by the IC based on the IC's own policies and procedures, and IC Case 22-069 should have been closed long ago for that reason. *See* Response to First IC Request at 4-5.

Unfortunately, instead of addressing the substance of [redacted] response, the IC has sent a series of unfounded additional requests to [redacted]. Those requests, which are directed to [redacted] in [redacted] personal capacity, ask [redacted] to disclose the substance of confidential internal agency deliberations and privileged communications without the aid of agency counsel. *See* IC Request for Further Clarification and Response (February 1, 2023); Third IC Request for Response (April 3, 2023).

As I explained in my last response, the IC has not cited any authority to support its position that [redacted] can unilaterally decide to share confidential internal DHS OIG communications with the IC, and do so without risking a waiver of privilege. Response to Second IC Request (February 21, 2023) at 2-4. I closed my prior letter with a sincere offer to review any additional authority that the IC would like to provide on that topic (*id.* at 5), but the IC did not respond to that letter at all.

Instead, the IC has now written to [redacted] for a third time, asking [redacted] to disclose confidential internal agency communications about an entirely different allegation. [redacted] cannot comply with much of the IC's latest request for the same reasons set forth in my prior letter.

The IC's most recent request alleges that IG Cuffari did not follow regulations regarding the preservation of his own text messages. The only allegation directed towards [redacted] in the IC's latest request is a vague suggestion that [redacted] was "likely" made aware of IG Cuffari's alleged loss of text messages and took no action. *See* Third IC Request at 2. Based on that vague conjecture, the IC now asks [redacted] to answer a laundry list of questions that would require her to unilaterally disclose confidential communications between the IG and his staff and agency counsel if any exist. *Id*. at 2-3. [redacted] cannot unilaterally disclose that information in [redacted] personal capacity for the reasons set forth in my last letter (*see* Response to Second IC Request at 2-4) and it is improper to continue to demand that from [redacted]

The IC's latest allegation is also premised on a misunderstanding of [redacted] role. The IC suggests that [redacted] had "a legal obligation to report the destruction of government information to NARA" (*id.* at 2) and asks [redacted] to describe [redacted] "obligations under 44 U.S.C. 3105 and 36 CFR 1230.10 to prevent unlawful or accidental destruction of records" (*id.* at 3).

I have reviewed the statutes and regulations cited in the IC's third request, and they do not support the allegation made against [redacted]. The statutes cited by the IC place record preservation and reporting obligations on the "head of each Federal Agency." *See* 44 U.S.C. §3105 ("The head of each Federal agency shall establish safeguards against the removal or loss of records…"); *Id.* §3106 ("The head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal…or other destruction of records"). The regulations cited by the IC likewise address the responsibilities of "the heads of Federal agencies" as well as each agency's designated record management officer. *See* 36 CFR §1230.10 ("The heads of Federal agencies must…Prevent the unlawful or accidental removal, defacing, alteration, or destruction of records"); 36 CFR §1230.14 ("The agency must report promptly any unlawful or accidental removal, defacing, alteration, or destruction of records" in a report submitted by "the individual authorized to sign records schedules as described in §1220.34(b) of this subchapter").

[redacted] is not the head of an agency, nor is [redacted] the designated agency records officer as described in 36 CFR §1220.34(b). *See* https://www.archives.gov/records-mgmt/agency/departments/homeland.html (listing the Designated Federal Agency Records Officers). Anyone—including CIGIE—can report a concern about the loss of government records to NARA, but the statutes and regulations cited by the IC do not place a legal reporting obligation on [redacted]. The allegation that [redacted] committed a "substantial violation of law" by not personally reporting the alleged loss of some of IG Cuffari's text messages to NARA is thus legally unfounded.

This case should have been closed long ago for the reasons set forth in [redacted] first response to the IC. The new allegation in the IC's third request does not change that analysis, because it is unrelated to the allegation originally levelled at [redacted], and premised on a vague suggestion that [redacted] should have complied with laws that do not apply to [redacted]

[redacted] and [redacted] counsel have repeatedly devoted time and attention to providing detailed responses to the IC's requests. But instead of engaging with the substance of those responses, the IC has simply ignored them, and sent new demands to [redacted] instead. [redacted] should not be forced to respond to shifting unfounded allegations about internal agency decision making. It is long past time to close IC Case 22-069, so that [redacted] can focus on [redacted] work.

Sincerely,

[redacted]

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

INTEGRITY COMMITTEE

July 14, 2023

Via Email
[redacted]
U.S. Department of Homeland Security
Office of Inspector General
245 Murray Dr., Building 410
Washington, DC 20528
[redacted]

Re: Disclosure of Information Related to IC22-046/69

Dear [redacted]:

On April 3, 2023, the Integrity Committee (IC) sought your assistance as the Authorized Person for the Department of Homeland Security (DHS) Office of Inspector General (OIG) to permit disclosure of DHS OIG information related to IC22-046/069 by DHS OIG [redacted].

You responded on April 18, 2023, essentially denying the IC's request, citing a series of legally and factually unsupported objections, which are described below. The IC is concerned that if you persist in maintaining this position, you are failing to meet your obligations under Addendum A to the IC's Policies and Procedures (dated March 25, 2021) (Addendum A). Accordingly, the IC requests that you reconsider your denial, and authorize [redacted] to disclose the requested information.

As you may recall, the IC's April 3, 2023, letter to you stated that the IC had issued a request for response to allegations to [redacted]. In response, [redacted] counsel claimed that [redacted] client "…is not authorized to disclose [DHS] *OIG's internal discussions regarding the language used in the Spring 2022 semiannual report…*" (emphasis added). [redacted] counsel also argued that [redacted] does not have "have full and final authority to provide access to DHS OIG records." Therefore, the IC sought your assistance, as the individual within DHS OIG with that authority, in permitting [redacted] to disclose this information to the IC as part of [redacted] response to pending allegations against [redacted].

Since then, [redacted], through counsel, has also declined to provide information regarding an allegation that IG Cuffari deleted certain of his substantive DHS OIG text messages, again citing [redacted] lack of authority to do so. Accordingly, the IC seeks your authorization on behalf of DHS OIG for [redacted] to provide the IC with information regarding both issues.

Your April 18, 2023, denial letter stated that the IC's request regarding [redacted] was not "well-defined." To the contrary, the IC's request was clear and factually specific -- as your actions after your denial letter plainly show. Specifically, on April 28, 2023, you sent a letter referencing the IC's request to the Department of Justice's Special Counsel Office (Special Counsel's Office), which is investigating matters relating to events at the U.S. Capitol on January 6, 2021. In pertinent part, you told the Special Counsel's Office that "the Integrity Committee of the Council of Inspectors General… appears to seek information from our DHS OIG [redacted] regarding January 6th texts and information. The Integrity Committee claims that our [redacted] will not provide information (which appears to be about events at the Capitol on January 6th) to them without specific authorization from me." The quoted passage obviously shows that, as of at least April 28, 2023, you were aware of what information the IC was attempting to receive.

Your letter to the Special Counsel's Office also appears to have been an attempt to give that office an opportunity to object to DHS OIG's cooperation with the IC's request. In response, the Special Counsel's Office stated, "we do not object to DHS-OIG sharing any information that is requested of it by CIGIE." Notably, you neither informed the IC of your letter to the Special Counsel's Office, nor their response.

In addition, your denial letter to the IC raises other objections, such as claims that "the IC has not notified DHS OIG of a pending investigation, the allegation(s), or the scope of the investigation." None of these assertions are a valid basis to deny the IC's request. Per Addendum A of IC's Policies and Procedures[1]:

> *Upon request by the IC under section 7(B) or 7(C) of these Policies, an IG or other person with full and final authority to provide access under this section (Authorized Person)* ***must*** *provide and direct the staff of the OIG to provide the IC or its designated investigators with full and timely access to all OIG records, documents, witnesses, and other information that the IC or its designee deems necessary to carry out the IC's duties and responsibilities under section 11(d) of the IG Act (emphasis added).*

Furthermore, DHS OIG is obliged to honor the IC's access request under Addendum A regardless of whether the IC matter is at the review or investigation stage. Again, Addendum A reads:

> *In* ***reviewing or investigating*** *an allegation of wrongdoing against a Covered Person in a particular OIG, the IC* ***shall*** *have access to OIG records, documents, witnesses, and other information to the same extent, and under the same terms, that section 6 of the IG Act provides each IG with such access with respect to its establishment. Any Authorized Person shall be considered to be a Covered Person pursuant to section 2(D) of these Policies (emphasis added).*

[1] Addendum A to the IC Policies and Procedures, "Integrity Committee Access," (March 25, 2021).

Addendum A also explains the potential consequences of failing to fully cooperate:

> *Failure to Cooperate with IC. Pursuant to section 7(C) of these Policies, if an IG or Authorized Person fails to respond fully and in a timely fashion to an IC request for OIG records, documents, witnesses, or other information, the IC may make an independent finding of wrongdoing against such IG or Authorized Person…*[2]

Moreover, as you are likely aware, the IC is now required to report semi-annually to Congress any operational difficulties it encountered during the previous reporting period. Specifically, the IC must provide:

> *A brief description of any difficulty encountered by the Integrity Committee when receiving, evaluating, investigating, or referring for investigation an allegation received by the Integrity Committee, including a brief description of— any attempt to prevent or hinder an investigation….*[3]

In sum, there is clear authority for the IC's access to the requested information and the Special Counsel's Office clearly told you it has no objection to DHS OIG fully cooperating with the IC's inquiry.

Therefore, the IC respectfully requests you reconsider and authorize [redacted] to disclose the requested information to the IC. If you do not inform the IC that you have done so by July 21, 2023, the IC will be required to assess all its obligations and options under the law and policy. Finally, if you have any questions regarding the IC's position on this matter, to include its supporting legal authority, the IC staff stands ready to discuss this with you. Please contact the IC Working Group if you would like to set something up.

Sincerely,

K. H. Winters

Kevin H. Winters
PChairperson
Integrity Committee

[2] This is a point you acknowledged in your April 28, 2023, letter to the Special Counsel's Office, "I note that the Integrity Committee's access rule may apply and they may deem OIG employees to be committing misconduct for not turning over January 6th texts and information."
[3] 5 USC § 424 (d)(9)(I)(i).

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

August 10, 2023

Sent Via Electronic Mail

Kevin H. Winters
Chairperson, Integrity Committee
1717 H Street, NW, Suite 825
Washington, DC 20006-3900

Re: July 14, 2023, Response to Request for Disclosure of Information Related to IC 22-046/69

Dear Chairperson Winters,

I am writing in response to your letter dated July 14, 2023, sent on behalf of the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency (IC).

As you acknowledged in your previous letter, dated April 3, 2023, I have, on behalf of the Department of Homeland Security Office of Inspector General (DHS OIG), fully cooperated in prior IC matters and IC requests for records and information. In IC 20-059, I issued an email to all DHS OIG employees instructing our employees to cooperate fully with document requests from the assisting IG. The instant request, however, was far less clear. To date, the IC has not made a request to DHS OIG for records and information in the above-captioned matter.

While your letter of July 14, 2023, indicates that you do not seek records and information from DHS OIG but instead seek records and information from [redacted] personally, your letter also indicates that [redacted] is the subject of allegations of wrongdoing in IC 22-046/69. The IC's own written guidance provides that a subject should, when possible, recuse [redacted] from "any OIG decision-making concerning IC requests for witness interviews and document production."* It nevertheless appears that the IC expects [redacted] to make decisions concerning what DHS OIG documents to produce to the IC.

An additional complicating factor in the IC's request is that the underlying IC inquiry is directly related to multiple ongoing law enforcement matters in which we are an assisting law enforcement

* *See* https://www.ignet.gov/content/guidance-and-faqs (last visited August 10, 2023).

agency. To the extent that your letter of July 14, 2023, implies that DHS OIG was misguided to consult with the relevant office in the Department of Justice (DoJ) concerning disclosure of information to the IC, I must respectfully disagree. In my view, it would have been negligent not to consult with DoJ, given the significance of the ongoing matters.

In any event, your July 14, 2023, letter indicates that I am subject to a finding of wrongdoing by the IC if I again decline to issue the requested authorization to [redacted]. Accordingly, I have authorized [redacted] to provide the IC with DHS OIG records and information related to IC 22-046/69 on matters in which [redacted] participated in [redacted] official capacity as the [redacted] to the Inspector General, including deliberative and other sensitive records and information. *See* Attachment.

Please feel free to contact me if you have any questions.

Sincerely,

[redacted]

Attachment: August 10, 2023 Memorandum from [redacted]

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

MEMORANDUM

DATE: August 10, 2023

TO: [redacted]

FROM: [redacted]

SUBJECT: Disclosure of records and information in IC 22-046/69

In connection with the above-captioned matter, you are hereby authorized to disclose DHS OIG records and information to the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency (IC). This authorization includes records and information concerning internal DHS OIG deliberations and other actions you took in your official capacity as [redacted], DHS OIG.

I am providing this authorization on behalf of DHS OIG because Inspector General Cuffari is not participating in the above-captioned matter in his official capacity. This authorization is based on the IC's view that Addendum A to the *Integrity Committee Policies & Procedures* applies to the above-captioned matter.

Based on the foregoing, DHS OIG would not consider you to have breached any obligation of confidentiality you have to DHS OIG should you choose to disclose deliberative or otherwise sensitive records and/or information to the IC.

[redacted]

August 21, 2023

Sent via Electronic Mail to Integrity-WG@cigie.gov

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street NW, Suite 825
Washington, DC 20006

Re: Integrity Committee Cases 22-046 & 22-069

Dear Chair Winters:

We provide this supplemental response on behalf of [redacted] to the Integrity Committee's (IC) April 3, 2023 letter. On August 9, 2023, the Chief Information Officer for the Department of Homeland Security (DHS) issued clarifying guidance about preservation of text messages on government devices. We enclose a copy of the guidance with this letter.

Consistent with [redacted] explanation in his May 12, 2023 letter to the IC, the guidance makes clear that DHS employees need only preserve text messages that "meet the definition of a federal record" and need not preserve every text message sent on a government device. The guidance explains that many text messages "are not considered federal records because they do not contain evidence of the decisions, procedures, operations, or other activities of the agency." If the information or actions in the text messages are "documented in other places (such as in email)," then the employee need not preserve the text message.

This new guidance further supports [redacted] reasonable belief that Inspector General Cuffari's phone did not contain texts that were federal records subject to a preservation obligation. First, [redacted] understood from [redacted] discussions with IG Cuffari that the deleted texts concerned matters such as suggesting to a colleague that they meet for coffee, telling someone that he is running late, or sending best wishes to an employee who has fallen ill. As noted in our earlier letter, [redacted] cannot recall any circumstance where [redacted] personally observed IG Cuffari making any agency decision, commitment, or action in a text message. Second, [redacted] recalled that IG Cuffari would communicate about agency business by e-mail or via documents that he personally reviews and approves—thus ensuring that the information or actions were documented elsewhere and negating the need to preserve the text message as well.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

[redacted]

[redacted]

Enclosure: August 9, 2023 DHS Guidance

[redacted]

From: DHS Records Management
Subject: Frequently Asked Questions (FAQ) on Text Message Records Retention
Date: Wednesday, August 9, 2023 1:41:48 PM
Attachments: DHS Form EM210.pdf

On Behalf of [redacted]
Chief Information Officer & Senior Official Performing the Duties of the Deputy Under Secretary for Management

Colleagues,

Last week, my office issued a one-time attestation form to you as a senior executive or political appointee. Thank you to those who have acknowledged your responsibility to review, identify, and maintain text messages that meet the definition of a record. As a reminder for those who still need to do so, please complete, sign, and email the attached form to dhsrecordsmanagement@hq.dhs.gov **by September 29, 2023.**

To assist those of you who are still reviewing the attestation requirement, I am providing answers to frequently asked questions we have received below:

Question: Is this a new requirement?

Answer: No. As a DHS employee, you have a legal obligation to retain and preserve federal records under the Federal Records Act (FRA) 44 USC § 3301 to include text messages.

-

Question: Why do we have to do this One-Time attestation now?

-

Answer: To ensure all federal records including text messages are maintained in accordance with the FRA.

Question: Do I have to retain ALL of my text messages?

Answer: No. Only text messages that meet the definition of a federal record should be maintained in accordance with this requirement, DHS records policies, and NARA regulations. Many text messages, even those that mention DHS business, are not considered federal records because they do not contain evidence of the decisions, procedures, operations, or other activities of the agency. Instead, they only reference information, decisions, or actions that are documented in other places (such as in email). If, however, a text message is the way you received information that led to a decision or action, or communicated a decision or action you were taking, then it is a record.

Here are some examples of what qualifies as a federal record and what does not:

- **Official Communications**: Text messages exchanged between federal employees or officials related to official business or government matters can be considered federal records. This includes messages discussing policies, procedures, decisions, or other matters related to government operations.

Example of a record: The closeout meeting with the interview team is scheduled for tomorrow at 10 AM. I have decided that we will move forward with hiring the program manager we interviewed yesterday.

Example of a non-record: The interview is scheduled for tomorrow at 10 AM.

- **Legal and Regulatory Matters**: Text messages that pertain to legal or regulatory issues, such as discussions about pending lawsuits, investigations, compliance matters, or contractual agreements, may qualify as federal records.

  Example: We received a request for the documents related to the environmental impact assessment. We will not answer any questions pertaining to this subject.

  Example of a non-record: Please check your email regarding the pending environmental impact assessment.

- **Policy Development and Implementation**: Text messages related to the development, review, or implementation of government policies, regulations, or directives are often considered federal records.

  Example: The Secretary's office has approved the new cybersecurity policy 101-8613. Please inform all department heads and start implementation by next week.

  Example of a non-record: The new cybersecurity policy has been posted on the website.

- **Emergency Response and Crisis Management**: Text messages exchanged during emergency response situations, crisis management, or disaster recovery efforts by federal agencies can be classified as federal records.

  Example: Emergency alert: Category 3 hurricane expected to make landfall in the southeast region. Activate disaster response teams 3-6 and coordinate with FEMA ASAP.

  Example of a non-record: NOAA is predicting an active hurricane season this year.

- **Decisions and Authorizations**: Text messages that document decisions made by federal employees or officials, or those that provide authorization for specific actions or expenditures, may be deemed federal records.

  Example: Approval granted for the release of funds to initiate the infrastructure project. Notify the contractors and commence work per the agreed schedule.

  Example of a non-record: Please check your email. Approval was granted yesterday for the infrastructure project.

Thank you again for your diligence and commitment to meeting your records management obligations. If you have any questions, please reach out to dhsrecordsmanagement@hq.dhs.gov.

[redacted]
Chief Information Officer & Senior Official Performing the Duties of the Deputy Under Secretary for Management
U.S. Department of Homeland Security

August 30, 2023

Via Email

[redacted]

Integrity Committee Case 22-046 and 22-069: Request for Further Response

Dear [redacted]:

The Integrity Committee (IC) has become aware that the U.S. Department of Homeland Security's Office of Inspector General's (DHS OIG), [redacted], provided your client, DHS OIG [redacted], a memorandum on August 10, 2023, authorizing, on behalf of DHS OIG, [redacted] full cooperation with the IC's requests for responses related to IC cases 22-046 and 22-069. The IC understands, based on your previous letters, that the principal reason that [redacted] did not fully respond to the IC's requests for response dated October 26, 2022, February 1, 2023, and April 3, 2023, was because [redacted] had not been authorized to do so by DHS OIG. As previously conveyed, the IC disagrees with the premise that a lack of authorization prevented [redacted] from providing a full response. Nonetheless, the issue now appears to be moot, given that your client has received authorization from DHS OIG to do so.

For your reference, [redacted] memorandum to your client reads as follows:

In connection with the above-captioned matter, you are hereby authorized to disclose DHS OIG records and information to the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency (IC). This authorization includes records and information concerning internal DHS OIG deliberations and other actions you took in your official capacity as [redacted], DHS OIG.

I am providing this authorization on behalf of DHS OIG because Inspector General Cuffari is not participating in the above-captioned matter in his official capacity. This authorization is based on the IC's view that Addendum A to the Integrity Committee Policies & Procedures applies to the above-captioned matter.

Based on the foregoing, DHS OIG would not consider you to have breached any obligation of confidentiality you have to DHS OIG should you choose to disclose deliberative or otherwise sensitive records and/or information to the IC.

The IC looks forward to [redacted] supplemental response. In light of the fact that this is the IC's fourth attempt to receive a full response from [redacted] and that your client has been aware of the underlying requests for several months, the IC respectfully requests [redacted] response within 10 days of receipt of this letter. Please send the response and any questions you have regarding this request to Integrity-WG@CIGIE.GOV.

Sincerely,

/s/

[redacted]
Council of Inspectors General on Integrity and Efficiency

[redacted]

[redacted]

October 2, 2023

[redacted]
Council of the Inspectors General on Integrity and Efficiency
Integrity-WG@CIGIE.GOV

Re: [redacted] Response to the Integrity Committee's Fourth Request in Integrity Committee Case 22-046 and 22-069

Dear [redacted]:

I write in response to your August 30, 2023 letter requesting additional information from my client, [redacted], now that [redacted] has received authorization from [redacted] agency, to disclose privileged and sensitive information, including law enforcement sensitive communications, to the Integrity Committee (IC).

To date, [redacted], through [redacted] counsel, has provided responses to the IC in connection with IC Case 22-069 and 22-046 on three different occasions: December 5, 2022, February 21, 2023, and May 13, 2023. [redacted] three prior responses are attached hereto as exhibits along with the IC's three prior requests. *See* Exhibits A-F. [redacted], through counsel, now responds to the IC's fourth request on those same topics.

I. [redacted] response to allegations concerning DHS OIG's purported failure to sufficiently disclose misconduct by the U.S. Secret Service to Congress.

Two of the IC's three prior requests to [redacted] concern allegations about "DHS OIG's purported failure to timely and/or adequately disclose the U.S. Secret Service's deletion of text messages potentially relevant to the January 6th investigation." Exhibit D (Oct. 26, 2022 IC Request to [redacted]) at 1; Exhibit E (Feb. 1, 2022 IC Request to [redacted]).

As explained in our prior responses, as early as fall 2021, DHS OIG in fact repeatedly informed Congress that the Secret Service was impeding its review of the events of January 6, 2021. *See* Exhibit A (Dec. 5, 2022 response from [redacted]); Exhibit B (Feb. 21, 2023 response from [redacted]). For example, DHS OIG's Fall 2021 semiannual report to Congress states that DHS "significantly delayed OIG's access to Department records, thereby impeding the progress of OIG's review of the January 6 events at the Capitol." DHS OIG Semiannual Report to Congress: Apr. 1, 2021 – Sep. 30, 2021 at 19. DHS OIG's Spring 2022 Semiannual Report to Congress identified the Secret Service specifically, and explained that "Secret Service's significant delay of OIG access to Secret Service records" was "impeding the progress of [OIG's] January 6, 2021 review." DHS OIG Semiannual Report: Oct. 1, 2021 – March 31, 2022 at 15.

IG Cuffari disclosed additional information to Congress on July 13, 2022, when he informed congressional leaders that according to the Department, "many U.S. Secret Service (USSS) text messages from January 5 and 6, 2021, were erased as part of a device-replacement program. The USSS erased those text messages *after* OIG requested records of electronic communication from the USSS, as part of our evaluation of events at the Capitol on January 6." Exhibit G (July 13, 2022 letter from IG Cuffari) (emphasis in the original).

Those disclosures show that DHS OIG did not seek to hide information from Congress—indeed, quite the opposite. DHS OIG notified Congress of its concerns starting in the fall of 2021 and continued raising the alarm in subsequent reports, letters, and meetings. *See* Exhibit A ([redacted] Dec. 5, 2022 response) at 1-4.

While reasonable minds may differ on exactly what language to include in any given report, drafting choices like the one complained of in the IC's initial request are quintessential discretionary management decisions, which are not subject to investigation by IC. *See* IC Policies and Procedures at Appendix A (stating "gross mismanagement," which can support an investigation by the IC, "does not include discretionary management decisions.")

Although we continue to believe that our prior responses thoroughly address the allegation at issue, we provide additional information here in response to the IC's August 30, 2023 request for a further response.

A. Additional information regarding DHS OIG's Spring 2022 Semi-Annual Report to Congress.

[redacted] does not recall the details of [redacted] discussions regarding the information to include in the Spring 2022 semiannual report to Congress. However, [redacted] practice is to focus on the scope of DHS OIG's reporting requirements when [redacted] is reviewing draft language for potential inclusion in a Congressional report. [redacted] also takes care to ensure that statements included in a report are accurate, and considers the need to protect information about ongoing criminal investigations, as well as OIG's broader goal of obtaining additional cooperation and information from the Department.

The IG Act requires Inspectors General to submit semiannual reports to Congress that, among other things, describe any "incidents where the establishment has resisted or objected to oversight activities of the Office or restricted or significantly delayed access to information…." 5 U.S.C. § 405 (b)(21)(B). But the Act does not specify any particular level of detail that must be included in each report—instead, the Act gives Inspectors General discretion regarding exactly how much detail to disclose in any given Congressional report.

Importantly, the disclosures in DHS OIG's Spring 2022 Semi-Annual Report to Congress were followed by multiple far more detailed disclosures, many of which necessarily took place in private.

IG Cuffari summarized DHS OIG's extensive efforts to obtain records from the Secret Service in an August 23, 2022 letter to congressional leaders that has not been released to the public. Exhibit H (Aug. 23, 2022 letter from IG Cuffari). As IG Cuffari explains in that letter, in February 2021, DHS OIG formally sought all DHS electronic communications relating to the events of January 6, 2021. *Id*. at 1 n. 1. DHS OIG then spent months trying to get DHS to produce the records they had requested. Among other things, IG Cuffari personally met with the Secretary of the Department of Homeland Security in October 2021 to discuss "the months-long delay in obtaining e-mails that OIG had requested." *Id*. at 3 n. 2. During that meeting, the Secretary assured IG Cuffari that OIG would be given access to the information OIG had requested, and DHS produced a large set of emails to OIG shortly after the meeting. *Id*. In late February 2022, the Secret Service told OIG that text messages from January 2021 had been deleted. *Id*. at 5. On May 23, 2022, OIG staff confronted a high-level DHS official about the loss of Secret Service text messages. *Id.* at 3.

The final Spring 2022 semiannual report to Congress was submitted to the Secretary of DHS in early May 2022, as required under the IG Act. At that time, IG Cuffari believed that DHS would work with OIG to address the loss of text messages by the Secret Service, consistent with the Secretary's assurances when they met in October 2021. Exhibit H at 3 n. 2. Instead, when the Secretary finally transmitted OIG's Spring 2022 report to Congress on June 14, 2022, the Secretary attached a cover letter denying that the Secret Service was impeding OIG's work. *Id*. at 3. IG Cuffari then wrote to congressional leaders to explicitly notify them of the loss of text messages by the Secret Service. Exhibit G. He also privately briefed the House January 6 Select Committee about the problems OIG had encountered during its review of the events of January 6, 2021, including the destruction of Secret Service text messages. Exhibit H at 2.

In short, DHS OIG took multiple steps to ensure that Congress was informed of a troubling lack of cooperation from the Secret Service, while also working to encourage the Department to provide more information, and remaining mindful of the need to limit public disclosures regarding the details of an ongoing investigation. *See*, *e.g.*, Congressional Requests for Information from Inspectors General Concerning Open Criminal Investigations, 13 Op. O.L.C. 77 (1989) ("The reporting provisions of the Inspector General Act do not require Inspectors General to disseminate to Congress confidential information pertaining to open criminal investigations"). Those were appropriate discretionary decisions that complied with the IG Act.

B. The allegations regarding DHS OIG's 2022 Spring semiannual report to Congress are unfounded.

The allegations set forth in the IC's October 26, 2022 letter are unfounded for those reasons. [redacted] did not engage in any misconduct in connection with the preparation of OIG's Spring 2022 semiannual report to Congress, let alone misconduct that meets the threshold standards established by the IC. *See* IC Policies and Procedures at 6. The allegations against [redacted] should accordingly be denied, and this matter should be closed. *See id*. at 7 (after receiving a response the IC may "[d]etermine that the written response sufficiently answers or refutes the allegation(s) and that further inquiry or investigation is not warranted, and close the matter").

II. [redacted] response to allegations regarding the deletion of IG Cuffari's text messages.

The IC's third request to [redacted] in connection with IC Case 22-069 involves an entirely different set of allegations. This time, the allegations address IG Cuffari's alleged failure to properly preserve his own text messages. *See* Exhibit F (April 3, 2023 IC Third Request).

[redacted] May 13, 2023 response to the IC's third request explained that the allegations against [redacted] were premised on a misunderstanding of [redacted] role. *See* Exhibit C (May 13, 2023 Response) at 3. Specifically, the IC suggested that [redacted] had "a legal obligation to report the destruction of government information to NARA." Exhibit F at 2. But the statutes and regulations cited by the IC place record preservation and reporting obligations on the "head of each Federal Agency" and on each agency's designated record management officer. *See* Exhibit C at 3 (quoting the statutes and regulations cited by the IC). [redacted] is not the head of an agency, nor is [redacted] the designated agency records officer. As a result, [redacted] would not be responsible for reporting issues regarding document retention to NARA, nor is [redacted] subject to the requirements set forth in the statutes and regulations cited by the IC.

[redacted] May 13, 2023 response thus already addresses the crux of the allegations directed against [redacted] in the IC's third request. Much of the information the IC is seeking on this topic has now also been disclosed in public pleadings filed in related litigation brought by the Project on Government Oversight (POGO). *See Project on Government Oversight, Inc. v. Dep't of Homeland Sec.*, Case No. 22-cv-2424-ABJ. While we expect that the IC already has most, if not all, of the information it seeks from [redacted], at your request, [redacted], through undersigned counsel, now provides expanded responses to the questions posed in the IC's third request.

A. Response to specific questions posed in the IC's third request to [redacted].

The IC's April 3, 2023 third request for a response from [redacted] includes five paragraphs of specific questions. *See* Exhibit F at 2-3. We respond to each of those questions below.

1. [redacted] response to questions posed in Paragraph 1

Question 1(a)*: Do you agree that IG Cuffari had a government issued iPhone during the time period alleged and that his phone contained text messages?*

Response: Yes.

Question 1(b)*: Do you agree that the text messages were government records as defined by applicable law or regulation?*

Response: Whether or not a text message is a government record that must be preserved under the Federal Records Act (FRA), codified at 44 USC § 3301, turns on the nature of the communication. As explained by the Chief Information Officer for the Department of Homeland Security:

> Many text messages, even those that mention DHS business, are not considered federal records because they do not contain evidence of the decisions, procedures, operations, or other activities of the agency. Instead, they only reference information, decisions, or actions that are documented in other places (such as in email). If, however, a text message is the way you received information that led to a decision or action, or communicated a decision or action you were taking, then it is a record.

Exhibit I (Frequently Asked Questions on Text Message Records Retention). *See also*, Exhibit J (NARA training module on distinguishing records and non-records).

In a signed declaration filed in the POGO litigation on June 29, 2023, IG Cuffari explained that he does not conduct DHS official business via text message on his government-issued cellular phone. Exhibit K (June 29, 2023 Cuffari Declaration in Case No. 22-cv-2424).

Question 1(c)*: Please provide clarifying information to correct or supplement the above-listed version of events.*

Response: See responses to Questions 1(b), 1(d), and 2(a), and Section II(B) below.

Question 1(d)*: Please describe the nature of the purported FOIA request and the content of the text messages that were allegedly deleted.*

Response: The FOIA request at issue was submitted by the Project on Government Oversight (POGO) on July 5, 2022. POGO's FOIA request seeks five categories of documents related to DHS OIG's investigation into allegations of sexual harassment by DHS employees. IG Cuffari has submitted a signed declaration stating that he does not recall sending or receiving text messages pertaining to POGO's July 5, 2022 FOIA request and [redacted] believes his declaration is accurate, based on [redacted] experience working with him for more than [redacted]. *See* Exhibit K (Cuffari Declaration) ¶ 4.

2. [redacted] response to questions posed in Paragraph 2

Question 2(a): *If IG Cuffari's text messages were deleted, please explain (to the best of your knowledge) who deleted them, if they were deleted manually, to include whether IG Cuffari did so upon advice, and if so, who gave that advice.*

Response: IG Cuffari has testified that he deleted text messages routinely because he did not conduct official DHS OIG business via text message, which is consistent with the law. [redacted] knows that IG Cuffari, like all DHS OIG employees, certified that he completed the required annual DHS trainings on federal records and the use of electronic communications. Those trainings explain that not every DHS-related communication is a federal record that must be preserved under the FRA. Indeed, many text messages—like messages confirming the time of a meeting, or asking if a colleague has received an email—do not fall within the definition of a federal record for purposes of the FRA. *See*, *e.g.*, Exhibits I & J.

Question 2(b): *If the deletion of the text messages was pursuant to advice to IG Cuffari from staff or counsel at DHS OIG, please provide all documents that memorialize or contain that advice or a summary of the verbal communications from staff or counsel on that topic. If IG Cuffari did not delete them personally, please explain how the text messages came to be deleted.*

Response: See responses to Questions 1(b) and 2(a) above.

3. [redacted] response to questions posed in Paragraph 3

Question 3*: If IG Cuffari's text messages were deleted, was he advised by anyone to report this deletion to NARA? If so, please fully explain, to include who, when, and in what format was this advisory communication(s) made? If written, please provide the communications.*

Response: [redacted] believes that IG Cuffari complied with the FRA for the reasons detailed above. NARA recently asked DHS to conduct a review and provide a report "documenting IG Cuffari's practices with respect to the management of electronic messages, and in particular all messages that meet the definition of a federal record." Exhibit L (June 15, 2023 Letter from NARA). The response that DHS OIG sent to NARA on August 5, 2023 is attached here as Exhibit M. DHS OIG's August 5, 2023 response to NARA provides further details about IG Cuffari's document management practices, and confirms that DHS OIG will work with NARA to ensure any remaining questions are addressed. *See* Exhibit M.

4. [redacted] response to questions posed in Paragraph 4

Question 4*: Provide any and all DHS OIG policies and procedures, and any rules, regulations, or guidance, regarding retention, handling or deletion of text messages on DHS OIG government issued phones.*

Response: While [redacted] cannot conduct an agency-wide collection of all potentially relevant DHS OIG policies, procedures, rules, regulations, and guidance, as requested in Paragraph 4, when [redacted] is responding to the IC in [redacted] individual capacity, and indeed would not be tasked in [redacted] official capacity to conduct such a collection, key DHS OIG policies and guidance documents are provided in the exhibits attached to this response.[1]

5. [redacted] response to questions posed in Paragraph 5

Question 5*: If text messages that qualified as federal records were deleted from IG Cuffari's government issued iPhone as alleged, please explain how the deletion of text messages and subsequent reporting actions was or was not in compliance with the relevant reporting requirements, DHS OIG policies and procedures, rules, regulations or guidance documents, including, but not limited to, your obligations under 44 U.S.C. 3105 and 36 CFR 1230.10 to prevent unlawful or accidental destruction of records.*

Response: To the best of [redacted] knowledge, text messages that qualify as federal records were not deleted from IG Cuffari's government issued iPhone, as explained in more detail above.

[1] The IC's request for [redacted] to provide "any and all" DHS OIG policies, procedures, rules, regulations and guidance on this topic is inconsistent with the IC's standard guidance and practices. The IC routinely directs requests for relevant OIG documents to the Office itself, and not to an individual respondent. That makes sense, because the subject of an allegation cannot canvas OIG for "any and all" responsive documents without running afoul of IC guidance instructing subjects to refrain from contacting other individuals involved in the IC's investigation, and to recuse themselves from decision making concerning the production of documents. *See* https://www.ignet.gov/content/guidance-and-faqs.

B. Further clarification in response to allegations concerning IG Cuffari's retention of text messages.

The IC's April 3, 2023 letter alleges that [redacted] was likely made aware of the deletion of IG Cuffari's text messages but took no action in response. That is not so. [redacted] has no knowledge that IG Cuffari improperly deleted text messages and believes that assertion is unfounded based on [redacted] experience receiving and sending text messages to the IG. Additionally, even assuming arguendo that IG Cuffari had deleted federal records, documents filed recently in the POGO litigation make it clear that the DHS OIG Records and Information Management Officer was tasked with reviewing these facts and determining what, if any, disclosures were required.

***

We hope this additional information is of help, and trust that this fourth response to the IC sufficiently resolves any remaining questions you may have about the allegations presented in the IC's multiple prior requests to [redacted].

Sincerely,

[redacted]

Index of Exhibits to [redacted] Response
to the Integrity Committee's Fourth Request in IC Case 22-046 and 22-069

Exhibit A: [redacted] December 5, 2022 response to Integrity Committee

Exhibit B: [redacted] February 21, 2023 response to Integrity Committee

Exhibit C: [redacted] May 13, 2023 response to Integrity Committee

Exhibit D: October 26, 2022 IC Request to [redacted]

Exhibit E: February 1, 2023 IC Request to [redacted]

Exhibit F: April 3, 2023 IC Request to [redacted]

Exhibit G: July 13, 2022 letter from IG Cuffari

Exhibit H: August 23, 2022 letter from IG Cuffari

Exhibit I: FAQs on Text Message Retention

Exhibit J: NARA Federal Records Management training module

Exhibit K: June 29, 2023 Declaration of Joseph V. Cuffari

Exhibit L: June 15, 2023 letter from NARA

Exhibit M: August 4, 2023 response to NARA with supporting exhibits

Exhibit A

[redacted] December 5, 2022 response to Integrity Committee

[redacted]

[redacted]

December 5, 2022

VIA ELECTRONIC MAIL

Kevin H. Winters
Chairperson
Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
Integrity-WG@CIGIE.GOV

Re: [redacted] Response to Request in Integrity Committee Case 22-069

Dear Mr. Winters:

I write on behalf of my client, [redacted], in response to your October 26, 2022 letter requesting a response to allegations made in Integrity Committee (IC) Case 22-069.

The October 26, 2022 letter to [redacted] states that the IC has "has received allegations against [redacted] for abuse of authority, gross mismanagement, and conduct undermining independence or integrity." Oct. 26, 2022 Letter from K. Winters ("IC letter") at p. 1. The allegations at issue involve "DHS OIG's purported failure to timely and/or adequately disclose the U.S. Secret Service's deletion of text messages potentially relevant to the January 6th investigation." *Id*. Those allegations are without merit for the reasons set forth below.

I. [redacted] Helped to Ensure that Congress Received Appropriate Information About the Secret Service's Resistance to OIG Oversight

The allegations set forth in the IC letter relate to the Spring 2022 semiannual report to Congress from the Department of Homeland Security Office of Inspector General ("OIG"). That report disclosed that the U.S. Secret Service continued to impede access to records sought by OIG. *See Semiannual Report to the Congress: Oct. 1, 2021 – Mar. 31, 2022* at p. 15.[1] The Spring 2022 semiannual report first states that "Section 5(a)(21)(B) of the Inspector General Act of 1978 (IG Act) requires OIG to report 'incidents where the establishment has resisted or objected to oversight activities of the Office or restricted or significantly delayed access to information, including the justification of the establishment for such action.'" *Id*. The report then explains that "[d]uring the previous reporting period, we included information about Secret Service's significant delay of OIG's access to Secret Service records, impeding the progress of our January 6, 2021 review. We continue to discuss this issue with Secret Service." *Id.*

[1] Available at https://www.oig.dhs.gov/sites/default/files/assets/SAR/2022/oig-sar-oct21-mar22.pdf

The Spring 2022 semiannual report references earlier disclosures contained in OIG's Fall 2021 semiannual report to Congress. Among other things, the Fall 2021 report disclosed that:

> During this reporting period, the Department significantly delayed OIG's access to Department records, thereby impeding the progress of OIG's review of the January 6 events at the Capitol. The Department repeatedly suggested that OIG might not have a right of access to the records sought, but during the months-long period in which access was delayed the Department did not cite any legal authority consistent with section 6(a)(1)(B) of the IG Act that would have justified withholding the information.

Semiannual Report to the Congress: Apr. 1, 2021 – Sep. 30, 2021 at p. 19.[2] The Spring 2022 report added to the disclosures already made in the Fall 2021 report by identifying the Secret Service specifically and informing Congress that the issues described in the Fall 2021 report had yet to be resolved. *See Semiannual Report: Oct. 1, 2021 – Mar. 31, 2022* at p. 15.

The statements included in the Fall 2021 and Spring 2022 semiannual reports disclose that the Secret Service was impeding OIG's review of the devastating events that took place at the Capitol on January 6, 2021. And that was not the only information that DHS OIG provided to Congress about the improper actions taken by the Secret Service in response to OIG inquiries. On July 13, 2022, for example, Inspector General Cuffari told congressional leaders that according to DHS "many U.S. Secret Service (USSS) text messages from January 5 and 6, 2021, were erased as part of a device-replacement program. The USSS erased those text messages *after* OIG requested records of electronic communication from the USSS, as part of our evaluation of events at the Capitol on January 6." July 13, 2022 letter from IG Cuffari (emphasis in the original).[3]

The disclosures made by OIG are pointed and direct. They describe serious misconduct by the Secret Service that impeded OIG's critical review of the events of January 6, 2021.

Despite those detailed disclosures, on August 11, 2022, the Project on Government Oversight (POGO) published an article complaining that the Spring 2022 semiannual report did not include additional language contained in a draft of the report, which POGO obtained from an unidentified source. *See* N. Schwellenbach & A. Zago, *DHS Watchdog Nixed Alert to Congress About Purged January 6 Texts, New Docs Show*, POGO (Aug. 11, 2022).[4] The August 11, 2022 POGO article quotes "a key paragraph" of the draft report as follows:

> On February 23, 2022—more than 2 months after OIG renewed its requests for select Secret Service employees' text messages—Secret

[2] Available at https://www.oig.dhs.gov/sites/default/files/assets/SAR/2021/oig-sar-apr21-sept21.pdf

[3] Available at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-07-13-DHS-OIG-Letter-to-HSGAC-CHS.pdf

[4] Available at https://www.pogo.org/investigation/2022/08/dhs-watchdog-nixed-alert-to-congress-about-purged-january-6-texts-new-docs-show

> Service claimed inability to extract text message content due to an April 2021 mobile phone system migration, which wiped all data.

That unsent paragraph continues:

> Secret Service caused significant delay by not clearly communicating this highly relevant information at the outset of its exchanges with OIG during this reporting period. Moreover, Secret Service has not explained why it did not preserve the texts prior to the migration.

Id.

The IC's October 26, 2022 letter to [redacted] includes the exact same quotation used in the POGO article. *See* IC Letter at 1. The IC letter states that "it is alleged that, as of April 1, 2022, DHS OIG staff had prepared language for the draft semiannual report to Congress that offered additional details about the Secret Service text message deletions, but that those details were not ultimately included after the draft was sent to you and IG Cuffari." *Id.* While the IC letter does not contain any specific questions for [redacted] it requests a response to the allegations contained in the letter. *Id.* at 2.

[redacted] is not authorized to disclose OIG's internal discussions regarding the language used in the Spring 2022 semiannual report in her personal capacity. Despite that limitation, a wealth of public information belies any suggestion that [redacted] engaged in misconduct in connection with the language chosen for inclusion in OIG's report to Congress.

The semiannual report did not minimize OIG's concerns with the conduct of the Secret Service. *See Semiannual Report: Oct. 1, 2021 – Mar. 31, 2022* at p. 15 (explaining that the "Secret Service's significant delay of OIG access to Secret Service records" was "impeding the progress of [OIG's] January 6, 2021 review"). OIG provided a great deal of additional information to congressional leaders in other communications as well. As Inspector General Cuffari explained in an August 8, 2022 letter to House committee leaders, for example:

> Consistent with the law, I have reported to Congress various access issues that my office has experienced since 2021. As you note, this includes public reporting as early as our Semi-Annual Report to Congress (April 1, 2021–September 30, 2021). Additionally, since 2021, my staff and I have provided numerous briefings to Members and congressional staff about the wide-spread access issues that we have faced at every level of DHS.

August 8, 2022 letter from IG Cuffari at p. 1.[5]

Inspector General Cuffari also "briefed Members of the January 6 Select Committee about the impediments to access that we have experienced in our January 6 reviews[.]" *Id*. at p. 2.

[5] Available at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DHS-OIG.220808.Response%20to%20CBM%20BGT%20re%20Document%20Request.pdf

According to public reporting, the Select Committee was told, for example, that "the Secret Service has not been fully cooperative with [OIG's] probe." *DHS Inspector General Told Jan. 6 Panel He Went to Mayorkas About Secret Service Cooperation*, CNN (July 15, 2022).[6] IG Cuffari also told the Select Committee that "he brought the issue to Homeland Security Secretary Alejandro Mayorkas more than once and was told to keep trying to get the information. Ultimately, Cuffari decided to go to Congress because he could not get anywhere within DHS with his concerns." *Id*.

Nothing in OIG's decision to include less detail than some may wish in the Spring 2022 semiannual report suggests any effort to improperly protect the Secret Service, or anyone else, given that context. Instead, the public record shows that OIG ensured Congress was informed of the troubling actions taken by the Secret Service, while remaining mindful of the need to limit public disclosures regarding the details of an ongoing investigation. *See*, *e.g.*, *Congressional Requests for Information from Inspectors General Concerning Open Criminal Investigations*, 13 Op. O.L.C. 77 (1989) ("The reporting provisions of the Inspector General Act do not require Inspectors General to disseminate to Congress confidential information pertaining to open criminal investigations").

II. The Allegations Against [redacted] are Unfounded

OIG's multiple disclosures to Congress undermine any suggestion that [redacted] engaged in "abuse of authority, gross mismanagement, and conduct undermining independence or integrity" based on the language used in OIG's Spring 2022 semiannual report to Congress, as alleged in the IC letter.

More specifically, the Integrity Committee Policies and Procedures define "abuse of authority" as the "arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to her/him or to preferred other persons." IC Policies and Procedures at p. 16.[7] The IC further defines "gross mismanagement" as "action or inaction that creates a substantial risk of significant adverse impact on the OIG's ability to accomplish its mission." *Id*. Importantly, gross mismanagement "does not include discretionary management decisions, or action or inaction that constitutes simple negligence or wrongdoing." *Id.*

Differences in opinion about how exactly to word disclosures to Congress cannot support a finding of wrongdoing by the IC. The drafting decisions discussed in the IC's letter are discretionary management decisions that do not fall within the definition of "gross mismanagement." *See Id*. ("gross mismanagement . . . does not include discretionary management decisions"). Nor is there any reason to conclude that the decision about what language to include in OIG's semiannual report to Congress was an arbitrary or capricious abuse of authority. OIG did

[6] Available at https://www.cnn.com/2022/07/15/politics/homeland-security-inspector-general-deleted-text-message/index.html

[7] Available at https://www.ignet.gov/sites/default/files/files/ICP%26PRevised_Jan-2018_Rev1_Finalx.pdf

not hide its concerns about the Secret Service from Congress, and the exact language used in the Spring 2022 semiannual report was reasonable, particularly given the challenge of balancing the importance of Congressional disclosures with the need to protect the details of an ongoing investigation.

The allegations set forth in the IC letter likewise cannot support a finding that [redacted] engaged in "conduct undermining [the] independence or integrity" of [redacted] office. IC Letter at p. 1. [redacted] is committed to ensuring the integrity and independence of the Office of Inspector General, as [redacted] has demonstrated during [redacted] many years as a dedicated civil servant working under multiple different Inspectors General. Over the [redacted] has worked diligently to advance DHS OIG's mission during an extraordinarily difficult time. [redacted] supported OIG's efforts to obtain critical records from the Secret Service and [redacted] helped to ensure that Congress was made aware of the impediments OIG faced in seeking documents from that agency and DHS writ large.

In sum, the allegations set forth in the IC letter are unfounded. [redacted] did not engage in any misconduct in connection with the preparation of OIG's Spring 2022 semiannual report to Congress, let alone any misconduct that meets the threshold standards established by the IC. *See* IC Policies and Procedures at p. 6. The allegations against [redacted] should accordingly be rejected, and this matter should be closed. *See id.* at p. 7 (after receiving a response the IC may "[d]etermine that the written response sufficiently answers or refutes the allegation(s) and that further inquiry or investigation is not warranted, and close the matter").

Please let me know if you have any additional questions for [redacted] and thank you for your consideration.

Sincerely,

[redacted]

Exhibit B

[redacted] February 21, 2023 response to Integrity Committee

[redacted]

February 21, 2023

Kevin H. Winters, Chairperson
Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
Integrity-WG@CIGIE.GOV

Re: [redacted] Response to Request for Further Clarification in Integrity Committee Case 22-069

Dear Mr. Winters:

I write in response to your February 1, 2023 letter requesting additional information from my client, [redacted], in connection with Integrity Committee (IC) Case 22-069.

Your initial request to [redacted] sought [redacted] perspective on allegations relating to "DHS OIG's purported failure to timely and/or adequately disclose the U.S. Secret Service's deletion of text messages relevant to the January 6th investigation." October 26, 2022 IC Letter to [redacted] at 1; *Id.* at 2 (suggesting [redacted] "might offer any background, context, or supporting evidence (if available) prior to the IC's deliberations").

After receiving your October 26, 2022 request, [redacted] emailed the IC Working Group to ask if [redacted] could seek comments or legal help from DHS OIG counsel when responding to your request. *See* Exhibit A (email exchange with [redacted]) at 2. In response, the IC Working Group stated that:

> The allegations we received were directed at you individually, not at DHS-OIG as an office. Therefore, the IC has requested a response to these allegations from you. As the IC advises on its website under frequently asked questions, "…attorneys working for the Federal government cannot provide representation of a Subject for purposes of an IC matter."

Exhibit A at 1. As a result of those instructions, [redacted] had to retain private counsel to assist [redacted] in responding to your inquiries, instead of working with DHS OIG counsel.

I. [redacted] Has Already Provided the IC with a Detailed Response to the Allegation at Issue.

[redacted] retained me to represent [redacted] in this matter because the IC would not allow [redacted] to be represented by DHS OIG counsel. While that restriction put additional burdens on [redacted] and [redacted] counsel it did not prevent us from addressing the substance of the allegation at issue.

On December 5, 2022, I sent a detailed response to the IC on behalf of [redacted]. In that response, I explained that DHS OIG had not hidden its concerns about the Secret Service from Congress. *See* December 5, 2022 Letter from [redacted] at 1-2. In fact, DHS OIG repeatedly informed Congress that the Secret Service was impeding its review of the devastating events of January 6, 2021. For example, DHS OIG's Spring 2022 Semiannual Report to Congress stated that "Secret Service's significant delay of OIG access to Secret Service records" was "impeding the progress of [OIG's] January 6, 2021 review." DHS OIG Semiannual Report: October 1, 2021 – March 31, 2022 at p. 15. DHS IG Joseph Cuffari also specifically told congressional leaders that "many U.S. Secret Service (USSS) text messages from January 5 and 6, 2021, were erased" by the Secret Service "*after* OIG requested records of electronic communication from the USSS, as part of our evaluation of events at the Capitol on January 6." July 13, 2022 Letter from IG Cuffari (emphasis in the original).[1] As I explained in my December 5, 2022 letter, those disclosures and others like them belie any suggestion that DHS OIG sought to shield the Secret Service from oversight. *See* December 5, 2022 Letter from [redacted] at 1-4.

Despite those disclosures, the IC sought [redacted] response to an allegation complaining that DHS OIG did not include three additional sentences from a draft report in the final Spring 2022 Semiannual Report to Congress. *See* October 26, 2022 IC Letter to [redacted] at 1-2 (repeating an allegation first made in an article published by the Project on Government Oversight[2]). In response, I explained that differences in opinion about how exactly to word a disclosure to Congress cannot support a finding of wrongdoing by the IC given. *See* December 5, 2022 Letter from [redacted] at 4-5. Notably, the IC's own Policies and Procedures explain that "gross mismanagement," which can support an investigation by the IC, "does not include discretionary management decisions." IC Policies and Procedures at Appendix A. Drafting choices like the one at issue here are quintessential discretionary management decisions, which are not subject to second guessing by the IC.

I believe that the response I provided to the IC on December 5, 2022 thoroughly addressed the substance of the allegation at issue for those reasons.

II. The IC Points to No Authority That Permits [redacted] to Disclose Confidential DHS OIG Communications to the IC.

The IC's February 1, 2023 letter does not address any of the substantive arguments set forth in my December 5, 2022 letter. Instead, the IC now asks [redacted] to respond to its assertion that [redacted] must disclose the substance of confidential DHS OIG communications to the IC.

[1]Available at https://s3.documentcloud.org/documents/22087607/dhs-oig-letter-to-hsgac-chs-071322.pdf.

[2] *See* N. Schwellenbach & A. Zago, *DHS Watchdog Nixed Alert to Congress About Purged January 6 Texts, New Docs Show*, POGO (Aug. 11, 2022).

[redacted] was instructed to respond to the IC in [redacted] personal capacity, without the assistance of DHS OIG counsel. *See* Exhibit A at 1-2. Since [redacted] could not rely on the advice of DHS OIG counsel, [redacted] sought my counsel instead. And I am not aware of any legal authority that permits [redacted] to disclose confidential DHS OIG communications to other government entities.

The IC's February 1, 2023 letter argues that the IC should be permitted to access internal DHS OIG records as a matter of public policy, but the IC does not cite any authority that alleviates my concerns. The IC asserts that "[j]ust as a junior DHS OIG employee accused of individual misconduct would not be able to claim that they are unable to share official information with a DHS OIG investigator in an official internal investigation, a senior DHS OIG employee cannot make such a claim in the course of an official IC investigation." February 1, 2023 IC Letter at 2. But [redacted] is not in the same position as a junior DHS OIG employee who is asked to respond to a DHS OIG investigator, because [redacted] is being asked to share information outside of [redacted] agency.

The IC states that it "has no doubt that Congress expects it to conduct precisely the same type of comprehensive investigations that OIGs conduct within their own agencies and their own offices" (*id*.), but the statutory language chosen by Congress does not support that view. Courts "presume that the legislature says in a statute what it means and means in a statute what it says." *BedRock Ltd. v. United States*, 541 U.S. 176, 183 (2004) (quotation marks and citation omitted). When Congress addressed the authority of an Inspector General to obtain records from its own agency, Congress spoke clearly. Section 6(a) of the Inspector General Act of 1978 gives inspectors general the authority to access "all records, reports, audits, reviews, documents, papers, recommendations, or other materials available to the applicable establishment which relate to the programs and operations with respect to which that Inspector General has responsibilities under this Act." 5 U.S.C. app. 3 § 6(a)(1)(A). When Congress established the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency, in contrast, it granted no similar authority. *See* 5 U.S.C. App. 3 § 11(d) (establishing the Integrity Committee). By writing specific rules for intra-agency investigations conducted by an agency's own IG, and different rules for IC investigations into the actions of IGs at other government agencies, Congress confirmed that "it recognizes the differences between" the two. *Gutierrez v. Ada*, 528 U.S. 250, 256 (2000).

The IC's privilege assurances likewise fail to distinguish communications shared within DHS from communications provided to outside entities like CIGIE. The IC asserts that it "does not consider the provision of access to OIG records, documents, witnesses, or other information to constitute a waiver of any applicable privilege or similar doctrine as to third parties, as they are not disclosures outside of the executive branch." February 1, 2023 IC Letter at 2 n.1. But the IC cannot bind any other agency through those words, let alone the Article III courts that would ultimately rule on whether providing confidential internal agency communications to the IC acts as a privilege waiver.

The IC's February 1, 2023 letter cites no authority to support its position that [redacted] can share confidential internal DHS OIG communications with the IC without risking a waiver of privilege, and I know of no authority that supports that position. When considering the scope of the attorney-client privilege, for example, courts hold that "[i]n the governmental context, the 'client' may be the agency and the attorney may be an agency lawyer." *Tax Analysts v. I.R.S.*, 117 F.3d 607, 618 (D.C. Cir. 1997). Communications between agency lawyers and agency leaders are thus generally protected by the attorney-client privilege. But when privileged communications are shared outside of an agency, or even between distinct agency components, that privilege can be lost. *See Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 863 (D.C. Cir. 1980) (rejecting agency argument "that circulation limited to the confines of the agency of a document otherwise entitled to protection under the attorney-client privilege should not defeat the privilege" as "far too broad" when a document had been broadly shared across different parts of the agency).

Courts do not treat the entire Executive Branch as a single client when addressing privilege claims. Indeed, "different parts of the government may find themselves squaring off against each other as opposing parties in litigation" *Menasha Corp. v. U.S. Dep't of Justice*, 707 F.3d 846, 852 (7th Cir. 2013); s*ee also*, *SEC v. Fed. Labor Relations Auth.*, 568 F.3d 990, 997 (D.C. Cir. 2009) (Kavanaugh, J., concurring) ("Both the SEC and the FLRA are agencies in the Executive Branch," "yet one [has sued] the other in an Article III court."). When otherwise privileged communications are shared between two components of the Executive Branch that are on opposite sides of a dispute, privilege will be lost, just as it would be in the private sector.

The IC has not cited any authority that alleviates these concerns. Indeed, even the IC's own rules do not support the demands the IC has made to [redacted]. The IC specifically addresses its right to access OIG information in a 2021 addendum to its policies and procedures. The addendum states that:

> Upon request by the IC under section 7(B) or 7(C) of these Policies, *an IG or other person with full and final authority to provide access under this section* (Authorized Person) must provide and direct the staff of the OIG to provide the IC or its designated investigators with full and timely access to all OIG records, documents, witnesses, and other information that the IC or its designee deems necessary to carry out the IC's duties and responsibilities[.]

Integrity Committee Policies and Procedures Addendum A, §A (emphasis added).

The IC's own rules thus limit the IC's purported authority to request OIG records to requests made to an IG and those "with full and final authority to provide access under this section." *Id*. [redacted] is not an IG, nor does [redacted] have full and final authority to provide access to DHS OIG records. [redacted] should not be pressured to disclose the substance of confidential agency communications to the IC given her role, particularly when [redacted] was explicitly instructed to respond to the IC in [redacted] individual capacity, without representation by DHS OIG counsel. *See* Exhibit A.

I hope this letter has helped explain the approach I took when responding to the IC's request on behalf of [redacted]. The response I provided to the IC on December 5, 2022 addressed the substance of the allegation at issue without forcing [redacted] to make impossible decisions about the disclosure of confidential OIG communications. While I believe that we have now answered both of your requests thoroughly, I am always happy to consider any additional authority you would like to provide.

Sincerely,

[redacted]

Exhibit C

[redacted] May 13, 2023 response to Integrity Committee

[redacted]

May 13, 2023

Kevin H. Winters, Chairperson
Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
Integrity-WG@CIGIE.GOV

Re: [redacted] Response to Third Request in Integrity Committee Case 22-069

Dear Mr. Winters:

I write in response to the Integrity Committee's April 3, 2023 letter requesting a third response from my client, [redacted], in connection with Integrity Committee Case 22-069.

The IC's first request to [redacted] explained that the IC was investigating "DHS OIG's purported failure to timely and/or adequately disclose the U.S. Secret Service's deletion of text messages relevant to the January 6th investigation." First IC Request to [redacted] (October 26, 2022) at 1. The basis of that investigation was a complaint about the language used in DHS OIG's Spring 2022 Semiannual Report to Congress.

The allegation set forth in the IC's initial request cannot support a finding of wrongdoing against [redacted], as our December 5, 2022 response explained.

To recap, in its Spring 2022 Semiannual Report to Congress, DHS OIG disclosed that the Secret Service continued to impede its review of the events of January 6, 2021 by preventing DHS OIG from accessing Secret Service records. *See* Response to First IC Request (December 5, 2022) at 1-2. DHS OIG disclosed a great deal of information about its concerns with the Secret Service to Congress in multiple reports starting in the Fall of 2021, and in letters and meetings with congressional leaders. *Id.* at 2-3.

IC Case 22-069 is based on an allegation that the Spring 2022 Semiannual Report to Congress should have included additional language about the Secret Service that was contained in an earlier draft of the report. But differences in opinion about how to word one of many related disclosures to Congress cannot support a finding of wrongdoing by the IC. *Id.* at 4-5. The threshold standard established by the IC requires allegations of wrongdoing that rise to the level of abuse of authority, substantial misconduct, or conduct that undermines the independence or integrity of the OIG. *See* Integrity Committee Policies and Procedures § 7(A). None of those threshold standards are supported by the allegations set forth in the IC's initial request. *See* Response to First IC Request at 4-5.

Complaints about discretionary management decisions do not fall within the IC's definition of substantial misconduct. *See* Integrity Committee Policies and Procedures, Appendix A ("Gross mismanagement. . . does not include discretionary management decisions, or action or inaction that constitutes simple negligence or wrongdoing"). Nor can that allegation meet the IC's definition of an abuse of authority, or conduct that undermines the independence or integrity of the office. *Id.* ("'Abuse of authority' means arbitrary or capricious exercise of power. . . that adversely affects the rights of any person or that results in personal gain or advantage to her/him or to preferred other persons."). There is no self-dealing involved in the allegation set forth in the IC's first request, and no favoritism shown.

A difference in opinion about the edits made to a draft report cannot support action by the IC based on the IC's own policies and procedures, and IC Case 22-069 should have been closed long ago for that reason. *See* Response to First IC Request at 4-5.

Unfortunately, instead of addressing the substance of [redacted] response, the IC has sent a series of unfounded additional requests to [redacted]. Those requests, which are directed to [redacted] in [redacted] personal capacity, ask [redacted] to disclose the substance of confidential internal agency deliberations and privileged communications without the aid of agency counsel. *See* IC Request for Further Clarification and Response (February 1, 2023); Third IC Request for Response (April 3, 2023).

As I explained in my last response, the IC has not cited any authority to support its position that [redacted] can unilaterally decide to share confidential internal DHS OIG communications with the IC, and do so without risking a waiver of privilege. Response to Second IC Request (February 21, 2023) at 2-4. I closed my prior letter with a sincere offer to review any additional authority that the IC would like to provide on that topic (*id.* at 5), but the IC did not respond to that letter at all.

Instead, the IC has now written to [redacted] for a third time, asking [redacted] to disclose confidential internal agency communications about an entirely different allegation. [redacted] cannot comply with much of the IC's latest request for the same reasons set forth in my prior letter.

The IC's most recent request alleges that IG Cuffari did not follow regulations regarding the preservation of his own text messages. The only allegation directed towards [redacted] in the IC's latest request is a vague suggestion that [redacted] was "likely" made aware of IG Cuffari's alleged loss of text messages and took no action. *See* Third IC Request at 2. Based on that vague conjecture, the IC now asks [redacted] to answer a laundry list of questions that would require [redacted] to unilaterally disclose confidential communications between the IG and his staff and agency counsel if any exist. *Id*. at 2-3. [redacted] cannot unilaterally disclose that information in [redacted] personal capacity for the reasons set forth in my last letter (*see* Response to Second IC Request at 2-4) and it is improper to continue to demand that from [redacted]

The IC's latest allegation is also premised on a misunderstanding of [redacted] role. The IC suggests that [redacted] had "a legal obligation to report the destruction of government information to NARA" (*id.* at 2) and asks [redacted] to describe [redacted] "obligations under 44 U.S.C. 3105 and 36 CFR 1230.10 to prevent unlawful or accidental destruction of records" (*id.* at 3).

I have reviewed the statutes and regulations cited in the IC's third request, and they do not support the allegation made against [redacted]. The statutes cited by the IC place record preservation and reporting obligations on the "head of each Federal Agency." *See* 44 U.S.C. §3105 ("The head of each Federal agency shall establish safeguards against the removal or loss of records…"); *Id.* §3106 ("The head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal…or other destruction of records"). The regulations cited by the IC likewise address the responsibilities of "the heads of Federal agencies" as well as each agency's designated record management officer. *See* 36 CFR §1230.10 ("The heads of Federal agencies must…Prevent the unlawful or accidental removal, defacing, alteration, or destruction of records"); 36 CFR §1230.14 ("The agency must report promptly any unlawful or accidental removal, defacing, alteration, or destruction of records" in a report submitted by "the individual authorized to sign records schedules as described in §1220.34(b) of this subchapter").

[redacted] is not the head of an agency, nor is [redacted] the designated agency records officer as described in 36 CFR §1220.34(b). *See* https://www.archives.gov/records-mgmt/agency/departments/homeland.html (listing the Designated Federal Agency Records Officers). Anyone—including CIGIE—can report a concern about the loss of government records to NARA, but the statutes and regulations cited by the IC do not place a legal reporting obligation on [redacted]. The allegation that [redacted] committed a "substantial violation of law" by not personally reporting the alleged loss of some of IG Cuffari's text messages to NARA is thus legally unfounded.

This case should have been closed long ago for the reasons set forth in [redacted] first response to the IC. The new allegation in the IC's third request does not change that analysis, because it is unrelated to the allegation originally levelled at [redacted], and premised on a vague suggestion that [redacted] should have complied with laws that do not apply to [redacted]

[redacted] and [redacted] counsel have repeatedly devoted time and attention to providing detailed responses to the IC's requests. But instead of engaging with the substance of those responses, the IC has simply ignored them, and sent new demands to [redacted] instead. [redacted] should not be forced to respond to shifting unfounded allegations about internal agency decision making. It is long past time to close IC Case 22-069, so that [redacted] can focus on [redacted] work.

Sincerely,

[redacted]

Exhibit D

October 26, 2022 IC Request to [redacted]

[redacted]

October 26, 2022

Via Email

[redacted]

Integrity Committee Case 22-069: Request for Response

Dear [redacted]:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged with receiving, reviewing, and investigating, where appropriate, allegations of misconduct made against an Inspectors General (IG) and designated members of an IG's staff. The IC takes action on allegations of wrongdoing that involve abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such persons.

The IC has received allegations against you for abuse of authority, gross mismanagement, and conduct undermining independence or integrity. These allegations relate to your involvement in DHS OIG's purported failure to timely and/or adequately disclose the U.S. Secret Service's deletion of text messages potentially relevant to the January 6th investigation.

In particular, it is alleged that, as of April 1, 2022, DHS OIG staff had prepared language for the draft semiannual report to Congress that offered additional details about the Secret Service text message deletions, but that those details were not ultimately included after the draft was sent to you and IG Cuffari. The language that was removed from the draft read:

> *On February 23, 2022—more than 2 months after OIG renewed its requests for select Secret Service employees' text messages—Secret Service claimed inability to extract text message content due to an April 2021 mobile phone system migration, which wiped all data.*

The unsent paragraph continues:

> *Secret Service caused significant delay by not clearly communicating this highly relevant information at the outset of its exchanges with OIG during this reporting period. Moreover, Secret Service has not explained why it did not preserve the texts prior to the migration.*

Pursuant to IC procedures, we are reaching out to you to seek your perspective on the issues raised above. The IC has yet to fully deliberate on the merits of this matter and believes it would be helpful to provide you the opportunity to respond to these allegations, so you might offer any background, context, or supporting evidence (if available) prior to the IC's deliberations. The IC respectfully requests your response to this allegation within 20 days of receipt of this letter.

While the IC recognizes that you may need some assistance in gathering this information, please be advised that seeking assistance from fact-witnesses in your response to the IC may raise questions about the intent or effect of such contacts, which may lead to other issues. Therefore, please feel free to reach out to the IC Working Group should you have any questions regarding this request. You may submit your response and any questions you have regarding this request to Integrity-WG@CIGIE.GOV.

Sincerely,

K. H. Winters

Kevin H. Winters
Chairperson
Integrity Committee

Exhibit E

February 1, 2023 IC Request to [redacted]

February 1, 2023

Via Email
[redacted]

Integrity Committee Case 22-069: Request for Further Clarification and Response

Dear [redacted]:

The Integrity Committee (IC) is in receipt of your letter, on behalf of your client, [redacted] U.S. Department of Homeland Security's Office of Inspector General (DHS OIG), dated December 5, 2022, responding to allegations related to IC 22-069. The IC writes to seek further clarification.

In your letter, you state, "[redacted] is not authorized to disclose OIG's internal discussions regarding the language used in the Spring 2022 semiannual report in [redacted] personal capacity…" Please clarify whether this is [redacted] position or if [redacted] was asked or directed not to provide this information to the IC by anyone at DHS OIG. If it is the latter, please identify the individual(s) who made such a request or provided such direction.

The IC does not concur with [redacted] position and does not believe it is defensible. [redacted] can share all relevant information regarding IC 22-069 with the IC. As has previously been explained to [redacted], while the IC is investigating individual misconduct allegedly undertaken by [redacted], such individual misconduct is alleged to have occurred during the course of [redacted] conducting [redacted] duties as [redacted] for DHS OIG.

On October 26, 2022, [redacted] wrote to IC staff to confirm that the IC's request for information was sent to [redacted] in [redacted] "personal capacity." IC staff wrote to clarify. In pertinent part, IC staff responded on November 1, 2022, as follows:

> *[t]he allegations we received were directed at you individually, not at DHS-OIG as an office. Therefore, the IC has requested a response to these allegations from you. As the IC advises on its website under frequently asked questions, '…attorneys working for the Federal government cannot provide representation of a Subject for purposes of an IC*

> *matter.' (https://www.ignet.gov/content/guidance-and-faqs). Doing otherwise could create conflicts of interest. For example, there may be instances when the Subject's interest in defending themselves against an allegation diverges from the interests of their OIG. In other words, while OIG counsel is of course free to represent the OIG's interest in an IC matter, it would not be appropriate for OIG counsel to represent your interests.*

Therefore, the IC has made clear that it is inquiring into individual actions [redacted] undertook as [redacted] for DHS OIG.

In any event, asserting a "personal capacity" bar to providing official information relevant to an IC investigation is misplaced. For the public to maintain confidence in the independence and integrity of IGs and their senior staff, they must be accountable and allegations about their misconduct must be subject to independent investigation. In short, IGs and their senior staff must be subject to the same degree of oversight that they exercise over their agencies and their own subordinate personnel.

Congress created the IC to provide this oversight because no OIG staff can credibly investigate their own leadership. Any such investigation would lack, or would appear to lack, impartiality. For this reason, section 11(d) of the IG Act strips an OIG of the authority to conduct an internal investigation, vests such authority in the IC, and requires the IC Chairperson to conduct a "thorough and timely" investigation. The IC has no doubt that Congress expects it to conduct precisely the same type of comprehensive investigations that OIGs conduct within their own agencies and their own offices (when appropriate). Just as a junior DHS OIG employee accused of individual misconduct would not be able to claim that they are unable to share official information with a DHS OIG investigator in an official internal investigation, a senior DHS OIG employee cannot make such a claim in the course of an official IC investigation.[1]

The IC trusts this addresses your concerns and looks forward to [redacted] supplemental response.

Sincerely,

/s/

[redacted]
Council of Inspectors General on Integrity and Efficiency

[1] Similarly, the IC does not consider the provision of access to OIG records, documents, witnesses, or other information to constitute a waiver of any applicable privilege or similar doctrine as to third parties, as they are not disclosures outside of the executive branch.

Exhibit F

April 3, 2023 IC Request to [redacted]

April 3, 2023

Via Email

[redacted]

Integrity Committee Cases 22-046 and 22-069: Third Request for Response

Dear [redacted]:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged with receiving, reviewing, and investigating, where appropriate, allegations of misconduct made against an Inspectors General (IG) and designated members of an IG's staff. The IC takes action on allegations of wrongdoing that involve abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such persons.

The IC has received allegations against you for an alleged substantial violation of law, and conduct undermining independence or integrity. These allegations were outlined in a complaint the IC recently received.[1] The allegations are that:

1. During November 2022, a Department of Homeland Security, Office of Inspector General (DHS OIG) attorney asked IG Cuffari to produce text messages from his government issued iPhone in order to respond to a FOIA request. He then allegedly "indicated the text messages were deleted, in their entirety, from [his] government issued iPhone, and that the relevant policy for capturing such messages was not followed." The complaint alleges that the attorney in question concluded that those

[1] The IC has incorporated these new allegations into our existing open matter IC22-046/069, as they are factually related.

deleted text messages "very likely contained federal records, and therefore that the destruction of these was required to be reported to the National Archives and Records Administration." The complaint alleges that you were likely "made aware and took no action."

2. As of mid-March 2023, you have made no report to the National Archives and Records Administration (NARA) "concerning the destruction of these records, as legally required."

Pursuant to IC procedures, we are reaching out to you to seek your perspective on the issues raised above. The IC has yet to fully deliberate on the merits of this matter and believes it would be helpful to provide you the opportunity to respond to these allegations, so you might offer any background, context, or supporting evidence (if available) prior to the IC's deliberations. The IC notes that there appears to be a legal obligation to report the destruction of government information to NARA.[2] In addition to explaining the full context surrounding this alleged event, to include your role in it, if any, the IC would like you to specifically address the following issues in your response:

1. Do you agree with the allegation #1's assertion that IG Cuffari had a government issued iPhone during the time period alleged and that his phone contained text messages? Do you agree that the text messages were government records as defined by applicable law or regulation?[3] Please also explain whether the events described in allegation #1 above are accurate, to the best of your knowledge, or to the extent they are inaccurate please provide additional information to correct or supplement the above-listed version of events. In sum, please provide clarifying information to correct or supplement the above-listed version of events. Finally, please describe the nature of the purported FOIA request and the content of the text messages that were allegedly deleted.

2. If IG Cuffari's text messages were deleted, please explain (to the best of your knowledge) who deleted them, if they were deleted manually, to include whether IG Cuffari did so upon advice, and if so, who gave that advice. If the deletion of the text messages was pursuant to advice to IG Cuffari from staff or counsel at DHS OIG, please provide all documents that memorialize or contain that advice or a summary of the verbal communications from staff or counsel on that topic. If IG Cuffari did not delete them personally, please explain how the text messages came to be deleted.

[2] See 44 U.S.C. 3106 and 36 CFR 1230.14, stating "[t]he agency must report promptly any unlawful or accidental removal, defacing, alteration, or destruction of records in the custody of that agency to NARA…" and spelling out what details must be included in such a report.

[3] See 44 U.S.C. 3301 and 36 CFR 1220.18, stating that a record or Federal record includes "all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of the data in them."

3. If IG Cuffari's text messages were deleted, was he advised by anyone to report this deletion to NARA? If so, please fully explain, to include who, when, and in what format was this advisory communication(s) made? If written, please provide the communications.

4. Provide any and all DHS OIG policies and procedures, and any rules, regulations, or guidance, regarding retention, handling or deletion of text messages on DHS OIG government issued phones.

5. If text messages that qualified as federal records were deleted from IG Cuffari's government issued iPhone as alleged, please explain how the deletion of text messages and subsequent reporting actions was or was not in compliance with the relevant reporting requirements, DHS OIG policies and procedures, rules, regulations or guidance documents, including, but not limited to, your obligations under 44 U.S.C. 3105 and 36 CFR 1230.10 to prevent unlawful or accidental destruction of records.[4] Further, whether or not you have made the necessary report to NARA to date. And if you have not made such a report, please explain why.

The IC respectfully requests your response to these allegations within 20 days of receipt of this letter.

While the IC recognizes that you may need some assistance in gathering this information, please be advised that seeking assistance from fact-witnesses in your response to the IC may raise questions about the intent or effect of such contacts, which may lead to other issues. Therefore, we recommend reaching out to the IC Working Group should you have any questions regarding this request. You may submit your response and any questions you have regarding this request to Integrity-WG@CIGIE.GOV.

Sincerely,

K. H. Winters

Kevin H. Winters
Chairperson
Integrity Committee

[4] See 44 U.S.C. 3105 and 36 CFR 1230.10, stating "[t]he heads of Federal agencies must: (a) prevent the unlawful or accidental removal, defacing, alteration, or destruction of records… (b) Take adequate measures to inform all employees and contractors of the provisions of the law relating to unauthorized destruction, removal, alteration or defacement of records (c) Implement and disseminate policies and procedures to ensure that records are protected against unlawful or accidental removal, defacing, alteration and destruction; and (d) Direct that any unauthorized removal, defacing, alteration or destruction be reported to NARA."

Exhibit G

July 13, 2022 letter from IG Cuffari

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

July 13, 2022

The Honorable Gary C. Peters, Chairman
The Honorable Rob Portman, Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

The Honorable Bennie G. Thompson, Chairman
The Honorable John Katko, Ranking Member
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Peters, Ranking Member Portman, Chairman Thompson, and Ranking Member Katko:

The Inspector General Act provides that an Inspector General shall have timely access to all Department records and other materials related to Department programs overseen by the Inspector General. I am writing to offer a briefing regarding ongoing records access issues that we have been experiencing with the Department of Homeland Security. There are two specific issues that we would like to address with your respective committees.

First, the Department notified us that many U.S. Secret Service (USSS) text messages, from January 5 and 6, 2021, were erased as part of a device-replacement program. The USSS erased those text messages *after* OIG requested records of electronic communications from the USSS, as part of our evaluation of events at the Capitol on January 6. Second, DHS personnel have repeatedly told OIG inspectors that they were not permitted to provide records directly to OIG and that such records had to first undergo review by DHS attorneys. This review led to weeks-long delays in OIG obtaining records and created confusion over whether all records had been produced.

I will make myself and my staff available at your convenience. Please call me with questions, or your staff may contact [redacted]

Sincerely,

Joseph V. Cuffari, Ph.D.
Inspector General

Exhibit H

August 23, 2022 letter from IG Cuffari

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

August 23, 2022

The Honorable Carolyn B. Maloney, Chairwoman
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Bennie G. Thompson, Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

Re: Your August 16, 2022 letter

Dear Chairwoman Maloney and Chairman Thompson:

I write to respond to your August 16, 2022, letter and to clarify the record in this matter. As explained below, your letter incorrectly characterizes my responses to your previous letters as a "refusal" to comply with your requests for information. Your letter also uncritically accepts anonymously-sourced media reporting. The attention that has been lavished upon my organization, the Department of Homeland Security (DHS) Office of Inspector General (OIG), more properly belongs with DHS.

As Inspector General of DHS, I have reported that DHS has destroyed evidence related to the events of January 6, 2021 in violation of multiple preservation notices, concealed that destruction from Congress, and unreasonably delayed OIG's access to other DHS records.

Beginning just 10 days after the assault on the Capitol, OIG and multiple committees of Congress issued five separate notifications to DHS that it must preserve all electronic communications related to the events of January 6.[1] By letter dated July 13, 2022, I informed you that DHS --

[1] A January 16, 2021 notice issued by Chairs Adam Schiff, Bennie Thompson, Carolyn Maloney, and Jerrold Nadler, on behalf of their respective committees, to senior officials of the Federal Bureau of Investigation, National Counterterrorism Center, DHS, and the Directorate of National Intelligence, mandated the preservation of "[a]ll documents or materials that refer or relate to events that could or ultimately did transpire on January 6, or refer or relate to threats in connection with the US presidential inauguration." On February 9, 2021, DHS OIG issued an engagement letter for inspection of "*DHS Law Enforcement Preparation for and Response to the January 6, 2021 Events at the U.S. Capitol.*" About two weeks later, OIG formally requested

specifically, the Secret Service -- had deleted texts from DHS-owned phones after receiving OIG's preservation notice. On July 15, 2022, at Chairman Thompson's request, I briefed the House Select Committee to Investigate the January 6 Attack on the United States Capitol concerning OIG's issues with access to DHS records. During that briefing, I, along with career OIG staff, who were conducting the administrative review of DHS's preparation for and response to the events of January 6, described three major problems that OIG had encountered in connection with that review:

- DHS delayed producing requested e-mails for seven months, without ever identifying a legal justification for the delay;

- DHS personnel repeatedly told OIG personnel that they were not allowed to provide records directly to OIG and that instead such records had to undergo pre-disclosure review, leading to weeks-long delays and confusion over whether all records requested by OIG had been produced; and

- DHS deleted text messages from DHS-issued phones used by Secret Service personnel on January 6, 2021, after OIG and multiple committees of Congress had issued notices for DHS to preserve electronic communications related to January 6.

During the briefing, I emphasized that the Secretary sent Congress a transmittal letter, dated June 14, 2022 (attached), which accompanied OIG's Semi-Annual Report (SAR) to Congress for the period October 1, 2021 – March 31, 2022. In his letter, the Secretary inaccurately stated that OIG had not had any access problems.

Shortly thereafter, I was criticized for not informing Congress about the deletion of texts earlier than I did. To my knowledge, I am the only Inspector General to report these issues to Congress.

I respectfully suggest that this criticism is misdirected. DHS senior managers had the greatest contemporaneous fidelity about what the Secret

---

from DHS all electronic communications related to the events of January 6. On March 25, 2021, Chairwoman Maloney, Chairman Thompson, Chairman Schiff, Chairman Nadler, and five other members requested documents and communications received, prepared, or sent by DHS employees related to the events of January 6. On August 11, 2021, a notice issued by Chairman Thompson of the January Select Committee joined in both referenced Congressional requests. On August 25, 2021, a preservation notice issued by Chairman Thompson for the January 6 Select Committee requested all documents and communications received or shared relating to events that occurred on January 6. This notice directed DHS to provide the January 6 Select Committee with all documents DHS produced to other investigatory bodies, to include the OIG, relating to the January 6 attack.

Service was undertaking (and had allowed to occur) with their data and cellular telephones.

I came forward and told the January 6 committee about the deletion of texts. I did so only after it became clear, from the Secretary's June 14, 2022 letter, that the Secretary was intent on denying that there was a problem with OIG access.[2] DHS was subject to multiple notices to preserve electronic communications related to January 6, it deleted the texts anyway, it concealed that information from Congress and the OIG for more than a year, and it continued to dissemble as late as June 14, 2022 (in the Secretary's letter accompanying the SAR).

I share your and your colleagues' concerns about the denial of access to DHS' records, communications, and other materials.[3] Typically, when an Inspector General notifies Congress that he or she is having trouble obtaining access to agency records and information, Congress demands that the agency explain why it is not cooperating with the Inspector General.

DHS has engaged in sustained resistance to OIG oversight, destroyed evidence requested by Congress and the OIG, concealed that destruction of evidence from Congress and the OIG, and finally, after OIG staff confronted a high-level DHS official about the destruction of texts in a May 23, 2022 meeting, denied that anything was amiss in a letter to Congress. Moreover, yesterday, the media published a July 2022 Customs & Border Protection (CBP) memo that describes guidance from the DHS' Office of General Counsel and CBP's Office of Chief Counsel and advises CBP senior leadership about how to interfere with and prevent OIG oversight.[4] That advice, which misinterprets the Inspector General Act, is further

[2] Prior to receiving a copy of the Secretary's June 14, 2022 letter, I continued to believe that DHS leadership would support OIG's oversight work related to the events of January 6 and other OIG oversight projects. I personally met with the Secretary in October 2021 and described to him the months-long delay in obtaining e-mails that OIG had requested. The Secretary agreed that OIG should have access to the records it needs to conduct its oversight work. Shortly thereafter, the Secretary issued a memorandum to all DHS employees reminding them of their obligation to cooperate with OIG. Not long after that, DHS produced a large trove of e-mails that it had been withholding for seven months. Criticizing me for not informing Congress about the deleted texts before I reviewed the Secretary's June 14, 2022, letter amounts to saying that I should not have trusted the Secretary to follow through on the commitments he made to me when I met with him in October 2021.

[3] Herridge, Catherine, and Sganga, Nicole, CBS News, *DHS watchdog says department's lawyers are slowing down Secret Service Jan. 6 text probe*, August 10, 2022.

[4] Klippenstein, Ken, The Intercept, *DHS Jan. 6 Investigators Raised Alarm About Being Stonewalled Last Year*, August 22, 2022.

documentation, at the highest levels of DHS, of the Department's misguided and orchestrated interference with OIG's mission.[5]

I have not "refus[ed]" to provide the committees with information. Instead, I have provided information in the spirit of compromise aimed at balancing the Executive branch's legitimate interests with those of the Legislative branch. I have also been careful to adhere to Administration policy.

By letter dated June 13, 2022, I responded to your May 10, 2022 letter requesting information related to internal deliberations and unpublished reports. I highlighted the established principle that the Executive branch has a legitimate, constitutionally-recognized interest in protecting the confidentiality of its internal deliberations, to include deliberations conducted below the cabinet and subcabinet levels. I further explained that when Congress seeks deliberative materials, the two branches should negotiate in an effort to reach a compromise that accommodates the interests of the Executive branch and Congress.[6]

In that vein, as a compromise between refusing to provide any deliberative materials and producing the deliberative records themselves, I provided the committees with detailed descriptions of edits made to draft reports and the reasons for those edits. I also provided the committees with a survey that DHS OIG administered in connection with one of the projects at issue, as well as the results of the survey.

By letter dated August 8, 2022, I explained that based on guidance from attorneys in the Executive Office of the President (EOP), I had requested an opinion from the Office of Legal Counsel (OLC) concerning the production of deliberative materials sought by the committees. Contrary to the suggestion in your August 16, 2022 letter, my request to OLC was not a "delay tactic." Rather, EOP attorneys informed OIG that the official policy of the current Administration is found in the

[5] Although the CBP memo is in the public domain, the memo contains what appears to be attorney work product and it is not clear that DHS authorized public release of the memo. OIG is seeking the Department's consent to disclose the CBP memo to Congress. If that consent is obtained, OIG will demonstrate that the Department's interpretation of the Inspector General Act is incorrect.

[6] *See Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020); *Assertion of Executive Privilege over Documents Generated in Response to Congressional Investigation into Operation Fast and Furious*, 36 Op. O.L.C. 1, 4-5 (2012); Letter from Assistant Attorney General Raben to Chairman Linder, Subcommittee on Rules and Organization of House, House Committee on Rules (Jan. 27, 2000); *Assertion of Executive Privilege in Response to Congressional Demands for Law Enforcement Files*, 6 Op. O.L.C. 27 (1982); and *United States v. American* Tel. & Tel. Co., 567 F.2d 121, 127 (D.C. Cir. 1977).

November 4, 1982 Memorandum from the President to the Heads of Executive Departments and Agencies entitled *Procedures Governing Responses to Congressional Requests for Information.* According to that Memorandum, when an agency head is in doubt about the propriety of disclosing records of internal Executive branch deliberations to Congress, he or she should seek the opinion of OLC. Although the Inspector General Act gives an Inspector General considerable independence from the department or agency he oversees, I am not a free agent. To my knowledge the current Administration has not provided Congress with records of internal Executive branch deliberations, and it is not for me to set a precedent. If the Administration directs OIG to produce records of internal OIG deliberations to Congress, OIG will comply. Likewise, if the Administration directs OIG to produce records or witnesses related to the deletion of texts by DHS, OIG will comply.

As I stated in my August 8, 2022, letter, and as I explained during our July 15, 2022, briefing to the January 6 committee members, OIG does not confirm or comment on criminal investigations. We also do not comment on ongoing administrative reviews. Once any ongoing work is completed, OIG will examine Executive branch equities while considering any outstanding Congressional requests for documents, briefings, and transcribed interviews.

Contrary to your letter, I did not learn that the texts had been deleted 14 months before I notified Congress.

Your letter appears to credit inaccurate, anonymously-sourced reporting insofar as it suggests that I knew the Secret Service texts had been deleted 14 months before my July 13, 2022 notification to Congress. In fact, the Secret Service did not tell OIG that the texts had been deleted until on or about February 23, 2022. A draft management alert (disclosed without authorization) prepared by career staff in October 2021 refutes any claim that OIG knew about the deleted texts 14 months prior to July 13, 2022.[7] That draft document describes DHS's unjustified seven-month delay in providing e-mails that OIG requested, and also describes lengthy delays in OIG's receipt of other records stemming from the widespread belief among DHS personnel that records cannot be produced directly to OIG but instead must first undergo internal review. The draft management alert says nothing about the deletion of texts. In fact, the draft management alert states that text messages are "relevant" to OIG's inquiry and that OIG might "reinstitute" its request for texts (which OIG did). It is

[7] Although normally I would not discuss a draft OIG document, the draft management alert has already been released or described to the media.

virtually inconceivable that the career OIG staff who drafted the management alert concerning access issues, and who I know were strongly opposed to DHS's persistent restrictions on OIG access, would have left out any mention of deleted Secret Service texts had they been aware of the deletion.

Please call me with questions, or a member of your staff may contact [redacted].

Sincerely,

JOSEPH V [redacted]
CUFFARI

Joseph V. Cuffari, Ph.D.
Inspector General

Attachment

cc: The Honorable James Comer, Ranking Member
Committee on Oversight and Reform

The Honorable John Katko, Ranking Member
Committee on Homeland Security

Exhibit I

FAQs on Text Message Retention

From: DHS Records Management <dhsrecordsmanagement@hq.dhs.gov>
Sent: Wednesday, August 9, 2023 1:39 PM
Subject: Frequently Asked Questions (FAQ) on Text Message Records Retention
Attachments: DHS Form EM210.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

On Behalf of [redacted]
Chief Information Officer & Senior Official Performing the Duties of the Deputy Under Secretary for Management

Colleagues,

Last week, my office issued a one-time attestation form to you as a senior executive or political appointee. Thank you to those who have acknowledged your responsibility to review, identify, and maintain text messages that meet the definition of a record. As a reminder for those who still need to do so, please complete, sign, and email the attached form to dhsrecordsmanagement@hq.dhs.gov **by September 29, 2023**.

To assist those of you who are still reviewing the attestation requirement, I am providing answers to frequently asked questions we have received below:

Question: Is this a new requirement?

Answer: No. As a DHS employee, you have a legal obligation to retain and preserve federal records under the Federal Records Act (FRA) 44 USC § 3301 to include text messages.

Question: Why do we have to do this One-Time attestation now?

Answer: To ensure all federal records including text messages are maintained in accordance with the FRA.

Question: Do I have to retain ALL of my text messages?

Answer: No. Only text messages that meet the definition of a federal record should be maintained in accordance with this requirement, DHS records policies, and NARA regulations. Many text messages, even those that mention DHS business, are not considered federal records because they do not contain evidence of the decisions, procedures, operations, or other activities of the agency. Instead, they only reference information, decisions, or actions that are documented in other places (such as in email). If, however, a text message is the way you received information that led to a decision or action, or communicated a decision or action you were taking, then it is a record.

Here are some examples of what qualifies as a federal record and what does not:

- **Official Communications**: Text messages exchanged between federal employees or officials related to official business or government matters can be considered federal records. This includes messages discussing policies, procedures, decisions, or other matters related to government operations.

IC 22-069: 251

Example of a record: The closeout meeting with the interview team is scheduled for tomorrow at 10 AM. I have decided that we will move forward with hiring the program manager we interviewed yesterday.

Example of a non-record: The interview is scheduled for tomorrow at 10 AM.

- **Legal and Regulatory Matters**: Text messages that pertain to legal or regulatory issues, such as discussions about pending lawsuits, investigations, compliance matters, or contractual agreements, may qualify as federal records.

  Example: We received a request for the documents related to the environmental impact assessment. We will not answer any questions pertaining to this subject.

  Example of a non-record: Please check your email regarding the pending environmental impact assessment.

- **Policy Development and Implementation**: Text messages related to the development, review, or implementation of government policies, regulations, or directives are often considered federal records.

  Example: The Secretary's office has approved the new cybersecurity policy 101-8613. Please inform all department heads and start implementation by next week.

  Example of a non-record: The new cybersecurity policy has been posted on the website.

- **Emergency Response and Crisis Management**: Text messages exchanged during emergency response situations, crisis management, or disaster recovery efforts by federal agencies can be classified as federal records.

  Example: Emergency alert: Category 3 hurricane expected to make landfall in the southeast region. Activate disaster response teams 3-6 and coordinate with FEMA ASAP.

  Example of a non-record: NOAA is predicting an active hurricane season this year.

- **Decisions and Authorizations**: Text messages that document decisions made by federal employees or officials, or those that provide authorization for specific actions or expenditures, may be deemed federal records.

  Example: Approval granted for the release of funds to initiate the infrastructure project. Notify the contractors and commence work per the agreed schedule.

  Example of a non-record: Please check your email. Approval was granted yesterday for the infrastructure project.

Thank you again for your diligence and commitment to meeting your records management obligations. If you have any questions, please reach out to dhsrecordsmanagement@hq.dhs.gov.

[redacted]
Chief Information Officer & Senior Official Performing the Duties of the Deputy Under Secretary for Management
U.S. Department of Homeland Security

Exhibit J

NARA training module

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Federal Records Management Level 1: Creation and Receipt Participant Guide

Module 2 – Recognizing Records, Non-records, and Personal Files

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Module 2: Recognizing Records, Non-records, and Personal Files

Module 2 Checklist

- ☐ Complete this *Records, Nonrecords, and Personal Files* module.
- ☐ Complete the *Records, Nonrecords, and Personal Files Practice* module.
- ☐ Complete the *Who has the record?* practice.

Task Goal:

Given a set of materials, you will be able to distinguish between Federal records, non-records, and personal files according to parameters described in NARA definitions, guidelines, and tools.

Task Objectives:

- Explain the importance of recognizing records, non-records, and personal files.
- Identify the characteristics of personal files, non-records, and Federal records.

Module 2 Notes

Characteristics of Records, Non-records, and Personal Files

Personal Files – Notes

Non-records – Notes

Federal Records

Made or received by an agency of the United States Government and are appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government or because of the informational value of data in them.

You'll find the complete definition in 44 U.S.C. 3301.

Exclusions:

- Library, museum, and exhibition material
- Reference material
- Duplicate copies of records preserved only for convenience of reference

Records, Non-records, and Personal Files – Notes

Summary: Characteristics of Records, Non-records, & Personal Files

Characteristic	Records	Non-records	Personal Files
Related to	Official agency business	Extra copies Some drafts/notes Reference material	NOT work related Life outside work Employee's copy of personnel documents
Purpose	Document agency business, actions, organization, policies, etc.	Reference materials	Personal life outside work
Owned by	Agency	Agency	Employee
Retention controlled by	NARA-approved records schedule	Agency policy	Employee
Who authorizes destruction?	NARA-approved records schedule	Agency	Employee
Can be taken by employee?	No	No	Yes
Examples	Project files Time sheets Contracts Case files	Reference books Magazines Catalogs Extra reference copies Some "FYI" emails	Your child's practice schedule Your shopping list Your insurance information Your copy of an award letter

Is it a Record? Flowchart

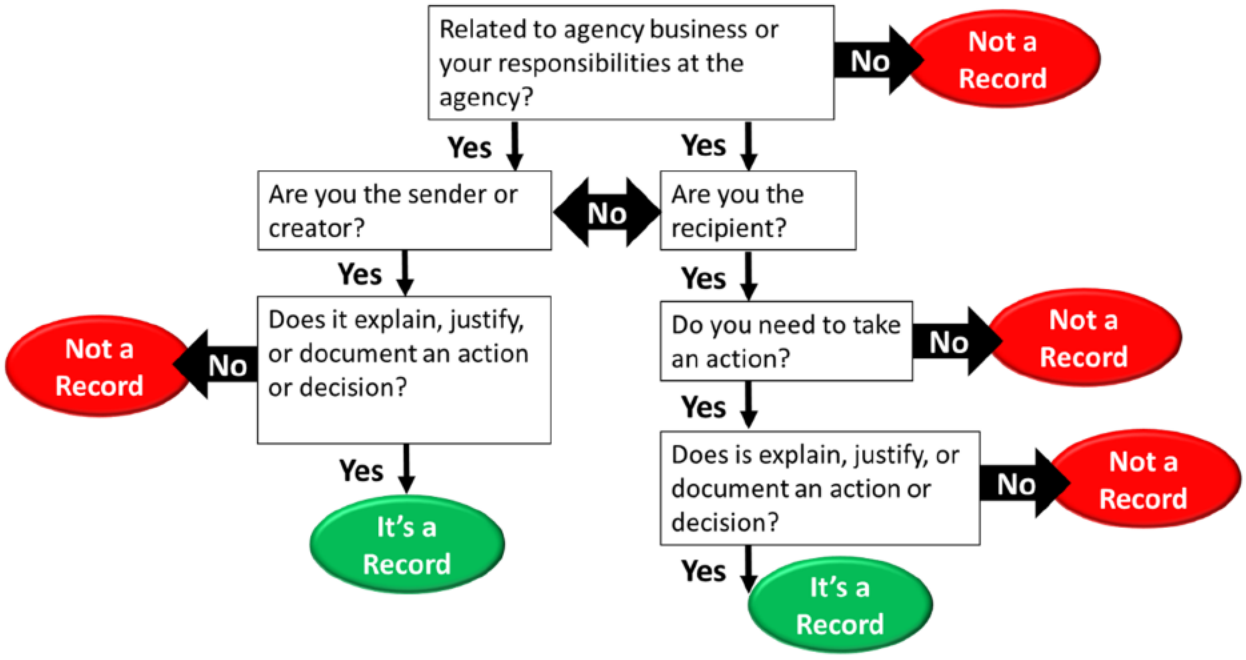


Exhibit K

Declaration of Joseph V. Cuffari

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PROJECT ON GOVERNMENT OVERSIGHT, INC., Plaintiff, v. DEPARTMENT OF HOMELAND SECURITY, Defendant.	Civil Action No. 22-2424 (ABJ)

DECLARATION OF JOSEPH V. CUFFARI

I, Joseph V. Cuffari, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information derived from official records and reasonably relied upon in the course of my employment, hereby declare as follows, relating to the above-captioned matter:

1. As previously explained in the Declaration I submitted for this matter, ECF No. 17-13, on July 25, 2019, the Senate approved my nomination to be Inspector General of the Department of Homeland Security ("DHS"). I have served continuously in that role since I was sworn in on July 29, 2019. I am the head of the DHS Office of Inspector General ("OIG").

2. I make this declaration in support of Defendant's Opposition to Plaintiff's June 6, 2023 Motion for Leave to Take Discovery (ECF No. 17) which concerns Plaintiff's July 5, 2022 Freedom of Information Act (FOIA) request designated by OIG as 2022-IGFO-00217.

3. As explained in my June 6, 2023, Congressional testimony before the House Committee on Oversight and Accountability, I do not conduct DHS official business via text message on my government-issued cellular phone.

4. Further, I am familiar with Plaintiff's FOIA request in this matter and I do not recall sending or receiving text messages on my government-issued cellular phone pertaining to Plaintiff's FOIA request.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.

JOSEPH V CUFFARI Digitally signed by JOSEPH V CUFFARI Date: 2023.06.28 16:34:11 -04'00'

Joseph V. Cuffari
Inspector General
Department of Homeland Security

Exhibit L

June 15, 2023 Letter from NARA

Sent Via Email. No Hard Copy to Follow.

June 15, 2023

[redacted]
Chief Information Officer
Department of Homeland Security
301 7th Street SW
Washington, DC 20024

Dear [redacted],

The National Archives and Records Administration (NARA) has been made aware of the potential loss of electronic messages, including text messages and Signal messages, within the Department of Homeland Security (DHS). DHS Inspector General (IG), Joseph Cuffari, testified at a Committee on Oversight and Accountability hearing for the Committee on National Security, Border and Foreign Affairs on June 6, 2023. In his testimony, he stated that he was one of a small number of Department officials who used Signal at the direction of the Department following a security breach in late 2020 and early 2021.

Mr. Cuffari stated he used Signal only for a single phone call, for which no record was maintained.[1] DHS has previously stated that Signal messages from former Acting Secretary Chad F. Wolf and Kenneth T. Cuccinelli, the former Senior Official Performing the Duties of the Deputy Secretary for DHS, were captured and preserved from this time period.[2] However, the capture and preservation of messages beyond these senior officials is unknown.

[1] See Testimony of DHS Inspector General Joseph Cuffari on June 6, 2023 to the Oversight, Investigations, and Accountability Subcommittee of the House of Representatives Committee on Homeland Security ("Cuffari Testimony"), at 1:24, https://oversight.house.gov/hearing/help-wanted-law-enforcement-staffing-challenges-at-the-border/.

[2] See Declaration of Christopher Granger, Executive Director for Information Technology Operations with the U.S. Department of Homeland Security, filed March 2, 2023 in *CREW v DHS, 1:22-cv-03350 (D.D.C.).*

In accordance with 36 CFR 1230.16(b), NARA requests that DHS look into this matter and confirm that all electronic messages sent or received by DHS officials using Signal have been managed in accordance with the Federal Records Act.

Mr. Cuffari also stated in his June 6, 2023, testimony that he deleted text messages from his government phone because he did not consider them to be federal records.[3] He further stated it is his practice to routinely delete text messages from his government phone.

Additionally, an article published by *Government Executive* on June 7, 2023, "The DHS Watchdog Says He Deletes Texts. Lawmakers Want to Know If This Violates Records Preservation Laws," states that the deletion of text messages was identified in late 2022, after the Project on Government Oversight filed a Freedom of Information Act lawsuit seeking Cuffari's and other officials' text messages related to their alleged suppression of a report on workplace sexual misconduct inside DHS.

In accordance with 36 CFR 1230.16(b), NARA requests that DHS provide NARA with the required report documenting IG Cuffari's practices with respect to the management of electronic messages, and in particular all messages that meet the definition of a federal record. The Department's review should include, but not be limited to, how DHS ensures that text messages that are federal records are properly retained; any training DHS provides to staff members, including senior officials, to ensure that text messages are captured as federal records; and any policies and procedures that are issued on how text messages are identified and preserved if determined to be federal records.

NARA understands that in August 2022, DHS began preserving electronic cellular devices and/or fully accessible backups of electronic cellular devices issued to senior officials and that, since November 2022, DHS has required all employees and political appointees to document their records retention activities prior to, and in connection with, any event that would lead to the factory reset of their electronic cellular devices.

If the Department determines that federal records were deleted without proper disposition authority, your final report must include a complete description of the records affected, a statement of the exact circumstances surrounding the deletion of messages, a statement of the safeguards established to prevent further loss of documentation, and details of all agency actions taken to salvage, retrieve, or reconstruct the records.

[3] *Cuffari Testimony,* at 1:38.

Thank you for your attention to this important matter. If you have any questions or wish to discuss further, please contact me at [redacted]nara.gov.

Sincerely,

[redacted]

[redacted]

Chief Records Officer
for the U.S. Government

cc: [redacted] Department Records Officer, Department of Homeland Security.

Exhibit M

August 4, 2023 response to NARA with supporting exhibits

[redacted]

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

August 4, 2023

[redacted]

Chief Records Officer for the U.S. Government
The National Archives and Records Administration
8601 Adelphi Road
Collage Park, MD 20740

Dear [redacted]

I am writing in response to your June 15, 2023, letter to [redacted] Chief Information Officer (CIO) of the Department of Homeland Security (DHS). Your letter requested information regarding the records management practices of the Department, including those of the DHS Office of Inspector General. As stated in my letter to you dated July 7, 2023, due to the statutory independence of the DHS Office of Inspector General (OIG) under the *Inspector General Act of 1978*, 5 USC §§ 401-424 (IG Act), I am transmitting OIG's response.

[redacted]

Electronic Messages

According to DHS OIG Directive OIG-140-00, *Records and Information Management Program*, dated November 4, 2015, the OIG's workforce "must not use instant messaging (e.g., text or Lync) to document business decisions and activities." During a June 6th congressional hearing, the Inspector General's sworn oral testimony was that he did not conduct official business via text message using his government-issued iPhone.[1] As per OIG-140-00, a record is not a duplicate copy preserved only for convenience or personal papers or other non-records.

[redacted]

Preservation of Electronic Messages

On October 4, 2022, DHS CIO [redacted] issued a memorandum to component CIOs providing guidelines on enhanced retention and preservation of electronic messaging. The CIOs were instructed to disable the use of iMessage on Department issued devices, and implement automated archival solution for SMS, Multimedia Messaging (MMS), and Rich Communication Service (RCS). Additionally, component CIOs were advised to preserve mobile

[1] See Testimony of DHS Inspector General Joseph Cuffari on June 6, 2023 to the Oversight, Investigations, and Accountability Subcommittee of the House of Representatives Committee on Homeland Security ("Cuffari Testimony"), at 1:24, https://oversight.house.gov/hearing/help-wanted-law-enforcement-staffing-challenges-at- the-border/.

[redacted]

devices or create a fully accessible backup of all device content for offboarding Senior Executives or political appointees, or whenever these employees' devices would be wiped for any reason. Components were provided several months to comply with this request. DHS OIG moved to implement this guidance immediately.

As of April 1, 2023, DHS OIG confirmed that the iMessage function was disabled on all OIG-issued iPhones. As of May 1, 2023[2] all OIG text messages sent or received from DHS OIG mobile devices are automatically archived. While archiving all text messages is generally not a records management practice, it ensures that all text messages created after May 1, 2023 can be retrieved. DHS OIG also creates a fully accessible backup of all mobile device content when an SES or political appointee departs the OIG or needs their device replaced or wiped for any reason; mobile devices include smart phones, tablets, and other devices with equivalent capabilities. Finally, DHS OIG mobile devices are configured to prevent user-initiated factory resets of cellular devices.

Use of Signal

On December 13, 2020, the Cybersecurity and Infrastructure Security Agency (CISA) notified DHS components of a breach of the DHS computer networks. DHS directed DHS components to install and use the Signal App to mitigate further risk to the DHS network. The Signal App was provided to a small group of employees, including DHS OIG senior leaders, for use in discussing the Department's response to the breach.

During the June 6th congressional hearing, the Inspector General's sworn oral testimony was that he only used the Signal App once for a DHS leadership call related to a breach of the DHS computer networks.[3] DHS leadership organized the call and was responsible for the management decisions to report the breach. The Inspector General was a participant in that DHS call and not the organizer, and like all DHS leadership calls, the Inspector General was not responsible for documenting it. In the attached May 31, 2023 declaration, the IG stated that "in early 2021, no more than a few weeks after

[2] The OIG began archiving all employee text messages in April 2023 for Verizon users and May 2023 for T-Mobile users.

[3] See Testimony of DHS Inspector General Joseph Cuffari on June 6, 2023 to the Oversight, Investigations, and Accountability Subcommittee of the House of Representatives Committee on Homeland Security ("Cuffari Testimony"), at 1:24, https://oversight.house.gov/hearing/help-wanted-law-enforcement-staffing-challenges-at- the-border/.

installing the Signal application, [he] deleted Signal from [his] OIG-issued cell phone because [he] no longer had use for it." (copy attached)

If not already removed by individual users previously, DHS OIG removed the Signal App from all remaining mobile devices during a device upgrade, between April and June 2022.

DHS OIG Training and Guidance

The DHS workforce is required to take formal Records and Information Management training annually. DHS creates and delivers this mandatory annual training. The training includes instruction on identifying and preserving federal records, as demonstrated in NARA's decision tree and flowchart (see attached). All DHS OIG employees are expected to complete this training on an annual basis.

In addition to annual mandatory records management training, DHS OIG provides periodic refresher training during OIG offices' All Hands Meetings, smaller group division/branch meetings, and one-on-one individual employee training sessions. DHS OIG also provides a records management briefing to all new employees during the OIG's bi-monthly mandatory New Employee Orientation sessions.

Our guidance documents include, but are not limited to, OIG Directive OIG-140-00, *Records and Information Management Program*; DHS Department Directive 141-03, *Electronic Records Management Updates for Chat, Text, and Instant Messaging*; and DHS Instruction 141-01-001, *Records, and Information Management* (see attached). All of our guidance is available to our employees on our Intranet site. Additionally, all DHS OIG employees are required to sign the DHS OIG IT Rules of Behavior (ROB) prior to gaining access to DHS OIG networks and IT systems. The DHS OIG ROB advises DHS OIG employees against conducting government business on government-issued mobile devices.

Preservation of Federal Records

The IG has testified that his actions comported with all preservation guidelines.[4] This matter has been referred to the Integrity Committee of the CIGIE which is inquiring about the same underlying matters that you have described in your June 15 letter.

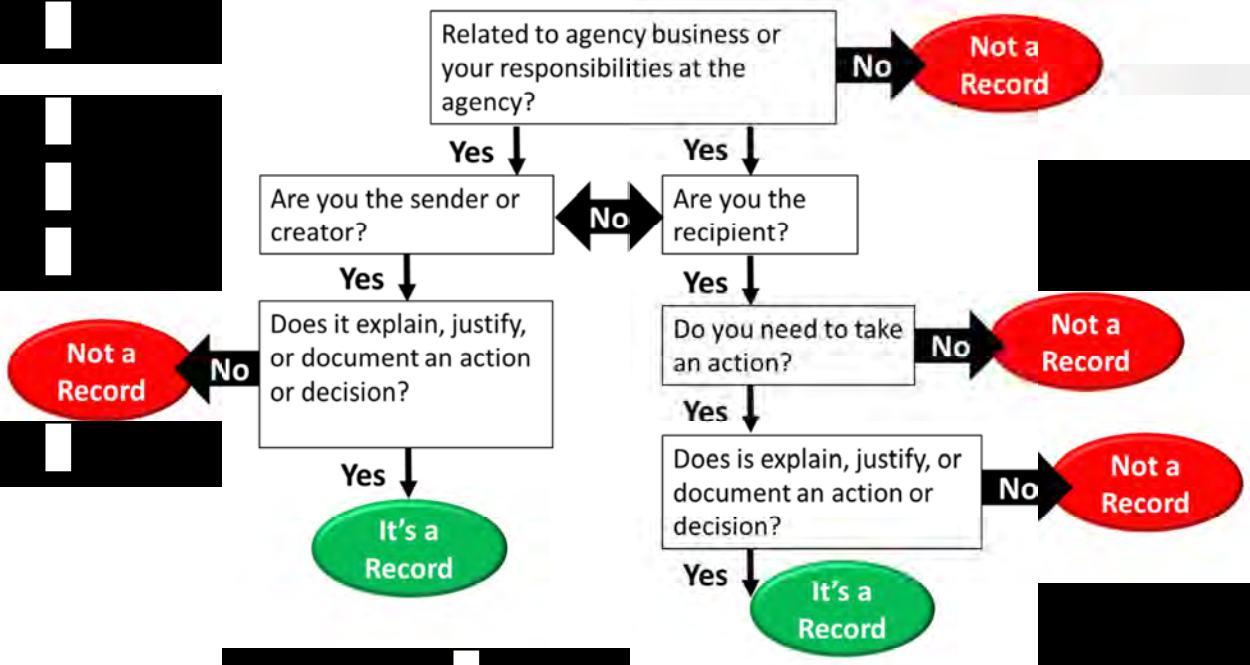
Thank you for the opportunity to respond to your questions. Please note that DHS OIG is committed to following and complying with the *Federal Records Act*.

Sincerely,

[redacted]

[4] See Testimony of DHS Inspector General Joseph Cuffari on June 6, 2023 to the Oversight, Investigations, and Accountability Subcommittee of the House of Representatives Committee on Homeland Security ("Cuffari Testimony"), at 1:24, https://oversight.house.gov/hearing/help-wanted-law-enforcement-staffing-challenges-at- the-border/.

Is it a Record? Flowchart



DIRECTIVE

SUBJECT:	DIRECTIVE NUMBER:
Records and Information Management Program	OIG-140-00
DISTRIBUTION:	DATE ISSUED:
All DHS OIG Employees and Contractors	**November 04, 2015**

I. Purpose

This directive establishes the Department of Homeland Security (DHS) Office of Inspector General (OIG) Records and Information Management (RIM) Program and the policies governing the program and DHS OIG records.

DHS OIG records are critical information assets that belong to the public and ensure the organization functions efficiently and effectively. DHS OIG's RIM Program serves a number of purposes including:

- Supports DHS OIG program and administrative missions by documenting its organizational structure, actions, decisions, and essential business transactions.
- Enables DHS OIG to respond to Freedom of Information Act (FOIA) requests, Congressional inquiries, and litigation discovery requirements.
- Preserves organizational memory and assists DHS OIG officials and their successors in making informed decisions.
- Ensures controls are implemented to safeguard against the unauthorized destruction and removal of records, which can result in disciplinary action.
- Protects essential/vital information and provides continuity in the event of a disaster.

II. Scope

This directive applies to all records created or received by DHS OIG employees and contractors (together referred to as "personnel" here after) regardless of medium.

III. Authorities

A. 44 USC Chapters 21, 29, 31, 33, 35, and 36; *Federal Records Act of 1950, as amended*

B. 36 CFR, Chapter XII, Subchapter B, Records Management

C. 36 CFR Part 1223, Managing Vital and Essential Records 41 CFR, Subtitle C, Chapter 102, Part 102 – 193 "Creation, Maintenance, and Use of Records

D. OMB/NARA Memorandum M-14-16, *Guidance on Managing Email,* 9/15/2014

E. OMB/NARA Memorandum M-12-18, *Managing Government Records,* 8/24/2012

F. OMB Circular A-130, *Management of Federal Information Resource*, 11/28/2000

G. DHS Directive 141-01, *Records and Information Management*, 8/11/2014.

H. DHS OIG –Disposition Authority for Investigative Case Files and Electronic Data System, job number N1-563-07-5, 10/11/2007

I. DHS OIG –Disposition Authority for Reports, Work papers, Correspondence, and Other Records, job number N1-563-09-10, 4/30/2009.

J. 5 USC § 552a, *Privacy Act of 1974, as amended*

K. 5 USC § 552, *The Freedom of Information Act*, as amended

L. 44 USC § 35, *Paperwork Reduction Act*, as amended

IV. Policy

A. DHS OIG records must be managed, safeguarded, and maintained throughout their lifecycle according to:

1. Applicable statutory and regulatory requirements,
2. National Archives and Records Administration (NARA) records disposition schedules, and other applicable NARA guidance,
3. DHS and DHS OIG policy and procedures.

B. The DHS OIG RIM Program is intended to promote efficient and effective RIM practices and to ensure personnel preserve records that document the execution of DHS OIG's mission, activities, and business decisions. As such, DHS OIG personnel must:

1. Adequately and properly document DHS OIG programs, activities and decisions, and maintain the records in accessible paper files or designated shared electronic drives, information systems, and electronic records management systems (ERMS).
2. Not use instant messaging (e.g., text or Lync) to document business decisions and activities. If instant messaging is inadvertently used for this purpose, maintain the message in another electronic format (e.g., as an email or Microsoft Word document) for record keeping purposes.
3. Follow approved DHS OIG File Plans to group, maintain, store, and archive Federal records in an organized and uniform manner to ensure records can be easily accessed.

The current DHS OIG File Plan aligns with DHS OIG records schedules that govern (1) audit and inspection reports, supporting documentation and work papers, correspondence, policy and procedural guidance, and other records maintained by various DHS OIG offices; and (2) investigative files and information maintained in the Office of Investigation's Enforcement Data Systems, (EDS).

The DHS OIG File Plan will be expanded as needed to incorporate all DHS OIG records (paper and electronic).

You may access the DHS OIG File Plan by clicking on the link below.
DHS OIG File Plan

4. Permanently preserve records designated as historically significant by NARA and temporarily preserve all other records according to the timeframes established in NARA records schedules.
5. Not destroy Federal records prematurely.
6. Maintain unscheduled records until NARA approves a records retention (disposition) schedule. Unscheduled records must be treated as permanent until a final disposition is approved.
7. Secure and safeguard records to protect the legal interest of the Federal Government and individuals affected by its activities, and to prevent unauthorized use.
8. Segregate non-records and personal papers from Federal records for storage purpose (i.e., non-records/personal papers should not be preserved with Federal records or filed according to the DHS OIG File Plan).
9. Keep personal papers to a minimum and destroy them when convenient.
10. Identify, preserve, and protect records to include temporary, permanent, and vital records (as defined in 36 CFR).
11. Take mandatory RIM training annually and other RIM training as deemed necessary by DHS OIG Office Heads.
12. When departing DHS OIG, only remove Federal records with DHS OIG Office of Counsel's prior permission. (Please see DHS OIG RIM Program Handbook, 140-00-01, for procedures and instructions on how to request Counsel's permission. Personnel should also notify their supervisor when seeking permission to remove records.)
13. By December 31, 2016, store and manage all emails that are Federal records (permanent and temporary) electronically.
14. Not use unauthorized personal, non-government email or text accounts to conduct DHS OIG business. Exception: Non-government emails and text accounts may be used in authorized undercover operations.

15. By December 31, 2019, store and manage all permanent Federal records (i.e., electronic and those converted to electronic medium) in designated DHS OIG ERMS. (This may require records to be printed to transfer them from one system to the ERMS.)

16. Be subjected to criminal penalties under 18 USC § 2071 for the willful and unlawful concealment, destruction, damage, removal, or mutilation of Federal records. The maximum penalty is a $250,000 fine, 3 years in prison, or both. These penalties also apply for attempts at such actions.

C. DHS OIG must report incidents of unauthorized destruction of Federal records to the DHS Headquarters Records Officer, who will notify NARA's Office of the Chief Records Officer for the U.S. Government.

V. Responsibilities

A. The **Inspector General** has delegated authority for DHS OIG's RIM Program to the **Assistant Inspector General for Management (AIGM)** and the Office of Management (OM).

B. The **AIGM** has delegated responsibility for the program to the DHS OIG-wide Records Officer and the OM Planning and Compliance Division.

C. The **DHS OIG-wide Records Officer**, also known as the Chief Records Officer, shall oversee and coordinate all aspects of the DHS OIG RIM Program on behalf of the AIGM, and work with all OIG offices, Office-wide Records Coordinators, and subject matter experts to implement the program and issue policy and guidance. The OIG-wide Records Officer shall also assess DHS OIG offices' compliance with program requirements annually including training requirements.

D. **DHS OIG Office Heads** shall:

1. Ensure the DHS OIG RIM Program is implemented by their office,
2. Monitor their office's compliance with program requirements by ensuring periodic records reviews are conducted,
3. Designate an Office-wide Records Coordinator to work with the DHS OIG-wide Records Officer to execute the program, and
4. For each field office location, designate Office Records Custodians to aid the Office-wide Records Coordinator execute the program. Offices may decide not to designate Records Custodian(s) if they do not have field offices.

E. **Office-wide Records Coordinators** shall work directly with the DHS OIG-wide Records Officer to implement the DHS OIG RIM Program for their respective office including ensuring records are properly accounted for, filed, archived, and transferred to NARA, and periodic records reviews are conducted.

F. **Office Records Custodians** shall work directly with their office's Office-wide Records Coordinator to implement the DHS OIG RIM Program for their field office or location.

G. The **Director of the OM Information Technology Division** or **a designee** shall:

1. Work with the DHS OIG-wide Records Officer to implement and maintain an ERMS that complies with NARA's requirements for electronic recordkeeping systems;
2. Implement and maintain proper recordkeeping procedures for existing information systems and daily backups of electronic records stored in DHS OIG information systems, network drives, and other electronic data collecting mechanisms;
3. Notify the OIG-wide Records Officer of proposed or anticipated change to DHS OIG systems, networks, and other mechanisms that store electronic records; and
4. Provide guidance to the OIG-wide Records Officer on information system security for storing and transferring electronic records

H. The **Counsel to the Inspector General** or **a designee** shall:

1. Upon request by a departing employee, advise the OIG-wide Records Officer whether identified Federal records can be removed by DHS OIG personnel.
2. Provide guidance to the OIG-wide Records Officer on protecting records that include Personally Identifiable Information. (Privacy guidance is posted on OIGCentral under Policy and Guidance, Management, Privacy & Information Safeguards.)

I. The **OIG Security Officer** shall work with the OIG-wide Records Officer to implement essential/vital records plans and to ensure that these records are accessible from designated continuity of operations locations.

J. All **DHS OIG offices and personnel** shall create, maintain, and preserve records that document DHS OIG's organizational structure, functions, policies, decisions, procedures, and business transactions according to established requirements outlined in this policy and related procedures; and shall not permanently remove Federal records unless granted permission by DHS OIG Office of Counsel.

VI. Procedures

Related procedures are posted on OIGCentral under Policy and Guidance, Management, Records Management & FOIA or Privacy & Information Safeguards.

VII. Definitions

A. **National Archives and Records Administration**. NARA is an independent agency of the United States Government charged with preserving and documenting government and historical records. Also, DHS OIG's assigned Archivist approves records retention schedules.

B. **Record** or **Federal Record**. 44 USC § 3301 defines the term "record" as:

1. Including all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them, and

2. Not including

(i) library and museum material made or acquired and preserved solely for reference or exhibition purposes; or

(ii) duplicate copies of records preserved only for convenience.

Records include but are not limited to paper, e-mails, text and instant messages, tweets, databases, shared drive files, video/audio recordings, photographs, or websites. Examples of DHS OIG records include, but are not limited to:

- Final DHS OIG reports and all supporting documentation/work papers
- Audit/Inspection Report Follow-up documents (e.g., corrective action plans, DHS recommendation closure requests, and DHS OIG responses)
- Briefing Books/materials prepared for the Inspector General or the DHS Secretary
- Correspondence signed by the Inspector General and other DHS OIG officials
- Electronic information in DHS OIG's Enforcement Data System, TeamMate, Project Tracking System or other electronic systems
- E-mails, text/Lync, and instant messages documenting the rationale for DHS OIG policy, decisions, or actions
- Organization Charts (DHS OIG-wide and those for a single office/group)
- Policy and Procedures (DHS OIG-wide and office-specific)

C. **File Plan**. A comprehensive list of applicable records created or received by DHS OIG including how the records are organized and maintained, regardless of format, and where they are stored. Typically, like records are assigned a unique numerical file code to facilitate the daily management, filing, storage, and retrieval of Federal records in an organized manner.

D. **DHS OIG Office Heads**. Inspector General (front office), Assistant Inspectors General, and others that lead the following offices: Audits, Counsel, Emergency Management Oversight, Information Technology Audits, Inspections and Evaluations, Integrity and Quality Oversight, Investigations, Legislative Affairs, Management, and Public Affairs.

E. **Electronic Records Management System**. ERMS is an electronic information management system that is used by personnel to manage, file, store, safeguard, and retrieve electronic Federal records, which are filed according to an approved file plan, before they are transferred to NARA for permanent storage or are destroyed at the end of the record's useful life, in accordance with records schedules.

F. **Record Retention Schedules or Record Schedule**. A legal document approved/signed by NARA's U.S. Archivist that describes categories or types of records and mandates how long the records are kept (retention) and what happens to them at the end of the retention time period (disposition). NARA issues General Records Schedules (GRS) that govern common categories of records and approves records schedules drafted by agency Records Officers for unique records that are not covered by GRS or other schedules, in accordance with records schedules.

G. **Essential/Vital Records**. Records essential to DHS OIG's continued functioning or reconstitution during and after an emergency. Also those records essential to protecting the legal and financial rights of DHS OIG and individuals directly affected by its activities.

H. **Non-Records**. Federally owned documentary or informational materials that are excluded from the statutory definition of a record (44 USC § 3301). Non-records are duplicate copies of documents kept **strictly** for convenience and library or museum materials made or acquired and preserved for reference or exhibition purposes.

I. **Personal Papers**. Documentary or informational materials, regardless of format, belonging to an individual that are not used to conduct agency business. Personal files and papers are not owned by the Federal Government. Personnel should seek legal counsel when there is a question of whether a document is a record or a personal paper.

VIII. Questions

For questions about this directive, please contact the DHS OIG-wide Records Officer in the Planning and Compliance Division, Office of Management at OIGRecords@oig.dhs.gov.

APPROVED BY: [redacted]

[redacted]

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

Issue Date: 02/23/2018

Policy Directive 141-03

MEMORANDUM FOR: Component Heads

FROM: Claire M. Grady 2/23/18
Under Secretary for Management

SUBJECT: Electronic Records Management Updates for Chat, Text, and Instant Messaging

The Presidential and Federal Records Act Amendments of 2014 (Public Law 113-187) enacted on November 26, 2014, expands the definition of federal records to include all recorded information, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form.

Much like in-person or telephonic conversations, business communications created and transmitted between Department employees that include substantive information about agency business, policies, and activities made via chat, text, or instant message may be considered federal records and must be preserved. DHS employees must take appropriate steps to establish and maintain a separate record of the communication that may be considered federal records. All DHS business transactions by electronic means are required to comply with the Department's records management policies. For more information about what constitutes a federal record, please refer to Title 44, United States Code, Chapter 33, Section 3301 and the Records and Information Management Program's Frequently Asked Questions page and the enclosed attachment, "Documenting Electronic Messages and Verbal Communications." [redacted]

In order to comply with federal law, applicable regulations, policy, and DHS Directive 141-01, the Department has implemented the following electronic records management guidance for the use of chat, text, or instant messaging:

- All DHS business transactions by electronic means are required to comply with the Department's records management policies. DHS employees should take steps to establish and maintain federal records when conducting business using chat, text, or instant messaging.
- All internal DHS chat/messaging systems (i.e., Lync, Skype, or other tools) must display a banner/disclaimer prohibiting the system to be used to formally transact agency business or to document the activities of the organization.

If you have any questions, visit the DHS Records and Information Management (RIM) site or, contact [redacted]

What is an "electronic message"?
Electronic messages include a range of communications from text to chat to IM (instant messages). They reside and are exchanged on agency networks and devices, on personal devices, or they can be hosted by third-party providers.

What is a "verbal communication"?
Verbal communications include telephone conversations, voicemail messages (or series of voicemails), a formal meeting, or even an informal chat with a coworker in the hallway.

The Department must capture and manage these records in compliance with Federal records management laws, regulations, and policies.

What kind of verbal communications or electronic messages might be considered a record?
Any communication in which an Agency decision or commitment is made or where an action is committed to, that is not otherwise documented, needs to be captured. For example:

- A meeting or conference call where a decision is made, if formal meeting minutes or notes are not taken.
- A text or telephone call giving guidance to a member of the regulated community.
- A telephone call responding to a member of the public about DHS policy.

What is the best way to capture conversations that are records?

- Write a memo to the file. Be sure to include:
  - Date and time of the communication
  - Type of communication (e.g., text, voicemail, telephone call)
  - Context of the message or conversation (electronic messages)
  - Participants
  - Subject
  - Details on any decisions or commitments (verbal communications)
  - Corresponding threads that precede a communication and provide more background

Does this mean that I have to write a transcript of every conversation or copy every text message?
No, not all electronic messages or verbal communications are records. Only write a memo to the file if one is needed to document your activities as a federal employee, contractor, and not otherwise captured.

How can I get additional guidance?
If you have policy questions about electronic messages or verbal communication records, contact your Component or the DHS Records Officer. You can find additional guidance in the following publications:

- DHS Instruction 141-01-001, "Records and Information Management"
- Documenting Your Public Service, National Archives and Records Administration

[redacted]

Department of Homeland Security
DHS Directives System
Instruction Number: 141-01-001
Revision Number: 00.1
Issue Date: 06/08/2017
Incorporating Change 1, 09/09/2019
Approved by [redacted]

RECORDS AND INFORMATION MANAGEMENT

I. Purpose

This Instruction implements the Department of Homeland Security (DHS) Directive 141-01, "Records and Information Management."

II. Scope

This Instruction applies throughout DHS to all records of the Department, as defined in the Federal Records Act, regardless of medium, which are created, collected, processed, used, stored and/or destroyed by DHS. Each Component is authorized to develop and implement more specific policies and procedures consistent and compatible with this Departmental Instruction and DHS policy.

III. References

A. Title 5, United States Code (U.S.C.), Chapter 5, Subchapter II – "Administrative Procedure"

1. § 552. "Public information; agency rules, opinions, orders, records, and proceedings" ["Freedom of Information Act," as amended]

2. § 552a. "Records maintained on individuals" ["Privacy Act of 1974," as amended]

3. § 553. "Rule making"

B. Title 18, U.S.C., Chapter 101, "Records and Reports"

C. Title 18, U.S.C., Chapter 121, "Stored Wire and Electronic Communications Transactional Records Access"

D. Title 40, U.S.C. Subtitle III, "Information Technology Management"

E. Title 5, Code of Federal Regulations (CFR), Part 1320, "Controlling Paperwork Burdens on the Public"

F. DHS Management Directive 047-01

G. DHS Directive 140-06 and Instruction 140-06-001, "Privacy Policy for Research Programs and Projects"

H. DHS Directive 123-05, "Telework Directive"

I. DHS Directive 142-03, "Electronic Mail Usage and Maintenance"

J. DHS Directive 262-11, "Freedom of Information Act Compliance"

K. DHS Instruction 047-01-001, "Privacy Policy and Compliance"

L. Federal Continuity Directive (FCD) 1, "Federal Executive Branch National Continuity Program and Requirements," ~~October 2012~~ *January 2017*

M. FCD 2, "Federal Executive Branch Mission Essential Function and Primary Mission Essential Function Identification," ~~July 2013~~ *June 2017*

IV. Definitions

A. "***Records Schedules***" or "***schedule***": Identifies records as either temporary or permanent. All records schedules are approved by the National Archives and Records Administration (NARA). A records schedule provides mandatory instructions for the disposition of records (including the transfer of permanent records and disposal of temporary records) when the records are no longer needed by the agency. As part of the ongoing records life cycle, disposition should occur in the normal course of agency business. All Federal records are scheduled (44 U.S.C. 3303) either by an agency schedule or a General Records Schedule (GRS). A schedule can be (a) a Standard Form (SF) 115, "Request for Records Disposition Authority" that has been approved by NARA to authorize the disposition of Federal records; (b) a GRS issued by NARA; or (c) a printed agency manual or directive containing the records descriptions and disposition instructions approved by NARA on one or more SF 115s or in the GRS.

1. ***GRS***: The Archivist of the United States issues GRS to provide disposal authorization for temporary administrative records common to several or all agencies of the Federal Government. These include records relating to civilian personnel, fiscal accounting, procurement, communications, printing, other common functions, and certain non-textual records. Use of the GRS is mandatory under 44 U.S.C. 3303a, so DHS requests authority from NARA prior to deviating from the disposition instructions prescribed in the General Records Schedules in accordance with 36 CFR 1225.22(c).

2. ***Agency Records Schedules***: All Federal agencies are required by law to develop records schedules for all records not covered by the GRS (44 U.S.C. 3303). Agencies submit the schedules for NARA approval on an SF 115. The SF 115 contains descriptions of record series or systems and disposition instructions for each. These instructions specify when the series is to be cut off, when eligible temporary records are to be destroyed or deleted, and when permanent records are to be transferred to NARA. The Office of the Secretary and DHS Components fulfill these requirements through two primary instruments:

a. Enterprise Records Schedules: Schedules which provide disposition authorization for records common to multiple DHS Components, which are not already covered by the GRS.

b. Component Records Schedules: Schedules which provide disposition authorization for program records unique to a single DHS Component, which are not already covered by the GRS or an Enterprise Records Schedule.

B. ***Schedule Approval***: NARA approves a schedule before it can be implemented. This approval authorizes and makes mandatory the retention periods contained in the schedule as well as the disposition instructions to be carried out upon expiration of the prescribed retention period. Some schedules, especially those containing records relating to financial management, claims, and other related matters, are also approved by the Government Accountability Office (44 U.S.C. 3309) before NARA approves the schedule.

C. ***Schedule Guide***: A schedule guide is a printed agency manual or directive containing descriptions of and disposition instructions for all documentary materials, record and non- record, created by a Federal agency or major component of an executive department. Unless taken from the GRS, the disposition instructions for agency records are approved by NARA on one or more SF 115s prior to issuance by the agency. The disposition instructions for the non-record material are established by the agency and do not require NARA approval.

D. ***Enterprise Scheduling***: The coordinated, enterprise-level submission of records disposition requests to NARA for common functions across the Department. The process for creating an enterprise schedule requires the Records Management Program Office to research existing DHS-wide and Component-specific schedules to ascertain the presence of specific classes of records, desired/required retention periods, and the existence of current disposition authority. The Records Management Program Office also vets the draft schedule through the Component Records Management Offices; and submits the schedule to NARA for approval. Component Records Offices vet the schedule through the appropriate program area. Once the schedule is approved by NARA, it obviates the need to create a Component-specific schedule.

E. ***File Plan***: A list of records in a specific office that describes how the records are organized and maintained. DHS adopted the Federal Enterprise Architecture (FEA) Business Reference Model (BRM) as basis for the Department-wide uniform file plan. The BRM provides an organized, hierarchical construct for describing the day-to-day business operations of the Federal Government using a functionally driven (not organizational) approach.

F. ***Nonrecord materials***: Are those Federally owned informational materials that do not meet the statutory definition of records (44 U.S.C. 3301) or that have been excluded from coverage by the definition. Excluded materials are extra copies of documents kept only for reference, stocks of blank forms or publications, or documents that provide no evidence of agency functions and activities.

G. ***Personal files*** (also called ***Personal Papers***): Are documentary materials belonging to an individual that are not used to conduct agency business. Personal files are excluded from the definition of Federal records and are not owned by the Government.

H. ***Records*** or ***Federal records***: Is defined in 44 U.S.C. § 3301 as including *"all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them."* ~~all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of the data in them~~ (44 U.S.C.

[redacted]

3301). *This definition includes all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form.*

I. ***Telework***: Any arrangement in which an employee regularly performs officially assigned duties at home or other worksites geographically convenient to the residence of the employee and away from the traditional worksite.

V. Responsibilities

[redacted]

A. ***Chief Records Officer***:

1. Serves as the Department's leader on Records and Information Management (RIM) related matters and is the agency representative to NARA, other departments, and agencies;

2. Ensures annual RIM training, in coordination with the Chief Human Capital Officer, is current and compliant with DHS requirements;

3. Facilitates RIM training as part of DHS-wide personnel in-processing procedures;

4. Leads, oversees, develops, coordinates, and implements the Department's RIM policy and procedures to include vital records management and NARA approval for all systems and program schedules throughout the agency, in collaboration with Component records officials;

5. Ensures records training is developed and implemented for records positions *as well as all DHS personnel*;

6. Develops records retention schedules applicable throughout the Department;

7. Develops ~~enterprise~~ *records retention schedules applicable to specific DHS programs or support entities*;

[redacted]

8. Ensures all records are properly managed with RIM policies and procedures to include necessary tools to manage records;

9. Participates in Acquisition Decision Reviews and Events for all enterprise information technology acquisitions; facilitates and participates in activities of the Records Leadership Council (RLC);

[redacted]

10. Establishes RIM procedures for records and record systems/applications to be applied throughout DHS including:

[redacted]

[redacted]

a. Transfer of records to records custodians during out-processing.

b. Processing of records and IT system retention schedules.

11. Ensures that DHS enterprise-wide systems and applications are in compliance with applicable RIM policies.

B. ***Chief Privacy Officer***:

1. Provides requirement to ensure records are stored in a way to make FOIA searches accurate and timely. Ensures privacy considerations are included in the RIM process during the creation or updating of any information systems containing records.

2. Ensures DHS employees understand how to properly handle record and non- record material with Personally Identifiable Information.

3. Ensures all DHS employees receive annual training on record management requirements for FOIA compliance.

4. Ensures privacy compliance documentation, including Privacy Threshold Assessments, Privacy Impact Analyses and Systems of Record Notices, cite an accurate and appropriate NARA approved retention and disposal schedule approved by Component Records Management Officers and the DHS Chief Records Officer (see DHS Instruction 047-01-001).

C. ***Component Heads***:

1. Designate a Chief Records Officer for the Component, and ensure records custodians are identified for all records. Assign the Component Chief Records Officer with the responsibility for leading, overseeing, and implementing a RIM Program within the Component in accordance with DHS policy.

2. Ensure all acquisitions and all phases of the acquisition lifecycle incorporate records management requirements, to include coordination with the RIM Program.

3. Ensure that Component systems and programs are operating in compliance with the applicable privacy documentation and that privacy compliance documentation cites an accurate and appropriate NARA approved retention and disposal schedule.

4. Reinforce the importance of RIM at the leadership staff level through ongoing development training and ensure annual mandatory RIM training is accomplished for all Component employees in accordance with DHS policy.

5. Ensure the identification, retention, and management of electronic and paper records according to DHS Records policy, to include custodial transfer and custody of records during out-processing.

6. Ensure RIM is included in information technology system that are acquired or developed within their Component.

D. ***RLC***:

1. Issues an annual RIM Report to the Under Secretary for Management (USM) and NARA;

2. Supports the Department's Chief Records Officer through the development of policies, procedures, related instructions, and quadrennial strategy;

3. Provides observations and recommendations regarding needed or proposed policy/program changes to the Chief Records Officer; and

4. Provides Component oversight and support for RIM activities.

E. ***Component Chief Records Officers***:

1. Lead, oversee, and implement a RIM Program in accordance with DHS policy to include records management within systems development, governance, and acquisition review;

2. Ensure Component personnel maintain a uniform file plansystem;

3. Ensure the identification, retention, and management of electronic and paper records according to DHS Records policy, to include custodial transfer and custody of records during out-processing;

4. Ensure records retention schedules are developed and applied throughout the Component;

5. Ensure Component RIM procedures include guidance for identifying and managing vital records in accordance with DHS RIM policy and the FCD 1 and 2;

6. Ensure Component records are aligned to the DHS RIM policy and requirements;

7. Coordinate with the Departmental Chief Records Officer to obtain NARA approval for all systems and record schedules;

8. Ensure the respective Component's portion of the file plan database is current;

9. Ensure all Component records are properly scheduled;

10. Ensure all Component personnel, including Program Managers, *adequately document the organization, functions, policies, decisions, procedures, and essential transactions of the agency in accord with NARA regulations and* appropriately manage the records they create or receive in the course of conducting DHS business;

11. Coordinate compliance with FOIA, the Privacy Act and E-Discovery;

12. Ensure all employees in the Component receive necessary records training;

13. Require mandatory annual RIM training for all employees; and

14. Notify the DHS RIM Program Office and NARA when they become aware of any actual, imminent, or threatened unlawful removal, defacing, alteration, or destruction of records (including electronic or machine-readable records) in the custody of the agency.

F. ***Subcomponent Records Liaisons***:

1. Serve as primary records points of contact for their Subcomponent and as an extension of the Component Records Manager;

2. Coordinate records activities for their Subcomponent on behalf of the Component Records Management Program;

3. Perform records management duties consistent with applicable ofpolicy and guidance; and

4. Collaborate with Component RIM Program Officials.

G. ***Records Custodians***:

1. Inform the Subcomponent Records Management Liaison of any issues regarding the records in their custody, such as the deletion or loss of a record;

2. Ensure retention of records, non-records and personal papers subject to a hold or freeze upon notification from the Office of the General Counsel; and

3. Perform records management duties consistent with applicable policy and guidance.

H. ***DHS RIM Program Office***:

1. Periodically evaluate or request the collection of information from the Component Chief Records Officers/Officials or Component Heads (as applicable) concerning the records management programs to be provided to the USM and NARA. The Office of Inspector General is exempt from such evaluation and/or information collection efforts;

2. Perform staff assistance visits as requested by Component leadership or records personnel; and

3. Promulgate RIM guidance for DHS through various media.

I. ***DHS Program Managers***:

1. Implement RIM requirements and governance into all DHS acquisitions and all phases of the acquisition lifecycle, to include coordination, review, and approval from the RLC;

2. Incorporate mandatory RIM training for contractors on all DHS contracts when contractors handle, review, or process DHS records; and

3. Ensure that all DHS systems that create, handle, and store records are scheduled, that proper records controls are applied or that records are transferred to a Records Management Application as applicable.

J. ***DHS Employees***:

1. *Adequately document the organization, functions, policies, decisions, procedures, and essential transactions of the agency and* ~~P~~properly identify, capture, retain, file, and dispose of or transfer records regardless of media or phase of creation stage (records lifecycle) in accordance with Title 44 U.S.C. Chapter 31; NARA regulations, 36 CFR Chapter XII, Subpart B; and DHS records policy;

2. Properly identify, manage, and maintain vital records;

3. Complete RIM training annually;

4. Manage records created or received in the course of conducting DHS business, including E-Mail and instant messaging records according to applicable federal and DHS regulations and policy for RIM, Privacy, FOIA, Information Sharing, and E-Discovery;

5. Coordinate RIM activities with Component RIM personnel to ensure compliance with applicable policies and procedures;

6. When teleworking, identify, safeguard, and manage all records in accordance with DHS RIM policies. See additional telework guidance at DHS Directive 123-05;

7. Ensure physical records, e.g., printed email, show all the metadata and identifiers that would be available if the records were stored electronically including the names of the sender and recipients, date, subject, and a list of attachments, by configuring their office applications according to RIM Program Office guidance; and

8. Ensure any Federal Records under their direct control are transferred to their supervisors or records custodian as part of out-processing from DHS.

VI. Content and Procedures

A. The Federal Records Act requires all Federal agencies to make and preserve records containing adequate and proper documentation of their organization, function, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities (44 U.S.C. § 3101; 36 CFR § 1222.22). This includes creating records that:

1. *Document the persons, places, things, or matters dealt with by the agency.*

2. *Facilitate action by agency officials and their successors in office.*

3. *Make possible a proper scrutiny by the Congress or other duly authorized agencies of the Government.*

4. *Protect the financial, legal, and other rights of the Government and of persons directly affected by the Government's actions.*

5. *Document the formulation and execution of basic policies and decisions and the taking of necessary actions, including all substantive decisions and commitments reached orally (person-to-person, by telecommunications, or in conference) or electronically.*

6. *Document important board, committee, or staff meetings.*

B. The Federal Records Act requires all Federal agencies to establish a records management program (36 C.F.R. § 1220.34). The program includes:

1. *Issuing policies establishing program objectives, responsibilities, and authorities for the creation, maintenance, and disposition of agency records.;*

2. *Assigning records management responsibilities in each program (mission) and administrative area to ensure incorporation of recordkeeping requirements and records maintenance, storage, and disposition practices into agency programs, processes, systems, and procedures;*

3. *Integrating records management and archival requirements into the design, development, and implementation of electronic information systems;*

4. *Providing guidance and training to all agency personnel on their records management responsibilities, including identification of Federal records, in all formats and media;*

5. *Developing records schedules for all records created and received by the agency and obtain NARA approval of the schedules prior to implementation;*

6. *Complying with applicable policies, procedures, and standards relating to records management and recordkeeping requirements issued by the Office of Management and Budget, NARA, GSA, or other agencies, as appropriate;*

7. *Instituting controls ensuring that all records, regardless of format or medium, are properly organized, classified or indexed, and described, and made available for use by all appropriate agency staff; and*

8. *Conducting formal evaluations to measure the effectiveness of records management programs and practices, and to ensure that they comply with NARA regulations.*

C. Records include *all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them. This definition includes all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form* ~~all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or are appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of the data in the records~~ (44 U.S.C. 3301).

D. Records, regardless of media or phase of creation stage (records lifecycle) are properly *created,* identified, captured, retained, filed, and disposed of or transferred in accordance with Title 44 U.S.C. Chapter 31; NARA regulations, 36 CFR, Chapter XII, Subpart B; and DHS records policy.

1. *Records are created to the extent necessary to ensure adequate documentation in accordance with 44 U.S.C. § 3101; 36 CFR § 1222.22.*

2. Records are organized and identified across the Department through a standard filing system, the DHS-wide FEA BRM file plan.

3. Non-records are managed separately from records, inventoried, and deleted or destroyed in accordance with DHS Records Policy.

4. Personal records are non-records and maintained separately from DHS records and kept to a minimum.

5. Employees (including Career Senior Executive Service and Political Appointees) may not remove or duplicate DHS records upon separation without prior approval by the Component Head.

6. DHS records, regardless of format, cannot be destroyed without an approved schedule.

VII. Questions

Address questions regarding this Instruction contact a Component Records Liaison, Records Custodian, Records Officer (Component or DHS), or OCIO for assistance with records identification, permanent records management, records schedules, identification of non-record documents, and additional information about the Department's Record and Information Management Program.

[redacted]

6/7/17
Date

CQ Congressional Transcripts
Jun. 6, 2023

Jun. 06, 2023 Revised Final

House Oversight and Accountability Subcommittee on National Security, the Border and Foreign Affairs Holds Hearing on Border Law Enforcement Staffing Challenges

LIST OF PANEL MEMBERS AND WITNESSES

GLENN GROTHMAN:
Foreign Affairs will continue -- will come to order. Everyone, welcome. Without objection, Representative Connolly of Virginia and Representative Ivey of Maryland are waived on to the subcommittee for the purpose of questioning the witnesses at today's hearing. Without objection, the chair may declare recess at any time.

I recognize myself for the purpose of making an opening statement. On day one of his administration, President Biden signaled to the world through words and actions that our borders are open. And so, they were. Our country has since watched the crisis along our southwest border devolve into a catastrophe, a humanitarian and national security catastrophe.

The deteriorating conditions along the Southwest border and mismanagement of resources have harmed law enforcement and made exist -- existing staffing challenges even worse. Just last month, the Department of Homeland Security Office of the Inspector General issued a report examining how Law Enforcement and Customs and

Border Protection and Immigration and Customs -- examining how Law Enforcement and Customs and Border Protection and Immigration and Customs Enforcement have been negatively impacted by historically high levels of illegal immigration and other operational challenges.

For this audit, the DHS Office of Inspector General surveyed over 9000 DHS law enforcement personnel within ICE and CBT. They collected information from Border Patrol agents who protect our border from illegal entries, Office of Field Operation officers who guard our points of entry, Enforcement Removal Operation officers who enforce immigration laws and Homeland Security investigation agents who investigate cross-border criminal activity.

What they found is shocking. 88 percent of ICE and CBP law enforcement personnel who responded says their work location was not adequately prepared and staffed during migrant surges. 71 percent of CBP personnel and 61 percent of ICE personnel stated that their current work location was not adequately prepared and staffed even during normal operations.

But there's nothing normal about the current border catastrophe. As noted in the IG's report, migrant encounters at the southwest border have risen from approximately a little under $1 million in fiscal year 2019 to $2.5 million in 2022. This fiscal year, through the end of April, CBP has already made $1.4 million encounters along the Southwest border, with $1.2 million of those coming from Border Patrol agent apprehensions of illegal border crossers.

Each of these encounters represents law enforcement resources expended in arresting and processing those individuals. And those resources are being used up at the expense of enforcement. The

inspector general's report highlights a two -- a 300 percent increase in the number of known got-a-ways, meaning migrants who evade apprehension entirely.

In fiscal year 2022, compared to 19 -- or 2019. Last year, there were more than 600,000 known got-a-ways recorded by CBP. In one border patrol station reviewed by the inspector general's audit, 15 percent of the got aways over a five-day period evaded apprehension simply because no agents were available to respond.

These -- I mean, think about that. I mean people are showing up at the southern border. Even though we know they're there, we don't have anybody who can show up and -- and process these people. These challenges have left the men and women on the front lines of this crisis overwhelmed and stretched to their limits.

To meet mission requirements, DHS implements stopgap measures like increased overtime and temporary details that exacerbate staffing challenges in the long-term by eroding morale and jeopardizing retention of experienced law enforcement professionals. Today, we hear from Inspector General Cuffari on his office's findings about the reality of the problem, how DHS is managing these staffing challenges and recommendations to solve the staffing crisis.

Since 2016, DHS Office of Inspector General and the Government Accountability Office have issued 25 reports examining staffing issues at our border, but 80 percent of the recommendations have been closed without yielding tangible results at DHS. In fact, DHS did not concur with one of the three recommendations in this report.

Appearing not even to be willing to acknowledge the impact of temporary details in overtime on the workforce. We must hold DHS accountable to achieve critical mission goals including ensuring

border security, enforcement of immigration laws and facilitating lawful trade and travel. And that means DHS must successfully manage law enforcement resources and support the men and women who carry out these essential functions.

I want to thank Inspector General Cuffari for appearing today and I look forward to working with his office to ensure continued robust investigation of DHS. I'll tell you. I've been at the border several times. The last time I was down there was two months ago. It was shocking, the degree to which we did not have enough people to deal with particularly would be got-a-ways coming across the border.

And -- and that's why we have this drug crisis in our country. But in any event, -- in any event, I'd like to recognize the ranking member, Garcia, for the purpose of making his opening statement.

ROBERT GARCIA:
Thank you very much, Mr. Chairman and I want to thank you for convening this important hearing. I want to just start by just noting that I hope that we can all commend the Biden-Harris administration for their actions to prevent a serious disorder at the border following the expiration of Title 42, which I believe was the right decision.

As a proud immigrant, myself and a patriotic American, we certainly have to focus on a humane and secure border, but also have legal pathways to let people continue to come to this country and be part of our experience. We know that immigrants make our country stronger. And we are a nation of immigrants.

Congressional Democrats and President Biden have taken clear actions to improve border security. We have provided unprecedented resources to the men and women who protect our borders. And

President Biden has implemented numerous policies to bolster the health and well-being of border security. Now, House Republicans on the other hand, have opposed greater funding to front-line agencies including Customs and Border Protection.

And House Republicans have called to defund our federal law enforcement agencies, claiming oftentimes and weaponizing them to further political agendas. Now, Democrats know we have a responsibility to support the well-being of all federal employees. And as mayor of Long Beach, California, I work closely with all of our employees and was proud to have the support of our local police department.

Today, I'm glad we're addressing the concerns of federal law enforcement agencies. The work that they do is very important. But I believe we have response -- I believe we have a responsibility to support all federal employees who serve our country. And that's everything from DHS to the US Postal Service.

However, today I'm very concerned that we're holding a hearing today on the basis of a flawed report and with a -- and -- and with a witness with a problematic record. Now, Mr. Cuffari is a witness who repeatedly refused to comply with this committee's requests for meetings and information. And he sought to block Congressional oversight at every turn.

It is actually ironic that we are dealing with -- with a politicized and problematic report given his own department staff morale challenges. Now, on September 23rd, 2022, a letter was published that was drafted and I quote "by concerned DHS OIG employees representing every program office at every grade level." The letter claimed that

Inspector General Cuffari quote "no longer has the support of his workforce" end quote.

And that staff fear retaliation if they speak up about the multitude of issues at the office. Staff made the startling claim that DHS OIG quote "will continue to fail under the IG's disastrous leadership" end quote. Now the concerns about this witness go on and on from his resigning under ethical concerns earlier in his career, allegations of deliberately delaying essential oversight reports and alerting and covering up critical investigative facts.

Now we all know that the inspector general is currently under investigation by the Counsel of the Inspector General on Integrity and Efficiency. CIGIE now, but rather than cooperate with legitimate oversight efforts, the inspector general has filed a lawsuit against CIGIE in a desperate attempt to escape scrutiny or consequences for failures and transgressions.

Now it is unacceptable that the individual entrusted to investigate fraud, waste and abuse in our third largest executive department believes that he is above the law, believes that his office is above scrutiny and from Congress, and believes that he is beyond reproach for his own potential -- potential -- perpetration of fraud, waste and abuse.

Now, under Inspector General Cuffari's leadership, the Department of Homeland Security Office of Inspector General has developed a pattern of flawed and misleading investigations, including a failure to report sexual misconduct and harassment at DHS and a failure to investigate and disclose to Congress missing Secret Service text messages from the January 6th insurrection.

I would also like to briefly address the report on which this hearing is based. A report that is misleading, non-representative of the board -- of the broader agency and deeply flawed. The DHS Office of Inspector General claimed that the purpose of their work was to gain insight into staffing. Instead, the report made sweeping generalizations about morale at CBP and ICE. The report -- the report has mathematical errors and misleading tables and graphs.

DHS OIG even states that their work was conducted in accordance with quote "generally accepted government auditing standards with the exception of data reliability." And I don't know about all of you, but with the exception of data reliability, it seems like a pity -- a pretty big exception to me. Now, we need an IG in place at DHS that was able to perform high quality audit work with integrity, objectivity and independence or we'll never have the accountability and transparency that we need and we deserve from this agency.

We should expect better. I look forward to this hearing only for the opportunity for our members to raise long-standing concerns. We have serious challenges to address at our borders and I look forward to building solutions to address them. Mr. Chairman, I yield back.

GLENN GROTHMAN:
I'm pleased to introduce our witness today. Joseph Cuffari was confirmed by the Senate in the Department of Homeland Security. -- to be the Department of Homeland Security's inspector general in July of 2019. He was previously a policy advisor to the governor of Arizona, served in the US Air Force and spent 20 years at the Department of Justice.

In 2013, he retired from his position as assisted -- as Assistant Special Agent in charge for the Office of Inspector General in Tucson,

Arizona. I want to thank Dr. Cuffari for being here today and I look forward to his testimony. I was down in Tucson sector for I think the third time in the last four years.

And I'll tell you. I am glad you were in that position and look forward to hearing -- hearing from -- from you and your testimony. Pursuant to Committee Rule 9g, the witness will please stand and raise your right hand. Do you solemnly swear or affirm that the testimony that you're about to give is the truth, the whole truth and nothing, but the truth so help you God?

JOSEPH CUFFARI:
I do.

GLENN GROTHMAN:
Let the record show the witness answered in the -- in the affirmative. We appreciate you being here today and look forward to your testimony. Let me remind you that we have read your written statement and it will appear in full in the hearing record. Please, if you can, limit your oral statement to five minutes.

As a reminder, please press the button on the microphone in front of you so that it's on and the members can hear you. When you begin to speak the light in front of you will turn green. After four minutes, the light will turn yellow. And when the red light comes on, your five minutes have expired. I recognize you to please begin your opening statement.

JOSEPH CUFFARI:
Chairman Grothman, Ranking Member Garcia and distinguished members of the subcommittee. Thank you for the opportunity to

discuss Homeland Security IG's critical oversight of DHS. Prior to my unanimous confirmation in 2019, I served more than 20 years with the Department of Justice IG and various offices along the Southwest border.

For ten of those years until the establishment of DHS in 2003, DOJ IG oversaw the Immigration and Naturalization Service and its component the US Border Patrol. I personally observed three special Border Patrol operations in which INS detailed agents of the Southwest border, and I investigated financial irregularities related to one of those operations.

As I promised Congress during my confirmation process as Homeland Security IG, I prioritized oversight of border security and immigration. My first visit to the Southwest border was within two months of my confirmation. And since then, I personally traveled to the Southwest border nine times to review DHS operations and border conditions.

These trips have encompassed all nine Border Patrol sectors from San Diego, California to the Rio Grande Valley in Texas. In addition, my senior staff or I have visited the northern borders of Washington, Michigan, New York, Vermont and Florida's maritime border. During my visits, I've engaged with senior law enforcement and frontline personnel to better understand how DHS can enhance border security and fight corruption.

I've also received situational briefings from NORTHCOM, SOUTHCOM, US Army North regarding Active and Reserve components assisting at the Southwest border. My testimony today will focus on CBP and ICE's management of resources and discuss in our recently published audit about the health and morale of CBP and

ICE. We conducted this audit to determine the extent to which DHS is effectively managing law enforcement staffing resources.

Our audit work included an analysis of attrition rates, success plans and physical observations of 31 facilities. We also interviewed and surveyed law enforcement personnel. We determined CBP and ICE's current approach to staffing is neither effective nor viable long term. Despite greater workload, staffing levels of both agencies have remained relatively flat since 2019. CBP and ICE have relied on the use of temporary duty assignments overtime shift work to -- to surge staffing along the Southwest border, a practice that dates back to at least 1994 with the creation of the INSs Natural -- National Border Strategy.

Although CBP and ICE annually assessed their staffing needs, neither agency has assessed the impact of these details on their operations. CBP and ICE have initiated programs focused on the well-being of their agents and officers. Both components could benefit from a more strategic approach to resource allocation.

We heard from more than 9000 law enforcement personnel that represents 16 percent of the 57,000 who we surveyed. Our analysis of the survey comments indicated that many recipients felt that current staffing has negatively impacted their health and morale. CBP and ICE cannot continue to use temporary duty assignments and overtime shift work effectively to meet the challenges at the Southwest border.

We made three recommendations to help DHS strategically assess the issues we identified. DHS concurred with two of these recommendations and did not concur with one. In total, during my tenure, we published 51 reports and made 145 recommendations

specifically aimed at improving DHS Southwest border ops. I'm very proud of the quality and quantity of the work by more than 700 professional career, DHS employees have produced under my leadership.

,As I reported since the fall of 2021, DHS continues to delay and deny OIG access to information that DHS is required to provide to us and that we need to do our jobs. I remain hopeful DHS will improve their responsiveness to our requests for information so that we can continue to provide Congress and the public robust timely oversight like that being featured in the day's hearing.

Mr. Chairman, this concludes my prepared remarks. I look forward to the subcommittee's questions.

GLENN GROTHMAN:
Thank you. Right on the button. I'll give you a few questions. Law enforcement staffing at the Southwest border is facing a systemic crisis, one that the Department of Homeland Security doesn't have a coherent plan to address. Why did you decide to initiate this report and what are some of the biggest challenges our law enforcement agents and officers face at the Southwest border that your report found?

JOSEPH CUFFARI:
Mr. Chairman, thank you. So, starting in around March of 2021, when it became safe to travel post-COVID, I began to visit the Southwest border again. I began to hear from line law enforcement personnel and senior staff that there were morale issues impacting the workforce. And those issues related to the deployment of Border

Patrol primarily from the Northern tier offices to the Southwest border.

I asked my staff to conduct a review. And they did so within a year and a half. And they completed the report in May of this year.

GLENN GROTHMAN:
What were some of the mental and physical consequences of the current work conditions of DHS law enforcement officers reported -- that DHS's law enforcement officers reported?

JOSEPH CUFFARI:
According to the law enforcement personnel who actually have been doing these details, the constant flux of being transferred to the Southwest border from the home station for 30 to 60 days provides a lot of turmoil to the agents and their families. In some cases, they don't know where on the Southwest border they're going to be detailed and/or for how long they're going to be there.

Once they complete their initial assignment, they returned back to their home station where they're in -- back working where they were originally assigned. And then, 30 to 60 days later, they get notified again that they're going back to the southwest border, so it's a constant churn. It's the unknown effects.

And according to the respondents, the -- they have developed an inability to continue to do what they consider to be their primary law enforcement function.

GLENN GROTHMAN:

One of the issues addressed in your report is temporary detailing, which is the practice of temporarily assigning agents and officers to different locations for a period of time before returning their returning to their permanent duty station. Many Border Patrol agencies and Office of Field operation officers can be detailed from their duty locations to assist with custody and processing of migrants.

One Border Patrol agent said in your report that agents were providing clothing, diapers, formula and other domestic services, noting that the job feels more like social worker duties rather than law enforcement. How can DHS improve their detailing practices to make sure the detainees are actually performing jobs within their job description?

JOSEPH CUFFARI:
It's a function of the first recommendation that we made to DHS, what they did not concur with, which was to hire an outside national academy to take a look and develop a strategic staffing model so that DHS would be best -- best able to use the -- the resources they have to the most effective benefit of the organization.

GLENN GROTHMAN:
Does the practice of temporary details leave home duty stations vulnerable or understaffed?

JOSEPH CUFFARI:
According to the agents who responded, yes. There is a gap when you pull resources from one area to another.

GLENN GROTHMAN:

No question, anybody who's down at the border knows that what are the current staffing levels that ICE and Customs and Border Patrol compared to their authorized levels.

JOSEPH CUFFARI:
I believe there are -- I don't know the exact number, Chairman, I'd have to get that number to you. OK.

GLENN GROTHMAN:
How many Border Patrol agents and office of field operation officers do we need to address the issues we are dealing with today?

JOSEPH CUFFARI:
That's a matter for the Department to decide based on the recommendation number one that we made to have an outside entity, take a look at the organization to have a strategic staffing model.

GLENN GROTHMAN:
I'll ask you. In a two -year period, we went from about 20,000 people coming across the southern border to about 220,000 per month. Isn't that kind of part of the big problem, that they haven't adjusted the number of agents for the huge number of people who are coming over here?

JOSEPH CUFFARI:
There certainly has been a significant influx of migrants coming in to the Southwest border. The staffing levels for ICE and CBP, although I don't know the actual numbers have remained relatively flat. So has the --

GLENN GROTHMAN:
OK. How does the turnover rate within DHS's law enforcement agencies compare with other government agencies?

JOSEPH CUFFARI:
Their turnover rate, from what I recall from our report, is consistent with that of other agencies in the federal government.

GLENN GROTHMAN:
OK, OK, very good. We'll now call on Mr. Garcia for five minutes.

ROBERT GARCIA:
Thank you, Mr. Chairman. Mr. Cuffari, I want to look at the report you recently published about Customs and Border Patrol morale among people working at the southern border. Now, an examination of your report shows that it is exceptionally flawed. And I'm stunned that you and your team released this report.

It does not meet the standards required of inspectors general, or quite frankly, data collection of any kind. Now, as you can see on this poster behind me. One of the first points highlighted in the report is that it is based on a -- and I quote "a non-statistical survey." I want to read that again. A non-statistical survey.

And you might as well at this point be doing a Twitter poll which is the same exact thing as a non-statistical survey. Now, I want to also again quote from the report, it cannot be projected to the entire population of CBP. In this paragraph, you explained that only 16 percent of border law enforcement personnel actually responded to the survey that the report is based on. And so, we have 16 percent respondents

of which was non-statistical of the actual -- those that were -- that are in the department.

And so, this is really flawed just from the go. And I just want to make sure that we highlight that is very important as far as this committee's work. Now, throughout the report . -- and then you begin to cherry pick responses from individual law enforcement officers to bolster your conclusions. Now last week our committee staff had the chance to sit and have actually interviews with border patrol sector chiefs.

Border Patrol agent, Joel Martinez, who is the chief patrol agent of Laredo sector, said it best, and I want to quote him. "If you speak to 20 different agents, you'll get 20 different opinions. Some guys are out there just loving their job." Now, it should be pretty obvious to anyone that there's a diverse set of opinions in any organization.

And if you don't actually conduct statistical analysis, you're not actually going to get a real report. Now, Mr. -- Mr. IG, did you interview chief patrol agents at CBP for this report?

GLENN GROTHMAN:
Yes, we did.

ROBERT GARCIA:
I believe the answer -- I don't believe you did actually, sir. It's not -- and if you did, it wasn't -- it's not clear in this report. But the most egregious flaw in this report is your office's failure to even test the reliability of the data. Now as you can also see here, you explain that you conducted your audit and I want to quote "according to generally accepted government auditing standards with the exception of data reliability." I'm going to read that one more time.

"According to generally accepted government auditing standards with the exception of data reliability." Now, do you agree that you need reliable data to do an audit?

JOSEPH CUFFARI:
I believe we need reliable data. We asked for that reliable data from the department. They were unable to provide it to us.

ROBERT GARCIA:
OK, so the answer is yes, I think you need -- we need reliable data to do an audit. And yet the data reliability of this report cannot be verified, and you actually say this in the report. So, in other words, we simply do not know if the data you relied upon is sufficient to support any of the findings of this report.

So essentially this report is not verified and should not be acceptable to anyone to make any sort of conclusions. Now I -- I know sir that the president that appointed you to this position also had a problem with facts and data, and so this is not a surprise. But I want to go back to actually the report itself.

The title of the report, for instance, makes no mention of staffing issues at CBP and ICE, which you allege were the entire purpose of this work. And the attrition data and the report is full of basic math errors. So, there are errors of basic math all throughout the report, the data is not reliable and a small subsection of folks were actually interviewed.

Now I think we can all agree that that safely established inhumane immigration policies and that the border we know are challenging tax -- tasks for Congress and every administration, but flawed reports like

this only make those tasks harder. Now this report is a disservice to our law enforcement personnel.

And instead of working to actually identify and solve issues affecting morale, our attention now is forced to correct mistakes and correct the report that is deeply flawed. Mr. Chairman, with that, I yield back.

GLENN GROTHMAN:
Mr. Gosar?

PAUL GOSAR:
Thank you, Mr. Chairman. Thank you very much for being here, Inspector. Now, in 2021, the Department of Health and Human Services took over $2 billion designated for other purposes such as replenishing medical supplies and coronavirus testing and moved it to house and care for illegal alien children. The executive took advantage of the recently terminated COVID-19 national emergency to spend money on programs unrelated to COVID-19. Are you concerned that the Department of Homeland Security may be using National Emergency Act money to redirect spending contrary to Congress's intentions?

JOSEPH CUFFARI:
Sir, I think you mentioned Health and Human Services originally?

PAUL GOSAR:
Yeah.

JOSEPH CUFFARI:

In the Department of Homeland Security, it's primarily FEMA who's responsible for the disbursement of COVID related funding. So, we have a number of audits. In fact, we have created a special COVID fraud unit to criminal -- investigate criminal fraud related to pandemic relief money.

PAUL GOSAR:
So has Homeland Security -- the Department of Homeland Security been forthcoming to you on how they're spending taxpayer money?

JOSEPH CUFFARI:
Based on the questions we've asked; we've been provided with information. And we're evaluating that information.

PAUL GOSAR:
Can you tell me the most egregious example of wasteful spending by DHS that you have uncovered?

JOSEPH CUFFARI:
There's a whole host of audits that we've completed. And I don't have one off the top of my head to give you at the moment.

PAUL GOSAR:
Were contracts done appropriately?

JOSEPH CUFFARI:
There have been a number of audits that we've -- that we've conducted to look at ICE's -- I'm sorry, a DHS unsolicited, no bid sole source contracting. We published a report about that last year. And

we've also identified in one instance where an unsolicited contract was awarded to a company to provide housing.

And that company also received an award from Health and Human Services.

PAUL GOSAR:
By the way, at the very beginning I talked about the status of children. What are the status of some of these children? How many have we lost?

JOSEPH CUFFARI:
DHS's responsibility is to care and feed for the children who are in their custody during the term that they're in their custody, which is primarily for a short period of time of about 72 hours. And DHS then releases the unaccompanied minors to Health and Human Services to the Office of Refugee Resettlement.

It then turns into a Health and Human services responsibility.

PAUL GOSAR:
And we've lost a bunch. Well, let me go back to something else. You uncovered the fact that the Secret Service erased text messages in the aftermath of January 6th, 2021. After you requested the electronic communications, could you please expound on your office's work in this area, one? Number two, why in the world would the Secret Service erase text messages?

That's number two. Does it make you suspicious that there's something to hide? And how many requests for documentation preservation were there?

JOSEPH CUFFARI:
I know of at least five preservation notices.

PAUL GOSAR:
And who did those come from?

JOSEPH CUFFARI:
Four of those were issued by majority members of oversight committees in the last Congress starting on January 16th of 2021. Four from a -- from a committee or multiple committees. And one from our office when we opened an audit of the events of January 6th.

PAUL GOSAR:
Can you come up with any idea why the Secret Service under preservation notices would erase emails?

JOSEPH CUFFARI:
We've been unable to get an answer to that question.

PAUL GOSAR:
Wow, that's pretty incredible. And the last one. You mentioned that there was a 100 percent increase in ICEs notices to appear, an NTA from October of 2020 to April of 2022. Could you explain what a -- what is in an NTA? And how often do illegal aliens show up for their court hearings?

JOSEPH CUFFARI:

I believe DHS discontinued the use of notices to appear or NTA's in November of 2021. They began to issue notices to report which required migrants to report to an immigration court on a predetermined date. The immigration court, as you know, is within the jurisdiction of the Department of Justice. And the immigration court would retain statistics on no shows or individuals who actually do show for their court date.

PAUL GOSAR:
I thank -- I want to thank you for your information. I think the other side is very particular because this doesn't point very good to them, so I yield back.

GLENN GROTHMAN:
Congressman Raskin?

JAMIE RASKIN:
Mr. Chairman, thank you. Mr. Cuffari, your duty under the Inspector General Act is to immediately report flagrant and serious abuses that are taking place. You were aware, at least as early as May of 2021, that the Secret Service had erased thousands of text messages that were sent before and during the January 6th violent attack on the Capitol and the Congress and the vice president.

But you failed to notify Congress for 14 months for a year and two months that the Secret Service was refusing to comply with your requests for information. So, why didn't you email a report as you are statutorily bound to do, these serious and flagrant failures to answer your questions about the disappearance of thousands of texts that were sent during January 6th?

JOSEPH CUFFARI:
Just so the record's clear, Congressman, we were not informed by the Secret Service on the date that you describe in '21. In fact, at no time in '21 were we informed that Secret Service had deleted and was no longer able to retrieve text messages on cell phones owned by the Secret Service.

JAMIE RASKIN:
So when did you become aware of that?

JOSEPH CUFFARI:
In February, I believe of 2022.

JAMIE RASKIN:
Well, we have documents showing that just six weeks after the initial request for documents from the Secret Service, you canceled requests to the Secret Service for phone records and text messages. Why did you do that?

JOSEPH CUFFARI:
If I recall correctly and I mentioned during my -- my prepared remarks here, DHS was delaying or denying us access to relevant information. We made --

JAMIE RASKIN:
But did you report that to Congress at that point or asked for a report to Congress?

JOSEPH CUFFARI:
I was working with the senior leadership of the Department to free up or to pry loose information that the Department was withholding from us. In fact, I met with the secretary of Homeland Security in about September or October of '21 and explained to him that we were having delays in getting information.

And the secretary saw fit to publish a memo in which he directed all the employees in the department to cooperate with our office. We subsequently received a tranche of documents from the department. They were basically emails that we had been waiting for eight months to receive. I think there were about 700,000 emails.

JAMIE RASKIN:
Yeah, well, what I don't understand is your office revived the request that you nullified six weeks after originally making it. Five months later, in December of 2021, is what the paper trail reveals. But what I don't understand is your statutory duty to immediately inform Congress about this flagrant abuse.

I mean, we're talking about the worst violent insurrection against Congress in the history of the United States and the Secret Service is not cooperating with your request for information. Why did you not think that you needed to immediately alert Congress to that fact?

JOSEPH CUFFARI:
I was working with senior leadership in the Department of Homeland Security to get the records we were lawfully entitled to receive. They were also -- the department was also under four preservation notices by Congressional oversight committees last Congress. And to my

knowledge the department never informed Congress that itself had deleted the messages nor were they ever asked about it.

JAMIE RASKIN:
Right. But that's the role of the inspector general. That's why we have an inspector general. Look, in June of 2022, you published your semiannual report where there was going to be a reference to the secret services obstruction of this investigative path. And you removed that. Why was the reference to the secret Services obstruction deliberately deleted from the June 22nd semiannual report of the Inspector General?

JOSEPH CUFFARI:
We -- I believe our first notification to Congress was in the fall of '21, in our semiannual report where we described the delays the department was doing to us and prohibiting us from receiving requested information.

JAMIE RASKIN:
Well, did you sign off on the decision to remove this reference from the report?

JOSEPH CUFFARI:
I don't know when that reference was.

JAMIE RASKIN:
In June 2022, there was going to be a reference to Secret Services obstruction of questioning about the disappearance of the texts. And

that was deliberately removed. Did you sign off on that deliberate removal?

JOSEPH CUFFARI:
I signed off on the removal and I signed a letter specifically to the January 6th Oversight Committee and to this oversight committee.

JAMIE RASKIN:
But why did you remove it?

GLENN GROTHMAN:
Your time is expired and I'm going to say something here. I think what's going on in the border is the biggest crisis this country has to deal with today. And it's not surprising that when the number of people coming into this country is increased by a factor of 11, it would have a tremendous impact on the morale of the Border Patrol.

I realize Mr. Cuffari was -- Dr. Cuffari was originally appointed by Donald Trump. And some people are never going to get over that. But our focus today should be on what's going -- we could have a million hearings on the southern border. But today we're going to focus on the morale of the Border Patrol and what effect this increase by a factor of ten.

The number of people coming across has. And I've been down on the border many times. I can assure you, if you go down there, the Border Patrol agents will tell you all sorts of things. But in any event, next we have Mr. -- Mr. Hayes. [ph]

ROBERT GARCIA:

Mr. Chairman? Mr. Chairman, I just want to also just add, I think the questions that have been asked so far in the statements on -- on our side have been all -- all within the scope of the hearing. I think that we're merely pointing out flaws and issues within the witness and the witnesses statements. And so, I just want to just add that I think that our line of questioning so far has been very reasonable within the scope of the -- of the hearing.

GLENN GROTHMAN:
Mr. Higgins?

CLAY HIGGINS:
Thank you, Mr. Chairman. My, my, my. Inspector General Cuffari, Joe Cuffari is one of the most honorable men I've ever met. And I've had interactions with many in seven years of Congressional service to my country. It is a -- he's a rare combination of experience and intellect and honor and principle. You always get a straight answer from Joe Cuffari.

I hope America's listening to him today. Facing attack after attack after attack from the left. The man is not looking at notes. He's responding from his head because he knows what's going on. It's no surprise that the Biden administration and my colleagues across the aisle don't like him because he's an honorable man who speaks the truth.

There's a lot of wailing and gnashing of teeth over there. The Democrats issue with Inspector General Cuffari is that he's an actual investigator. He's not a political hack. And he speaks the truth. Here's the problem though that my colleagues launching these attacks against this good man face. Joe Cuffari is a principled man.

And he deals with personal attacks against him like something stuck to the bottom of his boot. Inspector General Cuffari, you've been accused of conducting this -- your survey, a survey of 9000 agents, as my understanding. Our colleagues managed to leave that out. They act like you talked to 28 people. Over 9000 agents participated.

And in the -- in your report that you provided, you go on to attest to the quality of the survey, which -- which essentially, amazing to America watching, you came to the conclusion that these border agents that have been tasked with dealing with the disintegration of our -- of our sovereignty at the southern border, they've been moved from all across the country to work the southern border, taken away from their primary law enforcement role to do housekeeping and social work.

Your survey came to the conclusion amazingly that there's a problem with morale, but they're -- there -- they're folding themselves in half over there trying to impugn you as a man. And they get nowhere. America's watching. Let me ask you about these deployments, Inspector General Cuffari, employments from across the country, down to the southern border where agents were moved from where they lived and worked, where their families where their kids go to school to go down to the southern border.

Where those diplomas voluntary or where the agents ordered?

JOSEPH CUFFARI:
In certain cases, according to the agents and other employees of the department who were deployed, they were voluntary. And in others they were voluntold to go.

CLAY HIGGINS:
So, could you clarify what that means? I know what it means. I'm a -- I'm a veteran, an Army veteran. I was a cop for 12 years. I mean you get volunteered. Your chain of command tells you, yeah, we need you to volunteer for this. So, these guys are deployed for quite some time in incredibly difficult circumstances.

They love their country. They're serving their country. By and large, they -- they -- they concur. But the longer they stay down there, the more it impacts themselves, their family, their morale, their spread to the Corps, their units. I think it's obvious that the system of moving people down there has -- has been detrimental to the health and well-being of our agents.

It's concerning that agents are not performing their primary law enforcement roles. America is largely under the impression that we're moving border agents down there to enhance law enforcement. Is that the roles that these agents are primarily performing Mr. Cuffari?

JOSEPH CUFFARI:
The role that they were hired to do in the performance of their duties is to do law enforcement at least for the Border Patrol and the 1811 criminal investigators who were deployed there.

CLAY HIGGINS:
But what role are they actually performing down there?

JOSEPH CUFFARI:
They're doing some law enforcement, but they're also providing care and welfare services to the detained and those individuals who are

there processing.

CLAY HIGGINS:
Thank you, Inspector General. Thank you for your service. God bless you, sir. Stand strong. My time has expired, Mr. Chairman. I yield.

GLENN GROTHMAN:
Thank you. Congressman Lynch?

STEPHEN LYNCH:
Thank you, Mr. Chairman. Mr. Cuffari, first, let me say that, you know, I've been on this committee for 22 years and have involved in dozens and dozens and dozens of investigations, you know, from 20 something trips to Afghanistan over 20 to Iraq, Ukraine. There has been no member on this committee currently that has done more investigations and involved in this -- this type of work longer than I have.

And I'm honored to do it. Now, Mr. Cuffari, I do want to say that our relationship with the inspectors general has -- during that 22 years that I've been on this committee has been a partnership. We rely heavily on -- on our inspectors general to cooperate with us. It's been a good relationship. What -- what -- and I've dealt with probably 3 to 4 dozen different inspectors general over that 22 years.

And I've been proud to do it. I have to say that based on the evidence I have before me, our relationship with you is different. It is different. We have not had the cooperation and the relationship that -- of trust that we have had with other inspectors general. We have not had that with you. And I regret that.

I don't diminish your service to your country or any other capacity. I'm just talking about the facts of what have -- what has happened and what's going on. Are you familiar with the project on Government Oversight?

JOSEPH CUFFARI:
Yes.

STEPHEN LYNCH:
OK, so the -- the project on Government Oversight is a nonpartizan, independent, nonprofit group that we have worked with for more than the 22 years I've been here. I think they started in 1980 and they have been nothing short of honest and forthright. And I've worked with them in Republican administrations and -- and Democratic administrations.

And sometimes I agree with them, sometimes I don't. But they have always been straightforward regardless of whose administration was in power at that time. Mr. Chairman, I want you -- I want to ask for unanimous consent to enter into the record a letter from the Project on Government Oversight urging the president of the United States to remove Inspector General Joseph V Cuffari from his position with the Department of Homeland Security Inspector General.

GLENN GROTHMAN:
OK.

STEPHEN LYNCH:
I'll -- Mr. Cuffari, our you currently -- another group that we work with very closely and continue to is the -- the Council of Inspectors

General. And they're a group that not only does their own independent work but also polices other inspectors general. Am I correct in saying that you are currently under investigation by the Council of Inspectors General on integrity and efficiency, is that correct, Mr. Cuffari?

JOSEPH CUFFARI:
You're correct, Mr. Lynch.

STEPHEN LYNCH:
What is the basis of that investigation? Could you share that with us?

JOSEPH CUFFARI:
I'm uncertain, since I'm under investigation, if I can share that in a public setting. I'd be happy to discuss it with you.

STEPHEN LYNCH:
Well, they -- they've made it -- they've made it public, so I'm not sure how -- how private this is. There are several allegations. One, as -- as the ranking member of this full committee indicated was your failure to promptly notify Congress of -- of crucial information on the Secret Service erasure of text messages related to the January 6th attacks on this Capitol.

That did happen. It did happen. And I witnessed Republicans and Democrats running for their lives, so anybody who says that did not happen, let's just disabuse that notion. But the -- the relationship of trust that we have had with our inspectors general have not -- have not been continued. I want to yield my remaining time to the ranking member.

ROBERT GARCIA:
Thank you, sir. Thank you. Oh.

GLENN GROTHMAN:
The time is up.

ROBERT GARCIA:
Yeah, I get it. Go ahead, sir.

STEPHEN LYNCH:
I got the -- sorry.

GLENN GROTHMAN:
OK. Kelly Armstrong?

KELLY ARMSTRONG:
Thank you, Mr. Chair. Your report states that frequent deployments to the southern border are affecting staffing levels at the northern border. This is an important issue to my home state of North Dakota. Businesses rely on customers from both sides of the Canadian and US border. Commerce doesn't stop at 5 PM when CBP closes a port of entry.

Crops still need to be planted, substantial detours to operate -- operating facilities significantly raise costs. After years of shortened operational hours, CBP finally extended hours at three ports of entry in North Dakota on a trial basis, but these hours are only temporary, while CBP evaluates vehicular traffic, which is not account for other ramifications, including the transfer of goods and services.

Lawful economic access to the United States should not be based on volume. It is the government's basic duty to maintain the northern border. And drawing down at the northern border to beef up the southern border does not justify shutting down North Dakota -- North Dakota's economic sector. DHS is not properly allocating resources.

And we talk about these things in large dollar amounts, but I'm just having to talk about what is actually in the grand scope of things, a fairly insignificant one. However, it would be significant at the northern border. One of your reports highlights that the ICE -- that ICE spent over $17 million for hotel space and services that largely went unused in 2021. Can you elaborate on how ICE managed to waste $17 million in taxpayer resources?

JOSEPH CUFFARI:
If you're speaking about the contract that was between DHS and the Endeavor's Corporation?

KELLY ARMSTRONG:
I am.

JOSEPH CUFFARI:
The contract required a minimum number of beds to be available to ICE during certain periods. And those beds would be paid for regardless of whether a migrant was actually staying in the room -- in the hotel room.

KELLY ARMSTRONG:
Were the beds ever used?

JOSEPH CUFFARI:
Not to my knowledge, no.

KELLY ARMSTRONG:
Why was ICE able to use sole source contracting and not award a contract based on an open competitive process?

JOSEPH CUFFARI:
Because the question that you just asked relates to an ongoing matter. And I'm not able to provide more sufficient information in this setting.

KELLY ARMSTRONG:
OK. If the company had no experience, why were they awarded the contract over more experienced companies?

JOSEPH CUFFARI:
Again, Congressman, the same answer as before.

KELLY ARMSTRONG:
So, my next question, who is -- there's an ongoing investigation, so hopefully somebody will be held accountable.

JOSEPH CUFFARI:
Sir?

KELLY ARMSTRONG:
Would $17 million help at the Northern border?

JOSEPH CUFFARI:
I believe it would help anywhere.

KELLY ARMSTRONG:
I mean, we don't have the volume that they have on the Southern border, everybody understands that. But we also move a lot of products that a lot of people need. If you like bread, you like what goes on between North Dakota and Canada. If you like, you know, to eat a hamburger, you care about what goes on in North Dakota and Canada.

I'm trying -- I'm just trying to understand where we end up and how we get to these places that we have these scenarios where we are paying for money. I mean, we've seen people all over the country, many in sanctuary cities, balk and revolt at the fact that we're moving migrants across and moving them out of a high-density area into other places.

When -- when we're talking about -- do we have any analysis at this point yet of what we're spending on hotel rooms and other facilities while we have $17 million worth of unused beds?

JOSEPH CUFFARI:
I believe, Congressman, we have an ongoing audit to look at the movement of migrants and what it's costing DHS to do that.

KELLY ARMSTRONG:
Thank you. Thank you. I would just say in -- when -- as we finish this off that we have to figure out a better way to do this. We have normal at the same time the level of frustration from my constituents that

exists when we have unfettered access, whether it's ports of entry, whether it's between ports of entry and the vast majority of illegal activity that is occurring.

And at the same time, economic sectors for northern border communities are absolutely being crushed. And it started with COVID, and it started with vaccine mandates, and it started with the -- and finally ended with the United States being the last essentially country in the civilized world that allowed -- that lifted those mandates.

And these are real world consequences. And when we talk about trust and government and talk about trust in these issues, when people see fentanyl flowing across the southern border ports of entry between ports of entry, we've had that debate a thousand times when we see people being released into the interior of the United States with court dates that don't exist for five, seven, nine years in advance.

And I got a farmer from Grano, North Dakota that can't get across the border after 5 PM because he -- because we don't have the resources to do it. The -- the frustration is real. And it exists all across the country. And exists as far away from the southern border as you could possibly be, which is North Dakota.

Thank you and I yield back sir.

GLENN GROTHMAN:
Mr. -- Mr. Moskowitz?

JARED MOSKOWITZ:
Thank you, Mr. Chairman. The border has been a problem for a long period of time because Congress has failed to pass comprehensive

immigration reform. It's not like this is a new issue. This is something that's been going on for decades here. It's been passed from one president to the next to the next. Is it possibly worse now?

Well, that's what happens when you have a problem that you don't fix for -- for two decades. You know, the same people who talk about the border, you know, it's not like they've come up with solutions. They complain. They get on Fox News every day. But it's not like we're having solutions, and so I want to ask a couple of questions because I'm frustrated with Homeland as well.

I mean, I have a -- I have folks back home who were raped by their nanny. She spent 20 years in jail in Florida. And all the family wanted to know is that when she was released, what was going to happen? That's it. She was a victim. She had a right to know. And I had even on her behalf, made connections with Homeland on this issue.

We were told, don't worry. We will make sure the family knows if she's deported or if we're keeping her, whatever the story is. Guess what? None of it happened. She -- the rapist was deported, and nobody knows what happened to her. She's not flagged in the system. And now that family, the girl who's now a mother of two has to be worried about where her rapist is. And so, I have a couple of questions because obviously there's complaints all around whether it's Secret Service or ICE. You know, Homeland was founded 22 years ago -- or 20 years ago after a national emergency.

It's got 22 agencies in it. I'm not going to list them all. They're all household names. Has Homeland become too big? Is it too big? Is it time to split Homeland up? Is it time to reform the -- the bureaucracy?

JOSEPH CUFFARI:

Congressman, let me first say that you and I did have a discussion about the individual who was convicted of rape. And we discussed the Crime Victims' Rights Act. And the prosecutor should have complied with that. I hope that that information was helpful that I supplied to you.

JARED MOSKOWITZ:
Well, that's a whole other issue because quite -- quite -- quite frankly, the rapist had more rights than the victim.

JOSEPH CUFFARI:
Yes, sir, I agree with you. I will say that Homeland Security, as the third largest department in the federal government is quite large. It was put together as you described.

JARED MOSKOWITZ:
You're almost as big as DoD.

JOSEPH CUFFARI:
Yes, sir, we're number three right behind DoD and Health and Human Services. It perhaps may require a look by this committee or others, maybe the Committee on Homeland Security to see sort of a look back to see if it's fulfilling the mission that it was intended to do. But that would be a decision for Congress and not for me as the inspector general.

JARED MOSKOWITZ:
So, you don't -- you don't have any suggestions on potential reforms or -- or opinions on whether you think the agency can still function with

22 agencies? I mean I hear it's kind of like when all the agencies get together with the secretary, it's like the Knights of the Round Table. They each give five-minute updates to the secretary and then the meeting's over.

JOSEPH CUFFARI:
I will share that from our experience of doing audits and inspections and even criminal investigations that silos of information remain to this day in DHS, which is presenting a problem for effective management.

JARED MOSKOWITZ:
Yeah, so what I would like to hear is I'd like to hear solutions to problems rather than continuing to gaslight issues at Homeland or an INS or Customs and Border, whatever it is. And I just don't -- I don't hear any solutions. And I think it's quite time we start looking at reform at Homeland. I'll yield the balance of my time to -- to the ranking member.

ROBERT GARCIA:
Thank you. Mr. Cuffari, in April 2022, I want to get back to something, the nonpartisan watchdog project on Government Oversight and this was mentioned by another member, broke a disturbing story that your office sought to censor findings of sexual harassment and misconduct at DHS. According to the draft report that we've obtained in the committee, 28,000 DHS employees were surveyed.

And more than 10,000 of the 28,000 reported experiencing sexual harassment and misconduct in the workplace. Yet the report was

shelved. Mr. Cuffari, did your report on the morale of CBP, which we've been discussing consider the effects of sexual harassment on employees?

JOSEPH CUFFARI:
I'm sorry, Ranking Member, what's the question?

ROBERT GARCIA:
Did you report on the morale of CBP or ICE employees consider the effect of sexual harassment and misconduct? I think the answer to that is actually no, and -- but would you agree that sexual harassment and misconduct are one factor that could actually impact morale?

JOSEPH CUFFARI:
It could be a factor certainly.

ROBERT GARCIA:
Thank you. And yet it was not considered in that report and so I just want to make that note. I also with the remainder of my time, just want to note that --

GLENN GROTHMAN:
Your time has expired.

ROBERT GARCIA:
I'll -- thank you, Mr. Chairman. I will -- I'll discuss it later.

GLENN GROTHMAN:
Mr. Sessions?

PETE SESSIONS:

Chairman, thank you very much. Mr. Cuffari -- Dr. Cuffari, welcome to the committee. I think it's interesting that our friends rather than asking pertinent questions about what your ideas have been in writing have been simply to attack you. I've been to the border top to bottom for a number of years. And went back and saw firsthand the piles of equipment that still sit there waiting for the wall to be built.

It was my understanding, this is not a question to you, but it's my understanding that was there to help the Border Patrol agents so that they were not overrun as they're being done now. It would allow them operational control of the border. That would mean that they could then follow the political will.

If we went from one president to another, we would effectively understand, I don't know about 100 percent, but a higher percentage of people who were coming in could control drug usage, could control people who might come to this country who were wanted or would be seen as wanting to harm our country. And these piles are still there requiring the Border Patrol as when I was there with our young chairman and our General Chairman Comer down in Yuma where we were in a bus.

There were 90 or so people from Cuba men, one Border Patrol agent, one female border Patrol agent whose job was to hustle and get her job done. And that was not to catch people that were running away. That was to hurry up and take them to processing because her boss or her boss's boss was being held accountable for how long it took them to hustle to do their job, to take these people in rather than protecting our border.

I am concerned that there is a staffing issue problem. We've spoken about it, you have today with understanding how we protect this country. Seemingly, you're being attacked about your oversight after things have occurred rather than your ideas. We know the borders are in trouble. We know that we have a problem with fentanyl, got-a-ways, drugs, people coming to this country, losing children, the government actually taking control of children and then losing them, them being let loose on the streets of Texas, Arizona, California.

People in California seem to be happy with it. People in Arizona, I'll let them speak for themselves. But in Texas, it is causing a huge problem so much so that our governor is transporting them where they want to go. Washington DC, New York City, Chicago. And now they're being attacked for doing what these people wanted.

I want you to know. This Congress views in the majority that you are doing your job. That you're being stretched to a political limit about reporting what is happening versus trying to toe the line of what this department wants to do. The Department of Homeland Security, including the Secret Service. You were a few minutes ago, literally they said you did not do your job in reporting to them.

Have you ever offered to come and meet with the minority, which was then the majority? Did you ever -- were you ever asked to come meet with them?

JOSEPH CUFFARI:
I volunteered. And I met with several members of this committee who are now minority members.

PETE SESSIONS:

Well, I would say to my friend, Congressman Lynch that if he feels like he's not getting what he needs from his vast service, which I am a friend of Stephen's and I appreciate him, I would encourage him to do that with this subcommittee to write the same letter to get an answer because I view that this department is failing to protect this country, which is its core mission.

Why it was established was not to let anybody come to this country, encourage them, wave them through and then lose them from within the -- the masses of millions that are coming. I'm concerned about rule of law. I'm concerned about the deaths. I'm concerned about even mid-sized cities receiving people who've come from a marketing organization of a cartel to distribute drugs all over this country.

They are openly allowing this. And the Democratic Party is right there with this administration to allow it to happen. I want to thank you for taking time to meet with us. I find you refreshing, but I also want you to know when our friends that are on the other side, the Democrat members of this committee wish to correspond.

I would encourage them to come. And we'll get them the same answer rather than an answer that they don't like. Thank you very much. I yield back my time, Mr. Chairman.

GLENN GROTHMAN:
Mr. Goldman.

DAN GOLDMAN:
Thank you, Mr. Chairman. Did I just hear you say that you offered to come and sit with members of the majority in the last Congress?

JOSEPH CUFFARI:
That's correct.

DAN GOLDMAN:
You did?

JOSEPH CUFFARI:
Yes.

DAN GOLDMAN:
And did you ever do that?

JOSEPH CUFFARI:
Yes.

DAN GOLDMAN:
With who?

JOSEPH CUFFARI:
Mr. Moskowitz, Ms. Porter --

DAN GOLDMAN:
--Mr. Moskowitz was not in Congress last Congress. I'm talking about this Congress. I said last Congress. You said last Congress. He asked you, last Congress, did you ever meet with the majority Chairman Thompson, Chairman Maloney, anyone?

JOSEPH CUFFARI:

I met -- I did meet with Chairman Thompson, did not meet with Chairwoman Maloney.

DAN GOLDMAN:
OK. On August 1st, 2022, Chairwoman -- former Chairwoman Maloney and former chairman, Mr. Thompson from the Homeland Security Committee requested that you provide all communications and documents related to your office's decision not to pursue missing Secret Service text messages related to the January 6th insurrection.

Did you ever provide that information to those committee chairmen?

JOSEPH CUFFARI:
I did, in an August 23rd, 2022 letter to both Congresswoman -- Chairwoman Maloney and to Chairman Thompson.

DAN GOLDMAN:
You wrote a letter. Did you provide all the communications and documents related to your decision?

JOSEPH CUFFARI:
I provided information that was requested and not particular documents.

DAN GOLDMAN:
OK, well, let's just -- let the record show that you did not actually provide the requested information. Did you -- were your deputy inspector general and your chief of staff requested to have transcribed interviews last August or last Congress as well?

JOSEPH CUFFARI:
Yes.

DAN GOLDMAN:
And did you allow them to undergo these transcribed interviews?

JOSEPH CUFFARI:
Because of ongoing investigations, I did not permit them to be interviewed by this body.

DAN GOLDMAN:
So, you just blanketly refused to permit them even though they could of course come in here and say that they can't answer specific questions related to ongoing investigations.

JOSEPH CUFFARI:
That's correct.

DAN GOLDMAN:
OK. You know, I find it remarkable that we are having this hearing, you know, with -- with someone with a very clear vendetta and political politicized approach to the job of an independent inspector general. If the point of your report and the point of this hearing is as my colleague from Texas just said, because we have a problem at the border we can all agree.

And if the morale is down because there are not enough agents and officers at the border, we can all agree. The sad reality is that my colleagues on the majority have no interest in any meaningful

immigration reform. They would prefer to hold hearing like this. And we have many of them in the Homeland Security Committee where they can talk about the problems.

They can accuse the Biden administration of -- make false allegations about all of their terrible policies and yet they don't want to actually do anything. We need more -- would you agree, we need more immigration judges to decide asylum cases, Mr. Cuffari?

JOSEPH CUFFARI:
That would be a decision that would rest with the Justice Department who has --

DAN GOLDMAN:
That's some in question. do you think it would help things at the border if we had more immigration judges to decide asylum claims faster?

JOSEPH CUFFARI:
More people will certainly help across the entire network.

DAN GOLDMAN:
That's right. And you know, I heard it -- it gets tiresome to continue to have these conversations. There is a tremendous migration issue in Central America. There are 2.4 million Venezuelans in Colombia. This is not particular to the United States. This is a problem that Congressional effort and oversight and legislation needs to correct.

Yet we are not doing that. And when you hear my colleagues on the other side of the aisle talk about all the problems with fentanyl and with got-a-ways and with smuggling, do you know what they don't

ever talk about? They don't ever talk about the tremendous exportation of American made guns to Mexican cartels that give them the power and authority to control the fentanyl trafficking into this country.

My colleague from Texas just listed a whole litany of things that are the problems we're having at the border and never mentions guns. HR 2. HR 2, Mr. Perry, [ph] was an immigration border security bill. It doesn't mention guns. It doesn't mention gun trafficking. It doesn't mention guns going from America to Mexico.

If you want to talk about immigration reform and you want to fix it at the border, come talk to us. Let's be real about how we can actually fix the border. I yield back.

GLENN GROTHMAN:
Mr. Biggs?

ANDY BIGGS:
Thanks, Mr. Chairman, thanks, Dr. Cuffar, for being here. You know, I do think it's interesting that the last gentleman was asking you about asylum and immigration courts, but that's not in your purview, right? That's DOJ. That's -- that's not DHS, right?

JOSEPH CUFFARI:
That's correct.

ANDY BIGGS:
Yeah, so that was odd I thought, but it was pretty consistent. Because I thought the ranking -- the ranking member who's sitting in there today rather dubious his own credibility is kind of dubious because he

-- he basically questioned -- he questioned this document, your document your report. But in so doing, he spent a good portion of his time lauding the Biden border policies.

When you start lauding the Biden border policies which is -- I don't care what the pre 42 surge was, we've gone back down to the typical Biden border crisis numbers. That's where we sit today. And that's about a fivefold increase over what Jay Johnson said was a crisis on the border. If you see a thousand a day, he says, yeah, that's a crisis.

Well, you've got about 5000 a day. And the gentleman from Long Beach says, whoa, we've got this thing back under control. Well, that -- the -- you don't. You just simply don't. But I will say this. Your report is consistent with -- with my on the ground experience and getting down to the border many, many times.

I've taken the -- the chairman down many times. I've been down there. I go down there. You just go down there. I don't take anybody with me. I'll park my car. I'll start walking along the border, see how long it takes for a Border Patrol agents to come. When they finally get there. I ask them how things are going, and they tell me, it ain't going good.

I said well, what -- what are your colleagues feel? Well, they feel -- they feel like they've been abandoned by this administration. The other thing I will say is you had survey responses from 16 percent of the entire force, is that right?

JOSEPH CUFFARI:
16 percent of the 57,000 employees in DHS, primarily ICE and CBP, who we surveyed.

ANDY BIGGS:
Yeah, Well, in my -- in my -- my studies, a large study was typically we thought anything over 350 to 500 was a large in study, 9000 would be pretty persuasive. He compared it to a Twitter survey. The only difference is you had a limited universe. And if you're going to make a claim, you might say selection bias because only the people that cared enough to respond responded.

But you had 9000, 16 percent respond. Well, let's take a look here just a little bit. So, can you discuss what steps your office takes when an audit or investigation is opened?

JOSEPH CUFFARI:
We notify the department through a transmittal memo of opening of a project, an audit or an inspection. We let them know that we will be looking for certain documents for some communication. And we set what's called an entrance conference with the department's liaison office and the components liaison office to begin our audit or inspection work.

ANDY BIGGS:
And when you request documents or information, what's the typical response time for an agency?

JOSEPH CUFFARI:
Normally, it's about 30 days to respond back to us.

ANDY BIGGS:
Is the DHS? Are they responsive Typically within 30 days?

JOSEPH CUFFARI:
They have been on certain occasions.

ANDY BIGGS:
What's their typical response time now?

JOSEPH CUFFARI:
Upwards of about -- there is one project that is 140 days that we've made our request and haven't gotten the information.

ANDY BIGGS:
So, do they give you a rationale for their five month delay?

JOSEPH CUFFARI:
Not in that particular case, but they have in others.

ANDY BIGGS:
Is -- is a rationale for delay that they give to you, are those -- are those allowed under the Inspector General Act?

JOSEPH CUFFARI:
The only exception to not providing the IG that I'm aware of in the IG Act is the secretary of the department would have to make a determination that for national security or not to compromise an ongoing investigation that the Department Secretary would then have to make that determination.

ANDY BIGGS:

And has Secretary Mayorkas made that determination and communicated that to you?

JOSEPH CUFFARI:
He would also have to communicate that to this -- this oversight committee as well.

ANDY BIGGS:
Has he communicated that to you.

JOSEPH CUFFARI:
No sir.

ANDY BIGGS:
He doesn't communicate that to us as far as I know. So, he's not complying with the requirements of the Inspector General Act. Is that fair to say?

JOSEPH CUFFARI:
Not to my knowledge.

ANDY BIGGS:
Well, my time is expired. And I told you I'd go by fast, but Mr. Chairman, thank you.

GLENN GROTHMAN:
OK, Congressman Ivey.

GLENN IVEY:

Thank you, Mr. Chairman. Good morning, sir.

JOSEPH CUFFARI:
Good morning, sir.

GLENN IVEY:
Now, Mr. Raskin was asking you about text messages with respect to January 6th. I had some questions about some messaging. I believe it was signal that was used, I think by you and some of your colleagues beginning around December 13th, 2020. And this is based on an affidavit that you filed yesterday in a -- in a case that's pending.

Do you recall filing the affidavit?

JOSEPH CUFFARI:
I do.

GLENN IVEY:
OK. And in the affidavit, you talked about how there was a time -- there was a time where you made a switch and others to using Signal. Do you recall that?

JOSEPH CUFFARI:
I recall at the direction of DHS Signal was placed on our government cell phones as a result of the SolarWinds compromise of the department's communication.

GLENN IVEY:
OK, and who was it specifically that directed the use of Signal?

JOSEPH CUFFARI:
I believe it was the chief information officer for the Department of Homeland Security.

GLENN IVEY:
OK, and so during that time period, you used signal for until early 2021 according to your affidavit?

JOSEPH CUFFARI:
I physically used Signal on one occasion in a two week period of time.

GLENN IVEY:
OK. Well, I'm not sure you said that in your affidavit, but there came a time where you stopped using it in early 2021 according to your affidavit.

JOSEPH CUFFARI:
That's correct.

GLENN IVEY:
All right. And Signal, you may know, is an application where in some instances it can automatically delete the communications that are exchanged on it.

JOSEPH CUFFARI:
I actually -- I don't know that.

GLENN IVEY:

All right, well, let me ask you this. As the inspector general, you're familiar with the Federal Records Act, right?

JOSEPH CUFFARI:
Yes.

GLENN IVEY:
All right. And so, you know, there's an obligation to preserve government official government documents. Is that correct?

JOSEPH CUFFARI:
That's correct.

GLENN IVEY:
All right. And electronic messaging is -- falls under that category, isn't that right?

JOSEPH CUFFARI:
Yes.

GLENN IVEY:
OK, now, according to your affidavit all of those -- whatever those messages were, were all deleted, is that correct?

JOSEPH CUFFARI:
No, that's incorrect.

GLENN IVEY:
OK, they're not preserved.

JOSEPH CUFFARI:
No, what I'm saying is that the one instance that I did use Signal, it was an oral communication telephone call with the members of the Department of Homeland Security. I believe it was their breach response team. That's the one and only instance that I ever used Signal.

GLENN IVEY:
OK, well, did your organization, did your department respond that none of the messages on Signal were preserved in the filing from yesterday from the US attorney's office?

JOSEPH CUFFARI:
I don't believe there were messages. There was an oral communication, not text messages or anything to my knowledge at least in my case. I only used it once as I described.

GLENN IVEY:
All right, well, let me read this to you. However, until that time, the Signal messaging application was not approved for use on DHS devices. However, I was one of a small number of users authorized to install the application on my OIG issued cell phone for the limited purpose of discussing via secure means through the response to the above-described apparent breach of DHS computer networks.

So that's the messaging you're talking about.

JOSEPH CUFFARI:

That's the oral communication, not a message. I just want to be clear with the committee.

GLENN IVEY:
OK, and then in the next paragraph down, you said no more than a few weeks after installing the Signal application, I deleted Signal from my OIG issued cell phone because I no longer had use for it. That's --

JOSEPH CUFFARI:
--That's correct. Yes.

GLENN IVEY:
OK. So, any messages that are unavailable were not based on you deleting anything? It's just they were not preserved in some way.

JOSEPH CUFFARI:
No. What I'm saying just to be clear, Congressman I did not use Signal to do messaging. I used it to do a telephone call at the request of DHS.

GLENN IVEY:
All right. And there was nothing -- nothing was done to preserve anything with respect to those telephone calls.

JOSEPH CUFFARI:
I don't -- unless we had a Title three or some other electronic intercept in my oral communications, I don't believe there would be a message that would be preserved.

GLENN IVEY:

All right, let me ask you this question. With respect to the January 6th documentation from the -- the Secret Service, all right and there was a 14-month delay before you notified Congress that -- of that issue with respect to the deletion of the Secret Service text?

JOSEPH CUFFARI:
Just to be clear, I answered that question previously and it's not 14 months. We learned that DHS deleted all the email -- all the text messages from the Secret Service phones. We learned that in February of 2022.

GLENN GROTHMAN:
OK.

GLENN IVEY:
All right, thank you, Mr. Chair. I yield back.

GLENN GROTHMAN:
Now I have Mr. Perry.

SCOTT PERRY:
Thanks, Mr. Chairman. Mr. Cuffari, as often is the case I'm left with correcting, clarifying the record in these hearings. Comprehensive immigration reform as decried by my colleagues on the other side of the aisle is generally known and perceived, rightly so as amnesty for breaking America's laws. Therefore, that -- they lament the fact that we're not -- we're not interested in allowing people that come across our border illegally bringing fentanyl engaged in human trafficking

gang activity, we're not interested in providing amnesty for the lawlessness.

So no, there's not going to be comprehensive -- comprehensive immigration reform because that's what it includes. Just let's let the record reflect that. Regarding my colleague who complained about the rape of his constituent and the fact that it seemed like the person that was deported had more rights than she did, I would just remind my colleague on the other side of the aisle that they support that.

They've supported that in all the cities that they run across the country and at the southern border. They support that lawlessness. And so, it's rich for him to come in and complain on her behalf when he and his party have been aiding and abetting it for years upon years. And Mr. Goldman says that we don't want to talk about guns.

We're happy to talk about fast and furious where that party, his party took guns across the border to Mexican cartels that were used to kill Americans trying to protect this border. But they didn't want to talk about it. Eric Holder didn't want to talk about it, was held in contempt. And they still don't want to talk about it. And it's rich for Mr. Goldman to talk about you promoting falsehoods while he sat at the front and center of impeachment of a president based entirely on falsehood, which he was well aware of at the time and is well aware of right now.

I know you're laughing it up over there, aren't you? You're laughing it up because you're full of perfidy lies and more lies and more lies. Mr. Cuffari, it's been alleged or veered that more people would make it better, more people -- more Border Patrol agents. Mr. Goldman said, more judges. More would make it better.

Here's what also would make it better, I think. If less people were allowed to cross the border illegally, would that make it better?

JOSEPH CUFFARI:
That certainly would help, yes.

SCOTT PERRY:
If there were less people crossing illegally, would we need more judges to deal with those less people crossing illegally?

JOSEPH CUFFARI:
You would need more judges to process people who were claiming asylum.

SCOTT PERRY:
Right, but they're crossing illegally and claiming asylum based on their illegal crossing. The point is, yeah, we can hire as many as we want to. But as long as you're going to let more and more and more unstoppable people coming across the border, illegal, you're never going to have enough. The solution is not to hire more people.

The solution is to stop the people from coming across illegally. That's the solution. To get you to say that the solution is actually to hire more people, belies the fact that people are coming across illegally because of the policies of my friends on the other side of the aisle and no other reason for no other reason.

Was the border ever manageable before without hiring more people? Let me ask you that question, was it ever manageable before with -- without hiring more people?

JOSEPH CUFFARI:
According to my personal experience, it was manageable starting in 1994.

SCOTT PERRY:
You did a survey, 9300 and change. 16 percent of the total population surveyed much more than most of the polls that this operation runs to determine public opinion about who's going to vote for what. And you're being criticized here today for the survey. And some Border Patrol agents said that local management would transport migrants out of the facility before a visit and return them after the visit ended.

Why would they do that? Why would that happen?

JOSEPH CUFFARI:
I can't answer that, sir. That's --

SCOTT PERRY:
--I don't know. hazard a guess.

JOSEPH CUFFARI:
I didn't -- let me say in my experience, I didn't see that happen.

SCOTT PERRY:
Well, how would you see it happen? Like how would you see it happen if they move them before you got there and moved them back after you left? How would you see it happen?

JOSEPH CUFFARI:

We also do unannounced inspections when they don't know that we're coming to a particular detention.

SCOTT PERRY:
Right. But so you don't know that, right? But these are Border Patrol agents saying it. Our Border Patrol agents signing up for overseeing meal delivery, restocking snacks and hygiene products. Is that why people want to secure the border? Is that the job that they're looking for when they sign up and say I want to be a Border Patrol agent?

I want to replenish the snack supply for people coming across illegally. Is that like the number one request on their list of job assignments?

JOSEPH CUFFARI:
That's the frustration that they described. Thank you. Mr. Chairman, I yield the balance.

GLENN GROTHMAN:
Mr. Frost.

MAXWELL FROST:
Thank you, Mr. Chair. Mr. Cuffari. The Office of Personnel Management's Federal Employee Viewpoint Survey is a tool for federal agency employees to provide feedback on how engaged they are in their work. When people are engaged at work, they're more effective at their jobs. They perform the work more efficiently.

And part of a principal's job is keeping their team engaged. In other words, the Federal Employee Viewpoint Surveys can reveal what leadership techniques are working for agency executives and which ones are not. In fact, Mr. Cuffari, you regularly tout your office's

federal employee viewpoint score since you've taken over as inspector general.

In May 2022, in a letter to this committee, you highlighted portion portions of your office's survey data from 2020 and 2021 that apparently show improvement in employee engagement. And in an email you sent to all your staff in December 2022 that I have here, you again highlighted improvements in your agency's 2022 survey data.

Mr. Chair, I ask unanimous consent to enter into the record and email between Inspector General Cuffari and his office lauding the importance of Federal Employee Viewpoint Survey Scores.

GLENN GROTHMAN:
Without objection.

MAXWELL FROST:
Thank you. Mr. Cuffari, do you agree that the Federal Employee Viewpoint survey data are important indicators for how an agency is performing?

JOSEPH CUFFARI:
Yes.

MAXWELL FROST:
That's right. And in the past, you have said that they document progress. However, in the most recent survey data shows that a majority of the people in your office do not believe that their senior leadership maintains high standards of honesty and integrity. 66 percent of your employees. Mr. Cuffari, are you a senior leader?

JOSEPH CUFFARI:
Yes.

MAXWELL FROST:
Mr. Cuffari, are you aware that nearly half of the employees in the Office of Inspection and Evaluations, fear retaliation, fear retaliation, if they disclose suspected violation of laws, rules or regulation?

JOSEPH CUFFARI:
You're asking if I'm aware of it --

MAXWELL FROST:
--Are you aware of that? Are you aware of the fact that 40 percent compared to 43 percent who don't?

JOSEPH CUFFARI:
No sir.

MAXWELL FROST:
Yes. That's a reality through the survey that you tout. Mr. Cuffari, how about the fact that -- do you know about the fact that less than half of your staff in the Office of Council feel like they can safely disclose suspected wrongdoing?

JOSEPH CUFFARI:
Yes.

MAXWELL FROST:

You are aware of that. Only 45 percent feel like they can disclose that. I find this incredibly alarming, especially when coupled with the fact that you've run away from any efforts to conduct oversight in your office using taxpayer money, $1.4 million to contract a law firm to run away from accountability on your part.

And you know, I've seen weak leaders run from accountability before. In my home state of Florida, right now, Governor Ron DeSantis is saddling taxpayers with billions in legal fees to defend his unlawful policies with his intimidation, his removal of dissenting officials. He's taking major losses on the backs of taxpayers because private sector officials called out his disastrous agenda.

And the Florida legislature has approved a whole new budget to pay for all of his legal losses, but he doesn't want to answer for that. And I admit at this point, many of us realize that DeSantis gets an F in accountability. However, inspectors general are meant to serve as a safe haven for whistleblowers.

How is a whistleblower supposed to trust your office when a member's -- when members of your own staff don't even feel safe to report wrongdoing themselves? I yield to, Mr. Ivey.

GLENN IVEY:
Mr. Cuffari, I'm sorry, I had one -- one question left or a couple of quick questions left. This is with respect to text messages. With respect to your government issued iPhone.

JOSEPH CUFFARI:
Yes.

GLENN IVEY:

Did you delete text messages from your government issued iPhone?

JOSEPH CUFFARI:

Yes.

GLENN IVEY:

OK, and when was that?

JOSEPH CUFFARI:

It's my normal practice to delete text messages.

GLENN IVEY:

So you delete them on an ongoing basis?

JOSEPH CUFFARI:

That's correct.

GLENN IVEY:

All right. Are they stored anywhere? Not sure?

JOSEPH CUFFARI:

I'm not sure.

GLENN IVEY:

OK, well, it's safe to say based on that at the time you deleted them, you didn't know if they were stored in an alternative place, is that fair?

JOSEPH CUFFARI:
Correct. It's also fair to note that I don't use my government cell phone to conduct official business.

GLENN IVEY:
All right, so your testimony today is that these -- these text messages that you have deleted or at least some of them had no federal information or any information that would be implicated under the Federal Records Act.

JOSEPH CUFFARI:
Under the Federal Records Act, that's correct.

GLENN IVEY:
OK, and so they have no connection to official business at all?

JOSEPH CUFFARI:
Nothing that would be considered a federal record.

GLENN IVEY:
Well, are you using your federal phone for personal purposes then?

JOSEPH CUFFARI:
No sir.

GLENN IVEY:
All right, then what's the purpose for using your government issued phone?

JOSEPH CUFFARI:
To conduct business.

GLENN IVEY:
But not -- not federal business related to your department.

JOSEPH CUFFARI:
Not federal business considering that they are records. It's a clearly defined statute that places requirements on what a federal record actually is.

GLENN IVEY:
All right. Just a final question, so you've made a conscious decision with the documents or the messages you've deleted that the federal records laws did not apply to the -- the messages you deleted.

JOSEPH CUFFARI:
The messages that I deleted, I did not consider those to be federal records and therefore I deleted them, that's correct.

GLENN IVEY:
OK, thank you, Mr. Chairman.

GLENN GROTHMAN:
Ms. Mace?

NANCY MACE:

Thank you, Mr. Chairman. I didn't know we were going to be debating 2024 Presidential candidates this morning, but welcome to Congress.

JOSEPH CUFFARI:
Thank you.

NANCY MACE:
In 2019, there were just under 17,000 border agents handling an average of 71,000 monthly encounters. As of 2022, border agents decreased to 16,654, but average monthly encounters rose to around 184,000 encounters. In that time, there's no coincidence there was an over 300 percent increase in known got-a-ways.

Border agent row is low. Border agent retention is low. And this administration's ability to follow the rule of law is simply in the gutter. I'm very proud of South Carolina. At Fletsea, [ph] we train Border Patrol agents. I've been to one of their graduations. I know that they put a lot on the line. They work hard.

And so, the purpose of this hearing today is to talk a little bit about that. Speaking on the condition of anonymity, one agent said Under Biden, things are the worst they have ever been by far. Agents are calling in all the time. You always hear it doesn't matter, what's the point. Agents are afraid of ending up on the news for doing their job or getting in trouble for just doing their job and there is no morale.

Mr. Cuffari, yes, or no. Is this the same type of sentiment you found when visiting the southwest border from our Border Patrol agents?

JOSEPH CUFFARI:

Border Patrol agents have expressed similar comments to me and to my staff.

NANCY MACE:
Do you think it's the worst it's ever been for their morale?

JOSEPH CUFFARI:
It's been -- it's been significantly increased since I started with my federal civil service in 1993.

NANCY MACE:
OK, my next question, do you find agents have become apathetic as their concerns and workplace issues are not being addressed or are they sort of apathetic when you've talked to them?

JOSEPH CUFFARI:
They express frustration. I must say that the Border Patrol and the Immigration and Customs Enforcement agents do a great job every single day of the year and they're just frustrated.

NANCY MACE:
They work very hard, don't they?

JOSEPH CUFFARI:
They do.

NANCY MACE:
When you speak with Border Patrol agents, do you -- do they blame agency leadership? Do they blame the administration or both or the

status of the border? I mean, how -- who do they blame for this?

JOSEPH CUFFARI:
They express frustration with both.

NANCY MACE:
All right, Mr. Cuffari, I just want to thank you for your time today. I appreciate your work regarding the sad state of affairs that is the Border Patrol agents morale. I think it's very clear and evident today, it doesn't take us 65-page report to realize something is wrong as self-evident, it's undeniable.

Thank you for answering my questions today. While my colleagues on the other side of the aisle knew this was a problem, their goal has always been to punish or push our border patrol issues to the brink of unsustainability. And that's where we are today. What we were doing along our southern border is completely unsustainable.

It's a consistent strategy, never let a good crisis go to waste. And unfortunately, this plan has become com at the expense of deadly journeys for migrants vilification of our border agents and a less safe country for American citizens. Last year or last Congress when the left had the House. They had the Senate.

They had the White House. On this committee, I remember having one hearing about the border and it was about the northern border where we were getting less than 10,000 illegal immigrants coming across the northern border every year. And today, you know, we saw even last year and over the last the growth of illegal immigrants coming and crossing over the southern border daily.

It's far surpasses. And I hope that Republican leadership can hold this administration accountable. Thank you and I yield back my time, Mr. Chairman.

GLENN GROTHMAN:
Mr. LaTurner?

JACOB LATURNER:
Thank you, Mr. Chairman, I appreciate it. And thank you, Mr. Cuffari, for being here today. America's Border Patrol agents put their lives on the line to secure our border and halt the flow of illegal immigrants, drugs, weapons and human trafficking from entering our country. For far too long, under this administration, these brave men and women have been understaffed and without adequate resources to do their job effectively.

And that needs to change. Between fiscal years 2020 and 2022, your recent report found the number of Border Patrol agents guarding the southwest border fell slightly while monthly encounters with illegal aliens spiked by a staggering 450 percent. Your report also found that FY 2022 set the record for migrant deaths with more than 800 migrants dying while attempting to cross the southwest border.

These are not just statistics. They represent a very real crisis at the border that remains unaddressed by the Biden administration. Unsurprisingly, 88 percent of ICE and CBP agents you surveyed said their duty locations are not adequately staffed to handle the surge of people streaming across our border.

And to further compound the problem. 24 percent of respondents said they plan to leave their respective agencies within the calendar

year. It's a dangerous and demanding job in the first place. And it's clear from your reporting that morale amongst our border agents is lower than ever before. One agent testified that due to a significant shift in immigration policies from the prior administration, it feels like they are trying to do their job quote "with one hand tied behind their back." Mr. Cuffari, amongst the agents you surveyed, which policy changes did they say most hindered their efforts to protect our border?

JOSEPH CUFFARI:
The unknown, lawsuits. There's just a whole wide variety of concerns.

JACOB LATURNER:
Would the current number of agents be better able to maintain control of the Southwest border if Remain in Mexico is still in place?

JOSEPH CUFFARI:
More individuals certainly would help stem the flow of illegal immigration.

JACOB LATURNER:
I understand that, but the Remain in Mexico policy, if that was still in place, would that help them maintain control of the southwest border from the people that -- your observations?

JOSEPH CUFFARI:
I can't speak to the policy decisions.

JACOB LATURNER:

You concluded your report with three recommendations to remedy the staffing shortage at CBP and ICE. The Biden administration agreed with two of them but rejected the first under the premise the agency's staffing models are already sufficient. And that your report did not recognize all the DHS initiatives to support its personnel.

Do you agree with that assessment?

JOSEPH CUFFARI:
No.

JACOB LATURNER:
According to your report between fiscal year 2019 and 2022, there was a 303 percent increase in known got-a-ways. Is this occurring because there are no agents available to respond?

JOSEPH CUFFARI:
According to the agents who were on the border, yes.

JACOB LATURNER:
Your report details that at one Southwest border station, 15 percent of got-a-ways in a five-day period occurred because no agents were available to respond. How common of an occurrence is that?

JOSEPH CUFFARI:
It's -- to my knowledge, it's a weekly occurrence.

JACOB LATURNER:
What impact does the staffing shortage have on efforts to combat human trafficking, drug smuggling and other illicit activities?

JOSEPH CUFFARI:
A negative impact.

JACOB LATURNER:
Given the increasing demand for cybersecurity expertise, what steps is the department taking to recruit and retain individuals with specialized skills in this area?

JOSEPH CUFFARI:
I believe the department implemented an HR program to provide additional funding like an enhancement to basic salary for those types of career fields, those jobs that relate to that.

JACOB LATURNER:
Are there any partnerships or collaborations with educational institutions or industry to enhance recruitment that you know of specifically?

JOSEPH CUFFARI:
Not that I'm aware of, no.

JACOB LATURNER:
OK. Your report also detailed CBP and ICE's use of details and overtime as a staffing mechanism, how efficient is this from a budget perspective? And is this an approach that is the best use of taxpayer money?

JOSEPH CUFFARI:

It's driving a huge cost in terms of expenditures of money to the department.

JACOB LATURNER:
My time is about to expire, but I just want to thank you for being here today. I know you've put up with a lot from the other side of the aisle. And the reason that I'm so pleased with you being here and the way in which you've conducted yourself is because you've given short answers that center on the facts and the truth as you have observed it and I appreciate that.

You can ask any of my colleagues up here, you know you're getting the runaround when answers are really, really long and don't allow for you to -- to get to all the questions that you have. So, I appreciate you being here today. And I yield back, Mr. Chairman.

JOSEPH CUFFARI:
Thank you.

GLENN GROTHMAN:
Thank you. Ms. Porter?

KATIE PORTER:
Hello, Inspector General Cuffari, I want to ask you about the Office of Intelligence and Analysis. Are you aware of a domestic intelligence program under OIA that allowed Homeland Security individuals to interview just about anyone in the United States to gather human intelligence?

JOSEPH CUFFARI:

I believe we have an audit into that.

KATIE PORTER:

You have an ongoing audit?

JOSEPH CUFFARI:

I believe.

KATIE PORTER:

When was it initiated?

JOSEPH CUFFARI:

We're going to have to get back to you, ma'am.

KATIE PORTER:

Have you conducted any other oversight of this program, the overt human intelligence collection program specifically?

JOSEPH CUFFARI:

Not that I'm aware of, no.

KATIE PORTER:

Are you aware of this Politico article from March 6th of this year? DHS Has a Program Gathering Domestic Intelligence and Virtually No One Knows about it.

JOSEPH CUFFARI:

I'm not certain that I have seen that one.

KATIE PORTER:
Mr. Chairman, I'd like to enter this into the record.

GLENN GROTHMAN:
Without objection.

KATIE PORTER:
This program gives government officials broad discretion to interview any civilian for any reason that they want. Does it concern you that some employees working in this program are so worried about the legality of their actions that they wanted legal liability insurance?

JOSEPH CUFFARI:
That would certainly be a concern.

KATIE PORTER:
Are you aware of the workings of this program?

JOSEPH CUFFARI:
No.

KATIE PORTER:
Given that it made national news multiple times, why have you not undertaken an audit of this program in the past?

JOSEPH CUFFARI:
As I mentioned, I'm going to have to get back to you, ma'am, about when we did or didn't open an audit. I'm not certain.

KATIE PORTER:
Let me -- as you go about that work, let me give you some facts. There was a survey in 2020. There were 126 respondents. So this is three -- three years ago. Half of the respondents said they'd alerted managers of their -- about their concerns that their work involved activity that was inappropriate or illegal.

Are you aware of this survey?

JOSEPH CUFFARI:
No.

KATIE PORTER:
The slide deck put together by the department responded to this fact that half of all respondents said their work -- they were concerned their work was inappropriate or illegal. The slide deck said, quote, "There is an opportunity to work with employees to address concerns they have about the appropriateness or lawfulness of a work activity." Do you think it's appropriate for your agency to work with employees about their concerns about lawfulness or do you think that your office should be making sure the program is actually lawful?

JOSEPH CUFFARI:
The program that you described, it appears to be at Maine DHS and not within the Office of the Inspector General.

KATIE PORTER:
Correct, but you, as inspector general, sir, is your job not to super -- not to do oversight of Maine DHS?

JOSEPH CUFFARI:
Oh, most certainly.

KATIE PORTER:
OK. So I'm asking you about a program of DHS, and I'd like to know why you haven't conducted any oversight of it at this time.

JOSEPH CUFFARI:
I thank you for making us aware of it.

KATIE PORTER:
You were not aware.

JOSEPH CUFFARI:
I was not.

KATIE PORTER:
Are you aware that this program was interviewing incarcerated individuals without their counsel present?

JOSEPH CUFFARI:
No, ma'am.

KATIE PORTER:
Does that -- is that constitutional?

JOSEPH CUFFARI:
It's unconstitutional.

KATIE PORTER:
So can I have you promise that you will conduct an investigation into this program?

JOSEPH CUFFARI:
You have my commitment that if we don't have an ongoing audit, we will look into the matter that you're describing.

KATIE PORTER:
Thank you very much, Mr. Cuffari. I yield back.

GLENN GROTHMAN:
OK, in closing, I'd like to thank our panelists once again for their important and -- or our panelist for his important and insightful testimony. I'll yield to Ranking Member Garcia for his closing remarks.

ROBERT GARCIA:
Thank you, Mr. Chairman. I want to thank all of my colleagues today for their hard work and certainly to holding our witness accountable for the long history of partisan and improper behavior, for the mishandling of the January 6th investigation and for his inability to do his critical important job to its standards.

I want to remind the committee that this whole hearing is premised on a non-statistical survey and an opinion article that's disguised as serious oversight. The report is and I want to quote "again a non-statistical survey" end quote that quote "again cannot be projected to the entire population of CBP and ICE law enforcement officers and

agents." This is again a report that would not hold muster in any serious survey work.

Now without making this a hearing -- without making this hearing a lesson on typical methods and data integrity, if you're not willing to put in place data controls or use the foundational basics of statistics, you're left with the equivalent of a Twitter poll or a Yelp review. Now I spent some time studying statistical methods when I did my doctoral work and this work in this report would never be accepted in a basic stats class.

This isn't about data from the Department of Homeland Security, as you claimed in response to my earlier question, this is about the methods that you chose to publish publicly to push a political argument. This report indicates that you knew the fundamental problems with the report, yet you published it anyway.

Now our committee relies on the work of dedicated inspector general's to root out against waste, fraud and abuse. I also just want to note, and this was actually a very important note from earlier in the hearing that I am extremely concerned that today, in front of our committee, that -- and by the way that oversees the Federal Records Act that you admitted to deleting federal records based upon your own determination.

That should concern the chairman and this entire committee. Now, I personally have no confidence in your ability to hold up the mission that you are intended to do. Now, coming here with a study that doesn't meet the basic standards of data reliability by your own admission should be an embarrassment. An inspector general who does not understand his own duties who resists basic Congressional

oversight, who is deleting federal records, who is under investigation and who has lost the faith of his workforce, has no business serving.

And before I close, Mr. Chairman, I ask unanimous consent to include in the record a letter to both chairmen, the chairman and myself from the Project on Government Oversight dated June 6th, 2023, that speaks to the continued concerns with the inspector general and how his inability to perform his job is preventing independent oversight.

And I also asked unanimous consent to include into the record a letter from September 20th, 2022, from concerned DHS staff representing every program office at every level to the president detailing the IG's troubling management of the office. And I want to quote "his disastrous leadership." With that, I yield back.

GLENN GROTHMAN:
OK. So ordered. I think we have kind of a lack of common sense here. As Congressman Biggs said he's had me down on the border, probably 6 or 7 times by himself. I've been down there at other times. We have a situation, which depending on the metric context at the border, got-a-ways at the border, people crossing into the border unaccompanied minors.

The number of people coming here is say 8 to 10 times what it was two years ago. So common sense will tell you what the morale is of the Border Patrol. When you have that many more people coming across, you obviously have a hard time doing your job. A lot of these people are little -- are little children.

When I'm down there, the Border Patrol complains about having to kind of be a babysitter instead of doing what they signed up to be,

which is a law enforcement agency. They uniformly, by the way, say the biggest problem is not the lack of personnel though they say the lack of personnel is a big problem. The biggest problem is the policies of the Biden administration and that they got rid of the Remain in Mexico policy.

And no matter how many people they have down there as long as they have this asylum policy, a huge number of people are going to come in here. Another thing that frustrates them is the degree to which the Mexican cartels run the border. Last time I was down there me and Congressman Biggs ran into 21 people coming here from Mexico.

The reason they came there and the Border Patrol all knew it is because the Border Patrol was going to have to process 21 people including two kids under the age of one. And while they were busy processing them, it opened that segment of the border because they were understaffed to people crossing the border with illegal drugs, which leads to over 100,000 Americans dying every year of illegal drugs.

Because we don't have enough people to both process people and continue to guard the border. I'll remind the minority that 9000 people were surveyed here. But you don't need 9000 people if you're done at the border. If you talk to ten or 20 or 30 Border Patrol agents, you all get the same thing. They're woefully understaffed.

And the Biden administration, their policy when they got rid of stay in Mexico was -- apparently they don't care how many people are coming here. And that results in low morale because they signed up to guard our border and they're not allowed to guard our border when you have over 100,000 people coming here.

And over time, the arrogance of the people coming here just keeps getting worse. I'm struck by Border Patrol telling me people complaining that they've got concert tickets to go somewhere next week. And come on, Border Patrol. Let's go, let's go, let's go. And it's probably true, but that's what we have coming across.

It's so automatic. So, in any event, I hope in the near budget we get more Border Patrol agents down there so you can't just send a few families across, tie up the Border Patrol and if people coming across with drugs that are killing Americans. I also hope somebody in the Biden administration cares about the fact that our -- our -- getting rid of the stay in Mexico policy has made it so difficult for these guys to do their jobs.

But in any event, I thank you for being here. I remind -- with that and without objection, all members will have five legislative days within which to submit materials and submit additional written questions for the witnesses who -- which will be forwarded to the witness for their response. If there's no further business, without objection, this subcommittee stands adjourned.

List of Panel Members and Witnesses

PANEL MEMBERS:
REP. GLENN GROTHMAN (R-WIS.), CHAIRMAN

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REP. VIRGINIA FOXX (R-N.C.)

REP. CLAY HIGGINS (R-LA.)

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REP. JASMINE CROCKETT (D-TEXAS)

REP. ROBERT GARCIA (D-CALIF.)

REP. JAMIE RASKIN (D-MD.), EX-OFFICIO

WITNESSES:

DEPARTMENT OF HOMELAND SECURITY INSPECTOR GENERAL JOSEPH CUFFARI

Testimony & Transcripts

Complete written testimony for this event June 6, 2023

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From: [redacted]
To: Integrity-WG
Subject: {EXTERNAL} Supplemental Response by [redacted]
Date: Monday, August 21, 2023 12:11:42 PM
Attachments: 2023.08.21 [redacted] Supplemental Response.pdf

This email originated from outside of CIGIE. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon

Please find attached the supplemental response by [redacted] to your letter of April 3, 2023.

Regards,
[redacted]

[redacted]

[redacted]

[redacted]

Sent via Electronic Mail to Integrity-WG@cigie.gov

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street NW, Suite 825
Washington, DC 20006

Re: Integrity Committee Cases 22-046 & 22-069

Dear Chair Winters:

We provide this supplemental response on behalf of [redacted] to the Integrity Committee's (IC) April 3, 2023 letter. On August 9, 2023, the Chief Information Officer for the Department of Homeland Security (DHS) issued clarifying guidance about preservation of text messages on government devices. We enclose a copy of the guidance with this letter.

Consistent with [redacted] explanation in [redacted] May 12, 2023 letter to the IC, the guidance makes clear that DHS employees need only preserve text messages that "meet the definition of a federal record" and need not preserve every text message sent on a government device. The guidance explains that many text messages "are not considered federal records because they do not contain evidence of the decisions, procedures, operations, or other activities of the agency." If the information or actions in the text messages are "documented in other places (such as in email)," then the employee need not preserve the text message.

This new guidance further supports [redacted] reasonable belief that Inspector General Cuffari's phone did not contain texts that were federal records subject to a preservation obligation. First, [redacted] understood from [redacted] discussions with IG Cuffari that the deleted texts concerned matters such as suggesting to a colleague that they meet for coffee, telling someone that he is running late, or sending best wishes to an employee who has fallen ill. As noted in our earlier letter, [redacted] cannot recall any circumstance where [redacted] personally observed IG Cuffari making any agency decision, commitment, or action in a text message. Second, [redacted] recalled that IG Cuffari would communicate about agency business by e-mail or via documents that [redacted] personally reviews and approves—thus ensuring that the information or actions were documented elsewhere and negating the need to preserve the text message as well.

If you have any further questions, please do not hesitate to contact me.

[redacted]

Enclosure: August 9, 2023 DHS Guidance

[redacted]

From: DHS Records Management
Subject: Frequently Asked Questions (FAQ) on Text Message Records Retention
Date: Wednesday, August 9, 2023 1:41:48 PM
Attachments: DHS Form EM210.pdf

On Behalf of [redacted]
Chief Information Officer & Senior Official Performing the Duties of the Deputy Under Secretary for Management

Colleagues,

Last week, my office issued a one-time attestation form to you as a senior executive or political appointee. Thank you to those who have acknowledged your responsibility to review, identify, and maintain text messages that meet the definition of a record. As a reminder for those who still need to do so, please complete, sign, and email the attached form to dhsrecordsmanagement@hq.dhs.gov **by September 29, 2023.**

To assist those of you who are still reviewing the attestation requirement, I am providing answers to frequently asked questions we have received below:

Question: Is this a new requirement?

Answer: No. As a DHS employee, you have a legal obligation to retain and preserve federal records under the Federal Records Act (FRA) 44 USC § 3301 to include text messages.

-

Question: Why do we have to do this One-Time attestation now?

-

Answer: To ensure all federal records including text messages are maintained in accordance with the FRA.

Question: Do I have to retain ALL of my text messages?

Answer: No. Only text messages that meet the definition of a federal record should be maintained in accordance with this requirement, DHS records policies, and NARA regulations. Many text messages, even those that mention DHS business, are not considered federal records because they do not contain evidence of the decisions, procedures, operations, or other activities of the agency. Instead, they only reference information, decisions, or actions that are documented in other places (such as in email). If, however, a text message is the way you received information that led to a decision or action, or communicated a decision or action you were taking, then it is a record.

Here are some examples of what qualifies as a federal record and what does not:

- **Official Communications**: Text messages exchanged between federal employees or officials related to official business or government matters can be considered federal records. This includes messages discussing policies, procedures, decisions, or other matters related to government operations.

Example of a record: The closeout meeting with the interview team is scheduled for tomorrow at 10 AM. I have decided that we will move forward with hiring the program manager we interviewed yesterday.

Example of a non-record: The interview is scheduled for tomorrow at 10 AM.

- **Legal and Regulatory Matters**: Text messages that pertain to legal or regulatory issues, such as discussions about pending lawsuits, investigations, compliance matters, or contractual agreements, may qualify as federal records.

  Example: We received a request for the documents related to the environmental impact assessment. We will not answer any questions pertaining to this subject.

  Example of a non-record: Please check your email regarding the pending environmental impact assessment.

- **Policy Development and Implementation**: Text messages related to the development, review, or implementation of government policies, regulations, or directives are often considered federal records.

  Example: The Secretary's office has approved the new cybersecurity policy 101-8613. Please inform all department heads and start implementation by next week.

  Example of a non-record: The new cybersecurity policy has been posted on the website.

- **Emergency Response and Crisis Management**: Text messages exchanged during emergency response situations, crisis management, or disaster recovery efforts by federal agencies can be classified as federal records.

  Example: Emergency alert: Category 3 hurricane expected to make landfall in the southeast region. Activate disaster response teams 3-6 and coordinate with FEMA ASAP.

  Example of a non-record: NOAA is predicting an active hurricane season this year.

- **Decisions and Authorizations**: Text messages that document decisions made by federal employees or officials, or those that provide authorization for specific actions or expenditures, may be deemed federal records.

  Example: Approval granted for the release of funds to initiate the infrastructure project. Notify the contractors and commence work per the agreed schedule.

  Example of a non-record: Please check your email. Approval was granted yesterday for the infrastructure project.

Thank you again for your diligence and commitment to meeting your records management obligations. If you have any questions, please reach out to dhsrecordsmanagement@hq.dhs.gov.

[redacted]
Chief Information Officer & Senior Official Performing the Duties of the Deputy Under Secretary for Management
U.S. Department of Homeland Security

April 3, 2023

Via Email

[redacted]

Integrity Committee Cases 22-046 and 22-069: Request for Response

Dear [redacted]

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged with receiving, reviewing, and investigating, where appropriate, allegations of misconduct made against an Inspectors General (IG) and designated members of an IG's staff. The IC takes action on allegations of wrongdoing that involve abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such persons.

The IC has received allegations against you for an alleged substantial violation of law, and conduct undermining independence or integrity. These allegations were outlined in a complaint the IC recently received.[1] The allegations are that:

1. During November 2022, a Department of Homeland Security, Office of Inspector General (DHS OIG) attorney asked IG Cuffari to produce text messages from his government issued iPhone in order to respond to a FOIA request. He then allegedly "indicated the text messages were deleted, in their entirety, from [his] government issued iPhone, and that the relevant policy for capturing such messages was not followed." The complaint alleges that the attorney in question concluded that those deleted text messages "very likely contained federal records, and therefore that the

[1] The IC has incorporated these new allegations into our existing open matter IC22-046/069, as they are factually related.

destruction of these was required to be reported to the National Archives and Records Administration." The complaint alleges that you were "notified in writing about this records deletion in January 2023 by one of [your] attorneys and took no action to investigate this matter further, or to report the incident to the National Archives and Records Administration, as required."

2. As of mid-March 2023, you have made no report to the National Archives and Records Administration (NARA) "concerning the destruction of these records, as legally required."

Pursuant to IC procedures, we are reaching out to you to seek your perspective on the issues raised above. The IC has yet to fully deliberate on the merits of this matter and believes it would be helpful to provide you the opportunity to respond to these allegations, so you might offer any background, context, or supporting evidence (if available) prior to the IC's deliberations. The IC notes that there appears to be a legal obligation to report the destruction of government information to NARA.[2] In addition to explaining the full context surrounding this alleged event, to include your role in it, if any, the IC would like you to specifically address the following issues in your response:

1. Do you agree with the allegation #1's assertion that IG Cuffari had a government issued iPhone during the time period alleged and that his phone contained text messages? Do you agree that the text messages were government records as defined by applicable law or regulation?[3] Please also explain whether the events described in allegation #1 above are accurate, to the best of your knowledge, or to the extent they are inaccurate. In sum, please provide clarifying information to correct or supplement the above-listed version of events. Finally, please describe the nature of the purported FOIA request and the content of the text messages that were allegedly deleted.

2. If IG Cuffari's text messages were deleted, please explain (to the best of your knowledge) who deleted them, if they were deleted manually, to include whether IG Cuffari did so upon advice, and if so, who gave that advice. If the deletion of the text messages was pursuant to advice to IG Cuffari from staff or counsel at DHS OIG, please provide all documents that memorialize or contain that advice or a summary of the verbal communications from staff or counsel on that topic. If IG Cuffari did not delete them personally, please explain how the text messages came to be deleted.

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[2] See 44 U.S.C. 3106 and 36 CFR 1230.14, stating "[t]he agency must report promptly any unlawful or accidental removal, defacing, alteration, or destruction of records in the custody of that agency to NARA…" and spelling out what details must be included in such a report.

[3] See 44 U.S.C. 3301 and 36 CFR 1220.18, stating that a record or Federal record includes "all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of the data in them."

3. If IG Cuffari's text messages were deleted, was he advised by anyone to report this deletion to NARA? If so, please fully explain, to include who, when, and in what format was this advisory communication(s) made? If written, please provide the communications.

4. Provide any and all DHS OIG policies and procedures, and any rules, regulations or guidance, regarding retention, handling or deletion of text messages on DHS OIG government issued phones.

5. If text messages that qualified as federal records were deleted from IG Cuffari's government issued iPhone as alleged, please explain how the deletion of text messages and subsequent reporting actions was or was not in compliance with the relevant reporting requirements, DHS OIG policies and procedures, rules, regulations or guidance documents, including, but not limited to, your obligations under 44 U.S.C. 3105 and 36 CFR 1230.10 to prevent unlawful or accidental destruction of records.[4] Further, whether or not you have made the necessary report to NARA to date. And if you have not made such a report, please explain why.

The IC respectfully requests your response to these allegations within 20 days of receipt of this letter.

While the IC recognizes that you may need some assistance in gathering this information, please be advised that seeking assistance from fact-witnesses in your response to the IC may raise questions about the intent or effect of such contacts, which may lead to other issues. Therefore, we recommend reaching out to the IC Working Group should you have any questions regarding this request. You may submit your response and any questions you have regarding this request to Integrity-WG@CIGIE.GOV.

Sincerely,

K. H. Winters

Kevin H. Winters
Chairperson
Integrity Committee

[4] See 44 U.S.C. 3105 and 36 CFR 1230.10, stating "[t]he heads of Federal agencies must: (a) prevent the unlawful or accidental removal, defacing, alteration, or destruction of records… (b) Take adequate measures to inform all employees and contractors of the provisions of the law relating to unauthorized destruction, removal, alteration or defacement of records (c) Implement and disseminate policies and procedures to ensure that records are protected against unlawful or accidental removal, defacing, alteration and destruction; and (d) Direct that any unauthorized removal, defacing, alteration or destruction be reported to NARA."

From: Integrity-WG
To: [redacted]
Cc: Integrity-WG
Subject: IC22-046.069 Request for Response [redacted]
Date: Monday, April 3, 2023 10:15:56 AM
Attachments: IC22-046.069 Request for Response [redacted] pdf

---

Dear [redacted],

Please see the attached request from the Integrity Committee (IC). Please submit a response and any supporting documents to the IC no later than **April 23, 2023**.

Thank you.

Sincerely,
Integrity Committee Working Group

[redacted]

May 12, 2023

Sent via Electronic Mail to Integrity-WG@cigie.gov

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street NW
Suite 825
Washington, DC 20006

Re: Integrity Committee Cases 22-046 & 22-069

Dear Chair Winters:

We provide this response on behalf of [redacted] to the Integrity Committee's (IC) April 3, 2023 letter.

Introduction

[redacted] submission of a substantive response to the allegations in the IC's April 3, 2023 letter is not a concession by [redacted] that the IC's structure and processes are lawful. Rather, in the spirit of the obey-now-grieve-later principle, *see Garrison v. Department of Justice*, 72 F.3d 1566, 1576 (Fed. Cir. 1995), and with the aim of avoiding a full investigation, [redacted] is cooperating with the IC's inquiry. This cooperation is not a waiver of any right or remedy [redacted] may have in any other forum.

[redacted] Background

[redacted]

[redacted]

[redacted]

Timeline of Relevant Events

For ease of review, below is a timeline of relevant events related to IG Cuffari's text messages.

Date	Event
February 2, 2021	Alejandro Mayorkas is confirmed by the U.S. Senate to the position of Secretary, Department of Homeland Security.
July 5, 2022	The Project on Government Oversight (POGO) files a request under the Freedom of Information Act (FOIA) seeking e-mails and text messages from IG Cuffari and other DHS OIG personnel related to 18 topics.
August - October 2022	The controversy surrounding the Secret Service's deletion of text messages spurs several conversations between IG Cuffari and [redacted] about the rules governing retention of text messages sent or received on government phones. In those conversations, [redacted] reminded IG Cuffari that under DHS policy, agency business should not be conducted by text; that unlike other electronic communications, such as e-mail and Teams chats, text messages are not automatically captured on DHS OIG servers; and that if a unique record is inadvertently created by text, it should be preserved in some other format, such as by screenshotting the text and saving the screenshot to the network.[1]
December 15, 2022	An IT Specialist extracts data from IG Cuffari's phone.
December 16, 2022	[redacted], [redacted] a Teams message stating, "Hi [redacted] I need to urgently speak with you about the retention of text messages in POGO. I have some very serious concerns."
December 16, 2022	At a meeting following [redacted] Teams message, [redacted] tells [redacted] that the IT Specialist determined that there were no text messages on IG Cuffari's phone [redacted] asks [redacted] whether IG Cuffari uses the text feature on his phone, and [redacted] responds in the affirmative.
Week of December 19, 2022	[redacted] and IG Cuffari meet to discuss the IT Specialist's determination. IG Cuffari states that he deleted texts from his phone. IG Cuffari further states that he does not conduct DHS OIG business by text and describes his typical texts as dealing with things such as suggesting to a colleague that they meet for coffee, telling someone that he is running late, or sending best wishes to an employee who has fallen ill.
December 21, 2022	[redacted] meets with [redacted].[2] [redacted] explains the DHS OIG policies concerning conducting agency business by text and retention of electronic records. [redacted] opines that IG Cuffari's phone likely contained texts that constituted federal records, and further states that a destruction of federal records must be reported to the National Archives & Records Administration (NARA).

[1] In March 2023, DHS OIG deployed software that automatically captures texts on DHS OIG phones. However, that software was not in use during the period that gave rise to the events in this matter.
[2] The calendar invite for this meeting includes [redacted]. [redacted] does not recall whether [redacted] attended the meeting that day.

Applicable Law, Regulation, and Policy

Relevant to the IC's inquiry are several statutes and regulations, as well as other policy guidance.

Definition of a "Record"

Section 3301 of Title 44 defines federal records as only those materials that are "appropriate for preservation . . . as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them." DHS Policy Directive 141-03 (Feb. 23, 2018), *Electronic Records Management Updates for Chat, Text, and Instant Messaging*, advises employees that a "record" is "[a]ny communication in which an Agency decision or commitment is made or where an action is committed to, that is not otherwise documented, needs to be captured." (Attached as Exhibit A.)

Preservation of Records

Federal regulations require that the heads of Federal agencies must "[p]revent the unlawful or accidental removal, defacing, alteration, or destruction of records. . . Records must not be destroyed except under the provisions of NARA–approved agency records schedules or the General Records Schedules issued by NARA." 36 C.F.R. § 1230.10(a).

However, NARA guidance contains an exception for "transitory" records. NARA's General Records Schedule 5.2: Transitory and Intermediary Records permits the destruction of "[t]ransitory records," including "messages coordinating schedules, appointment, and events" when they are "no longer needed for business use." (Attached as Exhibit B.)

Related to the NARA guidance, DHS OIG Directive No. OIG-140-00 (Nov. 4, 2015), Section IV.B.2, *Records and Information Management Program*, advisees that DHS OIG employees should "not use instant messaging (e.g., text or Lync) to document business decisions and activities." It mandates that "if instant messaging is inadvertently used for this purpose, [the user] should maintain the message in another electronic format." (Attached as Exhibit C.)

Reporting of Destruction of Records

Federal law mandates reporting of certain matters to NARA, providing that the "head of each Federal Agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency." 44 U.S.C. § 3106(a). Likewise, the regulations state that the "heads of Federal Agencies must . . . [d]irect that any unauthorized removal, defacing, alteration, or destruction [of records] be reported to NARA." 36 C.F.R. § 1230.10(d).

Discussion

As explained below, [redacted] cannot be faulted for not reporting an alleged destruction of records.[3]

I.

[redacted] reasonably believes that IG Cuffari's phone did not contain federal records that must be preserved.

Based on [redacted] conversations with IG Cuffari in 2022, several months before the IC issued its April 3, 2023 letter, [redacted] reasonably believes that IG Cuffari's deleted text messages did not constitute federal records that must be preserved under any federal law or regulation, including 44 U.S.C. Chapter 31 and its accompanying regulations, or under the pertinent DHS OIG policies and procedures. [redacted] believes that IG Cuffari understood DHS OIG Directive No. OIG-140-00 (Nov. 4, 2015), and DHS Policy Directive 141-03 (Feb. 23, 2018), and his obligation not to conduct official agency business by text message.

[redacted] has no reason to doubt IG Cuffari's description of the types of messages he sends and receives by text. Based on IG Cuffari's description, these messages would not constitute "evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government," *see* 44 U.S.C. § 3301, or "communication in which an Agency decision or commitment is made or where an action is committed to," *see* DHS Policy Directive 141-03 (Feb. 23, 2018). As noted above, IG Cuffari described his texts as dealing with things such as suggesting to a colleague that they meet for coffee, telling someone that he is running late, or sending best wishes to an employee who has fallen ill.

In [redacted] experience, OIG decisions, actions, and commitments are documented in files maintained by auditors, inspectors, the budget office, procurement personnel, HR staff, attorneys, criminal investigators, and others. None of these decisions, commitments, or actions are accomplished by or recorded in text messages. [redacted] cannot recall any circumstance where [redacted] personally observed IG Cuffari making any decision, commitment, or action in a text message. On the contrary, [redacted] recollection is that IG Cuffari would communicate about agency business by e-mail or via documents that he personally reviews and approves. As a result, [redacted] did not have any personal knowledge that IG Cuffari deleted a text message containing a federal record as defined by 44 U.S.C. § 3301.

[3] DHS OIG Directive OIG-140-00 provides at section IV.C. that a destruction of records should be reported to the DHS Headquarters Records Officer, who will then notify NARA.

II.

[redacted] reasonably believed that the text message at issue was "otherwise documented" within the agency.

[redacted] told [redacted] in late 2022 that [redacted] believed IG Cuffari's phone contained "records" in texts and that the texts had been deleted. [redacted] understanding seems to be based on [redacted] review of texts from another phone, one of which was a message from that user to IG Cuffari suggesting that DHS OIG should apply more pressure on a DHS component to make a particular named individual available for an interview in connection with an inspection. For two reasons, [redacted] disagrees with [redacted] conclusion.

First, according to DHS policy, an electronic message should be preserved if it is evidence of where "an Agency decision or commitment is made or where an action is committed to." DHS Policy Directive 141-03 (Feb. 23, 2018), at 2. It is far from clear that an employee's suggestion that DHS OIG should apply more pressure to a DHS component to make someone available for an interview is an agency "decision or commitment." Nor would this suggestion be considered the agency committing to an "action."

Second, DHS policy requires that a text message be preserved *only if* the decision or commitment is "not otherwise documented." *Id*. In the one example of a possible "record" identified by [redacted], there existed separate e-mail traffic among DHS OIG senior staff (including [redacted]) that discussed the need to secure the individual's cooperation in an interview. This discussion culminated in a letter from IG Cuffari to the component head — also preserved in appropriate files — stating that under the IG Act, the component is required to make its employee available for an interview. Thus, the decision, commitment, or action at issue in the supposedly deleted "record" is "otherwise documented"; there is no separate legal obligation to preserve the text message.

To be clear, [redacted] was not aware of the content of any text message that IG Cuffari may have deleted before [redacted] brought this one particular message to [redacted] attention.[4] Even after [redacted] identified the potential issue, [redacted] had only second-hand information about it. [redacted] thus reasonably concluded that [redacted] need not report the possible deletion because DHS policy implementing federal records laws does not require that this particular text message be preserved.

[4] [redacted] knowledge of the contents of IG Cuffari's phone is limited. [redacted] does not recall ever viewing a text on IG Cuffari's phone documenting agency business that was not otherwise documented.

III.

Applicable law and regulations do not require [redacted] to report every time [redacted] hears about an allegation of record destruction.

By statute and regulation, an agency is required to report an unauthorized destruction of records to NARA. 44 U.S.C. § 3106(a); 36 C.F.R. § 1230.10(d). An agency is not required to report a *possible* destruction of records or the destruction of something that *might* have been a record concerning agency business that *might* not have been "otherwise documented." Simply put, [redacted] has no direct knowledge that any text on IG Cuffari's phone was an agency "record" that must be preserved. [redacted] therefore is not required to report the deletion of texts to the DHS Headquarters Records Officer for reporting to NARA.

Responses to the IC's Specific Questions

The IC posed several questions in its letter, each of which is addressed below.

1. Do you agree with the allegation #1's assertion that IG Cuffari had a government issued iPhone during the time period alleged and that his phone contained text messages?

Answer: Yes, IG Cuffari had a government-issued iPhone during this time. [redacted] would occasionally receive text messages from IG Cuffari and so [redacted] knew that IG Cuffari would send text messages from this phone. [redacted] cannot answer the question about whether the phone "contained" text messages at any point in time.

2. Do you agree that the text messages were government records as defined by applicable law or regulation? Please also explain whether the events described in allegation #1 above are accurate, to the best of your knowledge, or to the extent they are inaccurate. In sum, please provide clarifying information to correct or supplement the above-listed version of events.

Answer: This question is addressed above in Section I.

3. Please describe the nature of the purported FOIA request and the content of the text messages that were allegedly deleted.

Answer: [redacted] does not have any knowledge about the content of the text messages that were allegedly deleted, other than what [redacted] told [redacted]

4. If IG Cuffari's text messages were deleted, please explain (to the best of your knowledge) who deleted them, if they were deleted manually, to include whether IG Cuffari did so upon advice, and if so, who gave that advice. If the deletion of the text messages was pursuant to advice to IG Cuffari from staff or counsel at DHS OIG, please provide all documents that memorialize or contain that advice or a summary of the verbal communications from staff or counsel on that topic. If IG Cuffari did not delete them personally, please explain how the text messages came to be deleted.

Answer: [redacted] does not know who or how any text messages were deleted. [redacted] did not advise IG Cuffari to delete any text messages. As explained above, however, IG Cuffari explained during a meeting in mid-December 2022 that he deleted texts from his phone and that he did not conduct DHS OIG business by text. He also described the type of matters that would be discussed in text messages.

5. If IG Cuffari's text messages were deleted, was he advised by anyone to report this deletion to NARA? If so, please fully explain, to include who, when, and in what format was this advisory communication(s) made? If written, please provide the communications.

Answer: [redacted] did not know about the possible deletion of any text messages until [redacted] heard about these allegations from [redacted] did not have sufficient facts to advise IG Cuffari about reporting anything to NARA and does not know if anyone else advised IG Cuffari with respect to reporting it to NARA.

6. Provide any and all DHS OIG policies and procedures, and any rules, regulations or guidance, regarding retention, handling or deletion of text messages on DHS OIG government issued phones.

Answer: The relevant policies are quoted above and attached to this letter.

7. If text messages that qualified as federal records were deleted from IG Cuffari's government issued iPhone as alleged, please explain how the deletion of text messages and subsequent reporting actions was or was not in compliance with the relevant reporting requirements, DHS OIG policies and procedures, rules, regulations or guidance documents, including, but not limited to, your obligations under 44 U.S.C. § 3105 and 36 CFR § 1230.10 to prevent unlawful or accidental destruction of records. Further, whether or not you have made the necessary report to NARA to date. And if you have not made such a report, please explain why.

Answer: As explained above, based on [redacted] limited first-hand knowledge, [redacted] did not know that there had been an actual deletion of any agency records that required reporting to NARA. This question assumes that such a report is "necessary," and [redacted] does not have sufficient information to draw that conclusion.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

[redacted]

[redacted]

Enclosures: Exhibits A-C

Exhibit A

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

Issue Date: 02/23/2018

Policy Directive 141-03

MEMORANDUM FOR: Component Heads

FROM: Claire M. Grady 2/23/18
Under Secretary for Management

SUBJECT: Electronic Records Management Updates for Chat, Text, and Instant Messaging

The Presidential and Federal Records Act Amendments of 2014 (Public Law 113-187) enacted on November 26, 2014, expands the definition of federal records to include all recorded information, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form.

Much like in-person or telephonic conversations, business communications created and transmitted between Department employees that include substantive information about agency business, policies, and activities made via chat, text, or instant message may be considered federal records and must be preserved. DHS employees must take appropriate steps to establish and maintain a separate record of the communication that may be considered federal records. All DHS business transactions by electronic means are required to comply with the Department's records management policies. For more information about what constitutes a federal record, please refer to Title 44, United States Code, Chapter 33, Section 3301 and the Records and Information Management Program's Frequently Asked Questions page and the enclosed attachment, "Documenting Electronic Messages and Verbal Communications."

In order to comply with federal law, applicable regulations, policy, and DHS Directive 141-01, the Department has implemented the following electronic records management guidance for the use of chat, text, or instant messaging:

- All DHS business transactions by electronic means are required to comply with the Department's records management policies. DHS employees should take steps to establish and maintain federal records when conducting business using chat, text, or instant messaging.
- All internal DHS chat/messaging systems (i.e., Lync, Skype, or other tools) must display a banner/disclaimer prohibiting the system to be used to formally transact agency business or to document the activities of the organization.

If you have any questions, visit the DHS Records and Information Management (RIM) site or, contact [redacted], Office of the Chief Information Officer, phone: [redacted], email: [redacted]@hq.dhs.gov.

Attachment: Documenting Electronic Messages and Verbal Communications

What is an "electronic message"?
Electronic messages include a range of communications from text to chat to IM (instant messages). They reside and are exchanged on agency networks and devices, on personal devices, or they can be hosted by third-party providers.

What is a "verbal communication"?
Verbal communications include telephone conversations, voicemail messages (or series of voicemails), a formal meeting, or even an informal chat with a coworker in the hallway.

The Department must capture and manage these records in compliance with Federal records management laws, regulations, and policies.

What kind of verbal communications or electronic messages might be considered a record?
Any communication in which an Agency decision or commitment is made or where an action is committed to, that is not otherwise documented, needs to be captured. For example:

- A meeting or conference call where a decision is made, if formal meeting minutes or notes are not taken.
- A text or telephone call giving guidance to a member of the regulated community.
- A telephone call responding to a member of the public about DHS policy.

What is the best way to capture conversations that are records?

- Write a memo to the file. Be sure to include:
  - Date and time of the communication
  - Type of communication (e.g., text, voicemail, telephone call)
  - Context of the message or conversation (electronic messages)
  - Participants
  - Subject
  - Details on any decisions or commitments (verbal communications)
  - Corresponding threads that precede a communication and provide more background

Does this mean that I have to write a transcript of every conversation or copy every text message?
No, not all electronic messages or verbal communications are records. Only write a memo to the file if one is needed to document your activities as a federal employee, contractor, and not otherwise captured.

How can I get additional guidance?
If you have policy questions about electronic messages or verbal communication records, contact your Component or the DHS Records Officer. You can find additional guidance in the following publications:

- DHS Instruction 141-01-001, "Records and Information Management"
- Documenting Your Public Service, National Archives and Records Administration

Exhibit B

GENERAL RECORDS SCHEDULE 5.2: Transitory and Intermediary Records

This schedule covers records of a transitory or intermediary nature. Transitory records are routine records of short term value (generally less than 180 days). Intermediary records are those involved in creating a subsequent record. These records do not document significant decisions or actions an agency takes.

Note that this schedule does not cover original hardcopy still pictures, graphic materials or posters, aerial film, maps, plans, charts, sound recordings, motion picture film, or video recordings that are scheduled as permanent or unscheduled and that have been converted to an electronic format. Electronic versions of special media records such as these often do not adequately replace the original and therefore the original records may not be destroyed as "input records."

Item	Records Description	Disposition Instruction	Disposition Authority
010	**Transitory records.** Records required only for a short time (generally less than 180 days) **and** that are not required to meet legal or fiscal obligations, or to initiate, sustain, evaluate, or provide evidence of decision-making. Records include, but are not limited to: • messages coordinating schedules, appointments, and events • transmittal documents such as e-mail, letters, cover memos, and facsimile cover sheets that do not provide evidence of approval, concurrence, or decision-making, or include substantive comments • received copies of circulated internal information such as agency instructions, notifications, circulars, newsletters, and email blasts to employees • messages received from agency distribution lists or listservs • "to-do" or task lists and assignments	**Temporary.** Destroy when no longer needed for business use, or according to agency predetermined time period or business rule.	DAA-GRS-2017-0003-0001
020	**Intermediary records.** Records of an intermediary nature, meaning that they are created or used in the process of creating a subsequent record. To qualify as an intermediary record, the record must also not be required to meet legal or fiscal obligations, or to initiate, sustain, evaluate, or provide evidence of decision-making. Records include: • non-substantive working files: collected and created materials not coordinated or disseminated outside the unit of origin that do not contain information documenting significant policy development, action, or decision making. These working papers do not result directly in a final product or an approved finished report. Included are such materials as rough notes and	**Temporary.** Destroy upon verification of successful creation of the final document or file, or when no longer needed for business use, whichever is later.	DAA-GRS-2017-0003-0002

	calculations and preliminary drafts produced solely for proof reading or internal discussion, reference, or consultation, and associated transmittals, notes, reference, and background materials.
	• audio and video recordings of meetings that have been fully transcribed or that were created explicitly for the purpose of creating detailed meeting minutes (once the minutes are created)
	• dictation recordings
	• input or source records, which agencies create in the routine process of creating, maintaining, updating, or using electronic information systems and which have no value beyond the input or output transaction:
	  ○ hardcopy input source documents where all information on the document is incorporated in an electronic system (See Exclusion 1 and Note 1)
	  ○ electronic input source records such as transaction files or intermediate input/output files
	• ad hoc reports, including queries on electronic systems, whether used for one-time reference or to create a subsequent report
	• data files output from electronic systems, created for the purpose of information sharing or reference (see Exclusion 2)
	
	Exclusion 1: This item does not allow destruction of original hardcopy still pictures, graphic materials or posters, aerial film, maps, plans, charts, sound recordings, motion picture film, or video recordings once they are digitized. Agencies must follow agency-specific schedules for these records. If the records are unscheduled, the agency must submit a schedule for them.
	
	Exclusion 2: This item does not include the following data output files (agencies must follow agency-specific schedules for these records, except for the final bullet, which the GRS covers in another schedule):
	• files created only for public access purposes
	• summarized information from unscheduled electronic records or inaccessible permanent records
	• data extracts produced by a process that results in the content of the file being significantly different from the source records. In other words, the process effectively creates a new database file significantly different from the original
	• data extracts containing Personally Identifiable Information (PII). Such records require additional tracking and fall under GRS 4.2, item 130 (DAA-GRS-2013-0007-0012)		

	Note 1: An agency must submit a notification to NARA per 36 CFR 1225.24(a)(1) prior to destroying hardcopy input records previously scheduled as permanent. An agency must schedule the electronic version of unscheduled hardcopy input records prior to destroying the input record. **Legal citations:** 36 CFR 1225.22 (h)(2); 36 CFR 1225.24 (a)(1)		

Exhibit C

DIRECTIVE

SUBJECT:	DIRECTIVE NUMBER:
Records and Information Management Program	OIG-140-00
DISTRIBUTION:	DATE ISSUED:
All DHS OIG Employees and Contractors	**November 04, 2015**

I. Purpose

This directive establishes the Department of Homeland Security (DHS) Office of Inspector General (OIG) Records and Information Management (RIM) Program and the policies governing the program and DHS OIG records.

DHS OIG records are critical information assets that belong to the public and ensure the organization functions efficiently and effectively. DHS OIG's RIM Program serves a number of purposes including:

- Supports DHS OIG program and administrative missions by documenting its organizational structure, actions, decisions, and essential business transactions.
- Enables DHS OIG to respond to Freedom of Information Act (FOIA) requests, Congressional inquiries, and litigation discovery requirements.
- Preserves organizational memory and assists DHS OIG officials and their successors in making informed decisions.
- Ensures controls are implemented to safeguard against the unauthorized destruction and removal of records, which can result in disciplinary action.
- Protects essential/vital information and provides continuity in the event of a disaster.

II. Scope

This directive applies to all records created or received by DHS OIG employees and contractors (together referred to as "personnel" here after) regardless of medium.

III. Authorities

A. 44 USC Chapters 21, 29, 31, 33, 35, and 36; *Federal Records Act of 1950, as amended*

B. 36 CFR, Chapter XII, Subchapter B, Records Management

C. 36 CFR Part 1223, Managing Vital and Essential Records 41 CFR, Subtitle C, Chapter 102, Part 102 – 193 "Creation, Maintenance, and Use of Records

D. OMB/NARA Memorandum M-14-16, *Guidance on Managing Email,* 9/15/2014

E. OMB/NARA Memorandum M-12-18, *Managing Government Records,* 8/24/2012

F. OMB Circular A-130, *Management of Federal Information Resource*, 11/28/2000

G. DHS Directive 141-01, *Records and Information Management*, 8/11/2014.

H. DHS OIG –Disposition Authority for Investigative Case Files and Electronic Data System, job number N1-563-07-5, 10/11/2007

I. DHS OIG –Disposition Authority for Reports, Work papers, Correspondence, and Other Records, job number N1-563-09-10, 4/30/2009.

J. 5 USC § 552a, *Privacy Act of 1974, as amended*

K. 5 USC § 552, *The Freedom of Information Act*, as amended

L. 44 USC § 35, *Paperwork Reduction Act*, as amended

IV. Policy

A. DHS OIG records must be managed, safeguarded, and maintained throughout their lifecycle according to:

1. Applicable statutory and regulatory requirements,
2. National Archives and Records Administration (NARA) records disposition schedules, and other applicable NARA guidance,
3. DHS and DHS OIG policy and procedures.

B. The DHS OIG RIM Program is intended to promote efficient and effective RIM practices and to ensure personnel preserve records that document the execution of DHS OIG's mission, activities, and business decisions. As such, DHS OIG personnel must:

1. Adequately and properly document DHS OIG programs, activities and decisions, and maintain the records in accessible paper files or designated shared electronic drives, information systems, and electronic records management systems (ERMS).
2. Not use instant messaging (e.g., text or Lync) to document business decisions and activities. If instant messaging is inadvertently used for this purpose, maintain the message in another electronic format (e.g., as an email or Microsoft Word document) for record keeping purposes.
3. Follow approved DHS OIG File Plans to group, maintain, store, and archive Federal records in an organized and uniform manner to ensure records can be easily accessed.

The current DHS OIG File Plan aligns with DHS OIG records schedules that govern (1) audit and inspection reports, supporting documentation and work papers, correspondence, policy and procedural guidance, and other records maintained by various DHS OIG offices; and (2) investigative files and information maintained in the Office of Investigation's Enforcement Data Systems, (EDS).

The DHS OIG File Plan will be expanded as needed to incorporate all DHS OIG records (paper and electronic).

You may access the DHS OIG File Plan by clicking on the link below.
DHS OIG File Plan

4. Permanently preserve records designated as historically significant by NARA and temporarily preserve all other records according to the timeframes established in NARA records schedules.
5. Not destroy Federal records prematurely.
6. Maintain unscheduled records until NARA approves a records retention (disposition) schedule. Unscheduled records must be treated as permanent until a final disposition is approved.
7. Secure and safeguard records to protect the legal interest of the Federal Government and individuals affected by its activities, and to prevent unauthorized use.
8. Segregate non-records and personal papers from Federal records for storage purpose (i.e., non-records/personal papers should not be preserved with Federal records or filed according to the DHS OIG File Plan).
9. Keep personal papers to a minimum and destroy them when convenient.
10. Identify, preserve, and protect records to include temporary, permanent, and vital records (as defined in 36 CFR).
11. Take mandatory RIM training annually and other RIM training as deemed necessary by DHS OIG Office Heads.
12. When departing DHS OIG, only remove Federal records with DHS OIG Office of Counsel's prior permission. (Please see DHS OIG RIM Program Handbook, 140-00-01, for procedures and instructions on how to request Counsel's permission. Personnel should also notify their supervisor when seeking permission to remove records.)
13. By December 31, 2016, store and manage all emails that are Federal records (permanent and temporary) electronically.
14. Not use unauthorized personal, non-government email or text accounts to conduct DHS OIG business. Exception: Non-government emails and text accounts may be used in authorized undercover operations.

15. By December 31, 2019, store and manage all permanent Federal records (i.e., electronic and those converted to electronic medium) in designated DHS OIG ERMS. (This may require records to be printed to transfer them from one system to the ERMS.)

16. Be subjected to criminal penalties under 18 USC § 2071 for the willful and unlawful concealment, destruction, damage, removal, or mutilation of Federal records. The maximum penalty is a $250,000 fine, 3 years in prison, or both. These penalties also apply for attempts at such actions.

C. DHS OIG must report incidents of unauthorized destruction of Federal records to the DHS Headquarters Records Officer, who will notify NARA's Office of the Chief Records Officer for the U.S. Government.

V. Responsibilities

A. The **Inspector General** has delegated authority for DHS OIG's RIM Program to the **Assistant Inspector General for Management (AIGM)** and the Office of Management (OM).

B. The **AIGM** has delegated responsibility for the program to the DHS OIG-wide Records Officer and the OM Planning and Compliance Division.

C. The **DHS OIG-wide Records Officer**, also known as the Chief Records Officer, shall oversee and coordinate all aspects of the DHS OIG RIM Program on behalf of the AIGM, and work with all OIG offices, Office-wide Records Coordinators, and subject matter experts to implement the program and issue policy and guidance. The OIG-wide Records Officer shall also assess DHS OIG offices' compliance with program requirements annually including training requirements.

D. **DHS OIG Office Heads** shall:

1. Ensure the DHS OIG RIM Program is implemented by their office,
2. Monitor their office's compliance with program requirements by ensuring periodic records reviews are conducted,
3. Designate an Office-wide Records Coordinator to work with the DHS OIG-wide Records Officer to execute the program, and
4. For each field office location, designate Office Records Custodians to aid the Office-wide Records Coordinator execute the program. Offices may decide not to designate Records Custodian(s) if they do not have field offices.

E. **Office-wide Records Coordinators** shall work directly with the DHS OIG-wide Records Officer to implement the DHS OIG RIM Program for their respective office including ensuring records are properly accounted for, filed, archived, and transferred to NARA, and periodic records reviews are conducted.

F. **Office Records Custodians** shall work directly with their office's Office-wide Records Coordinator to implement the DHS OIG RIM Program for their field office or location.

G. The **Director of the OM Information Technology Division** or **a designee** shall:

1. Work with the DHS OIG-wide Records Officer to implement and maintain an ERMS that complies with NARA's requirements for electronic recordkeeping systems;
2. Implement and maintain proper recordkeeping procedures for existing information systems and daily backups of electronic records stored in DHS OIG information systems, network drives, and other electronic data collecting mechanisms;
3. Notify the OIG-wide Records Officer of proposed or anticipated change to DHS OIG systems, networks, and other mechanisms that store electronic records; and
4. Provide guidance to the OIG-wide Records Officer on information system security for storing and transferring electronic records

H. The **Counsel to the Inspector General** or **a designee** shall:

1. Upon request by a departing employee, advise the OIG-wide Records Officer whether identified Federal records can be removed by DHS OIG personnel.
2. Provide guidance to the OIG-wide Records Officer on protecting records that include Personally Identifiable Information. (Privacy guidance is posted on OIGCentral under Policy and Guidance, Management, Privacy & Information Safeguards.)

I. The **OIG Security Officer** shall work with the OIG-wide Records Officer to implement essential/vital records plans and to ensure that these records are accessible from designated continuity of operations locations.

J. All **DHS OIG offices and personnel** shall create, maintain, and preserve records that document DHS OIG's organizational structure, functions, policies, decisions, procedures, and business transactions according to established requirements outlined in this policy and related procedures; and shall not permanently remove Federal records unless granted permission by DHS OIG Office of Counsel.

VI. Procedures

Related procedures are posted on OIGCentral under Policy and Guidance, Management, Records Management & FOIA or Privacy & Information Safeguards.

VII. Definitions

A. **National Archives and Records Administration**. NARA is an independent agency of the United States Government charged with preserving and documenting government and historical records. Also, DHS OIG's assigned Archivist approves records retention schedules.

B. **Record** or **Federal Record**. 44 USC § 3301 defines the term "record" as:

1. Including all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them, and

2. Not including

(i) library and museum material made or acquired and preserved solely for reference or exhibition purposes; or

(ii) duplicate copies of records preserved only for convenience.

Records include but are not limited to paper, e-mails, text and instant messages, tweets, databases, shared drive files, video/audio recordings, photographs, or websites. Examples of DHS OIG records include, but are not limited to:

- Final DHS OIG reports and all supporting documentation/work papers
- Audit/Inspection Report Follow-up documents (e.g., corrective action plans, DHS recommendation closure requests, and DHS OIG responses)
- Briefing Books/materials prepared for the Inspector General or the DHS Secretary
- Correspondence signed by the Inspector General and other DHS OIG officials
- Electronic information in DHS OIG's Enforcement Data System, TeamMate, Project Tracking System or other electronic systems
- E-mails, text/Lync, and instant messages documenting the rationale for DHS OIG policy, decisions, or actions
- Organization Charts (DHS OIG-wide and those for a single office/group)
- Policy and Procedures (DHS OIG-wide and office-specific)

C. **File Plan**. A comprehensive list of applicable records created or received by DHS OIG including how the records are organized and maintained, regardless of format, and where they are stored. Typically, like records are assigned a unique numerical file code to facilitate the daily management, filing, storage, and retrieval of Federal records in an organized manner.

D. **DHS OIG Office Heads**. Inspector General (front office), Assistant Inspectors General, and others that lead the following offices: Audits, Counsel, Emergency Management Oversight, Information Technology Audits, Inspections and Evaluations, Integrity and Quality Oversight, Investigations, Legislative Affairs, Management, and Public Affairs.

E. **Electronic Records Management System**. ERMS is an electronic information management system that is used by personnel to manage, file, store, safeguard, and retrieve electronic Federal records, which are filed according to an approved file plan, before they are transferred to NARA for permanent storage or are destroyed at the end of the record's useful life, in accordance with records schedules.

F. **Record Retention Schedules or Record Schedule**. A legal document approved/signed by NARA's U.S. Archivist that describes categories or types of records and mandates how long the records are kept (retention) and what happens to them at the end of the retention time period (disposition). NARA issues General Records Schedules (GRS) that govern common categories of records and approves records schedules drafted by agency Records Officers for unique records that are not covered by GRS or other schedules, in accordance with records schedules.

G. **Essential/Vital Records**. Records essential to DHS OIG's continued functioning or reconstitution during and after an emergency. Also those records essential to protecting the legal and financial rights of DHS OIG and individuals directly affected by its activities.

H. **Non-Records**. Federally owned documentary or informational materials that are excluded from the statutory definition of a record (44 USC § 3301). Non-records are duplicate copies of documents kept **strictly** for convenience and library or museum materials made or acquired and preserved for reference or exhibition purposes.

I. **Personal Papers**. Documentary or informational materials, regardless of format, belonging to an individual that are not used to conduct agency business. Personal files and papers are not owned by the Federal Government. Personnel should seek legal counsel when there is a question of whether a document is a record or a personal paper.

VIII. Questions

For questions about this directive, please contact the DHS OIG-wide Records Officer in the Planning and Compliance Division, Office of Management at OIGRecords@oig.dhs.gov.

APPROVED BY: [redacted]

Chat Session	Message Date	Delivered Date	Read Date	Service	Type	Sender ID	Sender Name	Status	Replying to	Subject	Text	Attachment	Attachment type
Joe	2021-05-17 19:38:04	2021-05-17 19:38:05		iMessage	Outgoing			Delivered			Can you join this teams call?		
Joe	2021-05-18 16:42:27	2021-05-18 16:42:35		iMessage	Outgoing			Delivered			Good calls today. When can we debrief?		
Joe	2021-05-18 17:51:17		2021-05-18 18:14:42	iMessage	Incoming	+12027707754	Joe	Read			Very nice		
Joe	2021-05-20 10:53:40	2021-05-20 10:53:42		iMessage	Outgoing			Delivered			Good talk with[redacted]		
Joe	2021-05-20 11:00:45		2021-05-20 11:02:52	iMessage	Incoming	+12027707754	Joe	Read			Super		
Joe	2021-05-20 13:26:40	2021-05-20 13:26:42		iMessage	Outgoing			Delivered			You can always just go in on audio. Most staff will be on phone too. Then you can use pc for talkers		
Joe	2021-05-20 13:30:31	2021-05-20 13:30:32		iMessage	Outgoing			Delivered			I ll do a modified roll call once we let folks in		
Joe	2021-05-21 12:39:30	2021-05-21 12:39:32		iMessage	Outgoing			Delivered			Time for a call now?		
Joe	2021-05-21 12:59:05	2021-05-21 12:59:11		iMessage	Outgoing			Delivered			Has a good call this morning- can fill you in when you have time		
Joe	2021-05-21 12:59:08	2021-05-21 12:59:11		iMessage	Outgoing			Delivered			Has		
Joe	2021-05-21 12:59:14	2021-05-21 12:59:14		iMessage	Outgoing			Delivered			Had!		
Joe	2021-05-21 13:54:06		2021-05-21 13:54:29	iMessage	Incoming	+12027707754	Joe	Read			Be with you shortly		
Joe	2021-05-21 13:54:39	2021-05-21 13:54:41		iMessage	Outgoing			Delivered			Are you talking about sinema?		
Joe	2021-05-21 13:54:50	2021-05-21 13:54:50		iMessage	Outgoing			Delivered			That is at 1400 pst		
Joe	2021-05-21 13:54:58	2021-05-21 13:54:59		iMessage	Outgoing			Delivered			1700 est		
Joe	2021-05-21 18:04:12	2021-05-21 18:04:13		iMessage	Outgoing			Delivered			Made my points to them and they appreciated it		
Joe	2021-05-21 18:05:35		2021-05-21 18:05:35	iMessage	Incoming	+12027707754	Joe	Read			Thanks		
Joe	2021-05-21 18:05:50	2021-05-21 18:05:52		iMessage	Outgoing			Delivered			Liked “Thanks ”		
Joe	2021-05-26 12:02:19	2021-05-26 12:02:21		iMessage	Outgoing			Delivered			Tech trouble?		
Joe	2021-05-26 12:02:43	2021-05-26 12:02:43		iMessage	Outgoing			Delivered			We can call you…		
Joe	2021-05-26 12:08:21	2021-05-26 12:08:23		iMessage	Outgoing			Delivered			I think[redacted] should send it		
Joe	2021-05-26 18:02:05	2021-05-26 18:02:05		iMessage	Outgoing			Delivered			Can I call you later?		
Joe	2021-05-26 18:02:18		2021-05-26 18:20:10	iMessage	Incoming	+12027707754	Joe	Read			Yes		
Joe	2021-05-26 18:20:18	2021-05-26 18:20:18		iMessage	Outgoing			Delivered			On with[redacted]		
Joe	2021-05-26 18:21:04		2021-05-26 18:21:05	iMessage	Incoming	+12027707754	Joe	Read			No worries.[redacted] wants your approval for us to go to Sicily this summer 😉		
Joe	2021-05-26 18:41:24	2021-05-26 18:41:24		iMessage	Outgoing			Delivered			Grabbing dinner now. Can I ping you after?		
Joe	2021-05-26 18:41:42		2021-05-26 18:41:42	iMessage	Incoming	+12027707754	Joe	Read			Yes		
Joe	2021-05-26 18:41:46	2021-05-26 18:41:46		iMessage	Outgoing			Delivered			And it depends on the dates 🤷‍♂️		
Joe	2021-05-27 21:46:35		2021-05-28 06:39:45	iMessage	Incoming	+12027707754	Joe	Read				IMG_0008.HEIC	Image
Joe	2021-05-27 21:46:35		2021-05-28 06:39:45	iMessage	Incoming	+12027707754	Joe	Read				IMG_0006.HEIC	Image
Joe	2021-05-27 21:46:35		2021-05-28 06:39:45	iMessage	Incoming	+12027707754	Joe	Read				IMG_0007.HEIC	Image
Joe	2021-05-27 21:46:35		2021-05-28 06:39:45	iMessage	Incoming	+12027707754	Joe	Read				IMG_0010.HEIC	Image
Joe	2021-05-27 21:46:35		2021-05-28 06:39:45	iMessage	Incoming	+12027707754	Joe	Read				IMG_0009.HEIC	Image
Joe	2021-05-28 06:40:16	2021-05-28 06:40:18		iMessage	Outgoing			Delivered			Got it. Thanks		
Joe	2021-05-28 09:21:24		2021-05-28 09:21:31	iMessage	Incoming	+12027707754	Joe	Read			Cool		
Joe	2021-05-28 09:21:43	2021-05-28 09:21:44		iMessage	Outgoing			Delivered			Sent you another email to verify		
Joe	2021-05-28 09:24:29	2021-05-28 09:24:29		iMessage	Outgoing			Delivered			On the deputy counsel interview. Can I ping you when it breaks		
Joe	2021-05-28 09:24:50		2021-05-28 09:24:56	iMessage	Incoming	+12027707754	Joe	Read			Yes. No hurry		
Joe	2021-05-28 09:25:00	2021-05-28 09:25:00		iMessage	Outgoing			Delivered			Liked “Yes. No hurry”		
Joe	2021-05-28 10:28:39	2021-05-28 10:28:41		iMessage	Outgoing			Delivered			Headed to next meeting. In back to back		
Joe	2021-05-28 10:38:05		2021-05-28 10:43:29	iMessage	Incoming	+12027707754	Joe	Read			Copy		
Joe	2021-05-28 10:45:19	2021-05-28 10:45:21		iMessage	Outgoing			Delivered			So we need to talk about the list of names?		
Joe	2021-05-28 10:45:38	2021-05-28 10:45:39		iMessage	Outgoing			Delivered			I want to get that over to Isa		
Joe	2021-05-28 12:02:56	2021-05-28 12:02:57		iMessage	Outgoing			Delivered			R u joining OA update?		
Joe	2021-05-28 18:20:46	2021-05-28 18:20:47		iMessage	Outgoing			Delivered			Want me to send the budget to the DIGs?		
Joe	2021-05-28 18:21:18		2021-05-28 18:21:18	iMessage	Incoming	+12027707754	Joe	Read			Yes please. Thanks		
Joe	2021-05-28 18:29:07	2021-05-28 18:29:08		iMessage	Outgoing			Delivered			Liked “Yes please. Thanks ”		
Joe	2021-06-01 13:25:26	2021-06-01 13:25:28		iMessage	Outgoing			Delivered			Just realized we might have an 1811 or two we could offer to PRAC depending on grade level		
Joe	2021-06-01 13:25:57		2021-06-01 13:25:58	iMessage	Incoming	+12027707754	Joe	Read			Okay. Let me know		
Joe	2021-06-01 17:55:15	2021-06-01 17:55:17		iMessage	Outgoing			Delivered			I am off the phone when you are free		
Joe	2021-06-02 22:01:21	2021-06-02 22:01:23		iMessage	Outgoing			Delivered			Want to call and I can explain email?		
Joe	2021-06-03 09:40:47	2021-06-03 09:40:48		iMessage	Outgoing			Delivered			[redacted] has accepted a job elsewhere		
Joe	2021-06-03 09:48:02		2021-06-03 09:48:10	iMessage	Incoming	+12027707754	Joe	Read			Ugh		
Joe	2021-06-03 09:48:28	2021-06-03 09:48:33		iMessage	Outgoing			Delivered			Yeah.[redacted] said[redacted] would look for others[redacted] could recommend (		
Joe	2021-06-03 13:35:12	2021-06-03 13:35:14		iMessage	Outgoing			Delivered			Time for a call?		
Joe	2021-06-03 14:02:42		2021-06-03 14:48:24	iMessage	Incoming	+12027707754	Joe	Read				IMG_0011.heic	Image
Joe	2021-06-03 14:48:36	2021-06-03 14:48:37		iMessage	Outgoing			Delivered			Nice!		
Joe	2021-06-03 15:13:25	2021-06-03 15:13:27		iMessage	Outgoing			Delivered			Forgot to ask. Do you want[redacted] and me on the S1 meeting?? We are now listed as optional attendees		
Joe	2021-06-03 15:14:00		2021-06-03 15:14:01	iMessage	Incoming	+12027707754	Joe	Read			Yes		
Joe	2021-06-03 15:14:06	2021-06-03 15:14:06		iMessage	Outgoing			Delivered			Liked “Yes”		
Joe	2021-06-03 15:21:55		2021-06-03 15:53:37	iMessage	Incoming	+12027707754	Joe	Read			Not so bad for a guy from South Philly		
Joe	2021-06-03 15:53:42	2021-06-03 15:53:43		iMessage	Outgoing			Delivered			Laughed at “Not so bad for a guy from South Philly”		
Joe	2021-06-03 16:08:02	2021-06-03 16:08:04		iMessage	Outgoing			Delivered			Sigh of relief		
Joe	2021-06-03 16:08:59		2021-06-03 16:08:59	iMessage	Incoming	+12027707754	Joe	Read			Thoughts		

Joe	2021-06-03 16:11:53	2021-06-03 16:11:53		iMessage	Outgoing		Delivered	"Thanks for including us "
Joe	2021-06-03 16:12:23	2021-06-03 16:12:28		iMessage	Outgoing		Delivered	We appreciate the understanding of our oversight role
Joe	2021-06-03 16:12:30	2021-06-03 16:12:30		iMessage	Outgoing		Delivered	In all matters
Joe	2021-06-03 16:14:32	2021-06-03 16:14:33		iMessage	Outgoing		Delivered	We are not able to divide the work - we have statutory oversight that is separate and apart from operationa
Joe	2021-06-03 17:30:43	2021-06-03 17:30:49		iMessage	Outgoing		Delivered	Goal should be to NOT have the designation...
Joe	2021-06-03 18:01:39	2021-06-03 18:01:40		iMessage	Outgoing		Delivered	I have a hard stop at 6:10
Joe	2021-06-04 09:38:56	2021-06-04 09:38:57		iMessage	Outgoing		Delivered	Langford scheduled for Tuesday
Joe	2021-06-04 09:39:30		2021-06-04 09:39:30	iMessage	Incoming	+12027707754 Joe	Read	Superb! Thanks for your dedication
Joe	2021-06-04 09:39:44	2021-06-04 09:39:45		iMessage	Outgoing		Delivered	Liked "Superb! Thanks for your dedication "
Joe	2021-06-06 17:56:30		2021-06-07 07:50:38	iMessage	Incoming	+12027707754 Joe	Read	Arrived safe. With [redacted] and [redacted] Heading to dinner with our new agents
Joe	2021-06-07 07:50:42	2021-06-07 07:50:43		iMessage	Outgoing		Delivered	Liked "Arrived safe. With [redacted] and [redacted] Heading to dinner with our new agents"
Joe	2021-06-08 13:01:57		2021-06-08 13:04:03	iMessage	Incoming	+12027707754 Joe	Read	We should arrive at the Atlanta office at 2:30ish
Joe	2021-06-08 13:04:07	2021-06-08 13:04:15		iMessage	Outgoing		Delivered	Liked "We should arrive at the Atlanta office at 2:30ish"
Joe	2021-06-08 14:03:46		2021-06-08 14:03:55	iMessage	Incoming	+12027707754 Joe	Read	Major accident on highway. We are now using local roads, which are packed. May have call in only or broad
Joe	2021-06-08 14:04:02	2021-06-08 14:04:03		iMessage	Outgoing		Delivered	Liked "Major accident on highway. We are now using local roads, which are packed. May have call in only o
Joe	2021-06-08 14:28:22	2021-06-08 14:28:35		iMessage	Outgoing		Delivered	We re you able to read the background OEA sent for Langford? Very good prep
Joe	2021-06-08 14:29:10		2021-06-08 14:29:10	iMessage	Incoming	+12027707754 Joe	Read	Yes thanks
Joe	2021-06-08 14:29:22	2021-06-08 14:29:23		iMessage	Outgoing		Delivered	ETA?
Joe	2021-06-08 15:30:06	2021-06-08 15:30:08		iMessage	Outgoing		Delivered	[redacted]
Joe	2021-06-08 15:31:09	2021-06-08 15:31:09		iMessage	Outgoing		Delivered	Both were on 5/20 call
Joe	2021-06-08 15:32:46	2021-06-08 15:32:48		iMessage	Outgoing		Delivered	Wondering if you can take a shorter SW border overview and dive in
Joe	2021-06-08 15:54:33	2021-06-08 15:54:35		iMessage	Outgoing		Delivered	[redacted]
Joe	2021-06-08 15:59:21	2021-06-08 15:59:22		iMessage	Outgoing		Delivered	La Palma. Pulaski. More to come. About to travel again
Joe	2021-06-09 11:14:52	2021-06-09 11:14:54		iMessage	Outgoing		Delivered	Let me know when you have time to catch up
Joe	2021-06-09 14:48:28	2021-06-09 14:48:30		iMessage	Outgoing		Delivered	Will send you a proposal for death in custody reviews. Then will send Seattle public summary
Joe	2021-06-09 15:32:28		2021-06-09 15:32:59	iMessage	Incoming	+12027707754 Joe	Read	Copy. Just finishing up with FEMA and heading back to the office
Joe	2021-06-09 15:33:20	2021-06-09 15:33:20		iMessage	Outgoing		Delivered	Thx if you could look at death in custody proposal. Thx
Joe	2021-06-09 15:37:44		2021-06-09 15:37:53	iMessage	Incoming	+12027707754 Joe	Read	Yes. Please send and I ll review when I get to the office
Joe	2021-06-09 15:37:58	2021-06-09 15:37:59		iMessage	Outgoing		Delivered	In your email now
Joe	2021-06-09 15:39:37		2021-06-09 15:40:04	iMessage	Incoming	+12027707754 Joe	Read	Not there
Joe	2021-06-09 15:40:20	2021-06-09 15:40:21		iMessage	Outgoing		Delivered	Sent again. This time just to you
Joe	2021-06-09 15:50:26		2021-06-09 15:50:32	iMessage	Incoming	+12027707754 Joe	Read	Approved
Joe	2021-06-09 15:50:37	2021-06-09 15:50:38		iMessage	Outgoing		Delivered	Thanks!
Joe	2021-06-09 17:23:21	2021-06-09 17:23:28		iMessage	Outgoing		Delivered	Are you on teams
Joe	2021-06-09 17:23:44	2021-06-09 17:23:44		iMessage	Outgoing		Delivered	Want to join our budget debrief
Joe	2021-06-09 17:24:28	2021-06-09 17:24:32		iMessage	Outgoing		Delivered	Calling you
Joe	2021-06-10 08:10:45	2021-06-10 08:10:46		iMessage	Outgoing		Delivered	Time for a call?
Joe	2021-06-10 09:08:01	2021-06-10 09:08:03		iMessage	Outgoing		Delivered	Left him a message after we spoke but no return yet
Joe	2021-06-10 09:08:36		2021-06-10 09:08:37	iMessage	Incoming	+12027707754 Joe	Read	Copy
Joe	2021-06-10 09:44:34	2021-06-10 09:44:36		iMessage	Outgoing		Delivered	ASK: help us get peters sinema Kelly
Joe	2021-06-10 10:08:07		2021-06-10 10:08:14	iMessage	Incoming	+12027707754 Joe	Read	Please send [redacted] a thanks note
Joe	2021-06-10 10:08:17	2021-06-10 10:08:18		iMessage	Outgoing		Delivered	Yep
Joe	2021-06-10 13:47:32	2021-06-10 13:47:34		iMessage	Outgoing		Delivered	We have ongoing audit of uscis ability to process during COVID19
Joe	2021-06-10 15:15:27	2021-06-10 15:15:34		iMessage	Outgoing		Delivered	Systemic review of solitary
Joe	2021-06-10 15:30:46	2021-06-10 15:30:46		iMessage	Outgoing		Delivered	Joining the huddle?
Joe	2021-06-10 15:46:16	2021-06-10 15:46:17		iMessage	Outgoing		Delivered	I am adding [redacted] to the 4:00
Joe	2021-06-10 15:46:50		2021-06-10 15:47:47	iMessage	Incoming	+12027707754 Joe	Read	Copy
Joe	2021-06-10 18:17:11	2021-06-10 18:17:13		iMessage	Outgoing		Delivered	Can you look at the email I sent you re FB
Joe	2021-06-11 15:11:53	2021-06-11 15:11:55		iMessage	Outgoing		Delivered	Please call me when you land. All is fine. But need to catch up for a couple of things that need to go out
Joe	2021-06-11 16:30:06	2021-06-11 16:30:06		iMessage	Outgoing		Delivered	Sent you a condolence email
Joe	2021-06-15 11:26:32	2021-06-15 11:26:43		iMessage	Outgoing		Delivered	Just saw you called. I am here but ringer was off
Joe	2021-06-15 11:27:33	2021-06-15 11:27:35		iMessage	Outgoing		Delivered	On the CIGIE call...
Joe	2021-06-15 11:27:40	2021-06-15 11:27:40		iMessage	Outgoing		Delivered	Happy to take a break!
Joe	2021-06-15 11:27:49		2021-06-15 11:27:50	iMessage	Incoming	+12027707754 Joe	Read	Indeed
Joe	2021-06-15 18:42:25		2021-06-15 18:42:43	iMessage	Incoming	+12027707754 Joe	Read	Heading back to Tucson. Very productive day
Joe	2021-06-15 18:42:47	2021-06-15 18:42:47		iMessage	Outgoing		Delivered	Liked "Heading back to Tucson. Very productive day"
Joe	2021-06-15 18:43:06	2021-06-15 18:43:17		iMessage	Outgoing		Delivered	I can talk in about 15 minutes. You?
Joe	2021-06-15 18:43:36		2021-06-15 18:43:36	iMessage	Incoming	+12027707754 Joe	Read	In car with the agents.
Joe	2021-06-15 18:44:29	2021-06-15 18:44:37		iMessage	Outgoing		Delivered	Let me know when you have time please nothing urgent or significant but closing some loops
Joe	2021-06-15 18:44:59		2021-06-15 18:45:05	iMessage	Incoming	+12027707754 Joe	Read	Will do. About 1.5hrs
Joe	2021-06-15 18:45:09	2021-06-15 18:45:09		iMessage	Outgoing		Delivered	Liked "Will do. About 1.5hrs"
Joe	2021-06-16 13:13:32	2021-06-16 13:13:34		iMessage	Outgoing		Delivered	Or close
Joe	2021-06-16 18:05:29	2021-06-16 18:05:30		iMessage	Outgoing		Delivered	Still available?
Joe	2021-06-21 08:34:56	2021-06-21 08:34:57		iMessage	Outgoing		Delivered	On with front office. Can I call in 15?
Joe	2021-06-21 08:35:19		2021-06-21 08:48:48	iMessage	Incoming	+12027707754 Joe	Read	Sure. Heading to AP

Joe	2021-06-21 08:49:35	2021-06-21 08:49:36		iMessage	Outgoing			Delivered	Free until 0930		
Joe	2021-06-21 15:15:22	2021-06-21 15:15:24		iMessage	Outgoing			Delivered	[redacted] is not in cape may on Friday. Want to set a virtual meeting for another day?		
Joe	2021-06-21 15:23:26		2021-06-21 15:23:27	iMessage	Incoming	+12027707754	Joe	Read	Yes, that would work. Thanks		
Joe	2021-06-21 15:23:32	2021-06-21 15:23:33		iMessage	Outgoing			Delivered	Liked "Yes, that would work. Thanks "		
Joe	2021-06-21 17:27:19		2021-06-21 18:57:58	iMessage	Incoming	+12027707754	Joe	Read	Weather delay, ugh		
Joe	2021-06-21 18:58:24	2021-06-21 18:58:28		iMessage	Outgoing			Delivered	Bummer - But for the best really stormy here!		
Joe	2021-06-21 18:59:58		2021-06-21 19:00:06	iMessage	Incoming	+12027707754	Joe	Read	Yikes. I m heading back to AZ, at least it s in the 100s🔥		
Joe	2021-06-21 19:00:09	2021-06-21 19:00:10		iMessage	Outgoing			Delivered	Haha		
Joe	2021-06-21 19:00:36	2021-06-21 19:00:36		iMessage	Outgoing			Delivered	It s hot here, but with the added bonus of humidity!		
Joe	2021-06-21 19:01:23		2021-06-21 19:01:23	iMessage	Incoming	+12027707754	Joe	Read	In that case, I ll divert to sicily		
Joe	2021-06-21 19:02:21	2021-06-21 19:02:28		iMessage	Outgoing			Delivered		tmp.gif	Image
Joe	2021-06-21 19:03:00		2021-06-21 19:03:04	iMessage	Incoming	+12027707754	Joe	Read	Nice		
Joe	2021-06-21 20:18:25		2021-06-21 20:42:13	iMessage	Incoming	+12027707754	Joe	Read	Flight canceled		
Joe	2021-06-21 21:29:23	2021-06-21 21:29:24		iMessage	Outgoing			Delivered	Take it you heard from [redacted] that [redacted] will fix it tomorrow!		
Joe	2021-06-21 21:29:29	2021-06-21 21:29:29		iMessage	Outgoing			Delivered	Have a good night		
Joe	2021-06-21 22:09:42		2021-06-22 06:15:56	iMessage	Incoming	+12027707754	Joe	Read	Checked in a hotel. I gave a 0700 flight tomorrow to DC. Likely telework. I ll be in touch. Thanks		
Joe	2021-06-22 06:16:05	2021-06-22 06:16:13		iMessage	Outgoing			Delivered	Liked "Checked in a hotel. I gave a 0700 flight tomorrow to DC. Likely telework. I ll be in touch. Thanks"		
Joe	2021-06-22 19:41:02	2021-06-22 19:41:03		iMessage	Outgoing			Delivered	Just sent the draft presser - sorry!		
Joe	2021-06-23 13:10:42	2021-06-23 13:10:44		iMessage	Outgoing			Delivered	Memo looks good. No suggestions - please copy me on way out. Thx		
Joe	2021-06-23 13:13:38		2021-06-23 13:36:12	iMessage	Incoming	+12027707754	Joe	Read	Select the max?		
Joe	2021-06-23 13:17:32		2021-06-23 13:36:12	iMessage	Incoming	+12027707754	Joe	Read	All done		
Joe	2021-06-23 13:36:17	2021-06-23 13:36:18		iMessage	Outgoing			Delivered	Liked "All done"		
Joe	2021-06-23 13:36:35	2021-06-23 13:36:36		iMessage	Outgoing			Delivered	On a call and will be late to next meeting		
Joe	2021-06-23 19:58:39	2021-06-23 19:58:41		iMessage	Outgoing			Delivered	Nuts on Clark was a big hit with [redacted] says thank you!		
Joe	2021-06-24 17:13:43	2021-06-24 17:13:44		iMessage	Outgoing			Delivered	This is not good		
Joe	2021-06-25 09:52:54	2021-06-25 09:53:00		iMessage	Outgoing			Delivered	No need to call me back		
Joe	2021-06-25 09:53:12	2021-06-25 09:53:13		iMessage	Outgoing			Delivered	I have a question about the Hice letter and will ask you later!		
Joe	2021-06-25 14:27:51	2021-06-25 14:54:33		iMessage	Outgoing			Delivered	Will 3;30 work?		
Joe	2021-06-25 15:05:06		2021-06-25 15:05:16	iMessage	Incoming	+12027707754	Joe	Read	Yes		
Joe	2021-06-25 15:05:21	2021-06-25 15:05:22		iMessage	Outgoing			Delivered	Liked "Yes"		
Joe	2021-06-28 13:02:41	2021-06-28 13:02:48		iMessage	Outgoing			Delivered	I am going home after this unless you need something else		
Joe	2021-06-28 13:02:49	2021-06-28 13:02:50		iMessage	Outgoing			Delivered	Telework!		
Joe	2021-06-28 13:05:03		2021-06-28 13:30:51	iMessage	Incoming	+12027707754	Joe	Read	Zzzzsss		
Joe	2021-06-29 13:40:55	2021-06-29 13:40:58		iMessage	Outgoing			Delivered	Are you in PRAC call?		
Joe	2021-06-29 13:41:15		2021-06-29 13:41:16	iMessage	Incoming	+12027707754	Joe	Read	No		
Joe	2021-06-29 13:41:22	2021-06-29 13:41:23		iMessage	Outgoing			Delivered	Liked "No"		
Joe	2021-06-29 20:05:41	2021-06-29 20:05:45		iMessage	Outgoing			Delivered	I have a short video for you to tape tomorrow- can you donut at 0900?		
Joe	2021-06-29 20:05:49	2021-06-29 20:05:49		iMessage	Outgoing			Delivered	Do it		
Joe	2021-06-29 20:06:56		2021-06-29 20:07:04	iMessage	Incoming	+12027707754	Joe	Read	Yikes		
Joe	2021-06-30 14:06:54	2021-06-30 14:06:55		iMessage	Outgoing			Delivered	[redacted] is going to stop in to say hi. Before 3 00. Super nice and excited to say hello to you		
Joe	2021-06-30 17:03:20	2021-06-30 17:03:26		iMessage	Outgoing			Delivered	Substantiated		
Joe	2021-06-30 17:03:25	2021-06-30 17:03:26		iMessage	Outgoing			Delivered	First one		
Joe	2021-06-30 17:05:36	2021-06-30 17:05:37		iMessage	Outgoing			Delivered	End here. Skip[redacted]		
Joe	2021-07-01 11:08:55		2021-07-01 11:09:03	iMessage	Incoming	+12027707754	Joe	Read	It seems they are viewing this ask as the IG auditing their respective depts vs how this pandemic impacts ea		
Joe	2021-07-01 11:09:25	2021-07-01 11:09:26		iMessage	Outgoing			Delivered	Yes and i agree - reread this morning		
Joe	2021-07-01 11:12:30	2021-07-01 11:12:35		iMessage	Outgoing			Delivered	[redacted] point about a survey is potential method but what is value of data? Also covid t/w may not be com		
Joe	2021-07-01 11:12:44	2021-07-01 11:12:44		iMessage	Outgoing			Delivered	Eg- ease of calling employees back		
Joe	2021-07-01 11:13:16	2021-07-01 11:13:21		iMessage	Outgoing			Delivered	Transportation childcare, parental car, etc available		
Joe	2021-07-01 11:13:20	2021-07-01 11:13:21		iMessage	Outgoing			Delivered	Care		
Joe	2021-07-01 11:14:28		2021-07-01 11:14:28	iMessage	Incoming	+12027707754	Joe	Read	We have several projects just like[redacted] mentioned		
Joe	2021-07-01 11:14:44	2021-07-01 11:14:44		iMessage	Outgoing			Delivered	Agree		
Joe	2021-07-01 11:15:37	2021-07-01 11:15:37		iMessage	Outgoing			Delivered	Also we base work on data and assessment of risk- no good indicators here		
Joe	2021-07-01 11:17:03		2021-07-01 11:17:04	iMessage	Incoming	+12027707754	Joe	Read	Let s draft a response ltr. Talk about how we have performed and then talk about all the covid projects we c		
Joe	2021-07-01 11:17:32	2021-07-01 11:17:34		iMessage	Outgoing			Delivered	I have a draft in play with[redacted] and can send to you later today		
Joe	2021-07-01 11:20:37	2021-07-01 11:20:37		iMessage	Outgoing			Delivered	Sent you a teams note		
Joe	2021-07-01 11:20:55	2021-07-01 11:20:55		iMessage	Outgoing			Delivered	No pressure to respond but just in case you want to		
Joe	2021-07-01 11:24:01		2021-07-01 11:24:38	iMessage	Incoming	+12027707754	Joe	Read	In the yellow submarine		
Joe	2021-07-01 11:24:51	2021-07-01 11:24:53		iMessage	Outgoing			Delivered	😆		
Joe	2021-07-01 12:12:01		2021-07-01 12:12:12	iMessage	Incoming	+12027707754	Joe	Read	I have to meet with[redacted] so will be out for part of the afternoon. I let[redacted] know. Catch up later. Best		
Joe	2021-07-01 12:12:17	2021-07-01 12:12:18		iMessage	Outgoing			Delivered	Liked "I have to meet with[redacted] so will be out for part of the afternoon. I let[redacted] know. Catch up later. B		
Joe	2021-07-01 16:29:23	2021-07-01 16:29:23		iMessage	Outgoing			Delivered	Are we having the 4:20 huddle?		
Joe	2021-07-01 16:29:27	2021-07-01 16:29:27		iMessage	Outgoing			Delivered	4:30		
Joe	2021-07-02 10:29:25	2021-07-02 10:29:25		iMessage	Outgoing			Delivered	Can you sign select certificate I just sent		
Joe	2021-07-06 15:27:44	2021-07-06 15:27:49		iMessage	Outgoing			Delivered	Will be there in a minute. Taking a call from[redacted]		
Joe	2021-07-07 11:18:20	2021-07-07 11:18:26		iMessage	Outgoing			Delivered	I would not announce[redacted] yet		

Joe	2021-07-07 15:42:19	2021-07-07 15:42:20		iMessage	Outgoing		Delivered	Anybody home?
Joe	2021-07-07 15:43:01		2021-07-07 15:43:09	iMessage	Incoming	+12027707754 Joe	Read	I ll be back shortly
Joe	2021-07-07 15:43:12	2021-07-07 15:43:13		iMessage	Outgoing		Delivered	Liked "I ll be back shortly "
Joe	2021-07-07 15:50:46		2021-07-07 15:51:10	iMessage	Incoming	+12027707754 Joe	Read	Open for business
Joe	2021-07-07 15:51:17	2021-07-07 15:51:19		iMessage	Outgoing		Delivered	Coming back!
Joe	2021-07-09 10:47:39	2021-07-09 10:47:44		iMessage	Outgoing		Delivered	Management alert
Joe	2021-07-09 11:00:01	2021-07-09 11:00:02		iMessage	Outgoing		Delivered	Any 80
Joe	2021-07-09 11:00:45	2021-07-09 11:00:45		iMessage	Outgoing		Delivered	Not rushing back.
Joe	2021-07-09 11:01:06	2021-07-09 11:01:06		iMessage	Outgoing		Delivered	Feedback from them said it was key
Joe	2021-07-09 17:44:00		2021-07-09 17:46:11	iMessage	Incoming	+12027707754 Joe	Read	SSA admin fired
Joe	2021-07-09 17:46:23	2021-07-09 17:46:24		iMessage	Outgoing		Delivered	Meaning the Commissioner?
Joe	2021-07-10 13:48:11	2021-07-10 13:48:13		iMessage	Outgoing		Delivered	Sorry I missed your call. Want to talk now?
Joe	2021-07-11 08:29:56		2021-07-11 08:48:31	iMessage	Incoming	+12027707754 Joe	Read	[redacted] My cellphone will not synch with my mail. I ve shut it off several times to recycle but no go. Joe
Joe	2021-07-11 08:49:30	2021-07-11 08:49:31		iMessage	Outgoing		Delivered	Thanks for letting me know. I will let IT know- that happened to me on Friday
Joe	2021-07-11 09:29:39		2021-07-11 09:37:05	iMessage	Incoming	+12027707754 Joe	Read	Standing by. Thanks
Joe	2021-07-11 09:37:22	2021-07-11 09:37:23		iMessage	Outgoing		Delivered	[redacted] has been assigned
Joe	2021-07-11 09:54:41		2021-07-11 10:05:42	iMessage	Incoming	+12027707754 Joe	Read	Copy. Thanks
Joe	2021-07-11 11:26:18		2021-07-11 13:00:52	iMessage	Incoming	+12027707754 Joe	Read	Spoke with[redacted] Will have to wait until Monday. Pls call me if anything hot.
Joe	2021-07-11 13:00:57	2021-07-11 13:01:01		iMessage	Outgoing		Delivered	Will do!
Joe	2021-07-11 13:01:37	2021-07-11 13:01:39		iMessage	Outgoing		Delivered	Will keep phone close and ringer on
Joe	2021-07-13 10:50:45	2021-07-13 10:50:47		iMessage	Outgoing		Delivered	Can I swing by around 1100
Joe	2021-07-13 11:36:42		2021-07-13 11:53:12	iMessage	Incoming	+12027707754 Joe	Read	Yes
Joe	2021-07-14 07:55:05	2021-07-14 07:55:07		iMessage	Outgoing		Delivered	Can I call you around 0830 to discuss east coast courtesy visits?
Joe	2021-07-16 18:46:50	2021-07-16 18:46:51		iMessage	Outgoing		Delivered	$26.4M
Joe	2021-07-16 18:47:23		2021-07-16 18:47:36	iMessage	Incoming	+12027707754 Joe	Read	OMG!!! Wonderful
Joe	2021-07-16 18:49:15	2021-07-16 18:49:15		iMessage	Outgoing		Delivered	😍😍
Joe	2021-07-18 19:19:45	2021-07-18 19:19:46		iMessage	Outgoing		Delivered	You were right about my whereabouts!
Joe	2021-07-18 19:20:26		2021-07-18 19:22:55	iMessage	Incoming	+12027707754 Joe	Read	Go gettem
Joe	2021-07-18 19:23:00	2021-07-18 19:23:01		iMessage	Outgoing		Delivered	Liked "Go gettem"
Joe	2021-07-19 13:58:10	2021-07-19 13:58:12		iMessage	Outgoing		Delivered	Are you able to make the 4:30 leadership call today and if so can we include[redacted] has an update
Joe	2021-07-19 14:01:01		2021-07-19 14:14:15	iMessage	Incoming	+12027707754 Joe	Read	Super. Can we kick that to 5
Joe	2021-07-19 14:14:19	2021-07-19 14:14:21		iMessage	Outgoing		Delivered	Liked "Super. Can we kick that to 5"
Joe	2021-07-20 07:29:18	2021-07-20 07:29:19		iMessage	Outgoing		Delivered	At the dentist
Joe	2021-07-20 07:29:40	2021-07-20 07:29:40		iMessage	Outgoing		Delivered	Will call when done
Joe	2021-07-20 07:29:45		2021-07-20 07:51:25	iMessage	Incoming	+12027707754 Joe	Read	Copy. Enjoy the ride.
Joe	2021-07-20 13:35:16	2021-07-20 13:35:18		iMessage	Outgoing		Delivered	Time for a quick call?
Joe	2021-07-20 13:37:47		2021-07-20 13:37:53	iMessage	Incoming	+12027707754 Joe	Read	With judge
Joe	2021-07-20 13:38:15	2021-07-20 13:38:15		iMessage	Outgoing		Delivered	Sending a text to personal cell. Good news to share
Joe	2021-07-20 18:59:35	2021-07-20 18:59:36		iMessage	Outgoing		Delivered	At dinner - can we talk later or in the more?
Joe	2021-07-20 18:59:38	2021-07-20 18:59:38		iMessage	Outgoing		Delivered	Morning
Joe	2021-07-20 19:13:56		2021-07-20 19:15:29	iMessage	Incoming	+12027707754 Joe	Read	Morning is fine
Joe	2021-07-22 16:33:31	2021-07-22 16:33:42		iMessage	Outgoing		Delivered	Are you available for the 4:30?
Joe	2021-07-23 08:25:42	2021-07-23 10:16:03		iMessage	Outgoing		Delivered	No need to call back
Joe	2021-07-23 08:25:48	2021-07-23 10:16:03		iMessage	Outgoing		Delivered	Just checking in
Joe	2021-07-23 12:28:30	2021-07-23 12:28:31		iMessage	Outgoing		Delivered	We are back. Good meeting- let me know when you want the download
Joe	2021-07-27 08:58:07	2021-07-27 08:58:09		iMessage	Outgoing		Delivered	Running late
Joe	2021-07-27 08:58:19	2021-07-27 08:58:19		iMessage	Outgoing		Delivered	Be there soon
Joe	2021-07-27 08:58:40		2021-07-27 09:09:05	iMessage	Incoming	+12027707754 Joe	Read	Ugh
Joe	2021-07-28 08:05:53	2021-07-28 08:06:01		iMessage	Outgoing		Delivered	Do you have time to talk before the 0900 run through?
Joe	2021-07-28 08:07:43		2021-07-28 08:07:53	iMessage	Incoming	+12027707754 Joe	Read	Yes, let s meet in 5
Joe	2021-07-28 08:08:08	2021-07-28 08:08:09		iMessage	Outgoing		Delivered	I am in glacier in a meeting but can step out
Joe	2021-07-28 08:27:16		2021-07-28 08:29:07	iMessage	Incoming	+12027707754 Joe	Read	I m here
Joe	2021-07-28 08:29:11	2021-07-28 08:29:13		iMessage	Outgoing		Delivered	On way
Joe	2021-08-02 09:40:29	2021-08-02 09:40:32		iMessage	Outgoing		Delivered	Tour is on. See you there
Joe	2021-08-02 09:42:53		2021-08-02 10:07:47	iMessage	Incoming	+12027707754 Joe	Read	Copy
Joe	2021-08-02 13:39:53	2021-08-02 13:39:58		iMessage	Outgoing		Delivered	Not joining you at TSA - headed to[redacted] then
Joe	2021-08-02 14:23:01		2021-08-02 15:45:26	iMessage	Incoming	+12027707754 Joe	Read	Copy. Catch up later
Joe	2021-08-03 12:38:04	2021-08-03 12:38:09		iMessage	Outgoing		Delivered	I am out of the[redacted] - do you have time to talk?
Joe	2021-08-27 10:20:34	2021-08-27 10:20:39		iMessage	Outgoing		Delivered	Can you get on the machine for the 1030?[redacted] is available too
Joe	2021-08-27 10:20:41	2021-08-27 10:20:41		iMessage	Outgoing		Delivered	If not we can call you
Joe	2021-08-27 10:22:57		2021-08-27 10:23:07	iMessage	Incoming	+12027707754 Joe	Read	I ll pop on the machine
Joe	2021-08-27 10:23:11	2021-08-27 10:23:11		iMessage	Outgoing		Delivered	Liked "I ll pop on the machine"
Joe	2021-08-27 14:42:51	2021-08-27 14:43:00		iMessage	Outgoing		Delivered	Scheduling question- if needed could you come in on Friday 9/3 afternoon to record general[redacted] ma
Joe	2021-08-27 19:03:08		2021-08-27 19:54:52	iMessage	Incoming	+12027707754 Joe	Read	Yes
Joe	2021-08-27 19:54:59	2021-08-27 19:55:13		iMessage	Outgoing		Delivered	Liked "Yes"

Joe	2021-08-31 12:10:38	2021-08-31 12:10:43		iMessage	Outgoing		Delivered	Can you get on teams foe good news?
Joe	2021-08-31 12:15:47	2021-08-31 12:15:50		iMessage	Outgoing		Delivered	"SU-Don-Ya"
Joe	2021-09-02 18:00:10	2021-09-02 18:00:13		iMessage	Outgoing		Delivered	[redacted] is picking up the sandwiches [redacted] paid. [redacted] influenced what was ordered!
Joe	2021-09-02 19:34:35		2021-09-02 19:35:04	iMessage	Incoming	+12027707754 Joe	Read	Super. Thanks
Joe	2021-09-02 19:35:08	2021-09-02 19:35:09		iMessage	Outgoing		Delivered	Liked "Super. Thanks "
Joe	2021-09-05 18:32:04	2021-09-05 18:32:06		iMessage	Outgoing		Delivered	Can I call?
Joe	2021-09-05 18:32:26	2021-09-05 18:32:26		iMessage	Outgoing		Delivered	Want to give you an update
Joe	2021-09-07 11:37:56	2021-09-07 11:37:57		iMessage	Outgoing		Delivered	Not going to have the certificate ready for you - the space action is not done yet and won t be before tomor
Joe	2021-09-07 11:38:24		2021-09-07 11:38:24	iMessage	Incoming	+12027707754 Joe	Read	Copy
Joe	2021-09-07 11:38:30	2021-09-07 11:38:30		iMessage	Outgoing		Delivered	Liked "Copy"
Joe	2021-09-13 12:17:26	2021-09-13 12:17:32		iMessage	Outgoing		Delivered	Lunch?!?!
Joe	2021-09-13 12:25:29		2021-09-13 12:38:34	iMessage	Incoming	+12027707754 Joe	Read	Yes
Joe	2021-09-14 13:30:35	2021-09-14 13:30:37		iMessage	Outgoing		Delivered	Can I join you in your office for the rest of this call? Thanks
Joe	2021-09-14 14:39:53		2021-09-14 14:40:14	iMessage	Incoming	+12027707754 Joe	Read	Sorry, just seeing this. All good
Joe	2021-09-14 14:40:19	2021-09-14 14:40:20		iMessage	Outgoing		Delivered	Liked "Sorry, just seeing this. All good"
Joe	2021-09-15 15:36:45	2021-09-15 15:36:51		iMessage	Outgoing		Delivered	I reminded [redacted] you have a hard stop at 4
Joe	2021-09-15 15:37:26		2021-09-15 15:45:23	iMessage	Incoming	+12027707754 Joe	Read	Copy
Joe	2021-09-16 14:16:30	2021-09-16 14:16:32		iMessage	Outgoing		Delivered	I confirmed we closed out an incoming request from [redacted] tsa- via email. Do you want other info?
Joe	2021-09-21 12:45:41	2021-09-21 12:45:47		iMessage	Outgoing		Delivered	Call now?
Joe	2021-09-21 13:15:23		2021-09-21 13:15:30	iMessage	Incoming	+12027707754 Joe	Read	Yes
Joe	2021-09-21 13:15:39	2021-09-21 13:15:39		iMessage	Outgoing		Delivered	Sorry. On a call until 2
Joe	2021-09-21 13:15:43	2021-09-21 13:15:43		iMessage	Outgoing		Delivered	Interview
Joe	2021-09-22 09:12:12		2021-09-22 09:36:32	iMessage	Incoming	+12027707754 Joe	Read	Need shoutout to our office in the RM stmt at CHS hearing
Joe	2021-09-22 09:12:25		2021-09-22 09:36:32	iMessage	Incoming	+12027707754 Joe	Read	Nice shout out
Joe	2021-09-28 13:03:05	2021-09-28 13:03:07		iMessage	Outgoing		Delivered	Are you joining PRAC today?
Joe	2021-09-28 13:04:07		2021-09-28 13:04:13	iMessage	Incoming	+12027707754 Joe	Read	At lunch with [redacted] and INV
Joe	2021-09-28 13:04:30		2021-09-28 13:04:30	iMessage	Incoming	+12027707754 Joe	Read	Are you on with [redacted] and [redacted]
Joe	2021-09-28 13:04:33	2021-09-28 13:04:33		iMessage	Outgoing		Delivered	Ok. Do you want [redacted] to attend the IG only session on your behalf
Joe	2021-09-28 13:04:37	2021-09-28 13:04:37		iMessage	Outgoing		Delivered	Yes I am on
Joe	2021-09-28 13:04:48		2021-09-28 13:04:48	iMessage	Incoming	+12027707754 Joe	Read	Yes for [redacted] Thanks
Joe	2021-09-28 13:04:54	2021-09-28 13:04:55		iMessage	Outgoing		Delivered	Liked "Yes for [redacted] Thanks "
Joe	2021-09-28 13:44:08	2021-09-28 13:44:14		iMessage	Outgoing		Delivered	There was no IG only session FYI- duh
Joe	2021-09-28 13:47:45		2021-09-28 13:47:50	iMessage	Incoming	+12027707754 Joe	Read	Copy. Could you kick the 2pm to 215. Thanks
Joe	2021-09-28 13:47:57	2021-09-28 13:47:58		iMessage	Outgoing		Delivered	Liked "Copy. Could you kick the 2pm to 215. Thanks"
Joe	2021-09-28 14:54:34	2021-09-28 14:54:35		iMessage	Outgoing		Delivered	Can you [redacted] and I hang for one minute before 3
Joe	2021-09-28 15:27:58	2021-09-28 15:28:04		iMessage	Outgoing		Delivered	Now?
Joe	2021-09-28 15:28:06	2021-09-28 15:28:06		iMessage	Outgoing		Delivered	Sorry! Not for you
Joe	2021-09-28 15:41:52	2021-09-28 15:41:57		iMessage	Outgoing		Delivered	Need anything before this meet and greet? Once it is over, if you agree, I will send you selection certificate
Joe	2021-09-28 15:47:56	2021-09-28 15:47:57		iMessage	Outgoing		Delivered	Her resume is in the calendar invitation
Joe	2021-09-28 15:48:30		2021-09-28 15:48:30	iMessage	Incoming	+12027707754 Joe	Read	Who is this
Joe	2021-09-28 15:48:37	2021-09-28 15:48:38		iMessage	Outgoing		Delivered	Laughed at "Who is this"
Joe	2021-09-29 16:56:50	2021-09-29 16:57:42		iMessage	Outgoing		Delivered	For lunch tomorrow-do you need anything done? Reservations? Other?
Joe	2021-09-30 08:38:06	2021-09-30 08:38:19		iMessage	Outgoing		Delivered	ETA 0930. Do you Need to talk before then?
Joe	2021-09-30 09:40:31		2021-09-30 09:44:03	iMessage	Incoming	+12027707754 Joe	Read	No. When you get in
Joe	2021-10-04 09:23:30	2021-10-04 09:23:38		iMessage	Outgoing		Delivered	Please let me know when you have a minute to speak with me. Re INV postings
Joe	2021-10-04 17:16:34	2021-10-04 17:16:35		iMessage	Outgoing		Delivered	Do you know [redacted]
Joe	2021-10-05 15:27:38		2021-10-05 15:27:46	iMessage	Incoming	+12027707754 Joe	Read	At lunch. I ll call you shortly after
Joe	2021-10-05 15:28:01	2021-10-05 15:28:02		iMessage	Outgoing		Delivered	If I don t pick will call back
Joe	2021-10-05 16:40:13	2021-10-05 16:40:14		iMessage	Outgoing		Delivered	On with psi
Joe	2021-10-06 09:54:52	2021-10-06 09:54:53		iMessage	Outgoing		Delivered	Quick call?
Joe	2021-10-06 17:29:51	2021-10-06 17:29:53		iMessage	Outgoing		Delivered	Can we meet tonight or in the morning. With [redacted] and [redacted]
Joe	2021-10-07 15:56:15	2021-10-07 15:56:16		iMessage	Outgoing		Delivered	Can we stay in for a minute after?
Joe	2021-10-07 16:54:37	2021-10-07 16:54:38		iMessage	Outgoing		Delivered	Have you talked to him about pending IC legis?
Joe	2021-10-07 16:54:54	2021-10-07 16:54:54		iMessage	Outgoing		Delivered	Can we talk freely?
Joe	2021-10-07 19:40:35	2021-10-07 19:40:36		iMessage	Outgoing		Delivered	Do you want me to ask his scheduler for a meeting?
Joe	2021-10-08 09:06:47	2021-10-08 09:06:50		iMessage	Outgoing		Delivered	Please let me know when you can talk. Chairman Thompson is asking for a call with you at 1100 today
Joe	2021-10-08 15:15:37	2021-10-08 15:15:43		iMessage	Outgoing		Delivered	We sent you draft email. We all think it should be sent today
Joe	2021-10-09 13:20:44	2021-10-09 13:20:46		iMessage	Outgoing		Delivered	Any invitation come to you?
Joe	2021-10-10 20:43:35	2021-10-10 20:43:40		iMessage	Outgoing		Delivered	Pls call when you have a minute. Wanted to run our plan re FAST by you
Joe	2021-10-11 14:07:02	2021-10-11 14:07:04		iMessage	Outgoing		Delivered	[redacted] fell yesterday and [redacted] - fyi
Joe	2021-10-11 14:07:09	2021-10-11 14:07:09		iMessage	Outgoing		Delivered	Sounds like [redacted]
Joe	2021-10-11 14:08:48		2021-10-11 14:08:56	iMessage	Incoming	+12027707754 Joe	Read	[redacted]
Joe	2021-10-11 14:09:28	2021-10-11 14:09:28		iMessage	Outgoing		Delivered	Oh no! Amen, but better than the alternative. Sigh
Joe	2021-10-14 11:33:17	2021-10-14 11:33:19		iMessage	Outgoing		Delivered	Please let me know if you have time for a call
Joe	2021-10-15 13:00:18	2021-10-15 13:00:20		iMessage	Outgoing		Delivered	Can I call later

Joe	2021-10-15 13:00:42		2021-10-15 13:00:42	iMessage	Incoming	+12027707754	Joe	Read	Yes. Just checking in
Joe	2021-10-15 13:00:47	2021-10-15 13:00:48		iMessage	Outgoing			Delivered	Liked “Yes. Just checking in ”
Joe	2021-10-15 14:07:19	2021-10-15 14:07:23		iMessage	Outgoing			Delivered	Urgent?
Joe	2021-10-15 14:07:44		2021-10-15 14:07:48	iMessage	Incoming	+12027707754	Joe	Read	No
Joe	2021-10-18 11:23:26	2021-10-18 11:23:27		iMessage	Outgoing			Delivered	It s going to voicemail
Joe	2021-10-18 11:23:58		2021-10-18 11:24:03	iMessage	Incoming	+12027707754	Joe	Read	I m ready
Joe	2021-10-19 14:42:28	2021-10-19 14:42:30		iMessage	Outgoing			Delivered	Sorry that took so long - whenever you re free. I need your email to [redacted] Can t seem to find it!
Joe	2021-10-20 10:07:07	2021-10-20 10:07:09		iMessage	Outgoing			Delivered	Can I call on teams?
Joe	2021-10-20 10:07:14	2021-10-20 10:07:14		iMessage	Outgoing			Delivered	Or phone!
Joe	2021-10-20 19:12:13		2021-10-20 19:13:19	iMessage	Incoming	+12027707754	Joe	Read	Checking in. Pls call when you get settled. Thanks
Joe	2021-10-20 19:13:29	2021-10-20 19:13:30		iMessage	Outgoing			Delivered	Will do. About an hour
Joe	2021-10-20 19:15:50		2021-10-20 20:10:04	iMessage	Incoming	+12027707754	Joe	Read	Cool
Joe	2021-10-20 21:43:18		2021-10-20 22:54:53	iMessage	Incoming	+12027707754	Joe	Read	I looked up [redacted] was at [redacted] during my vetting but I don t believe I met [redacted]
Joe	2021-10-20 22:55:01	2021-10-20 22:55:02		iMessage	Outgoing			Delivered	Interesting
Joe	2021-10-20 22:56:04	2021-10-20 22:56:05		iMessage	Outgoing			Delivered	Did you see the cspan broadcast about border security- watching a rebroadcast now... Portman Johnson Sc
Joe	2021-10-20 23:03:01		2021-10-20 23:03:09	iMessage	Incoming	+12027707754	Joe	Read	Time for you to go Zzzsss
Joe	2021-10-20 23:03:13	2021-10-20 23:03:13		iMessage	Outgoing			Delivered	Liked “Time for you to go Zzzsss”
Joe	2021-10-21 10:03:46		2021-10-21 11:40:08	iMessage	Incoming	+12027707754	Joe	Read	Go gettem
Joe	2021-10-21 11:40:35	2021-10-21 11:40:36		iMessage	Outgoing			Delivered	Thx it is over- r u watching the other hearing
Joe	2021-10-21 11:41:34		2021-10-21 11:41:34	iMessage	Incoming	+12027707754	Joe	Read	Just back from my doctor appt and will dial in from beginning
Joe	2021-10-21 12:37:38	2021-10-21 12:37:40		iMessage	Outgoing			Delivered	Last 5 minutes are all you need to watch!
Joe	2021-10-21 12:38:11		2021-10-21 12:38:19	iMessage	Incoming	+12027707754	Joe	Read	I m 30 minutes in
Joe	2021-10-21 12:38:25	2021-10-21 12:38:26		iMessage	Outgoing			Delivered	Skip!!!
Joe	2021-10-21 12:38:31	2021-10-21 12:38:32		iMessage	Outgoing			Delivered	You will not regret
Joe	2021-10-21 12:38:38	2021-10-21 12:38:38		iMessage	Outgoing			Delivered	Go to Harley
Joe	2021-10-21 12:38:42	2021-10-21 12:38:42		iMessage	Outgoing			Delivered	Hawley
Joe	2021-10-22 11:13:47	2021-10-22 11:13:48		iMessage	Outgoing			Delivered	Time for a call?
Joe	2021-10-22 17:19:56	2021-10-22 17:20:01		iMessage	Outgoing			Delivered	I need one minute
Joe	2021-10-22 17:20:13		2021-10-22 17:26:23	iMessage	Incoming	+12027707754	Joe	Read	Sure
Joe	2021-10-22 19:51:18	2021-10-22 19:51:30		iMessage	Outgoing			Delivered	Calling in 5
Joe	2021-10-25 08:51:37	2021-10-25 08:51:40		iMessage	Outgoing			Delivered	Time for a call?
Joe	2021-10-25 08:54:35	2021-10-25 08:54:36		iMessage	Outgoing			Delivered	I have not seen the DoS email response re SIV. Action for me?
Joe	2021-10-25 13:23:03	2021-10-25 13:24:56		iMessage	Outgoing			Delivered	Can I call?
Joe	2021-10-25 13:47:50		2021-10-25 13:48:48	iMessage	Incoming	+12027707754	Joe	Read	Yes
Joe	2021-10-25 18:53:06	2021-10-25 18:53:08		iMessage	Outgoing			Delivered	Available?
Joe	2021-10-25 18:54:05		2021-10-25 18:54:12	iMessage	Incoming	+12027707754	Joe	Read	30 minutes
Joe	2021-10-25 18:54:17	2021-10-25 18:54:17		iMessage	Outgoing			Delivered	Liked “30 minutes”
Joe	2021-10-26 09:37:53	2021-10-26 09:37:55		iMessage	Outgoing			Delivered	Call?
Joe	2021-10-26 09:38:37		2021-10-26 09:38:37	iMessage	Incoming	+12027707754	Joe	Read	5 minutes
Joe	2021-10-26 09:38:43	2021-10-26 09:38:43		iMessage	Outgoing			Delivered	Liked “5 minutes”
Joe	2021-10-27 09:29:26	2021-10-27 09:29:27		iMessage	Outgoing			Delivered	Suggest we debrief the afghan coordination- do you have time to do that tonight
Joe	2021-10-27 09:45:38		2021-10-27 09:47:50	iMessage	Incoming	+12027707754	Joe	Read	Yes
Joe	2021-10-27 09:52:25	2021-10-27 09:52:26		iMessage	Outgoing			Delivered	Great. I asked [redacted] and he thought 1630 your time would work. Ok?
Joe	2021-10-27 09:52:48		2021-10-27 09:52:49	iMessage	Incoming	+12027707754	Joe	Read	That should
Joe	2021-10-27 09:52:55	2021-10-27 09:52:56		iMessage	Outgoing			Delivered	Liked “That should”
Joe	2021-10-27 18:28:23	2021-10-27 18:28:25		iMessage	Outgoing			Delivered	I am running late. Will be on as soon as possible
Joe	2021-10-28 15:53:41		2021-10-28 16:02:06	iMessage	Incoming	+12027707754	Joe	Read	Back in Lala land!
Joe	2021-10-28 16:02:12	2021-10-28 16:02:13		iMessage	Outgoing			Delivered	Loved “Back in Lala land!”
Joe	2021-10-28 16:14:17	2021-10-28 16:14:19		iMessage	Outgoing			Delivered	Are you free for a 5 00 leadership call. Instead of 4:30
Joe	2021-10-28 16:33:07	2021-10-28 16:33:08		iMessage	Outgoing			Delivered	Or are you available at all?
Joe	2021-10-28 16:33:15	2021-10-28 16:33:15		iMessage	Outgoing			Delivered	I may have lost the thread
Joe	2021-10-28 16:40:32		2021-10-28 16:42:41	iMessage	Incoming	+12027707754	Joe	Read	Yes
Joe	2021-10-28 16:42:48	2021-10-28 16:42:48		iMessage	Outgoing			Delivered	Liked “Yes”
Joe	2021-11-02 11:33:54	2021-11-02 11:33:56		iMessage	Outgoing			Delivered	[redacted] and [redacted] will be on call with us and [redacted] ok?
Joe	2021-11-02 11:49:29		2021-11-02 12:12:19	iMessage	Incoming	+12027707754	Joe	Read	Cool
Joe	2021-11-02 13:18:02	2021-11-02 13:18:04		iMessage	Outgoing			Delivered	[redacted] has open case
Joe	2021-11-03 13:58:25	2021-11-03 13:58:27		iMessage	Outgoing			Delivered	Want me to jump off?
Joe	2021-11-03 14:01:35	2021-11-03 14:01:35		iMessage	Outgoing			Delivered	Meaning too many people on.
Joe	2021-11-04 09:14:56	2021-11-04 09:14:58		iMessage	Outgoing			Delivered	Clarification from what I said yesterday- we have not shared a draft response letter outside dhs OIG
Joe	2021-11-04 09:18:14		2021-11-04 09:18:15	iMessage	Incoming	+12027707754	Joe	Read	Thoughts
Joe	2021-11-04 09:18:25	2021-11-04 09:18:25		iMessage	Outgoing			Delivered	OEA can share our draft
Joe	2021-11-04 09:23:05	2021-11-04 09:23:05		iMessage	Outgoing			Delivered	He means our call
Joe	2021-11-04 09:23:50	2021-11-04 09:23:51		iMessage	Outgoing			Delivered	Not the same
Joe	2021-11-04 09:29:37	2021-11-04 09:29:42		iMessage	Outgoing			Delivered	Want me to call?
Joe	2021-11-04 11:57:38	2021-11-04 11:57:43		iMessage	Outgoing			Delivered	Quick call?

Joe	2021-11-04 13:23:37	2021-11-04 13:23:38		iMessage	Outgoing		Delivered	I will send [redacted] COS a note
Joe	2021-11-05 15:15:50	2021-11-05 15:15:51		iMessage	Outgoing		Delivered	Not urgent but let me know if you can talk
Joe	2021-11-08 09:01:12	2021-11-08 09:01:17		iMessage	Outgoing		Delivered	Gentle nudge- IG update ok?
Joe	2021-11-08 09:28:53		2021-11-08 09:29:34	iMessage	Incoming	+12027707754 Joe	Read	All good. Can I now transmit
Joe	2021-11-08 09:29:45	2021-11-08 09:29:46		iMessage	Outgoing		Delivered	Let me look one more time please
Joe	2021-11-08 09:31:10	2021-11-08 09:31:11		iMessage	Outgoing		Delivered	Yes. Good to go. Thanks!
Joe	2021-11-08 09:31:52	2021-11-08 09:31:53		iMessage	Outgoing		Delivered	I spoke with ossoffs staff. Will schedule a meeting before the hearing
Joe	2021-11-08 09:34:15		2021-11-08 09:34:23	iMessage	Incoming	+12027707754 Joe	Read	Great. Also need Johnson mtg. Thanks
Joe	2021-11-08 09:34:30	2021-11-08 09:34:30		iMessage	Outgoing		Delivered	Yep we are working on it
Joe	2021-11-08 09:41:04	2021-11-08 09:41:05		iMessage	Outgoing		Delivered	Can I call?
Joe	2021-11-08 09:41:18		2021-11-08 09:41:19	iMessage	Incoming	+12027707754 Joe	Read	Yes
Joe	2021-11-08 12:37:36	2021-11-08 12:37:38		iMessage	Outgoing		Delivered	Sent the 1300 talkers - SORRY! The first version was somehow lost 😳
Joe	2021-11-08 12:37:46	2021-11-08 12:37:46		iMessage	Outgoing		Delivered	Had to rewrite
Joe	2021-11-08 13:13:34	2021-11-08 13:13:35		iMessage	Outgoing		Delivered	Thanks [redacted] for that idea and for all you do in working with MITRE - you are making great progress [redacted] next
Joe	2021-11-08 13:18:40	2021-11-08 13:18:41		iMessage	Outgoing		Delivered	No surprises
Joe	2021-11-08 13:18:52	2021-11-08 13:18:53		iMessage	Outgoing		Delivered	Listening to employees when we do
Joe	2021-11-08 13:27:42	2021-11-08 13:27:46		iMessage	Outgoing		Delivered	[redacted] is next
Joe	2021-11-08 15:17:50	2021-11-08 15:17:55		iMessage	Outgoing		Delivered	Can I take this one
Joe	2021-11-10 13:53:48		2021-11-10 13:53:59	iMessage	Incoming	+12027707754 Joe	Read	An association seeking to be transformed into a governing board
Joe	2021-11-10 13:54:09	2021-11-10 13:54:09		iMessage	Outgoing		Delivered	Liked “An association seeking to be transformed into a governing board”
Joe	2021-11-10 14:07:44	2021-11-10 14:07:46		iMessage	Outgoing		Delivered	You have wrong talkers. Can I send the next part?
Joe	2021-11-10 14:08:38		2021-11-10 14:08:38	iMessage	Incoming	+12027707754 Joe	Read	I have new ones
Joe	2021-11-10 14:09:17	2021-11-10 14:09:18		iMessage	Outgoing		Delivered	They sent wrong ones. It is ok but sent others for the next pet
Joe	2021-11-10 14:09:20	2021-11-10 14:09:20		iMessage	Outgoing		Delivered	Part
Joe	2021-11-10 14:09:36	2021-11-10 14:09:36		iMessage	Outgoing		Delivered	Just sent
Joe	2021-11-10 14:09:49		2021-11-10 14:09:49	iMessage	Incoming	+12027707754 Joe	Read	Yes
Joe	2021-11-10 14:12:13		2021-11-10 14:12:13	iMessage	Incoming	+12027707754 Joe	Read	Is [redacted] on
Joe	2021-11-10 14:12:19	2021-11-10 14:12:19		iMessage	Outgoing		Delivered	Who
Joe	2021-11-10 14:12:26		2021-11-10 14:12:27	iMessage	Incoming	+12027707754 Joe	Read	[redacted]
Joe	2021-11-10 14:12:29	2021-11-10 14:12:29		iMessage	Outgoing		Delivered	No
Joe	2021-11-10 14:13:59	2021-11-10 14:13:59		iMessage	Outgoing		Delivered	Nice!
Joe	2021-11-12 10:28:25		2021-11-12 10:28:38	iMessage	Incoming	+12027707754 Joe	Read	Let s visit with [redacted] after this call
Joe	2021-11-12 10:28:46	2021-11-12 10:28:47		iMessage	Outgoing		Delivered	Liked “Let s visit with [redacted] after this call”
Joe	2021-11-12 10:30:11	2021-11-12 10:30:11		iMessage	Outgoing		Delivered	Calling you now
Joe	2021-11-12 13:47:24	2021-11-12 13:47:26		iMessage	Outgoing		Delivered	Calling!
Joe	2021-11-12 13:48:04	2021-11-12 13:48:05		iMessage	Outgoing		Delivered	Let me try again. Do you have time for a call 😬
Joe	2021-11-12 14:32:59	2021-11-12 14:33:03		iMessage	Outgoing		Delivered	Runaway train. I think we need to agree to the call
Joe	2021-11-12 14:33:03	2021-11-12 14:33:03		iMessage	Outgoing		Delivered	I can explain
Joe	2021-11-16 11:14:47		2021-11-16 11:44:49	iMessage	Incoming	+12027707754 Joe	Read	Are you watching CIGIE meeting
Joe	2021-11-17 09:18:49	2021-11-17 09:18:51		iMessage	Outgoing		Delivered	At Johnson s office
Joe	2021-11-17 09:19:19		2021-11-17 09:21:15	iMessage	Incoming	+12027707754 Joe	Read	I m in my way
Joe	2021-11-17 15:44:13	2021-11-17 15:44:14		iMessage	Outgoing		Delivered	Stuck in basement at security
Joe	2021-11-17 15:46:34		2021-11-17 15:46:39	iMessage	Incoming	+12027707754 Joe	Read	Yikes
Joe	2021-11-17 15:46:55	2021-11-17 15:46:55		iMessage	Outgoing		Delivered	[redacted] is rescuing me but may not make it to you
Joe	2021-11-17 15:47:21		2021-11-17 15:47:22	iMessage	Incoming	+12027707754 Joe	Read	Copy. Come by when you re done
Joe	2021-11-18 14:35:33	2021-11-18 14:35:35		iMessage	Outgoing		Delivered	Can we push to 2:45? The PLD
Joe	2021-11-19 15:49:03	2021-11-19 15:49:05		iMessage	Outgoing		Delivered	Quick call?
Joe	2021-11-20 09:40:50		2021-11-20 10:43:49	iMessage	Incoming	+12027707754 Joe	Read	Politico article today about too many non-DoD related amendments on the Ndaa
Joe	2021-11-20 10:44:01	2021-11-20 10:44:02		iMessage	Outgoing		Delivered	Liked “Politico article today about too many non-DoD related amendments on the Ndaa”
Joe	2021-11-22 10:24:40	2021-11-22 10:24:42		iMessage	Outgoing		Delivered	Can I join you and [redacted] when you are done with performance?
Joe	2021-11-22 10:25:42		2021-11-22 10:25:43	iMessage	Incoming	+12027707754 Joe	Read	Just signed off. Want to ping us
Joe	2021-11-22 10:25:49	2021-11-22 10:25:49		iMessage	Outgoing		Delivered	Liked “Just signed off. Want to ping us”
Joe	2021-11-23 12:59:05	2021-11-23 12:59:10		iMessage	Outgoing		Delivered	Not a draft - it is final coming soon
Joe	2021-11-23 13:07:50	2021-11-23 13:07:50		iMessage	Outgoing		Delivered	Want to call?
Joe	2021-11-24 09:11:42	2021-11-24 09:11:43		iMessage	Outgoing		Delivered	Checking in. Need anything before my flight?
Joe	2021-11-24 09:20:45		2021-11-24 09:44:31	iMessage	Incoming	+12027707754 Joe	Read	No thanks
Joe	2021-11-24 13:18:27		2021-11-24 13:29:06	iMessage	Incoming	+12027707754 Joe	Read	Info just received from [redacted] ——The IG amendments did not make it into an NDAA amendment, but HSGA(
Joe	2021-11-24 13:29:13	2021-11-24 13:29:15		iMessage	Outgoing		Delivered	Loved “Info just received from [redacted] ——The IG amendments did not make it into an NDAA amendment, bu
Joe	2021-11-24 13:30:00		2021-11-24 13:30:00	iMessage	Incoming	+12027707754 Joe	Read	Interesting
Joe	2021-11-24 13:30:09	2021-11-24 13:30:09		iMessage	Outgoing		Delivered	I may not make the 1 00. Traffic is bad and have to take METRA
Joe	2021-11-24 13:30:19	2021-11-24 13:30:19		iMessage	Outgoing		Delivered	VERY interesting!
Joe	2021-11-24 13:31:29		2021-11-24 13:32:10	iMessage	Incoming	+12027707754 Joe	Read	He indeed. Happy motoring
Joe	2021-11-25 09:41:14		2021-11-25 11:53:28	iMessage	Incoming	+12027707754 Joe	Read	There they are in the Macys Day float
Joe	2021-11-25 11:53:38	2021-11-25 11:53:39		iMessage	Outgoing		Delivered	????
Joe	2021-11-25 15:31:02	2021-11-25 15:31:03		iMessage	Outgoing		Delivered	Yes! And also happy thanksgiving! 🦃

Joe	2021-11-25 15:35:43		2021-11-25 23:08:05	iMessage	Incoming	+12027707754 Joe	Read	Cool
Joe	2021-11-29 08:40:28	2021-11-29 08:40:33		iMessage	Outgoing		Delivered	Quick call before 0900?
Joe	2021-12-01 07:58:09	2021-12-01 07:58:10		iMessage	Outgoing		Delivered	I am taking a pass on breakfast- working and needed the time to knock something s out. Thanks
Joe	2021-12-01 07:59:48		2021-12-01 07:59:53	iMessage	Incoming	+12027707754 Joe	Read	Copy. Can we bring you something
Joe	2021-12-01 08:00:08	2021-12-01 08:00:08		iMessage	Outgoing		Delivered	No thanks! I have a freebie in the hotel
Joe	2021-12-01 08:00:17		2021-12-01 08:00:17	iMessage	Incoming	+12027707754 Joe	Read	Yikes
Joe	2021-12-01 08:00:40	2021-12-01 08:00:41		iMessage	Outgoing		Delivered	Hahaha. I am sure it will rival last night s dinner!
Joe	2021-12-01 08:01:26		2021-12-01 08:17:35	iMessage	Incoming	+12027707754 Joe	Read	I d tend to agree
Joe	2021-12-06 16:43:54	2021-12-06 16:44:00		iMessage	Outgoing		Delivered	No basked[redacted] you f he has a hard stop today... waiting for an answer
Joe	2021-12-06 16:44:07	2021-12-06 16:44:08		iMessage	Outgoing		Delivered	I asked[redacted]
Joe	2021-12-06 19:20:28		2021-12-06 19:42:44	iMessage	Incoming	+12027707754 Joe	Read	We have a reservation for six people at 6:15pm
Joe	2021-12-07 20:13:45	2021-12-07 20:13:50		iMessage	Outgoing		Delivered	Any chance we can increase our reservation to 8?
Joe	2021-12-07 20:28:35		2021-12-07 20:28:43	iMessage	Incoming	+12027707754 Joe	Read	Unfortunately it s Doubtful. They were packed but had more for six. I ll check though
Joe	2021-12-07 20:28:53	2021-12-07 20:28:53		iMessage	Outgoing		Delivered	Liked "Unfortunately it s Doubtful. They were packed but had more for six. I ll check though "
Joe	2021-12-10 14:35:41	2021-12-10 14:35:46		iMessage	Outgoing		Delivered	[redacted] is on too
Joe	2021-12-10 14:35:54	2021-12-10 14:35:54		iMessage	Outgoing		Delivered	And you could introduce[redacted] ifninclined
Joe	2021-12-10 14:36:01	2021-12-10 14:36:01		iMessage	Outgoing		Delivered	If inclined
Joe	2021-12-15 09:34:49		2021-12-15 09:36:25	iMessage	Incoming	+12027707754 Joe	Read	Senate will vote on ndaa this afternoon
Joe	2021-12-15 09:36:38	2021-12-15 09:36:41		iMessage	Outgoing		Delivered	⚽
Joe	2021-12-16 12:06:40	2021-12-16 12:06:42		iMessage	Outgoing		Delivered	[redacted]
Joe	2021-12-16 12:32:54		2021-12-16 12:53:49	iMessage	Incoming	+12027707754 Joe	Read	You re quite welcome! Very well deserved
Joe	2021-12-16 12:39:00		2021-12-16 12:53:49	iMessage	Incoming	+12027707754 Joe	Read	Please call me, urgent
Joe	2021-12-16 12:54:17	2021-12-16 12:54:18		iMessage	Outgoing		Delivered	Talked to[redacted] They are aware not a case yet still gathering info
Joe	2021-12-16 12:56:23		2021-12-16 12:56:26	iMessage	Incoming	+12027707754 Joe	Read	Let s chat after your CTAB mtg. They need to let us know if they get any incoming regarding OAW
Joe	2021-12-16 12:56:33	2021-12-16 12:56:34		iMessage	Outgoing		Delivered	Liked "Let s chat after your CTAB mtg. They need to let us know if they get any incoming regarding OAW"
Joe	2021-12-16 12:56:44	2021-12-16 12:56:45		iMessage	Outgoing		Delivered	This was on list of hotline complaints
Joe	2021-12-16 12:57:31		2021-12-16 12:57:32	iMessage	Incoming	+12027707754 Joe	Read	Copy but I didn t have any fidelity.
Joe	2021-12-16 12:58:20	2021-12-16 12:58:21		iMessage	Outgoing		Delivered	Understood!
Joe	2021-12-16 19:23:11		2021-12-16 20:48:52	iMessage	Incoming	+12027707754 Joe	Read	At airport board in 30 minutes. Great trip. Catch up tomorrow
Joe	2021-12-16 20:49:03	2021-12-16 22:45:25		iMessage	Outgoing		Delivered	Sounds good !
Joe	2021-12-17 16:44:01	2021-12-17 16:44:02		iMessage	Outgoing		Delivered	Want to call?
Joe	2021-12-19 21:30:11		2021-12-20 07:31:39	iMessage	Incoming	+12027707754 Joe	Read	I d like to leave this Weds open.[redacted] plans to go to Phoenix for a[redacted] lunch. I d like to join[redacted]
Joe	2021-12-20 07:32:04	2021-12-20 07:32:05		iMessage	Outgoing		Delivered	No conflict. Tuesday will work for the scif
Joe	2021-12-20 08:28:23		2021-12-20 20:20:42	iMessage	Incoming	+12027707754 Joe	Read	Excellent
Joe	2021-12-20 20:20:48	2021-12-20 20:20:50		iMessage	Outgoing		Delivered	Time for a call?
Joe	2021-12-21 10:08:17		2021-12-21 10:08:17	iMessage	Incoming	+12027707754 Joe	Read	Can you see me on camera
Joe	2021-12-21 10:08:24	2021-12-21 10:08:25		iMessage	Outgoing		Delivered	No
Joe	2021-12-21 10:08:37	2021-12-21 10:08:37		iMessage	Outgoing		Delivered	And you appear to NOT be on mute
Joe	2021-12-21 10:08:46	2021-12-21 10:08:46		iMessage	Outgoing		Delivered	But can t hear you
Joe	2021-12-21 10:09:41	2021-12-21 10:09:41		iMessage	Outgoing		Delivered	We could pivot to auditing topics if needed but I like being the different voice. How to detect and deter frau
Joe	2021-12-21 10:11:21		2021-12-21 10:11:27	iMessage	Incoming	+12027707754 Joe	Read	How do I get on camera
Joe	2021-12-21 10:11:53	2021-12-21 10:11:54		iMessage	Outgoing		Delivered	Bottom left - hover. See g to e video icon?
Joe	2021-12-21 10:12:01	2021-12-21 10:12:01		iMessage	Outgoing		Delivered	See the
Joe	2021-12-21 10:12:22	2021-12-21 10:12:22		iMessage	Outgoing		Delivered	On
Joe	2021-12-21 10:16:12	2021-12-21 10:16:14		iMessage	Outgoing		Delivered	"We have a case study approach but can pivot to a broader discussion if you prefer"
Joe	2021-12-21 10:37:16	2021-12-21 10:37:20		iMessage	Outgoing		Delivered	We will rework presentation ASAP
Joe	2021-12-21 10:37:39	2021-12-21 10:37:39		iMessage	Outgoing		Delivered	To at was just for you
Joe	2021-12-21 10:37:43	2021-12-21 10:37:43		iMessage	Outgoing		Delivered	That
Joe	2021-12-21 14:43:29	2021-12-21 14:43:31		iMessage	Outgoing		Delivered	Are you set for 1300 mst with[redacted] [redacted] will be there just because
Joe	2021-12-21 14:50:55		2021-12-21 14:56:10	iMessage	Incoming	+12027707754 Joe	Read	Copy
Joe	2021-12-21 14:56:27	2021-12-21 14:56:28		iMessage	Outgoing		Delivered	1400 mst SSM
Joe	2021-12-21 15:10:56	2021-12-21 15:10:58		iMessage	Outgoing		Delivered	Ice Contract terminated October 2021
Joe	2021-12-21 15:19:22	2021-12-21 15:19:35		iMessage	Outgoing		Delivered	Complete
Joe	2021-12-22 09:12:30	2021-12-22 09:12:34		iMessage	Outgoing		Delivered	Time to sign letters before you get on the road?
Joe	2021-12-22 09:12:59	2021-12-22 09:12:59		iMessage	Outgoing		Delivered	Sending congressional update letters re Rambo request
Joe	2021-12-22 09:13:07	2021-12-22 09:13:08		iMessage	Outgoing		Delivered	Or I can sign for you
Joe	2021-12-22 09:13:13		2021-12-22 09:13:14	iMessage	Incoming	+12027707754 Joe	Read	Yes. Send them. Thanks
Joe	2021-12-22 09:13:21	2021-12-22 09:13:22		iMessage	Outgoing		Delivered	Liked "Yes. Send them. Thanks "
Joe	2021-12-22 09:13:27	2021-12-22 09:13:28		iMessage	Outgoing		Delivered	[redacted] is working it now
Joe	2021-12-22 09:23:15	2021-12-22 09:23:16		iMessage	Outgoing		Delivered	In your box
Joe	2021-12-23 10:30:32	2021-12-23 10:30:34		iMessage	Outgoing		Delivered	Will try again after my 1030 interview
Joe	2021-12-23 10:37:48		2021-12-23 11:29:27	iMessage	Incoming	+12027707754 Joe	Read	Copy
Joe	2021-12-30 12:12:36	2021-12-30 12:12:42		iMessage	Outgoing		Delivered	Any reason to push for a meeting earlier?
Joe	2021-12-30 18:42:24		2021-12-30 18:42:36	iMessage	Incoming	+12027707754 Joe	Read	What am I missing
Joe	2021-12-30 18:44:46	2021-12-30 18:44:47		iMessage	Outgoing		Delivered	Sounds like[redacted] sees it but attorneys are unconcerned

Joe	2021-12-30 19:03:53	2021-12-30 19:03:58		iMessage	Outgoing		Delivered	Confused by the laissez faire or lack of urgency- not typical
Joe	2022-01-01 15:49:12	2022-01-01 15:49:19		iMessage	Outgoing		Delivered	I have an update when you have time
Joe	2022-01-01 15:50:35		2022-01-01 16:58:47	iMessage	Incoming	+12027707754 Joe	Read	Thanks. Will call in a bit. Just finishing timing a eace and heading to lunch
Joe	2022-01-01 18:12:54	2022-01-01 18:12:54		iMessage	Outgoing		Delivered	Can I call you later?
Joe	2022-01-01 18:13:20		2022-01-01 18:48:45	iMessage	Incoming	+12027707754 Joe	Read	Yes
Joe	2022-01-05 12:10:30	2022-01-05 12:10:32		iMessage	Outgoing		Delivered	Call?
Joe	2022-01-05 12:58:32	2022-01-05 12:58:34		iMessage	Outgoing		Delivered	[redacted] retired [redacted] In case you need to know
Joe	2022-01-05 13:00:47		2022-01-05 13:01:22	iMessage	Incoming	+12027707754 Joe	Read	Copy
Joe	2022-01-05 13:21:49	2022-01-05 13:21:51		iMessage	Outgoing		Delivered	[redacted]
Joe	2022-01-05 13:23:36	2022-01-05 13:23:37		iMessage	Outgoing		Delivered	Small part of next steps
Joe	2022-01-05 13:27:56	2022-01-05 13:27:58		iMessage	Outgoing		Delivered	Suggest you skip the rest of the updates unless [redacted] has time. Because [redacted] is behind
Joe	2022-01-05 13:35:52	2022-01-05 13:35:54		iMessage	Outgoing		Delivered	[redacted]
Joe	2022-01-05 14:28:34	2022-01-05 14:28:40		iMessage	Outgoing		Delivered	Apologies. I can take your call now
Joe	2022-01-05 21:23:37	2022-01-05 21:23:43		iMessage	Outgoing		Delivered	Do you have time to look at the final USCM draft email?
Joe	2022-01-05 21:29:53		2022-01-05 21:30:05	iMessage	Incoming	+12027707754 Joe	Read	Yikes
Joe	2022-01-05 21:30:11	2022-01-05 21:30:11		iMessage	Outgoing		Delivered	Meaning?
Joe	2022-01-05 21:30:54		2022-01-05 21:30:54	iMessage	Incoming	+12027707754 Joe	Read	[redacted] just leaving after dinner. Will get on it shortly
Joe	2022-01-05 21:31:19	2022-01-05 21:31:20		iMessage	Outgoing		Delivered	Thank you. I just sent
Joe	2022-01-05 21:45:14		2022-01-05 21:45:19	iMessage	Incoming	+12027707754 Joe	Read	Just reviewed. All good
Joe	2022-01-05 21:45:23	2022-01-05 21:45:23		iMessage	Outgoing		Delivered	Liked "Just reviewed. All good"
Joe	2022-01-06 09:52:22	2022-01-06 09:52:24		iMessage	Outgoing		Delivered	Checking in. Do you have what you need?
Joe	2022-01-06 10:38:17	2022-01-06 10:38:18		iMessage	Outgoing		Delivered	Final slide deck shows you going last, fyi
Joe	2022-01-06 10:38:33	2022-01-06 10:38:33		iMessage	Outgoing		Delivered	Saving the best!
Joe	2022-01-06 10:39:11		2022-01-06 10:39:12	iMessage	Incoming	+12027707754 Joe	Read	Yes. I saw that since I the oldest
Joe	2022-01-06 10:39:21	2022-01-06 10:39:21		iMessage	Outgoing		Delivered	😇
Joe	2022-01-06 11:07:46	2022-01-06 11:07:47		iMessage	Outgoing		Delivered	You look good on camera. Good placement of logo
Joe	2022-01-06 11:26:03	2022-01-06 11:26:04		iMessage	Outgoing		Delivered	Treasury questions
Joe	2022-01-06 11:51:18	2022-01-06 11:51:19		iMessage	Outgoing		Delivered	[redacted] is ready for questions
Joe	2022-01-06 11:51:27	2022-01-06 11:51:28		iMessage	Outgoing		Delivered	If they come
Joe	2022-01-06 12:09:24	2022-01-06 12:09:25		iMessage	Outgoing		Delivered	Nice!
Joe	2022-01-06 12:09:34	2022-01-06 12:09:35		iMessage	Outgoing		Delivered	Not us
Joe	2022-01-06 12:10:06	2022-01-06 12:10:07		iMessage	Outgoing		Delivered	No chat questions for us
Joe	2022-01-06 12:10:08	2022-01-06 12:10:09		iMessage	Outgoing		Delivered	Yet
Joe	2022-01-06 12:29:14	2022-01-06 12:29:15		iMessage	Outgoing		Delivered	Treasury
Joe	2022-01-06 12:38:23	2022-01-06 12:38:24		iMessage	Outgoing		Delivered	Call?
Joe	2022-01-06 12:39:06	2022-01-06 12:39:06		iMessage	Outgoing		Delivered	I have to flex at 1100 mst
Joe	2022-01-06 12:39:23	2022-01-06 12:39:23		iMessage	Outgoing		Delivered	Until noon mst
Joe	2022-01-07 09:05:39	2022-01-07 09:05:41		iMessage	Outgoing		Delivered	Looks like you are in the office- if so, time for quick call?
Joe	2022-01-13 11:08:18	2022-01-13 11:08:20		iMessage	Outgoing		Delivered	[redacted] clearance went to DHS yesterday
Joe	2022-01-13 11:08:54	2022-01-13 11:08:54		iMessage	Outgoing		Delivered	[redacted] employee fully separated
Joe	2022-01-13 11:13:54	2022-01-13 11:13:55		iMessage	Outgoing		Delivered	I am having teams trouble
Joe	2022-01-13 16:34:01	2022-01-13 16:34:04		iMessage	Outgoing		Delivered	Ask [redacted] re hawley?
Joe	2022-01-13 16:34:05	2022-01-13 16:34:06		iMessage	Outgoing		Delivered	[redacted]
Joe	2022-01-13 17:46:54		2022-01-13 17:47:14	iMessage	Incoming	+12027707754 Joe	Read	Ugh. I missed this
Joe	2022-01-13 17:47:27	2022-01-13 17:47:28		iMessage	Outgoing		Delivered	Sorry I did not raise
Joe	2022-01-13 17:48:18		2022-01-13 17:48:19	iMessage	Incoming	+12027707754 Joe	Read	Ask [redacted] to check in. Thanks
Joe	2022-01-13 17:48:31	2022-01-13 17:48:32		iMessage	Outgoing		Delivered	With [redacted]
Joe	2022-01-13 17:51:01		2022-01-13 17:51:06	iMessage	Incoming	+12027707754 Joe	Read	Yes
Joe	2022-01-14 11:32:11	2022-01-14 11:32:13		iMessage	Outgoing		Delivered	On with house approps
Joe	2022-01-14 11:33:38		2022-01-14 11:33:54	iMessage	Incoming	+12027707754 Joe	Read	Copy. Heading into mtg in phoenix. Call once [redacted] plea is done. Thanks
Joe	2022-01-14 11:34:00	2022-01-14 11:34:01		iMessage	Outgoing		Delivered	Liked "Copy. Heading into mtg in phoenix. Call once [redacted] plea is done. Thanks "
Joe	2022-01-14 14:48:11	2022-01-14 14:48:12		iMessage	Outgoing		Delivered	Are you ok if I invite OEA staff to the [redacted] call?
Joe	2022-01-14 14:48:17	2022-01-14 14:48:17		iMessage	Outgoing		Delivered	Just to listen in
Joe	2022-01-14 14:50:49		2022-01-14 15:11:15	iMessage	Incoming	+12027707754 Joe	Read	Yes
Joe	2022-01-14 15:16:42	2022-01-14 15:16:47		iMessage	Outgoing		Delivered	I moved the inv monthly next Wednesday to the following week. Put in a psi prep. For that meeting- do you want your hearing binder sent to the Tucson office
Joe	2022-01-14 15:17:38		2022-01-14 15:17:38	iMessage	Incoming	+12027707754 Joe	Read	Yes. Thanks
Joe	2022-01-14 15:18:15	2022-01-14 15:18:15		iMessage	Outgoing		Delivered	Liked "Yes. Thanks "
Joe	2022-01-14 21:27:27		2022-01-14 21:38:32	iMessage	Incoming	+12027707754 Joe	Read	Great week, lots of good things. Thanks and enjoy your weekend ☺️
Joe	2022-01-14 21:38:40	2022-01-14 21:38:45		iMessage	Outgoing		Delivered	Thank you!!!
Joe	2022-01-14 21:38:50	2022-01-14 21:38:50		iMessage	Outgoing		Delivered	Hope you enjoy yours too 😇
Joe	2022-01-18 11:39:38	2022-01-18 11:39:39		iMessage	Outgoing		Delivered	Hopping off the call
Joe	2022-01-20 10:03:12	2022-01-20 10:03:14		iMessage	Outgoing		Delivered	Joining this call?
Joe	2022-01-20 12:41:25	2022-01-20 12:41:26		iMessage	Outgoing		Delivered	Time for a quick call?
Joe	2022-01-20 12:43:46		2022-01-20 12:43:52	iMessage	Incoming	+12027707754 Joe	Read	Five minutes
Joe	2022-01-20 12:43:59	2022-01-20 12:43:59		iMessage	Outgoing		Delivered	No rush at all

Joe	2022-01-20 15:03:24	2022-01-20 15:03:26		iMessage	Outgoing		Delivered	Are you joining the Afghan call?		
Joe	2022-01-20 15:03:32	2022-01-20 15:03:32		iMessage	Outgoing		Delivered	[redacted] is on		
Joe	2022-01-21 13:08:11	2022-01-21 13:08:17		iMessage	Outgoing		Delivered	They sent wrong talkers. Will make sure it doesn t happen again. Apologies. That was the only change need		
Joe	2022-01-21 13:41:08		2022-01-21 13:49:53	iMessage	Incoming	+12027707754 Joe	Read	Copy		
Joe	2022-01-21 13:50:00	2022-01-21 13:50:01		iMessage	Outgoing		Delivered	Liked "Copy"		
Joe	2022-01-23 15:41:10	2022-01-23 15:41:12		iMessage	Outgoing		Delivered	Yahoo news is going to run this tomorrow:		
Joe	2022-01-23 15:41:16	2022-01-23 15:41:17		iMessage	Outgoing		Delivered	Hey. We are going to be including the following statement from Sen Wyden s spox in our article that will lik		
Joe	2022-01-23 15:41:56	2022-01-23 15:41:57		iMessage	Outgoing		Delivered	I am inclined to not comment. She has all the background about why and how we do what we do. Agre?		
Joe	2022-01-23 15:42:06	2022-01-23 15:42:06		iMessage	Outgoing		Delivered	Agree?		
Joe	2022-01-23 15:42:23		2022-01-23 15:42:23	iMessage	Incoming	+12027707754 Joe	Read	I ll be with you in a moment		
Joe	2022-01-23 15:42:33	2022-01-23 15:42:33		iMessage	Outgoing		Delivered	Liked "I ll be with you in a moment"		
Joe	2022-01-24 09:17:43	2022-01-24 09:17:45		iMessage	Outgoing		Delivered	Can we talk before the 0800? Perhaps a call with INV at 0745?		
Joe	2022-01-24 11:07:46	2022-01-24 11:07:47		iMessage	Outgoing		Delivered	Quick call?		
Joe	2022-01-24 13:36:52		2022-01-24 13:37:01	iMessage	Incoming	+12027707754 Joe	Read	[redacted] is not on		
Joe	2022-01-24 13:37:06	2022-01-24 13:37:06		iMessage	Outgoing		Delivered	I notices		
Joe	2022-01-24 13:37:35	2022-01-24 13:37:35		iMessage	Outgoing		Delivered	Also I don t agree with the idea that they will take possession of phones		
Joe	2022-01-24 13:37:42	2022-01-24 13:37:42		iMessage	Outgoing		Delivered	[redacted] is going to probe		
Joe	2022-01-24 14:00:35	2022-01-24 14:00:37		iMessage	Outgoing		Delivered	I don t agree with OC. And so t like how this positions they IG. This is not a criminal investigation- what authority do we have to take their phone login info? Is it different than a laptop? Can I show a		
Joe	2022-01-24 14:01:08	2022-01-24 14:01:09		iMessage	Outgoing		Delivered	Oops! Meant to send that to[redacted]		
Joe	2022-01-25 13:52:32		2022-01-25 13:52:42	iMessage	Incoming	+12027707754 Joe	Read		IMG_0046.HEIC	Image
Joe	2022-01-25 13:52:32		2022-01-25 13:52:42	iMessage	Incoming	+12027707754 Joe	Read	Visit with I&A, CISA, AZ National Guard, and state/local law enforcement at the Arizona Counterterrorism In		
Joe	2022-01-25 13:52:56	2022-01-25 13:52:57		iMessage	Outgoing		Delivered	Loved "Visit with I&A, CISA, AZ National Guard, and state/local law enforcement at the Arizona Counterterr		
Joe	2022-01-26 08:31:42	2022-01-26 08:31:43		iMessage	Outgoing		Delivered	Please let me know when you are available for a call this morning. Need to update you		
Joe	2022-01-26 10:03:07	2022-01-26 10:03:07		iMessage	Outgoing		Delivered	Calling you on teams ok?		
Joe	2022-01-26 11:20:40	2022-01-26 11:20:42		iMessage	Outgoing		Delivered	That was fantastic!!		
Joe	2022-01-26 12:02:42	2022-01-26 12:02:44		iMessage	Outgoing		Delivered	Joining the inv montly?		
Joe	2022-01-26 12:46:19	2022-01-26 12:46:20		iMessage	Outgoing		Delivered	EAP. Stigma		
Joe	2022-01-26 15:59:00	2022-01-26 15:59:01		iMessage	Outgoing		Delivered	[redacted] will be late		
Joe	2022-01-26 18:08:06	2022-01-26 18:08:07		iMessage	Outgoing		Delivered	Talked to[redacted] will let us know when plan has been updated.[redacted] is On the same page with you on all		
Joe	2022-01-26 18:20:31		2022-01-26 18:23:00	iMessage	Incoming	+12027707754 Joe	Read	Copy. Thanks		
Joe	2022-01-26 18:23:10	2022-01-26 18:23:14		iMessage	Outgoing		Delivered	Liked "Copy. Thanks "		
Joe	2022-01-27 14:33:34	2022-01-27 14:33:36		iMessage	Outgoing		Delivered	Are you joining the is call?		
Joe	2022-01-27 14:33:48	2022-01-27 14:33:48		iMessage	Outgoing		Delivered	OIE update re I and a		
Joe	2022-01-27 15:02:55	2022-01-27 15:02:56		iMessage	Outgoing		Delivered	To missed[redacted]		
Joe	2022-01-27 15:28:13		2022-01-27 15:28:20	iMessage	Incoming	+12027707754 Joe	Read	Yikes. So sorry		
Joe	2022-01-27 15:28:32	2022-01-27 15:28:32		iMessage	Outgoing		Delivered	No big deal just wanted you to know!		
Joe	2022-01-27 15:28:44	2022-01-27 15:28:44		iMessage	Outgoing		Delivered	[redacted] was fine with it		
Joe	2022-01-27 15:29:26		2022-01-27 15:29:26	iMessage	Incoming	+12027707754 Joe	Read	I was following the talkers and[redacted] not in them. Should have caught it though		
Joe	2022-01-27 15:30:22	2022-01-27 15:30:23		iMessage	Outgoing		Delivered	Not your fault - we failed to include[redacted] in both meetings and added after the first one. Good to know abou		
Joe	2022-01-27 15:32:14		2022-01-27 15:33:41	iMessage	Incoming	+12027707754 Joe	Read	You bet. I print them out and talk off by holding them up at a side of the screen. Consequently it blocks a pc		
Joe	2022-01-27 15:33:48	2022-01-27 15:33:49		iMessage	Outgoing		Delivered	Liked "You bet. I print them out and talk off by holding them up at a side of the screen. Consequently it bloc		
Joe	2022-01-27 15:33:52	2022-01-27 15:33:53		iMessage	Outgoing		Delivered	Helpful!		
Joe	2022-01-27 17:03:53	2022-01-27 17:03:54		iMessage	Outgoing		Delivered	Leadership huddle?		
Joe	2022-01-27 17:04:05	2022-01-27 17:04:06		iMessage	Outgoing		Delivered	Need it to move?		
Joe	2022-01-27 17:05:01		2022-01-27 17:05:02	iMessage	Incoming	+12027707754 Joe	Read	Yes. On a call pls kick for 30 minutes		
Joe	2022-01-27 17:05:09	2022-01-27 17:05:09		iMessage	Outgoing		Delivered	Liked "Yes. On a call pls kick for 30 minutes"		
Joe	2022-01-27 17:21:32	2022-01-27 17:21:32		iMessage	Outgoing		Delivered	Free now		
Joe	2022-01-27 17:22:53		2022-01-27 17:23:05	iMessage	Incoming	+12027707754 Joe	Read	I m on		
Joe	2022-01-27 17:23:10	2022-01-27 17:23:10		iMessage	Outgoing		Delivered	Coming on now		
Joe	2022-01-27 19:56:59	2022-01-27 19:57:02		iMessage	Outgoing		Delivered	If we can include others with s1 want me to invite[redacted]		
Joe	2022-01-27 20:12:55		2022-01-27 20:13:39	iMessage	Incoming	+12027707754 Joe	Read	Yes. Thanks		
Joe	2022-01-27 20:13:50	2022-01-27 20:13:54		iMessage	Outgoing		Delivered	Liked "Yes. Thanks "		
Joe	2022-01-28 18:11:25	2022-01-28 18:11:39		iMessage	Outgoing		Delivered	Do you want the follow up or wait until Monday?		
Joe	2022-01-28 18:12:21		2022-01-28 18:12:22	iMessage	Incoming	+12027707754 Joe	Read	Now would work		
Joe	2022-01-30 15:30:42		2022-01-30 20:49:41	iMessage	Incoming	+12027707754 Joe	Read	[redacted] and I arrived in Nola. All good.[redacted] driving in later this afternoon		
Joe	2022-01-30 20:49:47	2022-01-30 20:49:49		iMessage	Outgoing		Delivered	Liked [redacted] and I arrived in Nola. All good.[redacted] driving in later this afternoon"		
Joe	2022-01-30 20:50:16		2022-01-30 22:16:40	iMessage	Incoming	+12027707754 Joe	Read	Great dinner		
Joe	2022-01-30 22:16:45	2022-01-30 22:16:47		iMessage	Outgoing		Delivered	Loved "Great dinner"		
Joe	2022-02-01 11:09:00	2022-02-01 11:09:04		iMessage	Outgoing		Delivered		[redacted].vcf	Attachment
Joe	2022-02-01 14:32:18		2022-02-01 14:32:33	iMessage	Incoming	+12027707754 Joe	Read	Pls let[redacted] know about[redacted] Thanks		
Joe	2022-02-01 14:32:37	2022-02-01 14:32:37		iMessage	Outgoing		Delivered	Liked "Pls let[redacted] know about[redacted] Thanks "		
Joe	2022-02-01 15:44:01	2022-02-01 15:44:02		iMessage	Outgoing		Delivered	[redacted] is aware[redacted] would like us to wait until tomorrow to announce so[redacted] can tell[redacted] guys		
Joe	2022-02-01 16:19:19		2022-02-01 17:03:08	iMessage	Incoming	+12027707754 Joe	Read	Copy		
Joe	2022-02-03 13:05:30		2022-02-03 13:05:39	iMessage	Incoming	+12027707754 Joe	Read	All three of us just landed.[redacted] just texted me about a CIGIE infrastructures mtg right now. I don t have an i		
Joe	2022-02-03 13:06:02	2022-02-03 13:06:02		iMessage	Outgoing		Delivered	[redacted] is attending on your behalf		

Joe	2022-02-03 13:06:07	2022-02-03 13:06:07		iMessage	Outgoing		Delivered	Looking for invite now		
Joe	2022-02-03 13:06:10		2022-02-03 13:06:10	iMessage	Incoming	+12027707754 Joe	Read	[redacted] got on our early fgt		
Joe	2022-02-03 13:06:16		2022-02-03 13:06:16	iMessage	Incoming	+12027707754 Joe	Read	Copy		
Joe	2022-02-03 13:06:35	2022-02-03 13:06:36		iMessage	Outgoing		Delivered	Excellent		
Joe	2022-02-03 13:06:52		2022-02-03 13:06:53	iMessage	Incoming	+12027707754 Joe	Read	Dallas is closed down		
Joe	2022-02-03 13:07:15	2022-02-03 13:07:15		iMessage	Outgoing		Delivered	The infrastructure meeting already ended		
Joe	2022-02-03 13:31:01	2022-02-03 13:31:03		iMessage	Outgoing		Delivered	S1 did not support our FY23 pass back appeal. I am getting a brief at 2:30 and can backbrief at leadership h		
Joe	2022-02-03 13:52:28		2022-02-03 13:52:37	iMessage	Incoming	+12027707754 Joe	Read	Copy		
Joe	2022-02-07 12:48:25	2022-02-07 12:48:26		iMessage	Outgoing		Delivered	I will attend 4:30/1:30 meeting and we can talk through your friend. If that works?		
Joe	2022-02-07 12:51:30		2022-02-07 12:54:19	iMessage	Incoming	+12027707754 Joe	Read	Yes		
Joe	2022-02-07 12:54:26	2022-02-07 12:54:34		iMessage	Outgoing		Delivered	Liked "Yes"		
Joe	2022-02-09 09:35:49		2022-02-09 09:38:49	iMessage	Incoming	+12027707754 Joe	Read	Time for a chat		
Joe	2022-02-09 10:00:14	2022-02-09 10:00:16		iMessage	Outgoing		Delivered	Can I ping you later?		
Joe	2022-02-09 10:00:34		2022-02-09 10:00:43	iMessage	Incoming	+12027707754 Joe	Read	Yes		
Joe	2022-02-09 10:00:47	2022-02-09 10:00:47		iMessage	Outgoing		Delivered	Liked "Yes"		
Joe	2022-02-11 19:52:22	2022-02-11 19:52:30		iMessage	Outgoing		Delivered	Current Location	CL.loc.vcf	Location
Joe	2022-02-11 19:53:18		2022-02-11 19:53:18	iMessage	Incoming	+12027707754 Joe	Read	Putting out an APB		
Joe	2022-02-11 19:54:31	2022-02-11 19:54:32		iMessage	Outgoing		Delivered	For me?		
Joe	2022-02-11 19:54:48	2022-02-11 19:54:49		iMessage	Outgoing		Delivered	994 sandcastle!		
Joe	2022-02-11 19:54:52		2022-02-11 19:54:54	iMessage	Incoming	+12027707754 Joe	Read	Oh yes		
Joe	2022-02-11 19:55:02	2022-02-11 19:55:02		iMessage	Outgoing		Delivered	Need to call?		
Joe	2022-02-11 19:55:17		2022-02-11 19:55:17	iMessage	Incoming	+12027707754 Joe	Read	No. Just joking. Enjoy		
Joe	2022-02-11 19:55:25	2022-02-11 19:55:25		iMessage	Outgoing		Delivered	😂		
Joe	2022-02-11 20:02:34		2022-02-11 20:02:50	iMessage	Incoming	+12027707754 Joe	Read	From [redacted] talking about [redacted] - Unsurprisingly the integrity committee needed less than an afternoo		
Joe	2022-02-13 18:12:29		2022-02-13 18:32:03	iMessage	Incoming	+12027707754 Joe	Read	Time for a chat		
Joe	2022-02-15 09:01:11		2022-02-15 09:05:14	iMessage	Incoming	+12027707754 Joe	Read	Copy. All good		
Joe	2022-02-15 09:05:20	2022-02-15 09:05:26		iMessage	Outgoing		Delivered	Liked "Copy. All good"		
Joe	2022-02-15 10:52:53	2022-02-15 10:52:54		iMessage	Outgoing		Delivered	We are running this to ground - the priority reporting		
Joe	2022-02-15 11:05:32		2022-02-15 11:15:19	iMessage	Incoming	+12027707754 Joe	Read	Copy. Thanks		
Joe	2022-02-15 11:15:07		2022-02-15 11:15:19	iMessage	Incoming	+12027707754 Joe	Read	Interesting comments		
Joe	2022-02-15 11:15:23	2022-02-15 11:15:23		iMessage	Outgoing		Delivered	Liked "Interesting comments"		
Joe	2022-02-16 08:46:43	2022-02-16 08:46:45		iMessage	Outgoing		Delivered	Lease let me know when you have a minute to chat		
Joe	2022-02-16 08:50:59	2022-02-16 08:50:59		iMessage	Outgoing		Delivered	Please*		
Joe	2022-02-16 08:51:04		2022-02-16 08:51:04	iMessage	Incoming	+12027707754 Joe	Read	I ll be with you momentarily		
Joe	2022-02-16 08:51:18	2022-02-16 08:51:19		iMessage	Outgoing		Delivered	No rush!!		
Joe	2022-02-17 09:34:12	2022-02-17 09:34:14		iMessage	Outgoing		Delivered	Thanks to [redacted] for [redacted] honor awards panel work		
Joe	2022-02-17 12:58:32	2022-02-17 12:58:34		iMessage	Outgoing		Delivered	Tyler is on this one		
Joe	2022-02-18 11:26:30	2022-02-18 11:26:33		iMessage	Outgoing		Delivered	[redacted]		
Joe	2022-02-22 13:10:55	2022-02-22 13:10:57		iMessage	Outgoing		Delivered	Interesting		
Joe	2022-02-22 13:11:33		2022-02-22 13:11:33	iMessage	Incoming	+12027707754 Joe	Read	Indeed		
Joe	2022-02-22 14:48:32	2022-02-22 14:48:34		iMessage	Outgoing		Delivered	[redacted]		
[redacted]										