

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051

<https://oversight.house.gov>

January 25, 2024

The Honorable Gail S. Ennis
Inspector General
Office of Inspector General
Social Security Administration
6401 Security Boulevard, Suite 300
Baltimore, MD 21235

Dear Inspector General Ennis:

I write to request documents and information regarding your role in advising Department of Homeland Security Inspector General (DHS IG) Joseph V. Cuffari to consider hiring WilmerHale to investigate former senior Department of Homeland Security Office of Inspector General (DHS OIG) employees. If true, this would appear to violate your ethics agreement, which shows that you were a partner at WilmerHale and continue to have an ongoing financial stake in the firm's profitability. As a result, your referral to your former employer WilmerHale potentially represents a financial conflict of interest.

In 2020, Inspector General Cuffari hired WilmerHale to conduct an investigation into purported allegations of misconduct by three former senior DHS OIG employees.¹ This investigation—which cost taxpayers \$1.4 million—did not substantiate any illegal conduct and is currently under investigation by the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency for potentially being retaliatory.² According to a court filing from Inspector General Cuffari, the decision to hire an outside firm to investigate was due to intra-office conflicts of interests and “other IGs’ recommendations.”³ Inspector General Cuffari also stated in a December 31, 2020, transmission to Congress: “After conferring with members of the

¹ Department of Homeland Security, Office of Inspector General, *Report of Investigation* (Dec. 14, 2020) (online at www.oig.dhs.gov/sites/default/files/assets/FOIA/final-redacted-wilmerhale-roi_01-13-21_0516pm.pdf).

² *DHS Watchdog Settles Whistleblower Reprisal Case for \$1.17 Million*, Project On Government Oversight (July 27, 2023) (online at www.pogo.org/investigation/2023/07/dhs-watchdog-settles-whistleblower-reprisal-case-for-1-17-million).

³ Plaintiffs Complaint for Declaratory Injunctive, and Other Relief, *Kristen Fredricks et al. vs. Council of the Inspectors General on Integrity and Efficiency et al.* (Apr. 4, 2023) (No. 1:23-CV-00442) (online at <https://nclalegal.org/wp-content/uploads/2023/04/ECF-1-CIGIE-Complaint-and-Exhibits-ALL.pdf>).

Inspector General community, I authorized issuance of a solicitation for independent investigative services to examine allegations concerning the three senior executives.”⁴

However, on June 29, 2023, Inspector General Cuffari was deposed as part of a Merit Systems Protection Board proceeding and his testimony identifies that you were the only Inspector General he recalled speaking to prior to hiring WilmerHale.

Q. Do you recall contacting the law firm of WilmerHale—and I forget the other names—Cutler Pickering, something like that—about an investigation that, in part, concerned allegations against Ms. Costello?

A. **Yes.**

Q. Did you consider going to other inspector generals [sic] for this investigation before considering going to WilmerHale?

A. **Yes.**

Q. Who did you consider going to?

A. **I ultimately spoke to Gail Ennis, the Social Security Inspector General.**

Q. Was she the only one?

A. **I don't recall. There may have been another one.**

* * *

Q. And you think you may have approached one other inspector general?

A. **Yes.**

Q. And you don't remember who that was?

A. **No.**

Q. And I [sic] assuming that inspector general declined to take on that investigation as well?

⁴ 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 (Dec. 31, 2020).

A. Correct.⁵

He also stated that you declined to undertake this investigation because, “the workload would be overwhelming for her and her staff.”⁶ Prior to Inspector General Cuffari’s June 2023 deposition and in response to congressional inquiries, Inspector General Cuffari failed to disclose that you considered conducting this investigation.

In response to Questions for the Record from Representative John Katko, former Ranking Member of the Committee on Homeland Security, regarding the process to select WilmerHale, Inspector General Cuffari stated that DHS OIG utilized Simplified Acquisition Procedures (SAP) to award the contract, which allowed DHS OIG to solicit a quote from WilmerHale directly.⁷ It is also notable that the contract awarded to WilmerHale is the highest contract ever awarded under SAP by DHS OIG and is an amount greater than the next four highest awards combined.

Further, this contract work may have potentially set a precedent in future contract awards to WilmerHale for investigative work. Since DHS OIG awarded the contract to WilmerHale, the firm was awarded a separate sole-source contract by the Drug Enforcement Administration (DEA).⁸ In DEA’s justification for awarding a \$1.35 million contract to WilmerHale, it cites, “WilmerHale’s previous investigative experience with the U.S. Department of Homeland Security” as one of the unique qualifications for awarding this contract.⁹ According to public data, the DHS OIG contract is the only contract awarded to WilmerHale from the Department of Homeland Security.¹⁰ It appears that 74% of all federal contract dollars awarded to WilmerHale reference the contract award from DHS OIG. WilmerHale’s contract with DEA is also under Congressional scrutiny for potential conflicts of interest.¹¹ According to Office of Government Ethics Public Financial Disclosure Reports and correspondence you sent to the Social Security

⁵ Merit Systems Protection Board, Washington Regional Office, Deposition of the Inspector General Joseph Cuffari (June 29, 2023) (online at www.documentcloud.org/documents/23880005-june-29-2023-deposition-of-dhs-inspector-general-joseph-cuffari).

⁶ *Id.*

⁷ Committee on Homeland Security, *Hearing on Oversight of the Department of Homeland Security’s Office of Inspector General*, 117th Cong. (Apr. 21, 2021) (online at www.govinfo.gov/content/pkg/CHRG-117hhrg44634/pdf/CHRG-117hhrg44634.pdf); Inspector General Cuffari noted DHS OIG utilized Federal Acquisition Regulations Subpart 13.5 Simplified Procedures for Certain Commercial Products and Commercial Services.

⁸ See USASpending, *Contract Summary* (PIID 15DDHQ21P00001076) (online at www.usaspending.gov/award/CONT_AWD_15DDHQ21P00001076_1524_-NONE_-NONE-) (accessed Dec. 16, 2023).

⁹ Drug Enforcement Administration, *Justification for Other Than Full and Open Competition* (15DDHQ21R00000010) (online at <https://sam.gov/api/prod/opps/v3/opportunities/resources/files/7f6745f0c167484d99616fa04a875c9d/download>) (accessed Dec. 16, 2023).

¹⁰ See USASpending, *Recipient Profile: Wilmer Cutler Pickering Hale and Dorr LLP* (online at www.usaspending.gov/recipient/a97da24c-f1d6-24d1-a38a-ac37efb0345b-C/all) (accessed Dec. 16, 2023).

¹¹ See Letter from Ranking Member Charles E. Grassley, Senate Committee on the Budget, to Boyd Johnson, Partner, WilmerHale (Apr. 12, 2023) (online at www.grassley.senate.gov/imo/media/doc/grassley_to_wilmer-hale_-_dea_foreign_ops_review.pdf).

Administration (SSA) prior to your confirmation, you are currently receiving an early retirement benefit from WilmerHale; however, the amount of the benefit is dependent upon that firm's profitability.¹² On October 17, 2017, you described the steps you would take to "avoid any actual or apparent conflict of interest" in the event of your confirmation.¹³ In your letter to the Social Security Administration's Designated Agency Ethics Official, Daniel F. Callahan, you stated that your early retirement benefit "[would] not exceed \$175,000 annually, but may decrease should the firm not achieve certain income targets." To avoid a conflict of interest, you wrote that during the time you received this early retirement benefit, you "[would] not participate personally or substantially in any particular matter that to [your] knowledge has a direct and predictable effect on the financial interests of WilmerHale LLP, unless [you] first [obtained] a written waiver, pursuant to 18 U.S.C. § 208(b)(1)."¹⁴ As such, if you referred any entity to WilmerHale without a proper waiver in place, such action would likely constitute a violation of your ethics agreement.

Given Inspector General Cuffari's statement(s) and in light of your potential violation of your ethics agreement by referring your prior firm WilmerHale to DHS OIG thus establishing a precedent for WilmerHale to take on additional investigative work on behalf of the federal government, I request that SSA OIG respond to the following questions no later than February 8, 2024:

1. When did the DHS IG request that you provide investigative services or undertake an investigation into senior DHS OIG employees?
2. When did you decline to provide investigative services or undertake an investigation? What was the reason for declining?
3. Did you at any point begin providing investigative services or an investigation into senior DHS OIG employees prior to declining?
 - a. If so, what date did you begin?
 - b. What information was collected?
4. Please describe and provide communications between you or SSA OIG staff and the DHS IG and/or his staff referring to or relating to your declination of providing investigative services or undertaking any proposed investigation.

¹² Office of Government Ethics, Executive Branch Personnel Public Financial Disclosure Report, Gail S. Ennis (2020); Office of Government Ethics, Executive Branch Personnel Public Financial Disclosure Report, Gail S. Ennis (2021); Letter from Gail Susan Ennis to Daniel F. Callahan, Designated Agency Ethics Official, Social Security Administration (Oct. 17, 2017).

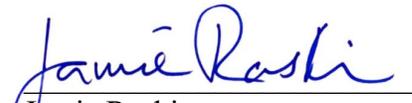
¹³ Letter from Gail Susan Ennis to Daniel F. Callahan, Designated Agency Ethics Official, Social Security Administration (Oct. 17, 2017).

¹⁴ *Id.*

5. Have you or any SSA OIG staff during your tenure ever recommended or suggested that DHS OIG or any other entity in the federal government contract with WilmerHale?
 - a. If so, please provide a list of instances, including all documents and communication related to waivers you requested and, if approved, obtained, pursuant to 18 U.S.C. § 208(b)(1), regarding referral of investigations to WilmerHale LLP.

The Committee on Oversight and Accountability 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. 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.

Sincerely,


Jamie Raskin
Ranking Member

cc: The Honorable James Comer, Chairman