

April 19, 2013

MEMORANDUM FOR: MICHAEL E. HOROWITZ  
INSPECTOR GENERAL  
OFFICE OF THE INSPECTOR GENERAL

FROM: CAROL OCHOA  
ASSISTANT INSPECTOR GENERAL  
OVERSIGHT AND REVIEW DIVISION

SUBJECT: Investigation regarding Assistant Special Agent in Charge Joseph Cuffari, Tucson Area Office, Investigations Division

## **I. Introduction**

On November 6, 2012, [REDACTED] Chief of the Civil Division for the U.S. Attorney's Office for the District of Arizona, sent a letter to Denver Field Office Special Agent in Charge [REDACTED] about Assistant Special Agent in Charge Joseph Cuffari's 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 he was assaulted by two U.S. Bureau of Prisons corrections officers. Cuffari was the case agent who conducted a criminal investigation of the inmate's allegations.<sup>1</sup>

[REDACTED] alleged in the November 6 letter that Cuffari, over the objections of the Assistant U.S. Attorney handling the civil matter, 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. [REDACTED] stated that by failing to notify the Assistant U.S. Attorney and his own supervisors about the plaintiff's request for his testimony, Cuffari violated Department of Justice (Department) *Touhy* regulations that govern the permissibility of testimony by Department employees. See 28 C.F.R. §§ 16.21, et seq.

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<sup>1</sup> Cuffari joined the OIG in 1993 and has been the Assistant Special Agent in Charge in the Investigations Division's Tucson Area Office since July 2001. Prior to joining the OIG, Cuffari was an investigator with the Air Force's Office of Special Investigations for six years. Cuffari possesses an undergraduate degree in Management Information Systems and a Master's Degree and Ph.D in Management.

As we describe further in this memorandum, Cuffari also testified on February 2, 2012, at a deposition in the same civil matter. The deposition was noticed by the plaintiff. Cuffari informed his supervisor and the OIG's Office of General Counsel in advance of his testimony. The deposition was not completed on February 2 and the parties agreed to continue it to a date to be determined. The October 25, 2012, hearing was held in connection with the plaintiff's motion to compel the production of documents from the United States, including documents Cuffari had identified during his deposition. Cuffari testified at the motions hearing at the plaintiff's request, but did not seek approval from his supervisor or the Office of General Counsel (OGC). Cuffari has maintained that he believed the October 25 motions hearing was in fact a continuation of his February 2 deposition.

██████████ letter and several related documents were referred to the Oversight and Review Division on December 5, 2012, for investigation. To investigate the matter, we reviewed ██████████ letter and Cuffari's November 20, 2012, response to the allegations that he drafted at the instruction of the OIG General Counsel. We also reviewed the transcript of the October 25, 2012, motions hearing at which Cuffari testified, as well as the transcript of the testimony he provided at his February 2, 2012, deposition. In addition, we conducted interviews of Cuffari, ██████████ ██████████, and the Assistant U.S. Attorney who handled the civil matter during the relevant time period, ██████████ ██████████

During our investigation, we received information that Cuffari provided the inmate's mother with names of lawyer friends of his, two of whom ultimately became the inmate's lawyers for the civil case. We investigated this matter as well.

This memorandum summarizes the results of our investigation. In Part II, we provide our investigative findings relating to Cuffari's involvement in the civil litigation, including his testimony at the February 2, 2012, deposition and the October 25, 2012, motions hearing. We also describe the circumstances under which Cuffari provided the inmate's mother with the names of three Tucson area law firms for a potential civil action against the United States. Part III summarizes our conclusions.

In sum, we concluded that Cuffari testified at the October 25 hearing without first notifying the OIG and obtaining approval to do so, in violation of the Inspector General Manual. We also found that Cuffari's personal relationship with the inmate's attorneys raised a question about his impartiality and created a potential conflict of interest with respect to his involvement in the civil litigation. We therefore concluded that under applicable ethics guidelines and the Inspector General Manual, Cuffari should have informed his supervisor and the OIG Office of General Counsel of this relationship. In addition, we concluded that Cuffari ran afoul of a

separate ethics regulation when he provided the inmate's mother with the names of his friends' law firms.

## II. Factual Summary

In October 2008, Cuffari began investigating allegations that husband and wife Bureau of Prisons Correctional Officers ██████████ and ██████████ physically assaulted an inmate named ██████████. Cuffari stated in his written response to ██████████ letter that the criminal investigation developed what he believed was "overwhelming evidence of the ██████████' illegal actions." Cuffari's investigation led the U.S. Attorney's Office for the District of Arizona (Tucson office) to issue target letters to the ██████████ in April or May 2010. The U.S. Attorney's Office also had discussions with the ██████████ about entering into pre-indictment guilty pleas, but an agreement was not reached. As we note later, the government ultimately decided in April 2011 not to indict the case.

Cuffari told O&R investigators that during the initial stages of the criminal investigation, ██████████ began asking the prosecutor about who would represent him in a lawsuit. The prosecutor informed ██████████ that she represented the United States and that her involvement pertained to the criminal case. Cuffari said that he told ██████████ he could pursue independent legal counsel to determine whether he had a civil claim, but did not provide him with any names of attorneys.

According to Cuffari, ██████████ mother began calling him after ██████████ was placed in a Special Housing Unit. He spoke to her on August 30, 2010, and during this call advised her about her son's right to "seek independent legal advice outside of the Department of Justice." Cuffari said he was obligated to provide ██████████ mother with this information pursuant to the Crime Victim's Rights Act.<sup>2</sup>

Cuffari said that he also told ██████████ mother "that there were firms in Tucson that represented individuals that do personal injury and that sort of stuff" and gave her the names of three law firms, which he identified to us as ██████████; ██████████; and Haralson, Miller, Pitt.<sup>3</sup> Cuffari told

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<sup>2</sup> The Crime Victim's Rights Act, 18 U.S.C. § 3771, requires that employees of the Department and certain other departments and agencies of the United States "make their best efforts to see that crime victims are notified of, and accorded, the rights" described in the statute. 18 U.S.C. § 3771(c)(1). The statute also provides that "[t]he prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights" described in the statute. 18 U.S.C. § 3771(c)(2).

<sup>3</sup> ██████████ is a member of the firm ██████████ ██████████ is a member of the Law Offices of ██████████; and the full name of the third firm is Haralson, Miller, Pitt, Feldman & McAnally PLC.

us that [REDACTED] and two partners at the firm Haralson, Miller, Pitt – [REDACTED] and [REDACTED] – were among a group of 8 to 12 individuals in Tucson with whom Cuffari has had regular lunches since 2003 or 2004. Cuffari described [REDACTED] as being a “dear friend” and said he was also friends with [REDACTED], [REDACTED] and [REDACTED]. [REDACTED] ultimately retained [REDACTED] and [REDACTED] as his attorneys. Cuffari told us that he did not provide [REDACTED] mother with their names and that he only identified the name of their law firm.<sup>4</sup>

On October 4, 2010, [REDACTED] filed a civil complaint against the United States seeking monetary damages for [REDACTED] injuries and the full recovery of the cost of the litigation, including attorney’s fees. The complaint alleged that the United States, through the [REDACTED], had committed assault and battery against [REDACTED]. The complaint also alleged that the United States was negligent in the hiring and supervision of the [REDACTED]. The complaint was not served on the United States until March 10, 2011, and, at the government’s request, the plaintiff agreed to stay the civil action because of the pending criminal case. The United States finally answered the complaint in February 2012 and denied that the [REDACTED] had committed an assault or battery and denied the Bureau of Prisons was negligent.

Cuffari told us that he first learned that [REDACTED] had retained counsel on December 7, 2010, when he, the prosecutor, and a trial attorney from the Department’s Civil Rights Division visited [REDACTED] in prison to interview him in connection with the criminal investigation. Cuffari said they stopped questioning [REDACTED] when he told them that he was represented by the law firm Haralson, Miller, Pitt. According to Cuffari, [REDACTED] did not identify his attorneys by name, and neither Cuffari nor the prosecutor asked [REDACTED] for the names. Cuffari told us that he informed the prosecutor that he “knew people in the law firm.”<sup>5</sup> Cuffari also said he was not aware of any obligation he had to inform the OIG’s General Counsel of his personal relationship with the attorneys at the law firm and we found no evidence that he notified OGC.

According to Cuffari, the prosecutor told him on March 13, 2011 – which was two days after the United States was served with the complaint – that [REDACTED] attorney had filed a tort claim against the United States arising from the alleged assault. Approximately two weeks later, Assistant U.S. Attorney [REDACTED] contacted Cuffari to advise him that the

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<sup>4</sup> [REDACTED] left the law firm in July 2012, but has remained [REDACTED] attorney. [REDACTED] continues to serve as co-counsel.

<sup>5</sup> The prosecutor told the OIG that he had no recollection of [REDACTED] stating to them in this meeting that he had retained private counsel and denied that Cuffari ever told him that he knew people at Haralson, Miller, Pitt.

Phoenix branch of the U.S. Attorney's Office would be handling the civil litigation because the Tucson branch was recused in light of the pending criminal matter.

In April 2011 the U.S. Attorney's Office and the Department's Civil Rights Division both declined to seek an indictment against the [REDACTED] and the criminal case was closed. Cuffari alleged that the [REDACTED] investigation was the third case that the U.S. Attorney's Office had declined to prosecute as a result of the OIG's decision to review the U.S. Attorney's Office's role in ATF's Operation Fast and Furious.<sup>6</sup>

Cuffari told us that he did not learn that [REDACTED] was [REDACTED] attorney until late May 2011, when [REDACTED] called to inform Cuffari that he was representing the United States in the civil case. During that conversation, [REDACTED] told Cuffari that [REDACTED] was representing [REDACTED]. According to both [REDACTED] and Cuffari, Cuffari told [REDACTED] then that he had a personal relationship with [REDACTED].

[REDACTED] also told Cuffari that [REDACTED] intended to call Cuffari as a fact witness in the case. On May 27, 2011, Cuffari sent an e-mail to OIG General Counsel [REDACTED] stating:

Last week, AUSA [REDACTED] began reviewing our report of investigation and material we obtained during our investigation. He also met with the Tucson USAO as well as [REDACTED] attorney. AUSA [REDACTED] is now in the discovery phase and he fully expects that [REDACTED] attorney will subpoena me as a witness. AUSA [REDACTED] suggested that I coordinate with your office to determine who would provide me with legal representation in the event that I am called for a deposition.

Cuffari told us that he notified the Office of General Counsel and his SAC about the future deposition because of the issue of representation. He said that he was unaware of any OIG requirement that he provide such notice.

The deposition was scheduled for February 2, 2012. Cuffari notified OIG attorney [REDACTED] of this, as well as his supervisor SAC [REDACTED] and Investigations Division SAC [REDACTED]. [REDACTED] coordinated with [REDACTED] to produce Cuffari for the deposition, and Cuffari told us that [REDACTED] said [REDACTED] would represent the OIG's interests at the proceeding.

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<sup>6</sup> The Assistant U.S. Attorney involved in the decision to decline prosecuting the [REDACTED] told us that the decision was based on an assessment of the evidence and the belief that a jury was unlikely to convict the [REDACTED] if the case went to trial.

Several days prior to the deposition, [REDACTED] and [REDACTED] requested that Cuffari review three discs that contained the documents that the government had so far produced to the plaintiff as part of its discovery obligations in the case. [REDACTED] said the primary purpose of the deposition was for Cuffari to identify OIG documents that were potentially missing or being withheld from what had been produced. [REDACTED] also told us that he told Cuffari prior to the deposition that he “understood that [Cuffari’s] position was adverse to [the government’s] defense, that his testimony would be whatever it was going to be... and that it was [REDACTED] job to... cross examine [Cuffari].”

Cuffari’s deposition was conducted at [REDACTED] law office and was attended by [REDACTED]. Among other things, Cuffari described his professional background, the organization and operations of the OIG, and his responsibilities as the ASAC in Tucson. Most of Cuffari’s testimony pertained to the types of documents created or obtained as part of the criminal investigation and what materials were not included in the discovery so far produced by the government. In this regard, Cuffari identified several categories of documents that were not part of the materials he had reviewed on the three discs.<sup>7</sup>

[REDACTED] and [REDACTED] had exchanges throughout the deposition about the government’s grounds for not producing some of the documents identified by Cuffari, and on several occasions [REDACTED] directed Cuffari to not answer questions that could reveal potentially privileged or statutorily protected information. The parties did not complete the deposition because of the time of day and agreed to reconvene at a later date. In an e-mail to [REDACTED] and copied to [REDACTED] and [REDACTED], Cuffari stated,

We just completed my deposition and due to timing will need to reconvene at, as of yet, undetermined, later date. [REDACTED] [REDACTED] will be contacting you regarding the plaintiff’s request for OIG investigative policy instructions, and coordination

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<sup>7</sup> Through Cuffari’s testimony, the following seven specific categories of documents were identified as not being part of the materials Cuffari reviewed prior to the deposition: (1) communications by and between Cuffari and the attorneys for the Department of Justice and the Civil Rights Division; (2) police reports, Lexis-Nexis searches on the [REDACTED], information regarding the [REDACTED] vehicles, and Department of Motor Vehicle reports; (3) communications by and between the [REDACTED] and the Office of Special Counsel; (4) communications by and between Cuffari and the Office of Special Counsel; (5) communications by and between the [REDACTED] and the Ombudsman for the BOP; (6) communications by and between Cuffari and the Ombudsman for the BOP; and (7) communications regarding the logistics and scheduling of the criminal investigation about the [REDACTED] that was conducted by Cuffari.

between INV and OGC regarding the merits of the proposed prosecution in the underlying criminal case.

██████ told us he developed concerns about Cuffari's interactions with ██████ during the deposition. In particular, ██████ stated that "it seemed very clear to [him] that [Cuffari]... and ██████ were extensively familiar with each other and the scope of [Cuffari's] testimony." ██████ said his impression was based on the "coordinated smoothness" of Cuffari's deposition and that it appeared to him that Cuffari's testimony was "well-rehearsed." However, Cuffari told us that he did not have any communications with ██████ or ██████ before the deposition in which he discussed the ██████ civil case, ██████ deposition questions and his potential answers, or topics that would be covered during the deposition.<sup>8</sup> As noted earlier, Cuffari maintains that the October 2012 court hearing to address plaintiff's motion to compel at which he testified was in fact a continuation of his February 2012 deposition. Cuffari provided the following explanation in his written response to the allegation that he failed to notify anyone that he would be testifying at the hearing:

During my deposition, the parties became locked in dispute about the scope of my testimony as well as questions concerning the plaintiff's discovery request. ██████ attorney even placed or had his secretary place a telephone call to U.S. Magistrate Judge ██████ in an effort to resolve those differences. However, Judge ██████ was unavailable. I left the deposition with the clear understanding that I would be called at a later date before Judge ██████ to continue my deposition and that she would resolve any outstanding differences regarding the scope of my testimony.

Cuffari reiterated this description of events in his OIG interview and told us, "[t]here was no doubt in my mind when I left that deposition in February 2012 that the judge would play a role in the deposition," either telephonically as attempted at the deposition or by the parties appearing

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<sup>8</sup> We examined the cell phone records from Cuffari's government-issued Blackberry device from December 24, 2011, to the date of his deposition. During that period, Cuffari received seven phone calls from the main telephone number at Haralson, Miller, Pitt, and Cuffari placed six phone calls to the main telephone number at the firm. Most of these calls lasted between 1 to 3 minutes. Two telephone calls that originated from the law firm on January 4, 2012, and January 17, 2012, lasted six minutes and five minutes respectively. Cuffari told us that other than a meeting he attended with ██████ and ██████ a few days prior to the February 2 deposition he did not speak with ██████ about the deposition or the ██████ litigation. With respect to his telephone calls with the law firm, Cuffari identified to us several attorneys at the firm that he could have been calling, including ██████ but he could not identify with certainty with whom he spoke.

before her in a courtroom. Cuffari also said that his understanding would be confirmed by the deposition transcript.

We reviewed the transcript and identified a brief exchange between the parties where they discussed contacting the judge. According to the transcript, ██████ stated that he would “like to get the judge’s clerk on the phone and see if the judge will advise” the parties about privilege logs and a disagreement relating to information contained in a memorandum drafted by the Department’s Civil Rights Division that ██████ asserted was privileged. Cuffari told us that the parties attempted to contact the judge. According to Cuffari, “[w]hen she was unavailable, my deposition was ended that day that it would be continued so that she could resolve those issues.” In fact, according to the transcript, Cuffari continued to testify after the point at which the call to the judge appears to have been placed.

We also examined the transcript to identify any indication that Cuffari’s deposition would be continued “before” Judge ██████, which Cuffari told us was his understanding. At one point in connection with a dispute between the parties about access to some of Cuffari’s handwritten notes, ██████ stated,

maybe one of the ways to solve this is we get a special master to sit in on a reconvened deposition of Joe Cuffari when we have these handwritten notes and we can deal with it that way. But, my guess is after cooler heads prevail, if what we are looking at are simply factual recordings of what inmates are saying, there really isn’t a privilege implicated.

However, we did not identify any reference to reconvening the deposition before Judge ██████, and the discussion that did take place about reconvening the deposition focused on Cuffari’s availability. Specifically, in the exchange at the close of the deposition about reconvening, Cuffari explained that he would be unavailable between February 26 and the end of March because he would be in Washington, D.C., on active duty. ██████ and ██████ asked whether Cuffari might be able to continue the deposition during that time period if they travelled to Washington, D.C., and Cuffari responded that he believed his military unit would “accommodate” such a request.

The parties’ discovery dispute continued after Cuffari’s deposition. ██████ and ██████ exchanged letters in April 2012 concerning the scope of the government’s production and the applicability of certain privileges and statutory prohibitions on that production, including work product, attorney client privilege, the Privacy Act, and grand jury rules. With respect to the missing categories of documents identified by Cuffari at his deposition, ██████ indicated those materials would be reviewed for possible production under a protective order.

In April 2012, Cuffari was again asked by ██████ to review a collection of documents for production to plaintiff to determine what, if anything, was missing. According to Cuffari, ██████ provided him a disc on April 26 that “██████ purported to contain a scanned version of the complete set of [OIG discovery] materials (excluding any Grand Jury/Search Warrant documents.)” Cuffari stated that he reviewed the materials on the disc on May 3 and that he identified six Memoranda of Investigation that he believed were not included on the disc. The memoranda detailed interviews that Cuffari conducted with witnesses and discussed documents received in the course of the investigation. Cuffari scanned these documents and sent them to ██████ that same day.

Cuffari told us during his OIG interview that sometime that month, he participated in a three-way telephone call with ██████ and ██████. Cuffari said the purpose of the call was “to discuss my upcoming deposition, the timing of it, where I would be, when I would be some place, whether I had reviewed the CD, what items were missing.” ██████ told us that he recalled this telephone call, but stated that its only purpose was to “get a grip on the universe of documents” relating to the ██████ litigation and that there was no discussion of continuing Cuffari’s deposition during this telephone call.<sup>9</sup>

On August 14, 2012, ██████ filed a motion to compel that, among other things, sought an order that declared the entire completed OIG investigative file discoverable and that compelled production of unredacted copies of documents that pertained to the charging decision against the ██████, the ██████ personnel files and background checks, and documents presented to the grand jury. The motion also requested that Cuffari’s deposition be resumed at the government’s expense and without objections based on the privileges and statutory prohibitions noted above. On August 22, 2012, the United States filed a response that described the discovery dispute from the government’s point of view and argued the applicability of the contested privileges and statutory prohibitions. On September 12, 2012, the Court scheduled a motions hearing for October 25, 2012, at 9:30 a.m.

Cuffari told us that neither ██████ nor ██████ informed him that a motion had been filed. Cuffari said he recalled ██████ calling him on the afternoon of October 24 and that based on that call he understood that he would be testifying the next day. According to Cuffari,

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<sup>9</sup> ██████ stated that prior to the February 2012 deposition, he had discussed with ██████ the possibility that Cuffari’s deposition could be continued at a later date, if it was necessary after the deposition concluded. ██████ said it was possible Cuffari was present during this discussion.

In that telephone conversation ██████ reminded me that during my initial deposition, they had placed a call to Judge ██████ . . . and that the next day, the 25<sup>th</sup>, the continuation of my deposition would occur in her courtroom before her.

He also said that ██████ told him during this call that he would advise ██████ that the two had spoken and that Cuffari would be at the hearing.

We spoke briefly to ██████ about this call and he told us that he contacted Cuffari to confirm that he would be attending the hearing. ██████ said he told Cuffari that the purpose of the hearing was to determine the scope of the government's document production and Cuffari's testimony and whether the parties would have the "ability to continue" Cuffari's deposition. ██████ also stated that he could understand if Cuffari thought that the hearing was a continuation of his deposition because Cuffari was not a lawyer.

On October 25, 2012, at 8:29 a.m., Cuffari received a 1-minute phone call from someone at Haralson, Miller, Pitt. Two minutes later, at 8:31 a.m., Cuffari sent an e-mail to SAC ██████ with the subject line, "Tucson FCI ██████ matter." Cuffari stated in the e-mail, "I will be in a motions hearings (*sic*) at the US Courthouse this morning regarding this case." ██████ replied, "Thanks. . . .let me know how it goes!"

We asked Cuffari at what point he understood the proceeding was a motions hearing and not a deposition. Cuffari initially told us, "I didn't know it was a motions hearing," and denied that he used the term in his e-mail to SAC ██████. After we showed Cuffari the e-mail that stated, "I will be in a motions hearing," Cuffari told us, "I don't see a difference," and later said that he did not know the distinction between the two types of proceedings. Cuffari also told us that with his e-mail to ██████, he was conveying that he would be testifying at the hearing. Cuffari said, "I put in this e-mail that I sent to ██████ that I would be *in*, not *at*, a motions hearing." (emphasis added). In other words, Cuffari asserted that by using the word, "in," instead of, "at," he was telling ██████ that he would be testifying.

██████ interpreted the e-mail differently. He told us that he understood it to mean that Cuffari would be attending a motions hearing at the request of the AUSA. ██████ said that he did not know Cuffari would be testifying. ██████ also stated that had he known that Cuffari was being called to testify by plaintiff's counsel, he would have referred Cuffari to the General Counsel's Office in order to confirm that it was appropriate for Cuffari to testify for a party opposed to the United States.

██████ told us that when he arrived at the courthouse on the morning of October 25 for the motions hearing he was "surprised" to see Cuffari. He said that he was not expecting anyone to testify at the hearing

and had not received advance notice from ██████ that the plaintiff would be calling Cuffari as a witness. ██████ told us he asked Cuffari what he was doing at the hearing and that Cuffari responded, "It's a free country." ██████ said that ██████ co-counsel (██████), who was attending the hearing, then stated to him that they asked Cuffari to come.<sup>10</sup>

Cuffari denied making the statement, "It's a free country," and told us that he replied to ██████ question by stating he was there for a continuation of his deposition. Cuffari said ██████ looked "surprised" and responded, "I was unaware of it." Following this exchange, ██████ and ██████ went outside the courtroom. According to ██████, ██████ made an offer for the government to produce documents that would make the hearing unnecessary. ██████ rejected ██████ offer. Just minutes before the hearing began ██████ sent a text message to his Deputy Chief that stated, "Holy shit. Joe Cuffari is here on the request of plaintiff. I assume I'll object to him testifying, we've got taint issues now..."

The hearing began at 9:27 a.m. and lasted 1½ hours. After the attorneys entered their appearances, the Court stated, "We are on for hearing on plaintiff's motion to compel." Within the initial minutes of the hearing, ██████ asked the court for permission to call Cuffari as a witness:

Your Honor, before I get into really the meat of my oral argument this morning, I was hoping the court would allow me to introduce some evidence by way of live testimony. Special Agent Cuffari from the Office of the Inspector General is here in the courtroom today. I was going to ask that we have him sworn in, and **I would provide a little bit more foundation for the motion to compel by way of live testimony.** (Emphasis added)

The Court apparently saw that ██████ was prepared to object to ██████ request and asked why. ██████ stated,

Well, first of all, Agent Cuffari is an employee of the Government, he hasn't been authorized to testify here today. And this is a surprise tactic. I'm surprised to see Agent Cuffari here today. Plaintiff's counsel related to me before the hearing

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<sup>10</sup> ██████ sent an e-mail to ██████ after the hearing that stated:

I asked [Cuffari] what he was doing at the hearing. He replied, 'It's a free country.' Plaintiff's counsel confirmed that they requested [Cuffari] attend the hearing. Agent Cuffari sat behind the Plaintiff's bar, and when not testifying on the stand, stood and spoke to the Court from the Plaintiff's trial table.

that they asked him to come, apparently for this purpose. This is, I think highly inappropriate.

The Court responded, "I'm a little uncomfortable with it myself." However, after hearing argument for approximately 40 minutes, and over ██████████ repeated objection, the Court allowed ██████████ to call Cuffari as a witness. In response to ██████████ concern that the scope of Cuffari's testimony had not been authorized for the hearing because ██████████ was unaware he would be called, the Court stated, "I think we can take care of that by proper objections, and he'll know not to answer when you object, and then I'll rule on the objection."

Cuffari testified for approximately 40 minutes and covered a variety of topics similar to those covered during his February 2012 deposition, including the role of the Office of the Inspector General, the scope of the criminal investigation, and the nature of the documents created during the investigation. Cuffari also testified that he had appeared at the hearing at plaintiff's request. At the conclusion of Cuffari's testimony, the Court agreed to assign a special master to meet with the parties to attempt to resolve the discovery dispute. We did not identify any exchanges in the transcript in which the parties or the Court indicated or in any manner suggested that the hearing was a continuation of Cuffari's deposition.

After the hearing, Cuffari sent an e-mail to ██████████ stating,

I testified and the judge will be issuing an order that a Court-Appointed Special magistrate review all the documents and decide what is discoverable. I will let you know once I receive the order.

Cuffari told us that nothing occurred at the hearing that caused him to think he was there for a reason other than the continuation of his deposition. We asked whether ██████████ request of the Court to allow Cuffari to provide testimony as foundation for the motion to compel caused Cuffari to think the hearing was something other than a deposition. Cuffari responded,

It would be I was going to be deposed before the judge. He was asking the judge to allow me to testify . . . in my mind that was – that setting, that day in October was a continuation of my February 2012 deposition.

Cuffari told us that he still believed at the time of his OIG interview that the hearing on October 25 was in fact a continuation of his February deposition. According to Cuffari, the hearing was a deposition "because I got to testify."

### III. Analysis

#### A. Testimony at the October 25 Hearing

The Inspector General Manual (IG Manual) sets forth the policies and standards that govern the operations of the Office of the Inspector General. IG Manual Vol. I, 001.1 (February 22, 2006). Volume III of the IG Manual contains those policies that apply specifically to employees in the OIG's Investigations Division (INV). IG Manual Vol. III, 001.3 (April 23, 2007). Chapter 200.10 of Volume III addresses situations in which Investigations Division employees testify in "other than OIG matters." Chapter 200.10 states:

Legal issues arise when OIG employees are called upon to testify in court proceedings or before administrative bodies in other than OIG matters. INV employees must notify the Deputy Assistant Inspector General for Investigations (DAIGI), through the assistant special agent in charge (ASAC) and SAC, and obtain approval before testifying or providing official OIG information in other than OIG matters. The DAIGI will obtain authorization from the OGC before any INV employee provides such information or testimony.

We concluded that Chapter 200.10 of the IG Manual applied to Cuffari's testimony at the October 25 hearing. The provision requires that Investigations Division employees who testify in "other than OIG matters" obtain approval before testifying or providing official OIG information. The [REDACTED] litigation is a civil action brought by a federal inmate against the United States. The civil action is a matter "other than" the OIG criminal investigation Cuffari conducted with the U.S. Attorney's Office. Cuffari was asked to testify and supply OIG information in connection with the civil action. Thus, we concluded that Cuffari should have notified the appropriate OIG officials and obtained approval before testifying at the October 25 hearing.<sup>11</sup>

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<sup>11</sup> We also considered whether the Department's *Touhy* regulations required Cuffari to notify the U.S. Attorney's Office or his own supervisors in advance of his testimony at the October 25 hearing. The *Touhy* regulations (28 C.F.R. §§ 16.21-16.29) generally require that private parties in civil cases seeking information from a current or former Department employee provide notice of the request to the Department and identify the information being sought so that the Department can determine whether and to what extent disclosure is appropriate. Where the United States is not a party to the underlying litigation, current and former employees of the Department are precluded from producing or disclosing any information relating to or based upon material contained in the Department's files without prior approval from the Department. 28 C.F.R. § 16.22(a). However, the *Touhy* regulations do not include a similar approval requirement where the United States is a party to the

(Cont'd.)

Cuffari has asserted, however, that he understood that his testimony at the October 25 hearing was a continuation of his February 2 deposition. The IG Manual's notification requirement does not explicitly state whether it applies to continuation of testimony as well as initial testimony in a matter. We need not decide that issue, however, because we did not find credible Cuffari's assertion that he believed the matter was a continuation of his deposition.

Cuffari clearly stated in his e-mail to SAC [REDACTED] an hour before the proceeding was scheduled to begin that he would be "in a motions hearings [sic] at the US Courthouse" that morning. This e-mail followed by one minute a call Cuffari received from someone at Haralson, Miller, Pitt, and also followed a phone conversation the previous day that Cuffari had with [REDACTED] about his attendance at the hearing. Cuffari asserted that [REDACTED] told him during this call that that they would be continuing his deposition at court and before the judge. According to [REDACTED], however, he told Cuffari that the purpose of the hearing was to determine the scope of the government's document production and Cuffari's testimony and whether the parties would have the "ability to continue" Cuffari's deposition. [REDACTED] also offered that Cuffari may have misunderstood the purpose of the proceeding.

We do not believe Cuffari misunderstood. If, as Cuffari contends, [REDACTED] told him that the October 25 proceeding would be a continuation of his deposition, we think Cuffari's e-mail to [REDACTED] would have stated that. We do not believe that Cuffari would have informed [REDACTED] that he was attending a motions hearing if [REDACTED] had in fact told Cuffari the day before that it was a continuation of his deposition, especially where, as Cuffari claimed to us, he was unaware a motion had even been filed. We believe the simple explanation is what actually occurred: Cuffari told [REDACTED] he would be at a motions hearing because that is what [REDACTED] told him it was.

We also found scant support for Cuffari's contention that he left the February 2012 deposition "with the clear understanding" that it would be continued at a later date "before Judge [REDACTED]." We reviewed the transcript of the hearing and did not identify any discussion of continuing the deposition before Judge [REDACTED]. In fact, the judge's availability was not mentioned as a consideration during the parties' discussion about when the deposition might be continued. Instead, the focus of the discussion was on Cuffari's availability because of his upcoming travel to Washington, D.C. In addition, Cuffari stated in the e-mail he sent OIG attorney [REDACTED] [REDACTED], and [REDACTED] after the deposition, "We just completed my deposition and due to timing will need to reconvene at, as of yet, undetermined, later date."

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underlying litigation, as it is in the [REDACTED] case. See 28 C.F.R. § 16.23. We therefore did not assess Cuffari's conduct under the Department's *Touhy* regulations.

Cuffari's e-mail did not indicate that the judge's availability was a condition of continuing the deposition. In short, we did not find persuasive a contention that Cuffari made approximately nine months after the deposition and that is not supported by the contemporaneous records.

In addition, we were skeptical of Cuffari's assertion to us that when ██████ asked him prior to the hearing why he was at the courthouse, Cuffari replied he was there for the continuation of his deposition. Cuffari's purported response was materially different than what he had e-mailed his supervisor about an hour earlier – that he was attending a motions hearing.

Instead, we credited ██████ recollection of events on October 25. As described earlier, ██████ told us that he was surprised Cuffari was at the courthouse because he was not expecting anyone to testify. ██████ said that when he asked Cuffari what he was doing at the hearing, Cuffari responded, "It's a free country." Cuffari denied making this statement. However, the contemporaneous documents support ██████ recollection. As noted earlier, in an e-mail ██████ sent to his supervisor after the hearing, he related his exchange with Cuffari and plaintiff's counsel, including Cuffari's "It's a free country" comment. In addition, just minutes before the hearing began ██████ sent a text message to his supervisor expressing his shock that Cuffari was there at plaintiff's request and stating that he was going to object to Cuffari testifying. ██████ did not state in either of these contemporaneous e-mails that Cuffari was under the impression he was there for the continuation of his deposition, which is something that would clearly have been germane to explaining Cuffari's attendance. In crediting ██████ recollection of events, we found that Cuffari's statement, "It's a free country," further undermined Cuffari's contention that he believed he was attending a continuation of his deposition.

We also concluded that even if Cuffari actually misunderstood the purpose of the October 25 proceeding before he arrived at the courtroom, there were several indications both immediately prior to and within the first several minutes of the commencement of the hearing that should have made it clear to Cuffari that he was not attending a continuation of his deposition. The first such indication was that ██████, who Cuffari knew would attend the reconvened deposition, was surprised when he saw Cuffari at the courthouse. If that alone did not cause Cuffari to question his alleged belief about the nature of the proceeding, the Court began the hearing by stating, "We are on for hearing on plaintiff's motion to compel." Within minutes of that announcement, ██████ requested that Cuffari be permitted to testify to "provide a little more foundation for the motion to compel[.]" ██████ objected to this request as a "surprise tactic" and because Cuffari had not been authorized to testify at the hearing. The Court even initially expressed reservations about Cuffari testifying. It is simply not credible that under

these circumstances Cuffari could have maintained his alleged misunderstanding that he was attending the continuation of his deposition.

For all of the above reasons, we concluded that under the IG Manual Cuffari was required to notify the OIG about the October 25 motions hearing and obtain approval prior to testifying. We also concluded that Cuffari's e-mail to SAC [REDACTED] one hour before the hearing that stated he would be "in a motions hearings [sic]" did not satisfy this requirement. We were not persuaded by Cuffari's assertion that by using the word, "in," instead of, "at," he was conveying to [REDACTED] that he would be testifying. The obligation under Chapter 200.10 of the IG Manual is the employee's, and we do not believe that Cuffari's at best equivocal e-mail satisfied this obligation. Moreover, a principal purpose of Chapter 200.10 is to afford supervisors and the Office of General Counsel an opportunity to address any legal issues pertinent an employee's testimony about OIG information. As a consequence of Cuffari sending an e-mail one hour before the hearing was scheduled to begin and not clearly communicating to his supervisor that he would be testifying, this review did not occur.

**B. Cuffari's relationship with [REDACTED] attorneys**

We concluded that Cuffari's personal relationship with [REDACTED] attorneys raised a question about his impartiality with respect to his testimony in the civil litigation and that under applicable ethics guidelines Cuffari should have informed the Office of General Counsel of the appearance problem and received authorization to testify at the February 2012 deposition and October 2012 motions hearing. Cuffari failed to do so.

Section 2635.502 of the Federal ethics regulations set forth in the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635) addresses circumstances under which an employee's relationship with specific parties can give rise to questions about the employee's impartiality. The regulation provides,

Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

5 C.F.R. § 2635.502(a).

The regulation's definition of a "covered relationship" does not include persons with whom the employee is merely friends. However, the regulation also provides that,

An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

5 C.F.R. § 2635.502(a)(2). According to the Office of Government Ethics, this particular provision "could well include an employee's assignment to a particular matter to which a boyfriend, girlfriend, or other close friend is a party."

We found that the lawsuit brought by ██████ for monetary damages and attorney's fees against the United States is a particular matter that is likely to have "a direct and predictable effect" on the financial interests of Cuffari's friends, ██████ and ██████. We also found that a reasonable person with knowledge of the relevant facts would question Cuffari's impartiality in the litigation. As described in this memorandum, Cuffari told us that ██████ and ██████ were his friends – ██████ a "dear friend" – and were among a group of individuals in Tucson with whom Cuffari has had regular lunches for years. In addition, when Cuffari informed ██████ mother about her son's right to "seek independent legal advice outside of the Department of Justice," he provided her with the name of ██████ and ██████ law firm. In short, the existence of a personal friendship between Cuffari and the lawyers whose firm's name he provided to the plaintiff's mother could create the appearance that Cuffari was not fully impartial in his approach to the civil litigation.

We concluded that under Section 5635.502(a)(2), Cuffari should have informed the Office of General Counsel about his relationship with ██████ attorneys when he learned in May 2011 that ██████ was representing ██████ in the civil case. Cuffari also learned in May 2011 that he would be testifying in the case. Although Cuffari told ██████ in May 2011 that he had a personal relationship with ██████, he did not inform his supervisors or any OIG official of the friendship. Further, when Cuffari sought guidance from the OIG's General Counsel about who would represent him at the deposition, he did not inform the General Counsel of his relationship with the attorney who would be conducting the deposition, nor did Cuffari inform his supervisor or any other official of the relationship prior to his testimony at the October 2012 motions hearing.

We also found that Cuffari ran afoul of a separate ethics regulation when he provided ██████ mother with the names of his friends' law firms.

Section 2635.702 of the Federal ethics regulations states, “[a]n employee shall not use his public office for . . . the private gain of friends . . . .” [REDACTED] mother contacted Cuffari in August 2010 in his capacity as the agent conducting the criminal investigation of allegations that her son was assaulted by prison corrections officers, and Cuffari responded to the mother’s inquiries in that capacity. He provided her with the names of three particular law firms that she could contact with respect to her son’s potential civil cause of action. Two of the firms Cuffari identified carried the very names of his friends, and the Tucson office of the third included two additional friends – [REDACTED] and [REDACTED] – who were firm partners. We concluded that Cuffari’s actions had the effect of providing those firms, and thus his friends, a competitive advantage over other Tucson-area law firms and attorneys that might have vied for [REDACTED] case, as well as providing prospective income in the form of attorney’s fees to the firm retained. We found that such a competitive advantage and prospective income was “private gain” for purposes of Section 2635.702 and that Cuffari’s actions therefore failed to comply with the ethics regulation.

We also considered whether Cuffari’s conduct violated any provisions of the IG Manual. With respect to standards of conduct, the IG Manual provides that “OIG employees are prohibited from engaging in any unethical, criminal, dishonest, or other conduct prejudicial to the OIG, DOJ, or the federal government.” IG Manual Volume I, Chapter 030.5(A)(2). As described above, we concluded that Cuffari did not comply with ethics regulations as they applied to his friendship with [REDACTED] attorneys. We concluded on the same basis that Cuffari’s actions violated the IG Manual’s prohibition on unethical conduct.

The IG Manual also includes a reporting requirement under circumstances where there is an actual or potential conflict of interest. See IG Manual Volume I, Chapter 030.6. Under this provision, “an employee must report to their supervisor any actual or potential personal or financial conflict of interest.” IG Manual Volume I, Chapter 030.6(B). The provision states that such conflicts “[g]enerally . . . arise[] when an employee’s official actions affect or appear to affect the personal or financial interest of the employee or a member of the employee’s family.” However, the IG Manual does not limit the applicability of this provision to conduct affecting the financial interests of the employee or the employee’s family. The provision identifies several examples of actual or potential personal conflicts of interest, including “a personal or familial relationship with an individual doing business with the OIG or DOJ.”

As described above, we concluded that Cuffari did not comply with the reporting requirements under Section 5635.502(a)(2) because we found that the existence of a personal friendship between Cuffari and the lawyers whose firm he recommended to the plaintiff’s mother could create the

appearance that Cuffari was not fully impartial in his involvement with the civil litigation. We concluded that these circumstances also created a potential conflict of interest under Chapter 030.6(B) of the IG Manual and that Cuffari should have reported the potential conflict to his supervisor. The OIG would have then, as provided by the IG Manual, made “a determination . . . with regard to the continued assignment of any matter affected by that conflict, and any possible violation of the OIG Standards of Conduct, the laws of the United States, or the regulations governing the OIG and DOJ.” IG Manual Volume I, Chapter 030.6(B). Cuffari’s failure to provide the required notice deprived the OIG of the opportunity to make this determination in advance of Cuffari’s actions in the case.

#### **IV. Additional Information**

As part of this investigation, we reviewed e-mails from Cuffari’s OIG Outlook account for the period of January 2011 to October 2012 to determine whether Cuffari had any e-mail contact with [REDACTED] or [REDACTED] relating to the [REDACTED] litigation. In the course of reviewing these e-mails, we identified conduct that Cuffari had engaged in or was engaging in that was beyond the scope of our investigation. After reviewing the e-mails and consulting with OGC to determine whether Cuffari had made appropriate disclosures, we identified the following conduct that may warrant additional review:

- Cuffari 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 his appointment to the commission on his Confidential Financial Disclosure form.
- Cuffari donated surplus OIG printers to a high school where his wife is the principal without disclosing the circumstances to OGC for review.
- Cuffari used his OIG e-mail account to lobby for a position as the Inspector General for the Arizona National Guard.
- Cuffari contacted Congressional staff members and commented on matters involving the Department of Justice.
- Cuffari wrote a recommendation letter in his official capacity and on OIG letterhead in support of an Assistant U.S. Attorney’s candidacy to become a U.S. Magistrate Judge.

We are referring these matters to the Investigations Division for appropriate action. We have attached as Appendix A to this report a chart that summarizes the information contained in the relevant e-mails. We

have also attached as Exhibits 1-19 the actual e-mails. In addition, we have attached as Exhibit 20 Cuffari's Confidential Financial Disclosure Report for the time period relevant to his appointment to the Arizona State Commission on Appellate Court Appointments.

# Appendix A

## SUMMARY OF SELECTED E-MAILS SENT OR RECEIVED BY ASAC JOSEPH CUFFARI

Subject Matter	Exhibit #	Date	To	From	Attachment	Synopsis of E-mail
Cuffari serving on an Arizona State Commission on Appellate Court Appointments (appointed on 3/30/12; confirmed on 4/18/12); Cuffari's wife serving on the Pima County Commission on Trial Court Appointments (appointed on 1/17/12; confirmed on 4/18/12).	1	2/24/2012	██████████ (former AZ Assistant Attorney General and current AZ businessman)	Joseph Cuffari	Cuffari's Resume	Cuffari expresses his interest in serving on the commission. He refers to his prior service on the AZ Supreme Court Alternate Dispute Resolution Commission [Note: this occurred around 2001]. He also mentions that he has someone in Yuma who is also interested in serving should the current nominee's confirmation stall.
	2	2/26/2012	██████████	Joseph Cuffari	██████████ resume	E-mail chain in which Cuffari forwards ██████████ resume, saying that he had already sent his application to the Governor's office. ██████████ responds by asking if ██████████ is solid on all pro-life issues; Cuffari responds yes, as far as he knows. {Note: ██████████ was subsequently appointed to the same commission as Cuffari.}
	3	3/20/2012	██████████ (DOJ employee)	Joseph Cuffari	None	E-mail chain in which ██████████ gives Cuffari a heads up that ██████████ is applying for a state judge opening. Cuffari responds that his wife is on the trial court commission and he is on the appellate court one. He tells ██████████ that ██████████ is not allowed to contact the committee members directly, but apparently can talk to spouses and that he will let ██████████ know if ██████████ calls him.
	4	3/24/2012	██████████ (Arizona USAO AUSA)	Joseph Cuffari	List of Judicial Committee members	E-mail chain in which ██████████ mentions that she is applying for a Pima County Superior Court judge position, asks Cuffari if it is his wife on the committee member list and, if so, whether he would put in a good word for her. Cuffari responds that that is his wife and that he would pass on the information to her.
	5	7/18/2012	██████████	Joseph Cuffari	None	E-mail chain in which Cuffari tells ██████████ that there are 14 applicants for the AZ Supreme Court and ██████████ responds that it is an exciting list with lots of prospects.

## SUMMARY OF SELECTED E-MAILS SENT OR RECEIVED BY ASAC JOSEPH CUFFARI

Subject Matter	Exhibit #	Date	To	From	Attachment	Synopsis of E-mail
	6	8/2/2012 and 8/6/2012	██████████ (Arizona USAO Victim Witness Coordinator)	Joseph Cuffari	None	E-mail chain in which Cuffari contacts ██████████ to compliment him on a recommendation letter ██████████ had sent to Cuffari's wife's commission regarding the application of Arizona AUSA ██████████ for a judgeship. Cuffari tells ██████████ that ██████████ did not make the cut, although his wife did vote for her.
	7	10/23/2012	██████████ (Arizona Special AUSA; Tax Division attorney)	Joseph Cuffari	None	E-mail chain in which Cuffari suggests ██████████ contact the two commissioners designated to do due diligence regarding Court of Appeals judicial applicant ██████████. ██████████ asks if it is okay to let them know that he got their names from Cuffari and Cuffari answers in the affirmative.
	8	11/27/2012	██████████	Joseph Cuffari	None	E-mail chain in which Cuffari tells ██████████ that the commission is going to interview all seven applicants for Division 1. ██████████ states that he strongly supports ██████████ and Cuffari responds, "Understand." [Note: At this time ██████████ was chief counsel with the AZ AG's Office.]
	9	11/28/2012	██████████ (General Counsel for AZ Gov. Jan Brewer)	Joseph Cuffari	None	E-mail chain in which Cuffari tells ██████████ that the commission is going to interview all seven applicants for Division 1. ██████████ responds that ██████████ should get nominated and Cuffari responds, "Understand."
	10	11/29/2012	██████████	Joseph Cuffari	None	E-mail chain in which ██████████ writes a note in support of ██████████ application to the Governor for appointment to the Arizona Court of Appeals, Division 1. Cuffari responds that he will pass this on to the other commission members. [Note: ██████████ was subsequently appointed.]
Cuffari's contact with Congress	11	8/30/2011	██████████ (Senate Judiciary Committee staffer)	Joseph Cuffari	None	Cuffari forwards former Arizona USA ██████████'s resignation e-mail to ██████████ with the comment "WOW."

Appendix A

SUMMARY OF SELECTED E-MAILS SENT OR RECEIVED BY ASAC JOSEPH CUFFARI

Subject Matter	Exhibit #	Date	To	From	Attachment	Synopsis of E-mail
	12	11/16/2011 and 12/1/2011	██████████ Senate Judiciary Committee staffer), copying ██████████ and ██████████ (Senator Grassley and Judiciary Committee investigators)	Joseph Cuffari	None	E-mail chain in which ██████████ asks Cuffari if there is a good time for him to talk to Senator Grassley's office. Cuffari responds by expressing concerns that ██████████ did not receive his initial e-mail response [which we don't have] and asking ██████████ to contact him when he is available.
	13	12/23/2011	██████████ copying ██████████ (Senate Judiciary Committee staffer)	Joseph Cuffari	Daily Caller article regarding OIG interview of CRT analyst ██████████	Cuffari forwards article with the comment, "Very interesting article..."
Cuffari seeking a job outside of the OIG	14	12/6/2011 and 12/9/2011	██████████ (Arizona Court of Appeals judge)	Joseph Cuffari	None	Cuffari tells Judge ██████████ that he is seeking a position as Inspector General for the National Guard or other senior positions within the National Guard. ██████████ responds that he received Cuffari's message, but hadn't yet had an opportunity to talk to Arizona Governor Jan Brewer or her staff about this. Cuffari responds with tips on which staffers to talk to. He mentions he met with one particular staffer on "this and other subjects" a few weeks earlier.
	15	5/29/2012	██████████ (Arizona state legislator), copying ██████████ (attorney?)	Joseph Cuffari	Cuffari's Resume	Cuffari mentions ██████████ having spoken to ██████████ regarding Cuffari's interest in serving with the state and asks if ██████████ has time to meet with him to discuss senior-level key staff opportunities with the Arizona National Guard.

## SUMMARY OF SELECTED E-MAILS SENT OR RECEIVED BY ASAC JOSEPH CUFFARI

Subject Matter	Exhibit #	Date	To	From	Attachment	Synopsis of E-mail
	16	10/3/2012 and 10/4/2012	██████████ General Counsel for AZ Gov. Jan Brewer)	Joseph Cuffari	Cuffari's suggested enhancements to the Arizona National Guard statute	E-mail chain in which ██████████ acknowledges meeting Cuffari and Cuffari responds that he is deeply interested in serving as IG for the National Guard and that he is sharing his dissertation regarding the use of IGs in the federal government and his suggestions for enhancements to a California Senate bill that could be tailored for Arizona. He also mentions that the governor has the authority to appoint someone like him to her executive staff, detail him to the Arizona National Guard, and then authorize his appointment to IG.
	17	10/20/12 and 10/23/12	██████████ (Arizona Court of Appeals Judge)	Joseph Cuffari	None	E-mail chain in which Cuffari and ██████████ discuss the restrictiveness of the statute regarding the Arizona National Guard and how the statute could be changed to allow Cuffari to be eligible for a senior position. ██████████ closes by saying he would draft some proposed language.
Cuffari writing a recommendation letter on OIG letterhead and using his OIG title	18	12/14/2011	██████████ copying both attorneys)	Joseph Cuffari	Recommendation letter for ██████████ ██████████ on OIG letterhead)	Cuffari forwards a letter of recommendation for consideration of ██████████ for the position of a US Magistrate Judge. He requests that ██████████ share the recommendation letter with other members of the committee for review and consideration.
Cuffari donating surplus OIG printers to the school where his wife is a principal without disclosing such fact to the OIG.	19	Multiple from 7/15/11 to 2/7/12	██████████ and ██████████ (all OIG)	Joseph Cuffari	None	E-mail chain discussing the process by which Cuffari's surplus printers can be donated to "a local school", later identified as ██████████ High School (seemingly by Cuffari). There is no mention in the e-mails of the fact that Cuffari's wife's is the principal of that school.