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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],"



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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).



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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.



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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.



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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.



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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) 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) Not long after that, (b) (6), (b) (7)(C) Acting Inspector General Kelly retired on June 10, 2019.

I was confirmed by the Senate on July 25, 2019. (b) (6), (b) (7)(C)

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) 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.



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(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



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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.



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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

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).



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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) [REDACTED], declined to make changes to the draft report that (b) (6), (b) (7)(C) [REDACTED] and I thought were warranted (see discussion below), another subject matter expert, (b) (6), (b) (7)(C) [REDACTED], reviewed the draft. (b) (6), (b) (7)(C) [REDACTED] concluded that major portions were inconsistent with governing



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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 were violated in committing the offense, or had been warned about the conduct in question;



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- (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) (7)(C) critique of the draft report with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) decided to make major revisions to the report, and explained (b) (6), (b) (7)(C) 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.



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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)

(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) (7)(C) was “opposed to these changes” and indicated that (b) (6), (b) (7)(C) 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.



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I agreed with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) 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 (b) (6), (b) (7)(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.



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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



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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).



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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 202-981-6000.

Sincerely,

**JOSEPH V
CUFFARI**

Digitally signed by
JOSEPH V CUFFARI
Date: 2022.05.13 16:55:56
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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 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