

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

KRISTEN FREDRICKS, JOSEPH V.  
CUFFARI, JOSEPH E. GANGLOFF, and  
JAMES M. READ,

*Plaintiffs,*

v.

COUNCIL OF THE INSPECTORS GENERAL  
ON INTEGRITY AND EFFICIENCY  
("CIGIE"), INTEGRITY COMMITTEE("IC");  
KEVIN H. WINTERS, Chairman, IC, in his official  
capacity; ROBERT P. STORCH, Vice-Chairman,  
IC, in his official capacity; GAIL S. ENNIS,  
Member, IC, in her official capacity; KIMBERLY  
A. HOWELL, Member, IC, in her official  
capacity; DALE A. CHRISTOPHER, Deputy  
Director for Compliance, U.S. Office of  
Government Ethics, in his official capacity;  
TOM MONHEIM, Member, IC, in his official  
capacity; CATHERINE S. BRUNO, Member, IC, in  
her official capacity; ALLISON LERNER,  
Inspector General, National Science  
Foundation, former Chair and Vice Chair,  
CIGIE, in her official capacity,

*Defendants.*

CIVIL CASE NO. 23-442

**COMPLAINT  
FOR DECLARATORY,  
INJUNCTIVE, AND OTHER RELIEF**

JURY TRIAL DEMANDED

**INTRODUCTION**

Plaintiffs find themselves enmeshed in an unjust, Kafkaesque<sup>1</sup> system produced by an unconstitutionally structured entity and abetted by a complete absence of independent oversight, accountability and lawful due process. The Supreme Court has frequently reiterated that the

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<sup>1</sup> The Trial, Franz Kafka (1925).

structure and remit of federal agencies must comply with the Constitution. *U.S. v. Arthrex*, 141 S. Ct. 1970, 1981 (2021); *Collins v. Yellen*, 141 S. Ct. 1761, 1787 (2021); *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2197 (2020); *Lucia v. SEC*, 138 S. Ct. 2044 (2018); *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 483 (2010). Yet the Council of the Inspectors General on Integrity and Efficiency (“CIGIE”), its Integrity Committee (“IC”), and the members of these bodies still exercise quintessentially executive powers under a structure that plainly violates the Constitution. This uncontrolled exercise of executive power, untethered from any Presidential control or supervision, is exacerbated by an unconstitutional funding mechanism that this Court also must proscribe.

### **PARTIES**

1. Kristen Fredricks is a career civil servant and member of the Senior Executive Service (“SES”) and is currently Chief of Staff for the Inspector General (“IG”) at the U.S. Department of Homeland Security (“DHS”) and Acting Deputy IG for External Affairs. This role entails, for instance, communications with Congress. She has been subject to process and questioning by the Defendants.
2. Joseph V. Cuffari is currently the Presidentially Appointed and Senate Confirmed (“PAS”) Inspector General (“IG”) for the U.S. Department of Homeland Security (“DHS”). Through the pretense of conducting “investigations,” the IC has continuously and relentlessly tormented Mr. Cuffari and subjected him to unlawful inquisitions starting a mere six weeks after his unanimous confirmation by the U.S. Senate in 2019.
3. James M. Read is a career civil servant and a member of the SES. He is currently the Chief Counsel to the IG of the DHS. Defendants have consistently, though without any authority, denied him the ability to properly represent his client, the Office of Inspector General (“OIG”) for DHS.

4. Joseph E. Gangloff retired from government service in December 2019, after 43 years of government service. He had served over 25 years in the SES in leadership positions with the Criminal Division of the Department of Justice, the Office of Government Ethics, and the Office of Inspector General for the Social Security Administration.
5. Once Mr. Gangloff retired, the Defendants ceased to have any legitimate authority over him; nevertheless, they have continued to subject him to their unlawful processes.
6. The Council of the Inspectors General on Integrity and Efficiency (“CIGIE”) is an “independent entity” within the Executive Branch. 5 U.S.C. § 424(a)(1). Its stated mission is “to address integrity, economy and effectiveness issues that transcend individual Government agencies and aid in the establishment of a professional, well-trained and highly skilled workforce in the Offices of Inspectors General.”
7. The Integrity Committee (“IC”) is a committee of CIGIE whose stated mission is “to receive, review, and refer for investigation, as appropriate, allegations of wrongdoing made against: an Inspector General (IG), designated staff members of an Office of Inspector General, the Special Counsel, U.S. Office of Special Counsel (OSC), and the Principal Deputy Special Counsel, OSC, and ensure the fair, consistent, timely, and impartial disposition of the allegations.”
8. CIGIE and IC were created and are authorized by the Inspector General Reform Act of 2008, P.L. 110-40. The Act defines the membership of CIGIE and the IC. 5 U.S.C. § 424(b), (d).
9. The membership of CIGIE and IC includes individuals who are neither appointed by nor are answerable to the President of the United States, and in several cases are members of the legislative branch. 5 U.S.C. § 424(b), (d).
10. Kevin H. Winters is the current Chairman of the IC. Mr. Winters is the IG of Amtrak (National Railroad Passenger Corporation). He was selected for that role by the Amtrak Board of

Directors. He was neither nominated to his position by the President nor confirmed by the Senate. The President has no authority to terminate Mr. Winters as IG of Amtrak, as that authority is vested exclusively in Amtrak's Board of Directors. IG Winters was appointed to the IC by the then-Chairman of CIGIE. In 2020, members of IC chose IG Winters to serve as IC's Chairman. CIGIE has no authority to remove IG Winters from his position on IC. The only possible political avenue of controlling IG Winters's exercise of office as Chairman of IC is impeachment. He is sued in his official capacity.

11. Robert P. Storch is the PAS IG for the U.S. Department of Defense and is one of two Vice-Chairmen of the IC. He was appointed to the IC by the then-CIGIE Chair. He is sued in his official capacity.
12. Gail S. Ennis is the PAS IG for the Social Security Administration and is a member of the IC. She was appointed to the IC by co-defendant, Allison Lerner. She is sued in her official capacity.
13. Kimberly A. Howell is the IG for the Corporation for Public Broadcasting—a private nonprofit corporation. She was appointed to the IC by co-defendant, Allison Lerner. She is neither a PAS nor, on information and belief, a federal employee, and was appointed to the IG position by the Corporation for Public Broadcasting's ("CPB") Board of Directors. The President has no authority to terminate Ms. Howell, as IG of CPB, as that authority is vested exclusively in its Board of Directors. She is sued in her official capacity.
14. Dale A. Christopher is Deputy Director for Compliance, U.S. Office of Government Ethics ("OGE"), appointed to that office by the Director of OGE. Under the statute, the Director of OGE is an *ex officio* member of the IC but may delegate these responsibilities to another person

within OGE. *See* 5 U.S.C. § 424(d). Mr. Christopher himself is not an IG nor is he a Presidential appointee. He is sued in his official capacity.

15. Tom Monheim is a current member of the IC and has served as one of two IC Vice Chairmen since March 3, 2023, appointed to that position by the current CIGIE Chair. He is the PAS Intelligence Community IG. On information and belief, he was involved in the latest illegal inquiry directed at Plaintiff Cuffari. He is sued in his official capacity.

16. Catherine S. Bruno is Assistant Director of the Office of Integrity and Compliance within the Federal Bureau of Investigation and is a member of the IC. She is an *ex officio* member of the IC by virtue of 5 U.S.C. § 424(d). On information and belief, she was chosen by the Director of the FBI. She is sued in her official capacity.

17. Immediate past Chair of CIGIE Allison Lerner is the IG of the National Science Foundation (“NSF”). She was appointed by the Board of Directors of NSF. She is not a PAS officer. She was designated Vice Chair of CIGIE by the former Chair, and she became Chair starting on January 1, 2021. She is sued in her official capacity.

### **JURISDICTION AND VENUE**

18. This Court has jurisdiction pursuant to 5 U.S.C. §§ 702-703 and 28 U.S.C. §§ 1331, 1361, and 2201.

19. This Court is authorized to award the requested declaratory and injunctive relief under 5 U.S.C. §§ 702 and 706, 28 U.S.C. §§ 1361 and 2201-2202, and its equitable powers.

20. Venue is proper within this district pursuant to 28 U.S.C. § 1391. Defendants are United States agencies or officials sued in their official capacities. Half the plaintiffs are residents of this

judicial district and substantial parts of the events or omissions giving rise to the Complaint occurred within this district.

**STATEMENT OF FACTS**

**KRISTEN FREDRICKS**

21. Kristen Fredricks has been subject to IC's unconstitutional processes and threats. She is chief of staff for the IG of DHS (Plaintiff Cuffari) and acting deputy IG for external affairs.
22. Ms. Fredricks is an attorney and career civil servant. She received her Bachelor of Arts degree from the University of California-Berkeley and her Juris Doctor from Boston University School of Law.
23. Ms. Fredricks has been an active member in good standing of the bars of Massachusetts and California for over 20 years.
24. Prior to joining the Office of the Inspector General for the Department of Homeland Security ("DHS OIG") in late 2019, she worked for over a decade at the Social Security Administration ("SSA"), where she consistently received the highest possible performance ratings and numerous awards. Between 2010 and 2015, she worked as senior advisor to the Deputy Commissioner of SSA's Office of Hearings and Appeals, which at that time was one of the world's largest administrative courts.
25. In 2015, Ms. Fredricks was named Special Counsel to the Office of Chief Counsel to the Inspector General for SSA.
26. In 2019, Ms. Fredricks was told that the new IG for Homeland Security was encountering internal personnel difficulties in his office and asked whether Ms. Fredricks would consider detailing there to help him. The request was conveyed by Gail Ennis, the IG for the Social Security Administration. In November 2019, Ms. Fredricks was detailed to the DHS OIG as a

GS-15 employee. She competitively applied for and was selected for Chief of Staff of DHS OIG and was appointed to the SES in December of 2020. In the summer of 2021, Ms. Fredricks also assumed the role of acting Deputy IG for External Affairs at DHS OIG.

27. At the beginning of her detail, and as part of her duties, Ms. Fredricks contacted counsel at the IC and sought more information on how the IC operated. Her purpose in doing so was to address her office's dysfunction, which included, but was not limited to, unlawful appointment of officers and reorganization of various offices and functions within DHS on the eve of IG Cuffari's confirmation. Upon receiving Ms. Fredricks' inquiry, the IC counsel advised her that IG Cuffari "has to stop filing these Complaints" to the IC, apparently in reference to the documented allegations against various DHS OIG senior staff. Despite confusing and contradictory advice, Ms. Fredricks continued to seek information on the IC process.
28. Eventually Ms. Fredricks herself was named as the subject of an IC Complaint alleging that she had revealed the name of a putative "whistleblower." When she was notified that she was being investigated by the IC, she was further informed that because the IC was investigating actions Ms. Fredricks allegedly took in her "personal capacity," accordingly she could not be represented by a staff attorney at the DHS. This *ex ante* determination and denial of an employee's ability to rely on government attorneys is a routine practice of the IC. Fortunately, after seeing the dysfunction at DHS OIG early on, Ms. Fredricks had the foresight to obtain professional insurance, so she was able to afford private counsel to represent her in the IC investigation. The IC eventually closed the investigation with no adverse findings.
29. According to the letters the IC sent to Plaintiffs, the IC investigations proceed in three stages. First, a complaint is filed with the IC ("Complaint"). If the IC deems it advisable, it sends an inquiry letter to the subject of the Complaint via the subject's official government email

address. The allegations contained in the inquiry must be refuted by the subject such that no reasonable person could conclude, after further development of the record, that he or she had acted improperly. This is the standard Ms. Fredricks and all plaintiffs were held to for each inquiry letter. This standard, which presumes guilt and requires the subject to rebut the presumption violates the basic norms of due process and the law. *See* 5 U.S.C. § 424(d)(7).

30. Although ultimately Ms. Fredricks was vindicated, there was never an opportunity to contest the IC's claim that the alleged conduct was taken in her "personal" rather than "official" capacity, or to ever seek reimbursement for the expenses associated with retaining private counsel. Furthermore, although IC's investigations focused on the operations of DHS OIG, that agency was itself deprived of the ability to be represented by agency counsel whose duties are to defend the organization. IC's early-stage and default determination that the person whose conduct is being investigated acted in a "personal" capacity is unilateral, unappealable, and prejudicial. In fact, IC deems any attempt to dispute this determination as a new and separate offense and on that basis makes an immediate adverse finding against the subject.

31. While performing her official duties, Ms. Fredricks observed multiple meritless Complaints being filed against IG Cuffari. In addition, two other DHS OIG senior executives informed her that they had IC complaints filed against them and expressed their concern that counsel for DHS OIG was not involved in helping them respond to those complaints despite the fact that DHS OIG had institutional equities at stake. The Complaints against these high-ranking officials were closed without adverse findings.

32. The IC and its approach have been and are interfering with the DHS OIG's exercise of its legal responsibilities.



33. Ms. Fredricks was called as a witness in the IC's investigation of IG Cuffari regarding the circumstances surrounding a report authored by the Wilmer Hale firm ("The Report") (Redacted Copy Attached as Exhibit 1).
34. When IG Cuffari entered on duty, he encountered and was informed by career civil servant employees of multiple credible allegations of misconduct by senior DHS OIG officials. After attempting and failing to get the IC to investigate these allegations, IG Cuffari sought a neutral, outside investigator. As described below, this investigation was conducted by the Wilmer Hale law firm and resulted in the aforementioned Report.
35. The DHS OIG entered into a contract with Wilmer Hale to conduct an outside administrative investigation of those credible allegations of misconduct that IG Cuffari and several DHS OIG career civil service employees observed. Even though IG Cuffari's office engaged Wilmer Hale only after the IC advised him to take "whatever actions he deemed appropriate" with respect to the allegations that IG Cuffari brought to IC's attention, the very act of engaging this neutral and well-respected law firm prompted yet another complaint against IG Cuffari.
36. The IC selected the IG of the Department of Transportation ("DOT") to conduct the investigation about awarding of the Wilmer Hale contract. According to the IC's rules, since Ms. Fredricks was a witness and had information regarding the process to hire Wilmer Hale, DHS OIG counsel could not assist her, and so she once again had to engage private counsel, who aided her during the five-and-a-half-hour interview. As a consequence, Ms. Fredricks was forced to spend, from her personal funds, over \$4,000 in attorney fees connected to this interview, despite the fact that anything she may have observed with respect to the awarding of this contract she observed solely in and because of her official—not personal—capacity.

37. A week after her testimony as a witness in a complaint against IG Cuffari, the IC notified Ms. Fredricks that she was now the subject of yet another Complaint. The new investigation concerned alleged deletions of the U.S. Secret Service text messages which referenced the events of January 6, 2021. Mr. Cuffari was also a subject of this Complaint. The IC began its investigation despite the fact that no one in the DHS OIG has any control over the Secret Service or over where texts by members of that organization go. The OIG's remit is to serve as an inspector and auditor of the agency. Neither Ms. Fredricks, nor IG Cuffari, nor anyone else in the DHS OIG could control matters concerning text retention. In short, not only was no Plaintiff involved in any text deletions, there is no set of facts under which they could have been involved. Nevertheless, and despite the complaint's facial deficiency under the IC's rules, the IC sent an inquiry letter.
38. In any event, retention or deletion of governmental texts could be nothing but agency action of agency concern, and yet, once again the IC said it was investigating the complaint as a "personal capacity" matter and for that reason refused to allow any input from the counsel for the DHS OIG.
39. On April 3, 2023 Ms. Fredricks was served with yet another Request for Response with seven more requests having to do with an alleged deletion of records.
40. Although nothing having to do with this agency's text retention policies or practices can possibly be a "personal capacity" rather than "official business" matter, any attempt by Ms. Fredricks or anyone else to involve DHS OIG's personnel with pertinent knowledge or DHS OIG's counsel would, on information and belief, have been treated as a violation of the IC's self-serving procedures and would have resulted in an immediate adverse finding and recommendation by the IC.

41. The denial of her ability to consult with DHS OIG's counsel not only required Ms. Fredricks to incur additional unwarranted personal expenses, but it also precluded her from relying on any documents from OIG in formulating her response. Instead, she was consigned to rely only on information that was in the public record. As if this weren't enough, the IC in effect shifted the burden of disproving the allegations on Ms. Fredricks rather than itself.
42. On information and belief, the complaints against Ms. Fredricks and IC's decisions to investigate even obviously meritless complaints are retaliatory. On information and belief, these retaliatory actions were taken as a result of Ms. Fredricks refusing to heed IC's improper "warning" to stop reporting allegations of the complete breakdown of chain of command within DHS OIG prior to and after IG Cuffari's arrival.
43. The investigations into Ms. Fredricks, all of which are conducted by the unconstitutionally and unaccountably structured CIGIE and its Integrity Committee, have had a negative effect on Ms. Fredricks's work and actions. These investigations have also undermined or ignored the due process rights she is owed as a federal employee.

#### **JOSEPH V. CUFFARI**

44. Joseph V. Cuffari is the Presidentially-appointed and Senate-confirmed Inspector General for the Department of Homeland Security. He has been involved in conducting, supervising, and evaluating investigations and integrity issues for more than 36 years.
45. IG Cuffari received his Bachelor of Science in Business Administration degree from the University of Arizona (UA) in August 1984. In May 1995, he received a Master of Arts degree in Management from Webster University, and in September 2002 he earned a Doctor of Philosophy (Ph.D.) in Management degree from California Coast University. Also, in September 2002, he completed the Leadership in a Changing Environment seminar sponsored

by the Brookings Institution. He was awarded a Certificate in Public Policy and Management from the UA in September 2005. He also graduated from the U.S. Air Force's (USAF) Air University – Air War College in November 2016.

46. IG Cuffari served in the USAF for more than 40 years. He began his service after graduating high school in 1977 as an enlisted airman. He was subsequently competitively awarded an Air Force Reserve Officer Training Corps (AFROTC) scholarship for his studies at UA. Upon graduating UA and being commissioned as an Air Force officer, he served on active duty, in the USAF Reserves, and eventually in the Arizona Air National Guard, retiring in 2017 at the rank of Lt. Colonel.
47. He was a career civil service employee and worked in the Department of Justice (DOJ) OIG for more than 20 years, honorably retiring in May 2013 as an Assistant Special Agent in Charge of a Field Office. While working at DOJ OIG, he was selected to serve on difficult and sensitive investigations, including as a member of the team that evaluated the DOJ's response to and handling of the Aldrich Ames spy matter. He was also selected to assist a foreign government with forming an OIG within its ministry of the interior.
48. Immediately prior to his confirmation as DHS IG, he served for six years as the Policy Advisor for Military and Veterans Affairs to two Governors of Arizona.
49. His experience on managing investigative teams is also extensive. During his service with the USAF, he was selected as the Air Force Office of Special Investigations "Officer of the Year." As an USAF officer, he commanded three investigative field offices, including a joint NATO assignment in Naples, Italy. He also served as a program evaluator/investigator for the DOD OIG, and as the Deputy Mission Support Group Commander for an Air National Guard wing.

50. This extensive prior professional experience was a basis for his appointment and confirmation to his current position.
51. The President announced his intent to nominate Mr. Cuffari on November 1, 2018, and formally nominated him two weeks later. Mr. Cuffari's nomination lapsed with the expiration of the 115th Congress. He was renominated on January 16, 2019.
52. In connection with the U.S. Senate's advise-and-consent authority, Mr. Cuffari appeared for his confirmation hearing before the Senate Homeland Security and Governmental Affairs Committee ("HSGAC") on March 5, 2019. On March 11, 2019, in a bipartisan vote, the HSGAC reported his nomination to the Senate with a favorable recommendation. On July 25, 2019, the full U.S. Senate confirmed him by a voice vote.
53. On July 26, 2019, the President signed Mr. Cuffari's appointment certificate. On July 29, 2019, a U.S. Magistrate Judge in Tucson, Arizona administered the oath of office to him.
54. The previous Acting IG of DHS had abruptly retired on June 10, 2019, or about six weeks prior to Mr. Cuffari entering office.
55. Given the Acting IG's abrupt resignation, the timing of Mr. Cuffari's appointment was such that he quickly became aware of troubling matters at the office he had been appointed to lead.
56. In his many years of military and other government service, Mr. Cuffari had never before encountered this level of dysfunction and dishonesty by senior leadership. There was a level of withholding information, flouting rules, disrespect for proper authority, and risk of disgrace to the organization with which he was previously unfamiliar.
57. Faced with an untenable structure and apparent insubordination, including with respect to matters concerning budget and human resources, Mr. Cuffari contacted the then-Chairman of CIGIE and other seasoned IGs to seek their professional advice. Mr. Cuffari previously

worked for the IG of the Department of Justice, so he viewed other IGs generally, and that IG specifically, as good resources for advice and guidance.

58. By the third week of August 2019, Mr. Cuffari had made protected disclosures to the Senate HSGAC<sup>2</sup> committee on what he had found, what career employees had reported to him, and the problems he was facing. He reported that even though the Senate had already been aware that DHS OIG was having significant troubles, the situation on the ground was considerably worse than the Senators knew and than Mr. Cuffari expected when he took the job.
59. HSGAC had been aware of the dysfunction within the DHS OIG which manifested in a variety of ways including (but not limited to) the filing of numerous frivolous IC complaints, the hiring of senior staff in a manner meant to circumvent PAS IG's ability to weigh in on the decisions, and budgetary machinations. On December 6, 2019, HSGAC and the House Committee on Homeland Security, including Chairs and Ranking Members of both committees, sent a letter to IG Cuffari expressing their concerns on these long-standing challenges and highlighting that it had been "concerned for some time about DHS OIG's ability to perform its statutory mission."
60. Once the IC decided not to investigate the problems identified by Mr. Cuffari and other DHS OIG employees, he looked for ways to resolve them within the authority of his office. Due to intra-office conflicts of interest, and other IGs' recommendations, IG Cuffari ultimately sought an outside, impartial investigator.
61. IG Cuffari kept the Senate Homeland Security and Governmental Affairs Committee (a committee of the U.S. Senate with jurisdiction over DHS and the one that had overseen

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<sup>2</sup> Certain communications to the oversight committees of Congress are confidential and protected from public release or other disclosure.

Cuffari's nomination to his current position), the House Homeland Security Committee, both Appropriations committees, as well as the Office of Management and Budget, aware of the steps he had taken or was planning to take.

62. After a lawful solicitation, approved by the proper internal contracting and budgetary staff, the DHS OIG received inquiries from four entities. Two of these entities maintained their interest after being informed of the extent of the project and submitted proposals for the undertaking. These proposals were evaluated by the contracting officers within DHS OIG. They ultimately selected the proposal submitted by Wilmer Hale—a well-respected law firm with a national presence and experience in workplace investigations.
63. Eventually, Wilmer Hale prepared a report of its investigation, confirming many of IG Cuffari's and others' observations and fears. The redacted (to comply with Privacy Act provisions and to protect the identity of witnesses) report is attached hereto as Exhibit 1.
64. In response to IG Cuffari's attempts to reestablish order within DHS OIG, he was targeted by a relentless stream of meritless retaliatory complaints to the IC that continues to this day.<sup>3</sup> The latest Request for Response was served on April 3, 2023 and has eight requests. The retaliatory complaints initiated a series of IC investigations, follow-ups, and requests for supplementary information which now total more than *63 requests(!)*. (Exhibit 2)(Chart of Claims). The complaints baselessly alleged an endless series of transgressions by IG Cuffari, most of which have already been closed with no action or any findings adverse to Mr. Cuffari. Thirteen complaints, though likewise meritless, remain pending with at least 18 supplemental inquiries recently added. Nevertheless, responding even to these meritless complaints took inordinate

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<sup>3</sup> And, it appears from press reports, relentless leaks and attacks in the press arising from these Complaints.

amounts of time and resources and interfered with IG Cuffari's ability to perform his official duties.

65. One of the still-pending complaints relates to the Wilmer Hale contract, while another alleges that IG Cuffari misstated the academic discipline of his degree, and one takes issue with matters of previous employment already addressed by the Senate in its advise-and-consent role. According to the IC's procedures, these allegations could not be pursued by it if the Department of Justice believed a criminal investigation was warranted.
66. On information and belief, the IC brought complaints and conducted investigations against IG Cuffari in cases where both the Justice Department *and* the Office of Special Counsel declined action on matters complained of. It also did so despite the fact that an allegation of employment retaliation by a federal employee is within the exclusive province of the U.S. Merit Systems Protection Board ("MSPB"). *Elgin v. Dept. of Treasury*, 567 U.S. 1 (2012). IC's actions violated IG Cuffari's right to due process and threatened the separation of powers and the unitary executive.
67. All but two of the complaints against Cuffari, albeit ultimately factually and legally deficient, related to allegations of violations in the performance of his official duties. The other two concerned matters that allegedly occurred before his confirmation and while he was still a private citizen. They were all served upon him at his official government email address. He retained counsel at a cost of \$7,000 to defend against these pre-confirmation allegations. With respect to post-confirmation allegations, IC's requests included not only protected attorney-client information, but protected communications with Congress, as well as with the Office of Special Counsel under the relevant "whistleblower" provisions, as well as pre-decisional



information. IC's requests also covered departmental records such as materials he received from DHS and other agencies, all of which were obtained during IG Cuffari's official duties.

68. In the ordinary course of affairs, such requests would be handled by the principal deputy IG to whom Mr. Cuffari has delegated all such tasks. The principal deputy IG generally directs DHS OIG's FOIA officer to gather requested material and provide them to the requesting party. This chain of command demonstrates beyond cavil that a) IG Cuffari held the documents in his official and not personal capacity, and b) that DHS OIG possessed strong institutional interests in responding to the requests for these materials. But the IC process denied this reality by claiming that the inquiry was solely for matters in Mr. Cuffari's personal capacity.
69. Despite the fact that documents requested by IC were generated in IG Cuffari's official rather than personal capacity, IC denied IG Cuffari permission to use DHS OIG's resources (including OIG's staff attorneys) to respond to these complaints. Indeed, DHS OIG was not permitted to intervene even to defend its own interests.
70. Denial of the views of OIG staff attorneys ensures that the IC's complaints interfere with the performance of IG Cuffari in his duties. After being informed that investigations by the IC were treading on privileged material that was provided to Congress, the IC has issued a batch of allegations over discretionary decisions involving multiple actors within the DHS OIG and required responses within 20 days. These requests once again treat Mr. Cuffari's actions as having been made in his "personal capacity" and warn him that discussing the matter with other people in his office may itself be grounds for further investigations and findings of misconduct. The requests demand Mr. Cuffari's thought processes in editing a report to Congress—a task entirely within his discretion.

71. The IC's request indicates that the IC is examining discretionary judgments made by dozens of DHS OIG personnel at all levels of the organization who are not subject to the IC's authority and who, although working in management chains that ultimately lead to IG Cuffari, were not closely supervised by IG Cuffari on a day-to-day basis as they worked on complex projects. This circumstance vividly illustrates the absurdity of the IC's "personal capacity" claim and construct. And it goes beyond the question of fairness to the respondent/subject, who is supposed to sit down with a private attorney and somehow formulate a response without talking to anyone in OIG who was involved in the complex matters under examination, which spanned years and some of which began before IG Cuffari was confirmed.
72. The IC has put Mr. Cuffari in an untenable position that can only be remedied by this Court. If he declines to answer questions, he is subject to an immediate finding of misconduct by not cooperating with an IC inquiry, but if he does answer them, he will be breaching his obligation to abide by the confidentiality principle and the duty to avoid creating the potential for harm of releasing such information as described in the Department of Justice Manual § 1-7.00.
73. Much like Plaintiff Fredricks, IG Cuffari had to obtain private counsel. As with Plaintiff Fredricks, the IC peremptorily and unlawfully declared that all of the complaints against Cuffari had to be answered in his personal capacity.
74. The incessant complaints to the IC and IC's never-ending investigations of these obviously meritless grievances caused substantial interference with IG Cuffari's official duties. Plaintiff Cuffari estimates the time to respond to these matters over the past three-and-a-half years may have reached 2,000 hours. Meeting the IC's constant demands and deadlines has come at a substantial cost. Twelve DHS OIG employees were needed to respond to the IC's voluminous requests for protected and other privileged materials. The production to IC eventually totaled

3 million documents and 400 Gigabytes of data. It took DHS OIG employees more than 800 person-hours to produce the documents instead of performing their other duties. At the same time, IC refused to investigate the very credible violations IG Cuffari and career employees uncovered in DHS OIG. This campaign of distraction and harassment also impeded IG Cuffari's ability to fulfill the assurances of decisive action that he gave to the members of the U.S. Senate who, during IG Cuffari's confirmation process, had expressed deep concerns about the dysfunction within DHS OIG.

75. Specifically, during the confirmation process, senators asked the then-nominee Cuffari to do three things, *viz.*, 1) bring stability to the leadership function; 2) identify and hold individuals accountable for their misconduct; and 3) bring back a modicum of civility to the operations of the office. Mr. Cuffari committed to doing so. And despite a relentless stream of Complaints, presumably lodged by those discomfited by his efforts in this regard, he has largely done so.
76. One instance of IC process directly interfering with IG Cuffari's attempts to carry out his responsibilities and promises to the U.S. Senate occurred when he terminated an insubordinate employee who, among other things, refused a directed reassignment. Because Mr. Cuffari promised the U.S. Senate to address the office's dysfunction were he to be confirmed, he exercised his prerogative to reassign an employee to another position. Because she refused reassignment, she was placed on administrative leave.
77. The employee was removed from federal service on June 11, 2020; however, she received all the due process required under federal law prior to any action being taken against her. The December 2020 Wilmer Hale Report further substantiated the propriety of the actions taken by Mr. Cuffari. Nevertheless, a mere nineteen days after Mr. Cuffari made his recommendations, he received a letter from the IC stating that it had opened an investigation into a complaint that

IG Cuffari was allegedly retaliating against the employee for her complaint over the manner in which Wilmer Hale was engaged by DHS OIG. The Office of Special Counsel had already investigated the claims of retaliation and found no substance to them, so it closed the investigation with no further action on September 3, 2020. Mr. Cuffari provided this information to the IC.

78. Even assuming that IC can validly exercise such power, it has abused this power by continuously peppering the DHS OIG with demand letters making no allowance for privileged documents, including protected materials shared with Congress, materials from other offices not related to DHS, or other privileged materials. IGs have the ability to obtain documents from their respective agencies. But the IC operates as a “Super IG” and claims the unlimited power to commandeer documents from any agencies *including* those sent to Congress.

79. By law, IGs are granted authority to have access to the records within their department as unfettered as the head of the agency. The IC has created a “Super IG” that claims the IG power across the whole of government including the legislative branch (which raises serious separation of powers concerns). IC asserts it has the authority to obtain from any agency any documents any IG could obtain from that agency.

**JOSEPH E. GANGLOFF**

80. Joseph E. Gangloff, a career civil servant and a lawyer, retired from government service in December 2019, after 43 years of government service. Mr. Gangloff had served for over 25 years in the Senior Executive Service (SES) in leadership positions within the Criminal Division of the Department of Justice, the Office of Government Ethics, and the Office of Inspector General for the Social Security Administration. He earned his Bachelor of Arts

degree *summa cum laude* from St. Joseph's University in Pennsylvania and *Juris Doctor* degree from the University of Pennsylvania, where he was awarded the Order of the Coif.

81. Mr. Gangloff's career focused at the domestic and international levels on the prevention, detection, investigation, and prosecution of public corruption. His service in the SES included serving as Principal Deputy Chief of the Public Integrity Section and as Senior Counsel in the Office of International Affairs of the Department of Justice's Criminal Division, Deputy Director of the United States Office of Government Ethics, and Chief Counsel to the Inspector General for the Social Security Administration.
82. As Principal Deputy Chief of the Public Integrity Section between 1994 and 2001, Mr. Gangloff's responsibilities encompassed handling nationally focused high-profile public corruption investigations and sensitive investigations including Independent Counsel matters and investigations of federal judges and members of Congress.
83. In addition to having responsibility for oversight of some of the nation's most sensitive public corruption cases, he was a principal drafter of the mission statement and procedures for the President's Council on Integrity and Efficiency ("PCIE"), which was a predecessor to CIGIE. In fact, he served as counsel to the IC when it was first formed and until leaving his position at the DOJ's Public Integrity Section.
84. Mr. Gangloff has earned international respect and acclaim for his contributions to the global fight against public corruption, having been a negotiator and drafter of the United Nations and Council of Europe's Conventions Against Corruption, as well as other similar multi-lateral instruments. In addition, he served for over a decade as an expert on international teams selected to assess country-specific compliance with these instruments; particularly significant reviews included an assessment of the Russian Federation. Notably, he has served as an adjunct

instructor at the International Law Academies in Budapest and Bangkok, The United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders (in Tokyo), and American University's Law School.

85. During his 10-year tenure as a Deputy Director of the Office of Government Ethics, Mr. Gangloff had nationwide responsibility for oversight of over 4,000 agency ethics officials in the over 120 agencies of the Executive Branch. He directed a wide range of audit, training, and technical support activities to ensure agency-specific program compliance; he was also responsible for monitoring administration of the financial disclosure system for Presidential appointees.
86. Well over two years after Mr. Gangloff retired, the IC notified him that it had opened an investigation against him "and other senior leaders." In contravention of its usual practices, the IC provided no opportunity for Mr. Gangloff to respond to the allegations before launching a formal investigation. In fact, the procedural flow chart submitted by the IC to Congress in its mandated annual report does not reflect any circumstance that could warrant launching a formal investigation without first allowing the subject to respond. Despite the fact that the allegations against Mr. Gangloff apparently encompass a wide range of matters that occurred after his retirement and for which he had no responsibility or authority when employed, and despite (no longer being employed) Mr. Gangloff having no access to any pertinent documents including emails that would be necessary to defend himself, the IC has threatened him with sanctions. The IC notification is vague, does not clearly inform him of the charges against him, and in the over 8 months since the notification, he has not been contacted by the IC to provide additional information. This process violates the IC's own procedural requirements, including adherence to established timeframes. Notably, the IC's guidance concerning its own

authority highlights that the IC does not have the power to take disciplinary action against an individual. Mr. Gangloff as a retiree is not subject to any disciplinary action by his former agency or any other component of the executive branch. 5 U.S.C. § 424(d)(4)(A) (definition of staff member).

87. Mr. Gangloff served as Chief Counsel to the Inspector General for the Social Security Administration from mid-2015 until the end of 2019, when he retired from Government service to be the primary caregiver for his ailing mother. As Chief Counsel, his responsibilities included serving as the agency's Whistleblower Ombudsman and Whistleblower Coordinator.
88. By letter dated June 7, 2022, the IC informed Mr. Gangloff that it had launched an investigation against him relating to his service as Chief Counsel to the Inspector General for the Social Security Administration. Although the letter provided very few details, Mr. Gangloff could understand that in broad terms the complaint against him related to his involvement with Social Security's Civil Monetary Penalty Program ("CMPP"), as well as alleged retaliation against employees who complained about Mr. Gangloff's handling of that program. IC Notice to Gangloff attached as Exhibit3.
89. The IC's notification letter to Mr. Gangloff provided almost no pertinent information beyond stating merely that "the IC received a complaint alleging you and other senior leaders" engaged in vaguely identified, non-time-framed-conduct.
90. Notably, and contrary to IC's ordinary practice of inviting the subject of an allegation to provide information prior to initiating an investigation, the IC did not provide this opportunity to Mr. Gangloff. In addition, the IC did not ask Mr. Gangloff to respond to any specific accusation. The IC did not identify possible sanctions that could be imposed against him.

91. Despite Mr. Gangloff having been retired for over two years, the IC asserted that it continued to have jurisdiction over him and other (unnamed) individuals with respect to the allegations made in the complaint. This assertion is contrary to law. 5 U.S.C. § 424(d)(4)(C).
92. The IC did not identify what, if any, sanction could be imposed on Mr. Gangloff, regardless of the finding or conclusions of the IC's investigation. Nonetheless, a threat of public defamation or other adverse action by the IC remains. Further, while the notification states that an investigator "may contact you for an interview regarding this matter," and that Mr. Gangloff would have an opportunity to address any draft report of investigation (ROI), the IC has not contacted Mr. Gangloff at all other than through the notification letter, dated June 7, 2022. With respect to the IC's own processes, the IC has apparently ignored statutorily mandated deadlines and provided Mr. Gangloff with absolutely no information on the status of the investigation, the reasons for delays, the consequences of the IC's failures to follow its own policies and procedures, or any other matter.
93. As a former employee, Mr. Gangloff cannot receive the assistance of a lawyer from his former agency. In fact, as noted above, the IC has taken the position that legal support from the agency would not be permitted in any event because IC allegations are "personal" to the subject of the investigation. The overreach of the IC's assertion that the allegations against Mr. Gangloff are "personal" to him is underscored by the breadth of the IC's allegations, which broadly lump together actions of "other senior leaders" who were not even within the scope of Mr. Gangloff's supervisory authority and reflect actions that occurred well after he left the agency.
94. No process is available to allow Mr. Gangloff to review or obtain relevant agency documents. Even Mr. Gangloff's own emails from his time in government are unavailable to him.



Meaningfully determining the scope of relevant information would not be possible given the vagueness of the allegations as stated.

95. The broad scope of the allegations suggests that much of the conduct under investigation occurred *after* Mr. Gangloff retired, more than two-and-a-half years before the notification, and that additional conduct within the scope of the IC's investigation occurred wholly outside the areas of Mr. Gangloff's authority and responsibilities even during the period of his employment as a covered person. Mr. Gangloff has had no contact with the Social Security Administration with reference to the IC's investigation.
96. The IC has had no other communication with Mr. Gangloff concerning this matter before or since the letter. Mr. Gangloff has this accusatory letter hanging over his head with no recourse to remove it but this action.

**JAMES M. READ**

97. James Read is the current Counsel to the Inspector General of Homeland Security. He is a career civil servant, a member of the SES, and a lawyer. Mr. Read has served as a career civil servant in the executive branch for over 30 years. He has never held a political appointment.
98. Mr. Read received his Bachelor of Arts degree from Hamilton College and his *Juris Doctor* degree from the George Washington University Law School.
99. Mr. Read has been an active member in good standing of the bars of New York and the District of Columbia for over 30 years.
100. Following law school, Mr. Read served as a law clerk to the Chief Judge of the U.S. Claims Court (currently known as the U.S. Court of Federal Claims).
101. After a short stint in private practice, Mr. Read accepted a position at the Armed Services Board of Contract Appeals.

102. Mr. Read has served in various positions in the executive branch since then, including Chief Counsel to the Chairman of the MSPB; Director of the MSPB Office of Appeals Counsel; Special Counsel for Personnel at the DOJ Executive Office for U.S. Attorneys; Special Assistant to the Director of the DOJ Office of Attorney Recruitment and Management; and Assistant General Counsel of the Office of Management & Budget.
103. Mr. Read was appointed to the career Senior Executive Service in 2009.
104. Inspector General Cuffari named Mr. Read Acting Counsel to the Inspector General effective December 30, 2019. On or about March 29, 2020, Mr. Read assumed that role on a permanent basis. Mr. Read had not known Inspector General Cuffari prior to November 2019.
105. Like Ms. Fredricks, Mr. Read was appalled by the situation he encountered at DHS OIG, because it was far more extreme than he had seen previously in his then-30 years in Government. He observed factional behavior, personalization of policy disagreements, and failure to conform conduct to the agency's mission. Some senior staff actively opposed and undermined the Presidentially appointed leadership. The DHS OIG office structure created by these senior career staff was non-standard in the extreme and designed to prevent appointed leadership from exercising any effective control over the office.
106. The structure of the office was bizarre. The HR function was misplaced, and the organization of attorneys in the office providing legal advice to the IG produced inconsistent advice.
107. On or about July 1, 2020, the IC asked Inspector General Cuffari to respond to allegations of misconduct made against him.
108. Acting on Inspector General Cuffari's behalf, Mr. Read requested an extension of time to respond.

109. The IC informed Mr. Read that it was proceeding against IG Cuffari in his personal capacity and Mr. Read should not take part in representing him in responding to the allegations.
110. Based on his review of the IC complaint, Mr. Read determined that the allegations against IG Cuffari involved actions IG Cuffari took within the scope of his official duties. Mr. Read further determined that the interests of DHS OIG and Inspector General Cuffari were aligned, and therefore, that it was appropriate for DHS OIG attorneys to provide legal advice to IG Cuffari in the IC matter.
111. The IC nonetheless informed Mr. Read that DHS OIG attorneys were not permitted to provide IG Cuffari with legal advice in the IC matter.
112. Contrary to the IC's unsupported assertions, Mr. Read believed that he was obligated by the terms of his appointment to advise IG Cuffari in the IC matter.
113. In a telephone call on or about July 25, 2020, an attorney associated with CIGIE threatened Mr. Read with an IC investigation if he were to provide advice to IG Cuffari in the IC matter.
114. In the fall of 2020, CIGIE leadership proposed an amendment to the IC's rules that would give the IC authority to obtain any records of any Office of Inspector General, including records covered by the attorney-client and attorney work-product privileges, that the IC deemed relevant to an IC investigation.
115. Mr. Read believed that CIGIE lacked authority to adopt such a rule; in addition, he believed that the rule was being promulgated in violation of the Administrative Procedure Act. By letter dated November 20, 2020, and addressed to the Office of Management & Budget ("OMB"), Mr. Read set forth a detailed critique of the proposed rule.
116. By letter to OMB dated November 22, 2020, the then-Chairman of CIGIE, objected to Mr. Read's letter, opining that it was "regrettable" that Mr. Read had raised legal arguments against

the proposed rule. That letter appeared on CIGIE letterhead and was signed in his capacity as Chair of CIGIE. Mr. Read was copied on this letter. The episode demonstrates that CIGIE rejects even informed criticism by attorneys in the agencies as to its practices.

117. Because Mr. Read reports directly to IG Cuffari, he is subject to the IC's authority under section 11(d)(4)(A)(i) of the Inspector General Act (5 U.S.C. § 424(d)(4)(A)(i)).

118. By letter dated June 24, 2021, the IC demanded that Mr. Read respond to a complaint claiming that he had abused his authority, engaged in gross mismanagement, and engaged in conduct calling into question his integrity and independence, relating to discretionary management decisions he had made in the course of his official duties. The Complaints, as usual, were served on Mr. Read at his official government email address.

119. As is its usual practice, the IC informed Mr. Read that it was proceeding against him in his personal capacity. As a result, Mr. Read was deprived of the advice of agency attorneys and instead had to retain private counsel to represent him in the IC matter.

120. The IC also advised Mr. Read that he had the burden of "refuting" the allegations against him such that no reasonable person could conclude that he had acted improperly.

121. After Mr. Read, through private counsel, submitted a detailed response to the IC, the IC closed the matter without any adverse determination.

122. By letter dated May 6, 2022, the IC demanded that Mr. Read respond to additional allegations that he had acted improperly. Although the allegations related exclusively to actions Mr. Read took as part of his official duties and were non-criminal in nature, the IC again advised Mr. Read that it was proceeding against him in his personal capacity. The IC again advised Mr. Read that in order to avoid a full-blown investigation, he must refute the

allegations such that no reasonable person could conclude, after further development of the record, that he had acted improperly.

123. Mr. Read again was forced to hire private counsel and through her again responded to the allegations. Once again, the IC later closed the inquiry without any adverse determination.

124. In yet another IC investigation (with Mr. Read this time being a witness rather than the subject of the investigation), IC investigators asked Mr. Read to submit to a “voluntary” interview. The IC disingenuously characterizes such interviews as “voluntary;” however, on information and belief, an individual who exercises his due process rights and declines to participate will be automatically found guilty of failing to cooperate with the IC.

125. During the interview, IC investigators again threatened Mr. Read with “scrutinizing” his actions, all of which related exclusively to Mr. Read’s carrying out of his official duties.

126. On April 3, 2023 he received another request from the IC with seven question regarding someone else’s telephone records.

127. On information and belief, DHS OIG attorneys requested that the DOJ appoint a government attorney or a private attorney at the government’s expense to represent Mr. Read in the matter where Mr. Read served as a witness. On information and belief, DHS OIG attorneys did not receive a response to this request in time for Mr. Read’s interview with IC investigators. As a consequence, Mr. Read was forced to spend over \$5,000 from his personal funds in attorney fees connected to this interview. He has spent at least 200 hours responding to baseless allegations that do not meet even the IC’s stated standards of inquiry, not including the brand new request of the IC.

**THE OPERATIONS OF COUNCIL OF THE INSPECTORS GENERAL ON  
INTEGRITY AND EFFICIENCY AND THE INTEGRITY COMMITTEE**

128. CIGIE is a statutorily created body consisting essentially of all Inspectors-General in the federal service as well as individuals who serve as IGs in the executive and legislative branches as well as those who serve for various public corporations such as National Railroad Passenger Corporation and the Corporation for Public Broadcasting.

129. The membership of CIGIE is not limited to those IGs who have been nominated by the President of the United States and confirmed by the Senate.

130. For instance, legislative members are appointed as follows:

The Architect of the Capitol appoints the Architect of the Capitol IG. That IG is removable by the Architect of the Capitol. 2 U.S.C. §§ 1808(c)(1), (2).

The Capitol Police Board appoints the Capitol Police IG. The Capitol Police Board may remove that IG by unanimous vote. 2 U.S.C. §§ 1909(b)(1), (3).

The Comptroller General appoints a Government Accountability Office (“GAO”) IG. The GAO IG is removable by the Comptroller General. 31 U.S.C. §§ 705(b)(1), (2).

The Director of the Government Publishing Office (“GPO”) appoints a GPO IG. That IG is removable by the Director. 44 U.S.C. §§ 3902(a), (b)(1).

The Librarian of Congress appoints a Library of Congress IG. That IG is removable by the Librarian of Congress. 2 U.S.C. §§ 185(c)(1)(A), (2)(A).

131. The Integrity Committee is a statutorily created committee within CIGIE. Four of the Committee members are members of CIGIE appointed by the CIGIE Chairman. Additionally, an official of the Federal Bureau of Investigation serves on CIGIE and the Director of the Office of Government Ethics or his designee also serve on the IC. Given CIGIE’s and IC’s structure, it is possible for the IC to have no PAS-eligible members on the IC. Indeed, currently, four of the seven members of the IC, including its chairman, are not PAS officials.

132. The IC has informally adopted various policies and procedures governing its investigations. These procedures are not merely internal operating rules but are rules that bind the subjects of investigations. For example, the IC has determined that irrespective of the nature of the complaint lodged against any party, that party cannot rely on his agency's attorney to respond to allegations. The IC has shifted the burden of proof against the person against whom a Complaint is lodged. In contrast to established legal principles, the subject has the burden of "refuting" the allegations against him such that no reasonable person could conclude that he had acted improperly. These policies violate the bedrock of law, the presumption of innocence, and tellingly, they do not appear to be part of IC's formal Policies and Procedures adopted in January 2018 and posted on IC's website. See <https://bit.ly/3YSxnpY>
133. The investigations by the IC are civil and should be based at least on civil burdens of proof. But, in practice, the subject of the investigation has to prove innocence beyond a reasonable doubt because that is what the IC wrongfully requires.
134. Under IC's own rules, in order to trigger IC's action, any investigation must meet a "threshold standard" which, again according to IC's own definitions, "does not include discretionary management decisions, or action or inaction that constitutes simple negligence or wrongdoing," nor does it include a merely "debatable expenditure." See *id.*, § 7.A; Appendix A.
135. Despite IC's own standards for triggering investigations, IC on numerous occasions has investigated Plaintiffs over their discretionary management decisions and allegations that even if they were true (though they were not) did not rise to the level of "willful misconduct or gross and wanton negligence." *Id.*

136. When conducting investigations, the IC essentially assumes the authorities expressly vested in the Office of Inspector General for the relevant agency. Thus, the March 25, 2021, Addendum to the IC's 2018 Policies and Procedures states that every OIG, upon request, must provide the IC "with full and timely access to all OIG records, documents, witnesses, and other information that the IC or its designee deems necessary." As a result, the IC demands records and information that are otherwise available only to an agency's Inspector General and his staff. Because members of the IC need not be appointed by the President and are not necessarily removable by him, the IC has exercised the quintessentially executive authority that is normally reposed only in "principal officers" of the United States without actually being staffed by such officers.
137. Allison Lerner, while serving as Vice Chair of CIGIE, encouraged two OIG DHS senior executives to use government resources and their official titles to interfere in the Senate advise-and-consent process in hopes of scuttling IG Cuffari's nomination. One of these executives would continue holding herself out as Acting IG until Mr. Cuffari was confirmed. In other words, delays in and possible rejection of Mr. Cuffari's nomination personally benefited this official.
138. Neither Ms. Lerner nor the current Chairperson of the IC, Kevin Winters, expressed any concerns regarding government employees using official resources to influence the Senate's advise-and-consent role, even when that person would benefit from a delay in filling the role. This was a grave misuse of governmental resources for private gain and traduced 5 C.F.R. § 2635.502.
139. The IC and CIGIE often take a political role, beyond simply supplying information to Congress. While on official government time, two IC staff attorneys were dispatched to the



Hill in 2021 to lobby members to support various CIGIE legislative proposals. One such proposal was to transfer authority from the DOJ Office of Professional Responsibility to the DOJ OIG to investigate allegations of misconduct involving DOJ attorneys, in the performance of their prosecutorial functions. In addition, IC attorneys also lobbied against various Senators' amendments to the IG Act. Those lobbying efforts were shared at a December 14, 2021 CIGIE monthly meeting when CIGIE leadership praised the IC attorneys for their "hand-to-hand" combat on the Hill to defeat what CIGIE leadership viewed as "bad ideas" the Senators had presented in their amendments.

140. As a result of their personal familiarity with IG Cuffari as well as being the people who, when asked, provided professional advice to him, the then-Chairman of CIGIE and the IC's Senior Assistant General Counsel both recused themselves from the investigation into IG Cuffari.

141. Despite Ms. Lerner having been personally involved in an attempt to defeat IG Cuffari's nomination. Ms. Lerner appointed two members of the IC, which was then tasked with acting on complaints against IG Cuffari.

142. Neither CIGIE nor the IC provides any mechanism to review and address improper non-recusal decisions to force them to do so. This both explains the relentless harassment against the Plaintiffs and the reasons it cannot be addressed.

143. The Wilmer Hale Report implicates CIGIE leadership in improperly attempting to defeat IG Cuffari's nomination. Yet, not only did CIGIE leadership not recuse themselves in response to a clear conflict of interest, they ignored this outside report by a disinterested and professional law firm because the leadership apparently viewed, without a basis in fact, the report itself as "retaliatory." *See Russell v. Dept. of Justice*, 76 M.S.P.R. 317 (1997) (retaliatory reports given

little weight). By letter dated October 27, 2020, IG Cuffari requested IC Chairman Winters to recuse himself from matters involving IG Cuffari or DHS OIG. Chairman Winters refused to do so and subsequently opened additional investigations into IG Cuffari and DHS OIG staff.

144. In late 2020, the IC became aware that the insubordinate employee, whom IG Cuffari had removed from federal service, had made a threat against IG Cuffari. When IG Cuffari and Mr. Read learned of the threat through another IG office, they inquired with the then-Chairman of CIGIE to obtain specific information as they only had heard a general report. Instead of assisting IG Cuffari and Mr. Read with the requested information, IC Chairperson Winters responded that their inquiry about the threat would be viewed as interfering in an IC matter and would potentially result in yet another IC investigation against *them*.

145. As a PAS IG, IG Cuffari is a principal officer of the United States and a federal law enforcement officer within the meaning of 18 U.S.C. § 115. Because of IC Winters' refusal to apprise IG Cuffari of the circumstances and context of the alleged threat against him, he was left to his own devices to determine whether any steps had been taken to fully gather pertinent evidence and to begin the process of obtaining whatever protection may be warranted.

146. IC Winters refused to recuse himself in matters relating to IG Cuffari or Mr. Read.

147. At bottom, the leadership of CIGIE, through the IC, is attempting to undo the Presidential appointment and Senate confirmation of someone whom some of these individuals wished were never nominated. Not only were the initial efforts to oppose the nomination improper, but even assuming they were proper, the involvement of these same individuals in subsequently investigating the very person they had politically opposed, demonstrates a blatant disregard for due process and separation of powers.

148. To maintain impartiality in agency decision-making, IGs do not make recommendations for discipline or adverse action. However, the IC acts as a “Super IG” in contravention of this policy.
149. The IC does not merely make non-binding recommendations to other actors in the federal government. Rather, it creates reports that include “recommendations for disciplinary action, up to and including removal” which can be professionally and personally adverse to an individual. These reports are often made public and can result in termination and loss of reputation. There is no third-party review of such reports. The governing legal doctrine immunizes the government from liability for libel or slander. Because there is virtually no redress for a slanderous report, due process protections during the investigation and report preparation stages are even more necessary and required.
150. The IC by practice and by rule assumes all allegations that it determines to send to the subject for response are true and it is instead the duty of the subject to refute them beyond a reasonable doubt. *See* Exhibit 4 (Letter of IG Cuffari to IC p. 3 (Oct. 27, 2020)).
151. The IC, without any legal authority, employs an irrebuttable presumption that all complaints it receives concern the subject’s behavior in his personal rather than official capacity, thus precluding the subject from accessing an agency’s legal counsel or even exculpatory documents. This approach violates the Department of Justice’s Guidelines on the use of agency counsel. *See* 28 C.F.R. § 50.15(b) (default is to represent the individual unless not in agency’s interest). To defend an allegation personally, not knowing what the agency believes are its equities, is damaging to the individual and the agency.
152. The IC threatens individuals who contact CIGIE to complain about the IC’s actions, terming such contacts “interference” with the investigation even though CIGIE does not and

cannot interfere with any IC investigation. Exhibit 5 (Letter of IC to IG Cuffari (Oct. 19, 2020); Exhibit 4 (Letter of IG Cuffari Response to IC (Oct. 27, 2020)).

153. The IC unlawfully inserts itself and conducts investigations on matters that are governed by the Civil Service Reform Act (“CSRA”), which vests exclusive jurisdiction over such matters in the Office of Special Counsel and/or the MSPB. *See, e.g., Elgin v. Dept. of the Treasury*, 567 U.S. 1 (2012) (CSRA provides exclusive means for resolving federal employer/employee suits).
154. The IC’s disregard for any privileges (attorney-client, work product, classified material, deliberative process, provision of information to Congress as a whistleblower,<sup>4</sup> etc.) and any statutes that limit access to investigatory material to the IG of the agency involved or the Department of Justice, violates the separation of powers and due process of law and is not authorized by the Inspector General Reform Act.
155. Rulemaking is a significant government power. Except as it concerns investigations of “the Special Counsel or the Deputy Special Counsel,” IC has no rule-making authority. *See* 5 U.S.C. § 424(d)(12). Despite the absence of such an authority, the IC construes its own regulations and rules of procedure as binding all individuals that it claims it has statutory power to investigate. This practice undermines the Appointments Clause and the President’s inherent power to remove officers of the United States. In contravention of the Administrative Procedure Act, the Due Process Clause, and basic Constitutional structure, IC rules are unreviewable by anyone in the Administration, including CIGIE itself, of which IC is merely a committee. The leaders of CIGIE have testified to Congress that the IC is purposely

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<sup>4</sup> Disclosures made by federal employees to Congress are protected by law. 5 U.S.C. § 7211.

separated from CIGIE's review, not subject to its supervision, and that CIGIE does not and cannot intrude on IC matters and investigations or oversee its actions.

156. The IC's approach to its investigations affects not only individuals, but also Executive Branch agencies, because counsel to the relevant agencies are not permitted to be involved in IC investigations even when agencies' institutional interests are at stake.

157. The IC's procedures require the subject of any complaint to "fully refute the allegations" made against him and to do so without consulting agency counsel or exculpatory documents within the possession of the agency. This approach violates due process of law, by both presuming guilt and limiting an individual's ability to defend himself. Worse yet, these procedures are contrary to established legal principles and are not authorized by any statute or even IC's own regulations.

158. In 2021, by majority vote of its members, CIGIE adopted a rule giving the IC a right of access to any and all records held by any office of an Inspector General within any agency to include IGs in the legislative branch. Failure to turn over any document leads to an automatic finding of misconduct on the part of the official responsible for producing the documents. Such a finding may be entered even if the agency in question refuses to turn the document over to the subject of the investigation (or his private counsel) on the ground that the document is privileged or classified. (Unlike the Office of Special Counsel, which has the authority to obtain attorney-client privileged material, *see* 5 U.S.C. § 1212(b)(5)(C)(i), no statute grants CIGIE or the IC similar powers).

159. As part of this rule the IC claims a right to have protected legislative material produced to it. The Senate on learning of this requested that a "taint team" be created to review such

material. On information and belief, the IC rejected the Senate's request to establish a "taint team" to review such legislative materials.

160. CIGIE, as the repeated testimony of its officers reveals, takes no actions to control the IC and defers to the IC's members to determine their authority.

161. CIGIE does fund the IC, however, these funds are not appropriated by Congress.

162. IC is funded by a mechanism free from any Congressional or higher Executive control. It is a forced "pass the hat" procedure unknown elsewhere in law. IC's funding is derived from moneys Congress appropriated to fund various IG offices through a process whereby members of CIGIE, *i.e.*, the IG community, vote to allocate a portion of each of their appropriated budgets to the IC for its purposes and operations. Those IGs who vote against the proposal still have that "approved" amount deducted from their offices' budgets and sent to the IC.

163. The funding structure of CIGIE and the IC creates a host of Constitutional violations.

164. The IG Act, 5 U.S.C. § 424(c)(3)(A)(ii), provides that "upon the authorization of the Executive Chairperson," each member IG "shall fund or participate in the funding" of CIGIE's activities.

165. Section 5 U.S.C. § 424(b)(2)(A) provides that the Deputy Director for Management, Office of Management & Budget, is the "Executive Chairperson" of CIGIE.

166. Section 5 U.S.C. § 424(c)(3)(A) provides that the Executive Chairperson "*may* authorize the use of interagency funding for" CIGIE's activities, and goes on to denote such functions as training, *the functions of the IC*, and any other authorized purpose as determined by CIGIE, as the activities that may be funded through this mechanism.

167. Thus, the Executive Chairperson has discretion on whether or not to fund CIGIE and thus the IC.

168. But both CIGIE and the IC have non-discretionary functions. *See* 5 U.S.C. § 424(c)(1) (things CIGIE “shall” do); 5 U.S.C. § 424(d)(1) (things the IC “shall” do).
169. The Executive Chairperson’s ability to cut off funding for the non-discretionary actions of CIGIE and the IC represents an unconstitutional delegation of power to the Executive branch over funding a non-discretionary task of the CIGIE entity.
170. The vote of CIGIE to take a portion of each IG’s Congressionally appropriated budget similarly violates the appropriations power of Congress. Congress can not control CIGIE or the IC without defunding the IG’s at the same time. The mechanism for funding CIGIE and the IC not only allows the Executive Branch control of non-discretionary duties of CIGIE and the IC but also prevents Congressional control of those entities without striking at the resources of the IGs.
171. The portions of 5 U.S.C. § 424(c) that allow funding of the IC without Congressional appropriation also leave it uncontrolled by Congress and therefore unconstitutional.

### **CLAIMS FOR RELIEF**

#### **Count I: Violation of the Appointments Clause**

172. Plaintiffs reallege and incorporate the preceding paragraphs as if fully incorporated herein.
173. The IC is a public entity and/or an agency and/or an instrumentality of the United States subject to the constraints imposed on the federal government by the Constitution.
174. The IC functions as an autonomous entity. CIGIE, the IC, and their members exercise significant authority pursuant to the laws of the United States, those members are, notwithstanding provisions of the Act to the contrary, officers of the United States whose appointments must comply with the Appointments Clause of the United States Constitution (art. II, sec. 2).

175. By virtue of the wide-ranging discretion, duties, functions, and independence of the IC, members of the IC are principal officers whose appointments must be made by the President by and with the advice and consent of the Senate. Accordingly, the structure of the IC, which permits and requires membership of individuals not subject to Presidential appointment and Senate confirmation violates the Appointments Clause.
176. In the alternative, the members of the IC are inferior officers whose appointments must be made by the President, a court of law, or the head of a department. CIGIE is not a “department” within the meaning of Appointments Clause. Even if CIGIE is a “department” within the meaning of the Appointments Clause, because the Chairman of CIGIE is not appointed by the President and is instead selected by the members of CIGIE themselves, and because the Chairman of CIGIE need not hold any PAS office, the Chairman of CIGIE is not a “head of the department” within the meaning of the Appointments Clause. Therefore, the appointment of IC members by the Chairman of CIGIE violates the Appointments Clause.
177. In addition, the IG of the Architect of the Capitol is a member of the legislative branch, so his inclusion in CIGIE and potentially on the IC violates not only the Appointments Clause of and removal power under the Constitution, but also the separation of powers.
178. Furthermore, because the entities such as the National Railroad Passenger Corporation and the Corporation for Public Broadcasting are not “departments” within the meaning of the Appointments Clause and, in all events, the appointment power of the IGs for those entities is not vested in the head of those entities but rather in the relevant boards of directors as a whole, the membership on IC of members not appointed by the President, a court of law, or the head of a department, violates the Appointments Clause.



**Count II: Unconstitutional Delegation of Federal Power to a Private Entity**

179. Plaintiffs reallege and incorporate the preceding paragraphs as if fully incorporated herein.
180. Article I, § 1, of the Constitution provides: “All legislative Powers herein granted shall be vested in a Congress of the United States.” Article I, § 7 further requires legislation to be passed through bicameralism and presentment.
181. Congress may not “abdicate or ... transfer to others the essential legislative functions with which it is thus vested.” *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 529 (1935). Nor may it delegate to another branch the power to modify prior legislation through a process that bypasses bicameralism and presentment. *See Clinton v. City of New York*, 524 U.S. 417, 440-41 (1998).
182. Additionally, Congress may grant regulatory power to an executive agency only if it provides an “intelligible principle” by which an agency can exercise it. *Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019).
183. A statutory delegation lacks an intelligible principle and is thus unconstitutional if it grants an agency unfettered discretion to make policy decisions. *See Jarkesy v. SEC*, 34 F.4th 446, 461 (5th Cir. 2022) (finding violation of the Vesting Clause where “Congress gave the SEC the power to bring securities fraud actions for monetary penalties within the agency instead of in an Article III court whenever the SEC in its unfettered discretion decides to do so”), *petition for cert. docketed*, No. 22-859 (Mar. 9, 2023).
184. The doctrine has also been called “...rooted in the principle of separation of powers that underlies our tripartite system of Government.” *Mistretta v. United States*, 488 U.S. 361, 371 (1989).

185. Whether investigatory authority is deemed to be an executive or legislative function, it cannot be delegated to a private entity. *See Ass'n of Am. R.R. v. U.S. Dep't of Transp.*, 721 F.3d 666, 670 (D.C. Cir. 2013) (“Federal lawmakers cannot delegate regulatory authority to a private entity.”).

186. With the Inspector General Reform Act of 2008, Congress has delegated federal investigatory authority over the operations of federal departments and the performance of federal employees to the IC—a nominally public entity but one that is staffed, at least in part, by private or hybrid individuals such as the Inspector General of the Corporation for Public Broadcasting and the hybrid entity of Amtrak.

187. This unlawful delegation of authority includes, among other things, the power to obtain documents and information for all executive and legislative agency operations, to affect operations of various agencies within the United States Government, and to recommend removal of individuals from government service.

**Count III: Violation of the Administrative Procedure Act**

188. Plaintiffs reallege and incorporate the preceding paragraphs as if fully incorporated herein. Defendants’ promulgation of the IC Policies and Procedures (“ICPPs”) constitutes a “rulemaking” within the meaning of the APA, 5 U.S.C. § 551(5) and is subject to the notice and comment requirements of 5 U.S.C. § 553.

189. The ICPPs purport to be binding on third parties who are no longer with the government such as Mr. Gangloff.

190. The ICPPs impose substantive requirements upon individuals and employees beyond those required by federal statutes and contradict them.

191. Promulgation of the ICCPs without notice and without providing an opportunity for comment ignored procedures required by law.
192. Defendants have treated the ICCPs and their other stated investigative policies as imposing binding legal obligations on those accused and other third parties.
193. Defendants have commenced investigations against those accused and third parties, putting such third parties in the zone of protection of the APA.
194. The ICCPs, having not undergone notice and comment, were unlawful when issued and implemented and must be set aside under 5 U.S.C. § 706(2)(D).
195. Implementation of the ICCPs violates the Due Process Clause of the United States Constitution, so ICCP's must be set aside.

**Count IV: Violation of Due Process of Law**

196. Plaintiffs reallege and incorporate the preceding paragraphs as if fully incorporated herein.
197. Presumption of innocence, even in non-criminal matters is a bedrock principle of the rule of law and due process of law protections. Although in non-criminal matters adverse inferences may be drawn against a defendant who chooses not to respond to various allegations, the burden of proof is always on the party seeking to impose the penalty. Under the conditions of an IC investigation, all voluntary interviews are actually compelled by automatic adverse inference for failure to respond.
198. The IC's procedures violate these basic principles. When receiving a complaint, IC insists that the subject of the complaint "refute" the allegations against him such that no reasonable person could conclude that he had acted improperly. In placing the burden of proof on the subject of the complaint, the IC violates due process of law.

199. The due process of law violations threaten not only the subjects' employment but also their abilities to perform their duties and obligations to their respective agencies, and often professional legal obligations. They also threaten the privileges held by institutional clients of the individuals investigated or caught up in investigations. Finally, the reputational and professional injury can be substantial when such matters reach the press.

**Count V: Violation of Due Process of Law**

200. Plaintiffs reallege and incorporate the preceding paragraphs as if fully incorporated herein.

201. A fundamental principle of due process is the ability of any accused, whether in a criminal or civil matter to have access to and adduce any exculpatory materials.

202. When conducting its investigations, the IC invariably requires the target to rely on private attorneys to respond to any IC communication. At the same time, documents on which the target of the complaint may have relied in reaching the decision that prompted the complaint remain governmental documents and unavailable to the subject or his attorney.

203. Because governmental documents (even ones created by the subject himself) may be unavailable to the subject of investigation or his attorney, all the while the subject must convince the IC that the allegations against him are such that no reasonable person could conclude that he had acted improperly, the procedure to which targets of complaints are subjected violates fundamental fairness and due process of law.

204. When conducting its investigations, even while recognizing that responses to its inquiries may require that the target contact fact witnesses to obtain statements and records, the IC threatens the target that any such communication may be construed as an additional violation. This approach makes it impossible to ever meaningfully answer IC's charges without raising more charges in a perpetual loop.

**Count VI: Violation of Appropriations Clause**

205. Plaintiffs reallege and incorporate the preceding paragraphs as if fully incorporated herein.
206. The Constitution further provides that “[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const., art. I, § 9, cl. 7.
207. CIGIE and IC take federal government money without an appropriations act: CIGIE itself has exclusive authority to set its own budget by voting to reallocate money appropriated by Congress to various offices of Inspectors General, *see* 5 U.S.C. § 424(c)(3). This vote is exempt from any Congressional supervision, because even if Congress were to cut the budget for a given OIG, CIGIE could simply vote to increase the “tax” on various other OIGs to make up for it, thus keeping its own budget level. Both separately and in combination with the provisions shielding CIGIE and IC from executive supervision, this improper insulation from congressional budgetary supervision renders invalid any assertion of the CIGIE’s and IC’s authority.

**RELIEF REQUESTED**

**WHEREFORE**, Plaintiffs respectfully request that this Court enjoin the actions of the IC against Defendants and prohibit further actions by the IC against them without further order of this Court. The Plaintiffs also request that the Court find unlawful and set aside the ICPPs and find unlawful the structure of the IC as well as the funding mechanism of the IC. Also, the Plaintiffs seek a declaratory statement that any IC investigation of their acts while performing their duties cannot be deemed “personal,” so that nothing prevents Plaintiffs’ representation by—nor precludes their getting input from—their respective agencies and those agencies’ counsel, and for any such other relief as may to the Court may seem just.

**JURY DEMAND**

Plaintiffs demand a trial by jury of any triable issues.

April 4, 2023

Respectfully submitted,

/s/ John J. Vecchione

JOHN J. VECCHIONE (Va. Bar No. 73828)

Senior Litigation Counsel

GREGORY DOLIN, *Pro Hac Vice Forthcoming*

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# Exhibit 1

**Report of Independent Investigation:**  
Allegations of Misconduct by (b) (6), (b) (6) and (b) (6)

December 14, 2020

**Submitted by:**

(b) (6)



WILMER CUTLER PICKERING HALE AND DORR LLP

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**Table of Contents**

- I. Executive Summary ..... 1
- II. Background ..... 3
- III. The Campaign To Undermine Acting (b) (6) ..... 5
  - A. (b) (6) Retirement and Succession Planning ..... 5
  - B. (b) (6) Pressures (b) (6) to Retire ..... 6
  - C. (b) (6) Demands (b) (6) Retire ..... 8
  - D. (b) (6) Extends His Retirement Date ..... 9
  - E. (b) (6) is Publicly Criticized ..... 12
  - F. (b) (6) and (b) (6) Refer (b) (6) to CIGIE ..... 17
  - G. DHS OIG Employees’ View of the Special Report ..... 19
  - H. (b) (6) Retroactively Changes (b) (6) Position Description ..... 21
- IV. Attempts to Derail the Nomination of Dr. Cuffari as the New IG ..... 24
- V. Undermining the New IG ..... 29
  - A. (b) (6) Filled Vacancies to Limit the New IG ..... 29
  - B. Unprofessional Behavior Directed at IG Cuffari ..... 35
  - C. (b) (6) and (b) (6) Attempt to Investigate IG Cuffari ..... 37
  - D. (b) (6) Accuses IG Cuffari of Unethical Conduct ..... 40
  - E. (b) (6) and (b) (6) Allege that IG Cuffari Violated the IG Act ..... 41
  - F. (b) (6) and (b) (6) Seek to Withhold Information from IG Cuffari ..... 45
  - G. (b) (6) and (b) (6) Charge IG Cuffari with Abusing his Authority Regarding the Telework Policy ..... 46
  - H. (b) (6) Failure to Follow IG Cuffari’s Directive ..... 52
  - I. Confusion Over a Meeting with Foreign Nationals at DHS OIG Leads to Further Suspicion ..... 53
  - J. Another Dispute Leads (b) (6) and (b) (6) to Send Complaints about IG Cuffari to CIGIE IC and Congress ..... 55
- VI. Mistreatment of Other DHS OIG Employees ..... 57
  - A. An Atmosphere of Mistrust and Retaliation ..... 57
  - B. Accumulation of Power Through the Consolidation of Human Resources Management Division under the Office of Counsel ..... 59

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C.	Reassignment of (b) (6), (b) (7)(C) and Initiation of a Criminal Investigation for Use of a Parking Pass .....	63
D.	Reassignment of (b) (6) .....	69
VII.	The Unconfirmed Remaining Allegations .....	69
A.	False Testimony Before Congress.....	70
B.	Preferential or Unfavorable Treatment of DHS OIG Employees .....	72
1.	Appointment of (b) (6) as AIG (b) (6) .....	72
2.	Investigation of (b) (6), AIG (b) (6) .....	74
3.	Reprisal against (b) (6) .....	76
4.	Investigation of (b) (6) .....	78
5.	Investigation of (b) (6) .....	80
6.	Disciplinary Action Taken Against (b) (6) .....	88
C.	Misconduct, Malpractice or Unprofessional Behavior .....	88
1.	IG Cuffari Questions (b) (6) Drafting of an Ethics Screening Agreement.....	88
VIII.	Conclusion .....	91
IX.	Appendices	

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## I. EXECUTIVE SUMMARY

On May 4, 2020, the U.S. Department of Homeland Security Office of the Inspector General (“DHS OIG” or “the agency”) engaged WilmerHale to undertake an independent investigation into allegations regarding three senior DHS OIG employees—(b) (6), (b) (6), and (b) (6).<sup>1</sup> These employees allegedly engaged in an assortment of unprofessional behavior that was designed to undermine and contravene the authority of the two Inspectors General (“IGs”) to whom they reported at DHS OIG from late 2017 to 2020.

WilmerHale investigated eighty-eight allegations pertaining to (b) (6), (b) (6), and (b) (6). As part of our inquiry, we conducted over 70 interviews with current and former DHS OIG employees and other individuals, including (b) (6) and (b) (6). (b) (6) declined to speak with us. We also reviewed over 42,000 documents, including emails, text messages, memoranda, and DHS OIG policies.

Although our investigation did not substantiate all of the allegations, it revealed that (b) (6) behavior exacerbated an atmosphere of mistrust and unprofessionalism to the detriment of the agency and its mission. The agency was beset by employees’ accusations of misconduct and retaliation, frequent internal investigations of OIG personnel, and complaints and counter-complaints filed with the Integrity Committee (“IC”) of the Council of the Inspectors General on Integrity and Efficiency (“CIGIE”), the Office of Special Counsel (“OSC”), and Congress.

(b) (6) motive for her actions appears to have been a desire to further her own professional ambitions and those of her allies—(b) (6) and (b) (6)—while diminishing the professional opportunities of those whom she disliked and/or viewed as disloyal. (b) (6) and (b) (6) assisted (b) (6) in her endeavors. Indeed, current and former employees reported that (b) (6), (b) (6), and (b) (6) retaliated against anyone whom they believed stood in their way or was perceived as disloyal.

Our inquiry revealed that soon after (b) (6) was appointed to the (b) (6) position by former (b) (6), (b) (6), she expressed a strong desire to take over the top position at the agency. Although she initially got along with (b) (6), who supported her goal of leading the agency, she began to criticize him and pressure him to leave the agency when he postponed his retirement.

By early 2019, the relationship between (b) (6) and (b) (6) had so deteriorated that (b) (6). (b) (6) was openly hostile to (b) (6) in meetings with other senior OIG staff members. Current and former DHS OIG employees described (b) (6) as plainly disrespectful to (b) (6) (b) (6), frequently turning her back toward him during meetings and rolling her eyes while he spoke. The evidence also shows that (b) (6) pressured (b) (6) to retire so that she could take over as the (b) (6) repeatedly called into question his fitness to lead the agency, and lobbied the OIG senior staff to join her efforts to push him out. In May 2019, (b) (6) and (b) (6) used an internal inquiry to put public and political pressure on (b) (6) to retire. (b) (6) ultimately did retire following the publication of (b) (6) on the inquiry.

---

<sup>1</sup> Memorandum from DHS OIG Counsel to WilmerHale (May 7, 2020) (on file with author). The allegations identified in that memorandum provided the foundation for WilmerHale’s investigation.

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Following his retirement, (b) (6) and others retroactively changed (b) (6) personnel file to secure (b) (6) position as his successor. (b) (6) approved these retroactive changes, which purportedly justified her ability to serve in the position as the (b) (6) until a new IG could be confirmed.

In November 2018, the President of the United States announced the nomination of Joseph Cuffari for the IG position. (b) (6) soon began publicly expressing her lack of confidence in Dr. Cuffari's fitness for the role. Among other things, (b) (6) and (b) (6) expressed concerns that Dr. Cuffari's Ph.D. was from a "diploma mill" and that he lacked sufficient leadership experience. Multiple DHS OIG current and former employees confirmed that (b) (6) openly disparaged Dr. Cuffari at work. (b) (6) strenuously opposed Dr. Cuffari's nomination and shared her views freely within the agency, with DHS, with CIGIE, and with Congress. She often referred to DHS OIG as "[her] agency" and said that she needed to protect "her people" from Dr. Cuffari. Similarly, (b) (6) called into question Dr. Cuffari's qualifications to serve as IG and expressed her concerns to DHS, CIGIE, and the (b) (6).

For several months prior to Dr. Cuffari's confirmation, (b) (6) worked with others to try to maintain control over the key leadership positions in the agency while simultaneously limiting IG Cuffari's ability to hire Senior Executive Service ("SES") employees. (b) (6) and (b) (6) had also effectuated an undocumented move of the human resources department to the legal department in August 2018 prior to Dr. Cuffari's nomination. This unusual move allowed (b) (6) and (b) (6) greater control over internal investigations and personnel actions.

Once Dr. Cuffari arrived at DHS OIG in July 2019, (b) (6) actions soon led him to distrust her. (b) (6), as she had done previously with (b) (6), soon displayed overt hostility toward him. For instance, she, along with (b) (6), tried to launch an investigation into IG Cuffari on the grounds that an OIG-funded trip he planned to the Southwest Border was, in fact, personal in nature. (b) (6) and (b) (6) also instructed colleagues to withhold information from IG Cuffari and sought to isolate IG Cuffari from other agency leaders. The work environment became so bitterly hostile that employees who left the agency during this period cited dissension and tension as contributing factors for their departures. Employees described the working environment as extremely challenging and noted that (b) (6) and IG Cuffari had a "uniquely cold" relationship that made it difficult for them to work together, much less collaborate on key functions of the office. Indeed, both IG Cuffari and (b) (6) filed multiple allegations of misconduct against each other to CIGIE during IG Cuffari's first four months on the job.

In sum, our investigation revealed that (b) (6), with the assistance of (b) (6) and (b) (6), engaged in unprofessional conduct that elevated her own interests above those of the public. Nevertheless, our investigation did not reveal evidence substantiating many of the other allegations, including any allegation that (b) (6), (b) (6), or (b) (6) engaged in illegal conduct.

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This report presents the key findings and observations of our investigation.<sup>2</sup>

## II. BACKGROUND

In the aftermath of the September 11th terrorist attacks, the Department of Homeland Security (“DHS”) was created by merging twenty-two separate federal agencies into a single Cabinet department.<sup>3</sup> DHS is the third largest executive department in the federal government and has approximately 229,000 employees.<sup>4</sup> Along with the creation of DHS, DHS OIG was established “to provide independent oversight and promote excellence, integrity, and accountability within DHS.”<sup>5</sup> DHS OIG conducts independent audits, investigations, and inspections of the programs and operations within DHS, and makes recommendations for how DHS can operate more effectively and efficiently.<sup>6</sup> In 2005, Richard Skinner was confirmed as the first DHS IG.<sup>7</sup> After his retirement in 2011, DHS OIG was led by Acting IG Charles Edwards.<sup>8</sup> John Roth was confirmed as the second DHS IG in 2014 and served until 2017.<sup>9</sup> (b) (6) served as (b) (6) from then until he retired on June 10, 2019.<sup>10</sup> (b) (6) served as the (b) (6) (b) (6) from June 10, 2019 until the confirmation by the U.S. Senate of Dr. Joseph Cuffari as the third DHS IG on July 25, 2019.<sup>11</sup>

(b) (6)

<sup>2</sup> Our investigative findings and conclusions are based upon the over 42,000 documents we reviewed and the over 70 witnesses interviews we conducted during the course of our investigation. The discovery of additional relevant documents or identification of new witnesses could materially affect our findings and conclusions. Most notably, (b) (6) refused to speak with us, so we lack her perspective on some key events.

<sup>3</sup> History, The Dep’t. of Homeland Sec., (June 15, 2018), <https://www.dhs.gov/history>.

<sup>4</sup> Secretary of Homeland Security, The Dep’t. of Homeland Sec., (July 5, 2019) <https://www.dhs.gov/secretary>.

<sup>5</sup> About Us, The Off. of the Inspector Gen., <https://www.oig.dhs.gov/about> (last visited Dec. 11, 2020).

<sup>6</sup> *Id.*

<sup>7</sup> Richard Skinner, GTS Coal., (2020), <https://www.gtscoalition.com/about-us/strategic-advisors/skinner-richard-l/>.

<sup>8</sup> *Id.* (b) (6) (6)

<sup>9</sup> Jim Roth, The Dep’t of Homeland Sec., (Aug. 25, 2015) <https://www.dhs.gov/person/john-roth>; Ta (b) (6)

<sup>10</sup> (b) (6)

<sup>11</sup> (b) (6)

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(b) (6)

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(b) (6)

Dr. Joseph Cuffari served in the Air Force and in the Arizona Air National Guard, where he filled a variety of leadership positions with the Air Force Office of Special Investigations and the Department of Defense Office of the Inspector General. He worked at the Department of Justice (“DOJ”) from 1993 until 2013, serving in a variety of roles, the last of which was Assistant Special Agent in Charge of the DOJ’s Office of Inspector General field office in Tucson, Arizona. Following his tenure at DOJ, Dr. Cuffari served as a policy advisor to the Governor of Arizona. He was confirmed as the DHS IG on July 25, 2019.<sup>13</sup>

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(b) (6)

<sup>13</sup> Meet the IG, The Off. Of the Inspector Gen., <https://www.oig.dhs.gov/about/MeetTheIG> (last visited Dec. 11, 2020).

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### III. THE CAMPAIGN TO UNDERMINE ACTING (b) (6)

#### A. (b) (6) Retirement and Succession Planning

In June 2016, former IG John Roth appointed (b) (6) as the (b) (6).<sup>14</sup> While (b) (6) had been planning on retiring that year, he decided he would remain as the (b) (6) until a new IG was confirmed, which he hoped would happen by the end of 2018.<sup>15</sup> (b) (6) began his tenure as (b) (6) in late 2017 when Mr. Roth retired.<sup>16</sup>

In 2018, (b) (6) elevated (b) (6) to the (b) (6) role to help ensure a smooth transition to a new IG.<sup>17</sup> (b) (6) intended for (b) (6) to take over in the event that (b) (6) retired prior to the confirmation of a new IG.<sup>18</sup> On November 1, 2018, the White House announced the nomination of Dr. Joseph Cuffari for the IG role.<sup>19</sup> Following the announcement, (b) (6) set a retirement date of April 2019.<sup>20</sup>

In November 2018, (b) (6) decided to assume the role of (b) (6) and to appoint (b) (6) to the (b) (6) position he had previously held.<sup>21</sup> The corresponding SF-50 Personnel Action document shows that (b) (6) position description was changed to (b) (6) effective November 11, 2018.<sup>22</sup> During his interview, (b) (6) could not specifically recall his reason for appointing (b) (6) to the (b) (6) role, but he explained that he wanted to ensure that there would be an orderly transition between his retirement and the start of the new IG.<sup>23</sup> (b) (6) told us that he did not intend for the change in (b) (6) position description to (b) (6) to mean that she was actually taking over as (b) (6).<sup>24</sup> Rather, he expected that she would be serving as the “de facto” (b) (6).<sup>25</sup>

(b) (6) announced his plan in an agency-wide email, including his decision to appoint (b) (6) to the (b) (6) position.<sup>26</sup> (b) (6) also wrote to (b) (6), and asked her to change his official position description to (b) (6) and to assign (b) (6) to the (b) (6) position description.<sup>27</sup> (b) (6) made these changes in November 2018.<sup>28</sup> (b) (6) believed he needed to change his position description to (b) (6) because,

<sup>14</sup> Interview with (b) (6) (Aug. 7, 2020).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See President Donald J. Trump Announces Intent to Nominate Personnel to Key Administration Posts, The White House, (Nov. 1, 2018), <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-personnel-key-administration-posts-68/>.

<sup>20</sup> Interview with (b) (6) (Aug. 7, 2020).

<sup>21</sup> *Id.*

<sup>22</sup> WHDHS-00000786.

<sup>23</sup> Interview with (b) (6) (Aug. 7, 2020).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See WHDHS-00000033.

<sup>27</sup> WHDHS-00000034.

<sup>28</sup> WHDHS-00000656.

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under the Federal Vacancies Reform Act (“FVRA”), he could only hold the (b) (6) title for a certain period of time—generally 210 days from when the vacancy occurred following IG Roth’s retirement.<sup>29</sup> While the FVRA does limit the length of time (b) (6) could hold the title of (b) (6), it did not expressly require (b) (6) to formally change his position description.<sup>30</sup> Thus, (b) (6) (b) (6) belief that he needed to change his official position description from (b) (6) to (b) (6) after Dr. Cuffari’s nomination was (b) (5).

At the time that (b) (6) appointed (b) (6) to the (b) (6) position, multiple witnesses described the two as having a positive relationship.<sup>32</sup> (b) (6) had previously worked with (b) (6) (b) (6) at (b) (6) and was impressed with her work.<sup>33</sup> When (b) (6) called him to inquire about joining DHS OIG in the (b) (6) role, (b) (6) was supportive.<sup>34</sup> He noted, however, that soon after she was appointed to the (b) (6) role it became clear to him that (b) (6) was interested in “taking over” the agency, and she occasionally told him so directly.<sup>35</sup>

### B. (b) (6) Pressures (b) (6) to Retire

Witnesses reported that, as 2019 approached, the relationship between (b) (6) and (b) (6) began to deteriorate.<sup>36</sup> To (b) (6) recollection, the relationship with (b) (6) did not fall apart until the spring of 2019.<sup>37</sup> He noted that (b) (6) often became curt and aggressive with him.<sup>38</sup> After their relationship soured, he noticed that she began having separate meetings with the AIGs and Deputy AIGs without informing him.<sup>39</sup> (b) (3) (B), (b) (6), the (b) (3) (B), (b) (6), described these as “off-calendar” meetings.<sup>40</sup> (b) (3) (B), (b) (6), the (b) (3) (B), (b) (6) (b) (3) (B), (b) (6), said it appeared that (b) (6) was not making decisions and that (b) (6) was “essentially running” the agency.<sup>41</sup> (b) (6) believed (b) (6) conduct was odd, but he did not want to take their falling out personally or let it bother him.<sup>42</sup> His hope was that the staff would

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<sup>29</sup> Interview with (b) (6) (Aug. 7, 2020). The FVRA limits the length of time a person may serve as acting officer to 210 days, absent tolling or statutory exception. 5 U.S.C. § 3345, et seq. The 210-day period is tolled, however, while a nomination is pending. *Id.* At the time of IG Roth’s retirement, Dr. Cuffari had not yet been nominated. (b) (5)

<sup>30</sup> 5 U.S.C. § 3346(a)-(b).

<sup>31</sup> See generally 5 U.S.C. § 3345, et seq. (containing no such written requirement). (b) (3) (B), (b) (6), (b) (6) at DHS, explained that (b) (5)

<sup>32</sup> See e.g. Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).

<sup>33</sup> Interview with (b) (6) (Aug. 7, 2020).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* Follow-Up Interview with (b) (6) (Dec. 2, 2020).

<sup>36</sup> See e.g. Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).

<sup>37</sup> Interview with (b) (6) (Aug. 7, 2020).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).

<sup>41</sup> Interview with (b) (3) (B), (b) (6) (July 27, 2020).

<sup>42</sup> Interview with (b) (6) (Aug. 7, 2020).



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not become aware of any acrimony among the senior leadership.<sup>43</sup> According to (b) (6), (b) (6). (b) (6) had a “Machiavellian” and dictatorial leadership style that involved “trash[ing]” people who did not support her.<sup>44</sup>

Other witnesses, including (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), (b) (6), noticed the strained relationship between (b) (6) and (b) (6).<sup>45</sup> (b) (3) (B), (b) (6) stated the relationship started to sour during the government shutdown in December 2018.<sup>46</sup> (b) (3) (B), (b) (6) explained that (b) (6) and (b) (6) thought that DHS OIG should essentially shut down all of its work, while (b) (6) thought certain high-impact audit work should continue.<sup>47</sup> (b) (3) (B), (b) (6) also thought (b) (6) was upset that (b) (6) believed (b) (3) (B), (b) (6) should be categorized as an essential employee and report to work during the shutdown.<sup>48</sup> According to (b) (3) (B), (b) (6), (b) (6) ultimately deferred to (b) (6) and (b) (6) by agreeing to shut down audit work and furloughing (b) (3) (B), (b) (6).<sup>49</sup> However, from that point forward, (b) (3) (B), (b) (6) observed that the relationship between (b) (6) and (b) (6) continued to deteriorate.<sup>50</sup> (b) (3) (B), (b) (6) described (b) (6) as a “bull in the china shop.”<sup>51</sup>

Several other witnesses noticed the deteriorating relationship between (b) (6) and (b) (6) as well. For example, (b) (3) (B), (b) (6), the (b) (6), explained that the situation in the office devolved to the point where staff felt they had to choose between “Team (b) (6)” or “Team (b) (6).”<sup>52</sup> (b) (3) (B), (b) (6) recalled numerous meetings where (b) (6) disrespected (b) (6), rolled her eyes at him, made snarky remarks, and moved her seat to sit sideways instead of facing him directly.<sup>53</sup> (b) (3) (B), (b) (6), (b) (6), (b) (3) (B), (b) (6), and (b) (3) (B), (b) (6) both detailed the significant tension between (b) (6) and (b) (6).<sup>54</sup> (b) (3) (B), (b) (6) noted that (b) (6) was rude to (b) (6), frequently turning her back to him during meetings and rolling her eyes while he spoke.<sup>55</sup> (b) (6), (b) (3) (B) also observed (b) (6) sitting in meetings with almost her back to (b) (6).<sup>56</sup> She described the situation as “awkward,” “childish,” and “frustrating.”<sup>57</sup>

(b) (3) (B), (b) (6) stated that (b) (6) would often call her venting about (b) (6) leadership, saying that he was “losing it” and needed to retire.<sup>58</sup> According to (b) (3) (B), (b) (6), (b) (6) told

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).

<sup>53</sup> *Id.*

<sup>54</sup> Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020); Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).

<sup>55</sup> Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).

<sup>56</sup> Interview with (b) (6), (b) (3) (B) (Sept. 15, 2020).

<sup>57</sup> *Id.*

<sup>58</sup> Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).

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her that (b) (6) and (b) (6) asked (b) (6) to retire, but that he was being stubborn.<sup>59</sup> (b) (6) told (b) (3) (B), (b) (6) that she did not believe that other DHS OIG employees would respect her while (b) (6) remained the (b) (6).<sup>60</sup> (b) (3) (B), (b) (6) reported that she refused (b) (6) invitation to try to convince (b) (6) to retire.<sup>61</sup> (b) (6), (b) (3) (B) stated that she recalled (b) (6) telling (b) (6), “you were supposed to retire; you need to retire.”<sup>62</sup>

In her interview, (b) (3) (B), (b) (6) acknowledged that there were personal issues between (b) (6) and (b) (6), but she attributed the friction to the fact that (b) (6) has a forceful and direct personality.<sup>63</sup> (b) (3) (B), (b) (6) said that (b) (6) and (b) (6) clashed on issues, but claimed she could not recall whether (b) (6) expressed a desire to become the (b) (6).<sup>64</sup> She explained that she and (b) (6) did have concerns about (b) (6) judgment as a result of some of the actions he took as (b) (6).<sup>65</sup> For example, (b) (3) (B), (b) (6) explained that she and (b) (6) believed (b) (6) repeated extensions of his retirement date created uncertainties for the agency.<sup>66</sup>

(b) (3) (B), (b) (6) also acknowledged that (b) (6) and (b) (6), (b) (3) (B) relationship became tense leading up to (b) (6) retirement.<sup>67</sup> (b) (3) (B), (b) (6) recalled that (b) (6) disagreed with some of (b) (6) (b) (6) decisions and became “frustrated” when (b) (6) pushed off his retirement because it hindered their ability to plan for a transition.<sup>68</sup>

### C. (b) (6) Demands (b) (6) Retire

On March 21, 2019, (b) (6) called a meeting with (b) (6) and several of the AIGs to discuss “Transition Planning.”<sup>69</sup> The real purpose of the meeting was to pressure (b) (6) to retire.<sup>70</sup> (b) (6) and (b) (3) (B), (b) (6) later referred to this meeting as the “coup meeting.”<sup>71</sup>

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).

<sup>63</sup> Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

<sup>68</sup> *Id.*

<sup>69</sup> WHDHS-00000061. (b) (6), (b) (3) (B) invited (b) (6) and the following individuals: (b) (6) (AIG for (b) (6)), (b) (6) (AIG for (b) (6)), (b) (6) (former AIG for (b) (6)), (b) (6) (AIG for (b) (6)), (b) (6) (AIG for (b) (6)), and (b) (6). *Id.*

<sup>70</sup> See Interview with (b) (6) (Aug. 7, 2020).

<sup>71</sup> *Id.* Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020). (b) (3) (B), (b) (6) also believed (b) (6) had a series of meetings with AIGs (without (b) (6) leading up to this “coup meeting.” *Id.* We found no documentary evidence corroborating this statement. However, (b) (6), (b) (3) (B) stated that, prior to the “coup meeting,” (b) (6) approached senior staff, including (b) (3) (B), (b) (6), to garner supporters to oppose (b) (6) and force him to retire. Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).

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(b) (3) (B), (b) (6) accompanied (b) (6) to the meeting, but (b) (6) insisted that she leave.<sup>72</sup> (b) (6) explained that once the meeting started, (b) (6) “badgered” him to resign and claimed that the other AIGs in the meeting supported her position.<sup>73</sup> (b) (6) rebuffed her demand.<sup>74</sup> (b) (6) stated that he told (b) (6) that he would not relinquish his position and that he was committed to performing his duties so long as he was in the role.<sup>75</sup> (b) (3) (B), (b) (6), who was also present at the meeting, recalled that (b) (6) gave (b) (6) an ultimatum—if (b) (6) did not leave, (b) (6) would leave the agency.<sup>76</sup> According to (b) (3) (B), (b) (6), (b) (6) said that she needed to take over as (b) (6) to ensure a smooth transition for when the new IG joined the agency.<sup>77</sup> (b) (3) (B), (b) (6) said that she got so uncomfortable with (b) (6) (b) (6) actions that she responded in the meeting, “this seems to be a situation where you and (b) (6) need to have a conversation. I don’t think you should be having it with us.”<sup>78</sup>

(b) (3) (B), (b) (6) explained that she was not present for the meeting but heard from (b) (6) that (b) (6) (b) (6) became very upset because he believed that (b) (6) and the AIGs were “trying to force him out . . . to retire.”<sup>79</sup>

(b) (3) (B), (b) (6), who did attend the meeting, provided a different account. In her interview, she said that the intent of the meeting was to discuss transition planning with (b) (6), and that she, along with (b) (6), sought input from other SES employees on “decision points” to cover at the meeting.<sup>80</sup> (b) (3) (B), (b) (6) recalled feeling tension in the room during the meeting, although not specifically between (b) (6) and (b) (6), and (b) (3) (B), (b) (6) recalled that the meeting went “off course.”<sup>81</sup> She did not provide any further detail.

#### D. (b) (6) Extends His Retirement Date

After the government shutdown, (b) (6) indicated he was planning to retire in May 2019.<sup>82</sup> However, in April 2019 (b) (6) and (b) (6) (b) (6) called (b) (6) and asked him to extend his retirement date until the new IG was confirmed.<sup>83</sup> (b) (6) explained that (b) (6) and (b) (6) (b) (6) were concerned with the recent leadership changes at DHS, and they trusted (b) (6) and were concerned that the other leaders in DHS OIG lacked his experience.<sup>84</sup>

<sup>72</sup> Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020). (b) (3) (B), (b) (6) also confirmed that (b) (6) excluded (b) (6) (b) (6) from the meeting. Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).

<sup>73</sup> Interview with (b) (6) (Aug. 7, 2020).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).

<sup>77</sup> *Id.*

<sup>78</sup> Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).

<sup>79</sup> Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).

<sup>80</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

<sup>81</sup> *Id.*

<sup>82</sup> Interview with (b) (6) (Aug. 7, 2020).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* With respect to the leadership changes at DHS, on April 7, 2019, DHS Secretary Kirstjen Nielsen resigned. Resignation Letter of Secretary of Homeland Security Kirstjen M. Nielson, Dep’t. of Homeland Sec., (Apr. 7, 2019), <https://www.dhs.gov/publication/resignation-letter-secretary-nielson>. Two days later, on April 9, 2019, the Acting

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(b) (3) (B), (b) (6) confirmed that he and (b) (6) asked (b) (6) to delay his retirement, but emphasized that the request was rooted in a desire for stability at the agency during a time of upheaval rather than a reflection on (b) (6) specifically.<sup>85</sup>

On April 26, 2019, (b) (6) agreed to delay his retirement for several months.<sup>86</sup> (b) (6) told (b) (6) about his decision before he announced it to the full agency.<sup>87</sup> He believes he went to (b) (6) office on Friday, April 26, right after the call from DHS leadership.<sup>88</sup> (b) (6) observed that (b) (6) was very upset by his decision to delay his retirement based on her facial expressions; she also told (b) (6): “You could have said no.”<sup>89</sup> (b) (6) believes (b) (6) (b) (6) stormed out of her office after this discussion.<sup>90</sup> On April 29, 2019, (b) (6) sent an agency-wide email and explained that “[a]t the request of both (b) (6) and (b) (6), on April 26, [he] agreed to delay [his] pending retirement until the Senate confirms Joseph Cuffari, or July 31, 2019; whichever occurs first.”<sup>91</sup> In his email, (b) (6) further explained that he declined their first request that he delay his retirement because he “consider[s] succession planning to be an important leadership responsibility” and that he believed (b) (6) and “the Assistant Inspectors General were well suited to move forward, and OIG is in good hands.”<sup>92</sup> He noted, however, that DHS leadership believed “that the Department would benefit from the Office of Inspector General having more experienced leadership during this time of unprecedented Departmental turnover.”<sup>93</sup> (b) (6) forwarded (b) (6) email to another DHS OIG employee and wrote, “Shoot me now.”<sup>94</sup>

Less than two hours later, (b) (6) wrote to (b) (6) and (b) (6) stating, “One way to mitigate the risk that he stays after July 31 would be to not have any SES slots for him to remain in... Was (b) (6) slot slated to be used for anything?”<sup>95</sup> In her interview, (b) (3) (B), (b) (6) assumed she was referring to (b) (6) staying after July 31st, and she explained there was a limited number of SES positions and the plan was to advertise and begin the interview process for (b) (6)

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Deputy Secretary Claire Grady submitted her resignation. Message from Secretary Kirstjen M. Nielson on Acting Deputy Secretary Claire Grady, Dep’t. of Homeland Sec., (Apr. 7, 2019), <https://www.dhs.gov/news/2019/04/09/message-secretary-nielson-acting-deputy-secretary-grady>. On April 10, 2019, Kevin McAleenan, Director of the Customs and Border Patrol, became the Acting Secretary of DHS. Message from Acting Secretary Kevin K. McAleenan, Dep’t. of Homeland Sec., (Apr. 10, 2019), <https://www.dhs.gov/news/2019/04/10/message-acting-secretary-kevin-k-mcaleenan>. On April 11, 2019, Acting DHS Secretary McAleenan named David Pekoske, the Administrator of the Transportation Security Administration, as the Acting Deputy Secretary of DHS. Acting Secretary McAleenan Statement on the Designation of Administrator Pekoske to Serve as Senior Official Performing the Duties of the Deputy Secretary, Dep’t. of Homeland Sec., (Apr. 11, 2019), <https://www.dhs.gov/news/2019/04/11/acting-secretary-mcaleenan-statement-designation-administrator-pekoske-serve-senior>.

<sup>85</sup> Interview with (b) (3) (B), (b) (6) (Sept. 16, 2020).

<sup>86</sup> Follow-Up Interview with (b) (6) (Dec. 2, 2020).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Interview with (b) (6) (Aug. 7, 2020); Follow-Up Interview with (b) (6) (Dec. 2, 2020).

<sup>90</sup> *Id.*

<sup>91</sup> WHDHS-00000072.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> WHDHS-00000074.

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SES spot to fill with someone else at the time of his scheduled retirement.<sup>96</sup> The effect of such a move would leave (b) (6) without a position after July 31. About ten minutes after (b) (6) email, (b) (6) sent an email to (b) (6), (b) (6), and others confirming that they would begin interviewing to fill (b) (6) SES slot.<sup>97</sup> Specifically, (b) (6) wrote, (b) (6) we were planning to fill INV's current vacancy with your SES slot and post the last slot on May 6 . . . . Applications are being reviewed now and we will start interviews for the current vacancy in the next few weeks."<sup>98</sup>

Later that night, on April 29, 2019, (b) (6) sent an email to (b) (6) and (b) (6), with the subject line "Very stressful and now I can't sleep."<sup>99</sup> Referencing the television show *Game of Thrones*, (b) (6) wrote, "Perhaps Arya would consider taking care of some business here? The DHS OIG throne isn't as glam but we do have a night king that just. won't. die."<sup>100</sup> (b) (3) (B), (b) (6) confirmed that this email referenced the television show *Game of Thrones*, and that it was reasonable to assume that the "night king" was a reference to (b) (6).<sup>101</sup>

The next day, April 30th, (b) (6) wrote to (b) (6): "Do you think he will reach out directly to (b) (6) to discuss and cut you out of the discussion? I just don't want her to be so helpful and responsive to him that she gives him info/advice that would be hard to walk back."<sup>102</sup> In her interview, (b) (6) explained she did not want (b) (6) to advise (b) (6) on a course of action that made it difficult to follow the plan that was already in place to fill his SES spot with a new hire.<sup>103</sup>

For her part, (b) (3) (B), (b) (6) stated that she was concerned there was an "appearance of a lack of independence" because the request to (b) (6) to stay on as (b) (6) could be perceived as "a quid pro quo" for DHS OIG to "be less critical of [DHS] in [DHS OIG's] oversight work."<sup>104</sup> (b) (3) (B), (b) (6) stated that she expressed this concern to both (b) (6) and (b) (6).<sup>105</sup> In his interview, however, (b) (6), (b) (3) (B) stated that he did not view his request to (b) (6) as improper or an attempt to improperly influence (b) (6).<sup>106</sup>

Other witnesses corroborated (b) (6) negative reaction to the news of (b) (6) delayed retirement. (b) (3) (B), (b) (6) stated that (b) (6) claimed that DHS's senior leadership had

<sup>96</sup> Follow-Up Interview with (b) (3) (B), (b) (6) (Dec. 11, 2020).

<sup>97</sup> WHDHS-00000075.

<sup>98</sup> *Id.*

<sup>99</sup> WHDHS-00000849.

<sup>100</sup> *Id.* The television show *Game of Thrones* is a fantasy drama about the fight for the Iron Throne of the Seven Kingdoms of Westeros. See *Game of Thrones* (HBO television broadcast Apr. 28, 2019). The character of Arya Stark is a trained assassin. See *id.* In Episode three of Season eight, the character kills the Night King, the leader of zombie-like ice creatures known as the White Walkers, who are marching on the Seven Kingdoms to eliminate humankind. *Id.*

<sup>101</sup> Follow-Up Interview with (b) (3) (B), (b) (6) (Dec. 11, 2020).

<sup>102</sup> WHDHS-00000075.

<sup>103</sup> Follow-Up Interview with (b) (3) (B), (b) (6) (Dec. 11, 2020).

<sup>104</sup> Interview with (b) (3) (B), (b) (6) (Aug. 12, 2020).

<sup>105</sup> *Id.*

<sup>106</sup> Interview with (b) (3) (B), (b) (6) (Sept. 16, 2020).

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(b) (6) in their “back pocket.”<sup>107</sup> (b) (6) also told her that (b) (6) would never willingly retire, and that (b) (6) therefore needed to ensure that he did.<sup>108</sup> (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), recalled that (b) (6) and (b) (6) made comments regarding (b) (6) in staff meetings such as “he’s got to go” and “we have to get rid of him.”<sup>109</sup>

**E. (b) (6) is Publicly Criticized**

In July 2017 and March 2018, DHS OIG retracted a total of 13 Emergency Management Oversight Team (“EMOT”) reports regarding the Federal Emergency Management Agency (“FEMA”) response to disasters.<sup>110</sup> The EMOT reports were withdrawn in light of concerns that the reports were overly positive in their analysis of FEMA’s performance.<sup>111</sup> At a meeting with the House Oversight and Government Reform committee in March 2018, (b) (6) | (b) (6)

(b) (6) DHS OIG thereafter undertook the internal investigation.<sup>113</sup> (b) (6) recused himself from the review of the reports because in his previous role as the (b) (6) he had approved the reports, and he did not want to be perceived as attempting to influence the investigation.<sup>114</sup> (b) (6) assigned the review to (b) (6)<sup>115</sup> A few months later, in June 2018, (b) (6) appointed (b) (6) to serve as (b) (6), reporting directly to her and not (b) (6).<sup>116</sup> (b) (6) explained that (b) (6) worked with (b) (6) on the review.<sup>117</sup>

(b) (6) led the internal review team, which consisted of lawyers and analysts from the (b) (6).<sup>118</sup> (b) (6)

Finally, the review team hired an auditing firm to perform an external review of the EMOT reports and provide guidance on best practices (b) (6)

<sup>107</sup> Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).

<sup>108</sup> *Id.*

<sup>109</sup> Interview with (b) (3) (B), (b) (6) (July 28, 2020).

<sup>110</sup> (b) (6)

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> Interview with (b) (6) (Aug. 7, 2020); Follow-Up Interview with (b) (6) (Dec. 2, 2020); (b) (6)

<sup>115</sup> Interview with (b) (6) (Aug. 7, 2020).

<sup>116</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

<sup>117</sup> Interview with (b) (6) (Aug. 7, 2020).

<sup>118</sup> (b) (6)

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

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(b) (6) was interviewed twice as part of the investigation.<sup>122</sup>

The fact-finding aspect of the internal investigation was completed in October 2018.<sup>123</sup> On December 11, 2018, (b) (6) responded to a November 20, 2018 letter from the Senate Homeland Security and Governmental Affairs Committee (“HSGAC”) outlining the corrective actions taken by the team in response to the internal review of the EMOT reports.<sup>124</sup> In the letter, (b) (6) wrote, “My goal is to promote a culture of continuous improvement here at DHS OIG. With (b) (6) having recently announced his retirement and my transition to the role of (b) (6), I can assure you that I will play an active role in driving and delivering necessary change.”<sup>125</sup>

In his interview, (b) (6) stated that he believed (b) (6) letter to Congress completed the EMOT investigation.<sup>126</sup>

As explained above, on April 29, 2019, (b) (6) sent an agency-wide email announcing that he was putting off his retirement date at the request of DHS leadership.<sup>129</sup> Later that night, (b) (6) sent her Game of Thrones email writing that on the “DHS OIG throne,” there was “a night king that just. won’t. die.”<sup>130</sup> Early the next morning, on April 30, 2019, (b) (6) sent an email to (b) (6) about publicly releasing the findings of the EMOT investigation.<sup>131</sup> In the email, which had the subject line, “I think we need to do a public report/letter,” (b) (6) wrote:

Cc all the oversight committees and the department and cigie. In the letter as part of corrective action note that we are making concurrent notification to ic for whatever action they deem appropriate. We try to do a bipartisan call with Hsgac today to update them about (b) (6) and program office/staff briefings and [sic] tell them we have to kill more emot reports in the pipeline. We ask them what

<sup>121</sup> WHDHS-00000365. (b) (3) (B), (b) (6), the former (b) (6) in DHS OIG, recalled that the outside auditing firm, Williams Adley, was hired to conduct a review of the EMOT reports. Interview with (b) (3) (B), (b) (6) (Aug. 20, 2020). (b) (3) (B), (b) (6) questioned what (b) (6) and (b) (6) were trying to achieve with the outside firm and whether their goal was to make (b) (6) look worse. *Id.* (b) (3) (B), (b) (6) said she never spoke to anyone at the auditing firm, but she provided all of her notes to the firm. *Id.*

<sup>122</sup> Interview with (b) (6) (Aug. 7, 2020).

<sup>123</sup> (b) (6)

<sup>124</sup> WHDHS-00000879.

<sup>125</sup> *Id.*

<sup>126</sup> Follow Up Interview with (b) (6) (Dec. 2, 2020).

<sup>127</sup> WHDHS-00000062.

<sup>128</sup> *Id.*

<sup>129</sup> WHDHS-00000072

<sup>130</sup> WHDHS-00000849.

<sup>131</sup> *See* WHDHS-00000077.

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they are planning to do if anything and let them know what our current thinking is.<sup>132</sup>

The clear import of the email was that (b) (6) intended to publicize the results of the EMOT investigation and (b) (6) role to Congressional oversight committees, DHS, and CIGIE in an effort to prompt them to take action against him. Minutes later, (b) (6) responded, “And would we tell (b) (6) in advance or just drop the bomb[ ]and deal with the aftermath? Just to be clear, this is the nuclear option, yes?”<sup>133</sup>

(b) (6) responded to (b) (6), writing:

Yes we would be just as transparent as we have been so far. We tell him before we hit send. If hsgac says they have plans to do something else with the materials we sent we can reassess. The more I think about it I don’t see how we do anything else. He has put us both in an untenable position and it [sic] you are right will appear to some as if we are in on it. Also we need to go on official record now. He’s already told me he doesn’t support the findings and now he will clearly be here when Cuffari arrives. I don’t think he will be truthful. Private communications to IC could be just seen as disgruntled complaints. A public report looks like a public report[.]<sup>134</sup>

(b) (6) responded, “Ok. Here we go.”<sup>135</sup>

Despite their decision to publicize the findings of the EMOT investigation and (b) (6) role, (b) (6) and (b) (6) discussed the issue with others as well.<sup>136</sup> On Friday May 3, (b) (6) circulated a draft report to a group of DHS OIG employees, requesting a close hold, and seeking “technical comments” and “proposed revisions” by close of business on Monday, May 6.<sup>137</sup> She followed up with another email 12 minutes later to a smaller subset of people from her original email, thanking the group for the “candid discussion earlier this week about the available reporting mechanisms for this work” and explained why she thought a public report was important for “transparency and accountability.”<sup>138</sup> On Monday, May 6, (b) (6) an employee who worked on the internal review, circulated a draft with a note that the report “could use a little more in the post October 2018 chronology” since “we think it isn’t clear enough why we are issuing this report now, even though we finished our review and began reporting out to Congress in October.”<sup>139</sup>

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<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* We attempted to ask (b) (6) what she meant by this exchange with (b) (6), including by the phrase “drop the bomb” and the term “nuclear option.” However, this email was discovered after our October 30, 2020 interview of (b) (3) (B), (b) (6), and she declined our request for a follow up interview.

<sup>136</sup> WHDHS-00000327; WHDHS-00000277; Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

<sup>137</sup> WHDHS-00000327.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*





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(b) (6)

On June 6, 2019, (b) (6) (b) (6) received an email from a friend outside DHS OIG, which stated, “Sounds like you guys are going through some tough stuff right now. I’m thinking of you and wishing everything resolves well.”<sup>153</sup> (b) (6) (b) (6) replied, “It’s just awful. Partly because (b) (6) has had his head stuck in the sand. He was supposed to be retired by now and this wouldn’t have been a story.”<sup>154</sup> In response, the friend wrote, “So, does this mean you’ll be (b) (6)? Does (b) (6) have a date?”<sup>155</sup> In response, (b) (6) responded that (b) (6) is “hard hitting but he’s a terrible leader and communicator.”<sup>156</sup> Referring to (b) (6) retirement, (b) (6) wrote, “It was May 3 then July 31 now I think July 3, backing off over the next few weeks. Yes, I’m (b) (6) (unless the WH decides otherwise).”<sup>157</sup>

(b) (6) was displeased with the Special Report, and believed it was intended to force him out of the office.<sup>158</sup> During his interview, he stated that the Special Report left out exculpatory information, such as the fact that, as (b) (6), he had raised objections about the EMOT reports when first drafted and asked that the findings be reevaluated on several occasions.<sup>159</sup> (b) (6) (b) (6) also noted (b) (6) efforts to draw attention to the report, pointing out that she had published the report after she had already sent a letter to Congress with the investigation’s findings.<sup>160</sup> Finally, he speculated that (b) (6) may have planted stories about the Special Report with (b) (6) embarrass him.<sup>161</sup>

(b) (3) (B), (b) (6) recalled that (b) (6), (b) (3) (B) became frustrated that (b) (6), (b) (3) (B) did not take more accountability for the EMOT investigation findings and that (b) (6) lost confidence in (b) (6) (b) (6).<sup>162</sup> (b) (3) (B), (b) (6) recalled meeting with (b) (6) at the time (b) (6) articles were published.<sup>163</sup> At the meeting, (b) (3) (B), (b) (6) advised (b) (6) that the most “effective way to mitigate the damage [to OIG] was . . . to not wait to retire until [Dr. Cuffari] was confirmed.”<sup>164</sup> (b) (6)

<sup>151</sup> *Id.*<sup>152</sup> *Id.*<sup>153</sup> WHDHS-00000080.<sup>154</sup> *Id.*<sup>155</sup> *Id.*<sup>156</sup> *Id.*<sup>157</sup> *Id.*<sup>158</sup> Follow-Up Interview with (b) (6) (Dec. 2, 2020).<sup>159</sup> Interview with (b) (6) (Aug. 7, 2020).<sup>160</sup> *Id.* See also Follow-Up Interview with (b) (6) (Dec. 2, 2020). Our investigation revealed a letter from (b) (6) (b) (6) to Senators Johnson and Peters dated December 11, 2018. WHDHS-00000879. The letter provided information on the findings of the EMOT investigation. *Id.*<sup>161</sup> Interview with (b) (6) (Aug. 7, 2020). As (b) (6) declined to be interviewed, we were unable to ask her whether she was responsible for encouraging (b) (6) to report on the findings of the internal review.<sup>162</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).<sup>163</sup> Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020). (b) (3) (B), (b) (6) did not say whether anyone else was present for this meeting.<sup>164</sup> *Id.*

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retired on Monday, June 10, 2019, just days after the publication of (b) (6).<sup>165</sup> (b) (6) stated that he did so because he felt it was the best decision for the agency.<sup>166</sup>

F. (b) (6) and (b) (6) Refer (b) (6) to CIGIE

CIGIE is an independent entity of the executive branch established by Section 11 of the Inspector General Act.<sup>167</sup> CIGIE is comprised of multiple IG offices and is responsible for addressing issues of efficiency and professionalism across the IG community.<sup>168</sup> Michael Horowitz, IG for DOJ, is the current Chair of CIGIE, and Allison Lerner, IG for the National Science Foundation, is the Vice Chair.<sup>169</sup> The IC is the CIGIE committee responsible for receiving and reviewing allegations of wrongdoing made against “Covered Persons,” which include IGs, staff members designated by each IG, and anyone serving in an Acting or Interim capacity within one of those positions.<sup>170</sup> Designated staff members include all direct reports to the IGs and any other staff members for whom an IG determines there would be a risk that an internal investigation of them would lack objectivity.<sup>171</sup>

(b) (3) (B), (b) (6) stated that, while leading the EMOT investigation, she did not consider referring the matter to the CIGIE IC.<sup>172</sup> (b) (3) (B), (b) (6) stated that she did not believe (b) (5)

However, (b) (3) (B), (b) (6) statement is inconsistent with (b) (6) April 30th email to (b) (3) (B), (b) (6) in which (b) (6) wrote that they should “mak[e] a concurrent notification to [CIGIE] ic for whatever action they deem appropriate.”<sup>175</sup> To implement the plan, in early June 2019, prior to his retirement, (b) (6) and (b) (6) drafted a referral to the CIGIE IC about (b) (6), including his performance related to the EMOT reports.<sup>176</sup> (b) (6) wrote in an email to (b) (6), “Here’s a draft of the CIGIE referral. I think I’ve included enough info to trigger the IC’s jurisdiction.”<sup>177</sup>

<sup>165</sup> (b) (6)

<sup>166</sup> Follow-Up Interview with (b) (6) (Dec. 2, 2020).

<sup>167</sup> 5 U.S.C. § 11.

<sup>168</sup> Council of the Inspectors Gen. on Integrity and Efficiency, Resources, available at <https://www.ignet.gov/content/cigie-governing-documents>.

<sup>169</sup> *Id.*

<sup>170</sup> Integrity Committee Policies and Procedures 2018, Council of the Inspectors Gen. on Integrity and Efficiency, p.1, (January 2018).

<sup>171</sup> *Id.* at pg. 4.

<sup>172</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> WHDHS-00000077.

<sup>176</sup> WHDHS-00000079.

<sup>177</sup> *Id.* WHDHS-00000844.

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In light of (b) (6) abrupt retirement, however, (b) (6) and (b) (6) did not send the referral.<sup>178</sup>

On June 25, 2019, (b) (6), the CIGIE IC sent a letter to (b) (6) inquiring why she had not referred the matter to it.<sup>179</sup> Specifically, the letter stated, “[t]o date, the IC has not received a referral from DHS OIG regarding the allegations against (b) (6), as described in the ... Special Report...”<sup>180</sup> The IC noted (b) (6)

The letter concluded, “the IC has determined to review these allegations sua sponte and trusts that, in the future, DHS OIG will promptly refer to the IC any allegations of wrongdoing against the IG or designated staff member[s] in DHS OIG.”<sup>182</sup>

The next day, (b) (6) replied to the IC and copied (b) (6) and (b) (6) on the email.<sup>183</sup> (b) (6) noted that she was a “little perplexed by both the tone and substance of the letter.”<sup>184</sup> (b) (6) further wrote:

The team recommended that I refer the report to CIGIE but did not specify the Integrity Committee (IC). Per my discussions with the team, I notified Michael Horowitz, CIGIE Chairman, in advance of issuance about the nature of the findings and forwarded a link to the report the day it was published. Mr. Horowitz acknowledged receipt. Additionally, a few days prior to publishing the report, we began preparing a referral of allegations to the IC concerning our former (b) (6) (b) (6). Along with the issues raised in the report, (b) (5), (b) (6) We finalized the referral and planned to transmit it on Monday, June 10, 2019. Before we could send the email, however, (b) (6) announced his retirement, effective immediately on June 10.<sup>185</sup>

(b) (6) also provided a number of explanations for why she did not previously refer the allegations to the IC, including that “[w]hen we initiated the internal review...we had no idea that the review would eventually implicate (b) (6).”<sup>186</sup> For her part, (b) (3) (B), (b) (6) did not provide a clear answer as to why DHS OIG did not refer the EMOT investigation to the IC once it became apparent that the report would implicate (b) (6).<sup>187</sup> (b) (3) (B), (b) (6) claimed that she was unaware of whether the allegations fell within the IC’s jurisdiction—an answer inconsistent with both (b) (6) April 30th email and (b) (6) (b) (5)

<sup>178</sup> WHDHS-00000088.

<sup>179</sup> WHDHS-00000084.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> WHDHS-00000088.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

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(b) (5) [REDACTED]. Despite (b) (3) (B), (b) (6) [REDACTED] statements, the documentary evidence demonstrates that (b) (6) [REDACTED] and (b) (6) [REDACTED] planned to refer (b) (6) [REDACTED] to the CIGIE IC for investigation and would have done so had (b) (6) [REDACTED] not retired.

On June 27, 2019, (b) (6) [REDACTED] emailed the IC the referral of allegations related to (b) (6) [REDACTED], including supporting documentation, and copied (b) (6) [REDACTED] and (b) (6) [REDACTED] on the email.<sup>188</sup> The referral letter contained additional allegations beyond the issues with the EMOT reports.<sup>189</sup> (b) (6) [REDACTED] stated in her interview that she and (b) (6) [REDACTED] wanted to include everything they had about (b) (6) [REDACTED] that could be of interest to the IC.<sup>190</sup>

### G. DHS OIG Employees' View of the Special Report

Multiple current and former DHS OIG employees stated their belief that (b) (6) [REDACTED] and (b) (6) [REDACTED] used the Special Report to expedite (b) (6) [REDACTED] departure so (b) (6) [REDACTED] could accede to the position of (b) (6) [REDACTED].

- (b) (3) (B), (b) (6) [REDACTED], (b) (3) (B), (b) (6) [REDACTED], stated her view that (b) (6) [REDACTED] and (b) (6) [REDACTED] used the investigation as a vehicle to push (b) (6) [REDACTED] to retire.<sup>191</sup> (b) (3) (B), (b) (6) [REDACTED] speculated that (b) (6) [REDACTED] and (b) (6) [REDACTED] thought that (b) (6) [REDACTED] would retire after the Special Report was published.<sup>192</sup> According to (b) (3) (B), (b) (6) [REDACTED], while there were some Congressional requests for briefings, (b) (6) [REDACTED], (b) (6) [REDACTED], and later (b) (6) [REDACTED] also proactively reached out to the Congressional committees to brief them on the Special Report.<sup>193</sup> (b) (3) (B), (b) (6) [REDACTED] also speculated that (b) (6) [REDACTED] was the source for the (b) (6) [REDACTED].<sup>194</sup>
- (b) (3) (B), (b) (6) [REDACTED], (b) (3) (B), (b) (6) [REDACTED], stated her belief that (b) (6) [REDACTED] and (b) (6) [REDACTED] published the Special Report to publicly humiliate (b) (6) [REDACTED] and to force his retirement.<sup>195</sup> She also heard rumors that the information regarding the Special Report was leaked to the press, but she did not have any personal knowledge of it.<sup>196</sup>
- (b) (3) (B), (b) (6) [REDACTED], (b) (3) (B), (b) (6) [REDACTED], thought that (b) (6) [REDACTED] and (b) (6) [REDACTED] publicized the Special Report because they wanted to push (b) (6) [REDACTED] into retirement.<sup>197</sup> (b) (3) (B), (b) (6) [REDACTED] specifically recalled that (b) (6) [REDACTED] and (b) (6) [REDACTED] wanted to do a “roadshow” about the Special

<sup>188</sup> WHDHS-00000862.

<sup>189</sup> WHDHS-00000863.

<sup>190</sup> Interview with (b) (3) (B), (b) (6) [REDACTED] (Oct. 30, 2020).

<sup>191</sup> Interview with (b) (3) (B), (b) (6) [REDACTED] (Aug. 6, 2020).

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* (b) (3) (B), (b) (6) [REDACTED] stated that she did not know if (b) (6) [REDACTED] leaked (b) (6) [REDACTED], (b) (6) [REDACTED] and interacted with (b) (6) [REDACTED] when (b) (6) [REDACTED] worked there. *Id.* We reviewed allegations that (b) (6) [REDACTED] selectively leaked or otherwise provided information to the press in an improper fashion for personal gain. We found no direct evidence that (b) (6) [REDACTED], or anyone else, leaked information to the Washington Post.

<sup>195</sup> Interview with (b) (3) (B), (b) (6) [REDACTED] (Aug. 4, 2020).

<sup>196</sup> *Id.*

<sup>197</sup> Interview with (b) (3) (B), (b) (6) [REDACTED] (Sept. 15, 2020).

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Report throughout DHS OIG. <sup>198</sup> (b) (3) (B), (b) (6) thought that (b) (6) was driven by an “insatiable thirst” to take over as IG. <sup>199</sup> (b) (3) (B), (b) (6) said that she, along with others, were appalled by (b) (6) behavior. <sup>200</sup>

- (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), described the investigation and subsequent report as a “setup” and a “hit job” by (b) (6) and (b) (6). <sup>201</sup> (b) (3) (B), (b) (6) told us that (b) (6) convinced (b) (6) to take responsibility for the EMOT reports and then used his email taking responsibility to show to the Congressional committees that the EMOT reports were (b) (6) fault. <sup>202</sup>
- (b) (3) (B), (b) (6), the (b) (3) (B), (b) (6), speculated that (b) (6) directed (b) (6) to write the report in a way that would push out (b) (6) although he acknowledged he had no personal knowledge that occurred. <sup>203</sup> (b) (3) (B), (b) (6) recalled numerous closed-door meetings between (b) (6) and (b) (6) prior to the report being released. <sup>204</sup> He also observed intense conversations and felt that something did not seem right. <sup>205</sup> (b) (3) (B), (b) (6) also found it suspicious that as a result of (b) (6) retirement, (b) (6) became (b) (6). <sup>206</sup> He believed the review should have been done externally to avoid such appearances of a conflict of interest. <sup>207</sup>

Other DHS OIG employees detailed suspicions underlying the purpose of publishing the report. For example, (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), commented on the curious timing of (b) (6) announcement that he was postponing his retirement and the (b) (6) <sup>208</sup> (b) (3) (B), (b) (6) said she heard that on the day that one of the (b) (6) was published (b) (6) and (b) (6) came into the office laughing and rejoicing. <sup>209</sup>

On the other hand, (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), believed it was performed objectively. <sup>210</sup> (b) (3) (B), (b) (6) said (b) (6) was not involved in the investigation, but after completion, she was briefed on the findings and participated in the congressional briefings. <sup>211</sup> (b) (3) (B), (b) (6) recalled extensive discussions with (b) (6) and (b) (6) about whether OIG should publish the report, given the sensitivities and criticism related to (b) (6). <sup>212</sup> He relayed that (b) (6) and (b) (6) ultimately decided the report should

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> Interview with (b) (3) (B), (b) (6) (July 28, 2020).

<sup>202</sup> *Id.*

<sup>203</sup> Interview with (b) (3) (B), (b) (6) (July 27, 2020).

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> Interview with (b) (3) (B), (b) (6) (July 28, 2020).

<sup>209</sup> *Id.*

<sup>210</sup> Interview with (b) (3) (B), (b) (6) (July 16, 2020).

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

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be published because OIG would have published the report had it investigated any other organization.<sup>213</sup>

H. (b) (6) Retroactively Changes (b) (6) Position Description

On June 12, 2019, two days after (b) (6) retirement, (b) (6) (b) (6), emailed (b) (6) and copied (b) (6) <sup>214</sup> (b) (6) (b) (6) raised the issue of whether (b) (6) (b) (5)

DHS OIG's order of succession at that time was listed as follows: IG, DIG, Counsel, AIG for Audits.<sup>216</sup> (b) (6) wrote:

(b) (5), (b) (6)

(b) (3) (B), (b) (6) recalled that (b) (6) was concerned that (b) (6) (b) (5)

The day after receiving the email from (b) (6), (b) (6) emailed (b) (6), (b) (6) (b) (6), and (b) (6), the (b) (5), with the subject line, "(b) (6) eOPF HIGH IMPORTANCE PERSONNEL SENSITIVE DO NOT SHARE."<sup>219</sup> (b) (6) wrote, "Ladies, (b) (2), (b) (5), (b) (6) <sup>220</sup> She asked whether (b) (6) (b) (5), (b) (6), (b) (2) (b) (6) (b) (2), (b) (6) (b) (2), (b) (6) <sup>222</sup> (b) (6) replied:

<sup>213</sup> *Id.*

<sup>214</sup> WHDHS-00000398.

<sup>215</sup> *Id.*

<sup>216</sup> DHS Orders of Succession and Orders for Delegations of Authorities, Dep't. of Homeland Sec., Off. Of Inspector Gen., (Sept. 14, 2016).

<sup>217</sup> WHDHS-00000398.

<sup>218</sup> Interview with (b) (3) (B), (b) (6) (Sept. 16, 2020).

<sup>219</sup> WHDHS-00000403.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

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(b) (2), (b) (5)

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(b) (6) noted that (b) (6) was actually placed on a “DIG PD before he retired.”<sup>224</sup> (b) (6) responded that (b) (6) (b) (5)

However, by creating a new DIG PD for (b) (6), (b) (6) established two DIG positions at DHS OIG: one held by (b) (6) and one held by (b) (6). (b) (6) asked (b) (6) to (b) (2), (b) (5)

227 (b) (6) documented in an email what transpired based on her understanding with respect to (b) (6) position changes.<sup>228</sup> (b) (6) then listed the required action necessary (b) (2), (b) (6)

229 She also requested that (b) (6) (b) (2), (b) (6)

230 Finally, (b) (6) indicated that she would inform (b) (6) about these retroactive changes.<sup>231</sup>

Our review did not uncover any evidence that (b) (6) in fact ever did inform (b) (6) about these retroactive changes. (b) (6) noted that he had not spoken to (b) (6) since his retirement and had not received any correspondence from her.<sup>232</sup> He also did not recall anyone informing him that his position description was changed after his retirement; (b) (6) stated that in his view, any retroactive changes to his position description would be “nefarious.”<sup>233</sup>

In her interview, (b) (3) (B), (b) (6) explained that (b) (6) called her after (b) (6) retired to inform her that (b) (6) position description of (b) (6) was not listed in OIG’s order of succession. (b) (5).<sup>234</sup> Upon speaking to (b) (6), (b) (6), (b) (3) (B) notified (b) (6)

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).

<sup>227</sup> WHDHS-00000403.

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> Follow-Up Interview with (b) (6) (Nov. 16, 2020).

<sup>233</sup> *Id.*

<sup>234</sup> Interview with (b) (6), (b) (3) (B) (Aug. 27, 2020).





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indicated that it was a bona fide position and DHS OIG was allowed to have two DIGs at once.<sup>250</sup> (b) (6), (b) (3) (B) also recalled arguing with (b) (6) about making these changes.<sup>251</sup> (b) (3) (B), (b) (6) had never been asked to change someone's files after they retired and felt very uncomfortable doing so.<sup>252</sup> (b) (3) (B), (b) (6) approached her supervisor, (b) (6), and explained that she was not comfortable working on the request from (b) (6).<sup>253</sup> According to (b) (3) (B), (b) (6), (b) (6) then "went off on her" and told her to backdate the changes.<sup>254</sup> (b) (3) (B), (b) (6) ultimately complied, but explained that this incident was the "straw that broke the camel's back" and that she knew that she had to leave the organization immediately.<sup>255</sup> (b) (3) (B), (b) (6) also stated that (b) (6) yelled at her for conducting research about whether it was appropriate to retroactively change (b) (6) position description, rather than simply following (b) (6) orders.<sup>256</sup>

#### IV. ATTEMPTS TO DERAIL THE NOMINATION OF DR. CUFFARI AS THE NEW IG

At the outset, we note that while any citizen has the right to question a presidential nomination in their personal capacity, our investigation focused on the statements and actions of (b) (6), (b) (6), and (b) (6) while in their roles as senior employees at DHS OIG. Federal employees, in their capacity as private citizens, have a First Amendment right to express their political opinions and may contact lawmakers to do so.<sup>257</sup> However, it is a misuse of authority for a federal employee to use his or her public office to interfere with a Presidential nomination or the Senate confirmation process for personal gain or any other improper purpose.<sup>258</sup> Additionally, federal employees should not use their government resources, including the email system or access to lawmakers or other government officials, for personal gain or for any other unauthorized purposes.<sup>259</sup>

On November 1, 2018, the White House announced its intention to nominate Dr. Cuffari to serve as the IG of DHS.<sup>260</sup> Dr. Cuffari was formally nominated by the President on November 14, 2018.<sup>261</sup> Documentary evidence and witness interviews indicate that immediately following the

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<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> Interview with (b) (3) (B), (b) (6) (July 23, 2020).

<sup>257</sup> See *Garcetti v. Ceballos*, 126 S. Ct. 1951, 1953 (2006) (noting that "a citizen who works for the government is nonetheless still a citizen. The First Amendment limits a public employer's ability to leverage the employment relationship to restrict, incidentally or intentionally, the liberties employees enjoy in their capacities as private citizens."). However, "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." *Id.* at 1960.

<sup>258</sup> See 5 C.F.R. § 2635.702 ("An employee shall not use his public office for his own private gain . . . or for the private gain of friends.").

<sup>259</sup> See 5 CFR § 2635.704 (noting that government property shall not be used for unauthorized purposes, and the term "government property" includes "office supplies, telephone and other telecommunications equipment and services, the Government mails," etc.).

<sup>260</sup> President Donald J. Trump Announces Intent to Nominate Personnel to Key Administration Posts, *supra* note 19.

<sup>261</sup> 164 Cong. Rec. S6968 (daily ed. Nov. 14, 2018) (nomination of Joseph V. Cuffari), <https://www.govinfo.gov/content/pkg/CREC-2018-11-14/pdf/CREC-2018-11-14.pdf>.

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White House's announcement, and continuing throughout Dr. Cuffari's confirmation process, (b) (6), (b) (6), (b) (6) and (b) (6) engaged in disparaging discussions at work regarding Dr. Cuffari's qualifications, primarily regarding the validity of Dr. Cuffari's doctoral degree.

Specifically, the same day that the White House announced its intent to nominate Dr. Cuffari, (b) (6) sent an email to DHS OIG announcing the nomination.<sup>262</sup> (b) (6) forwarded that email on her work e-mail account to several people, including (b) (6) and the former general counsel of DHS OIG.<sup>263</sup> (b) (6) wrote to (b) (6), "Google California coast university."<sup>264</sup> (b) (6) wrote to the former general counsel: "His PhD is from California Coast University. Google it."<sup>265</sup> The former general counsel responded that they should continue the discussion on (b) (6) personal email account.<sup>266</sup> (b) (6) forwarded her exchange to (b) (6) on her DHS OIG e-mail account, and wrote, "This sums it up!" (b) (6) replied from her work e-mail account, "Hahahahaha."<sup>267</sup>

(b) (6) also responded directly to (b) (6), questioning the university from which Dr. Cuffari received his degree.<sup>268</sup> (b) (6) wrote to (b) (6): "if you dig around you'll see that the PhD is from California coast university and the masters is from Webster. Probably why they are not listed."<sup>269</sup> During his interview, (b) (6) recalled generally that (b) (6) openly sought to undermine Dr. Cuffari within DHS OIG and questioned his intelligence, noting that (b) (6) said Dr. Cuffari was "dumber than a box of rocks."<sup>270</sup> (b) (3) (B), (b) (6) also recalled (b) (6) saying that Dr. Cuffari is "a nice guy but dumber than a box of rocks."<sup>271</sup>

In addition, (b) (3) (B), (b) (6) stated that (b) (6) had instructed (b) (6) to run a query regarding where Dr. Cuffari obtained his Ph.D.<sup>272</sup> (b) (6) also heard (b) (6) respond, "I was right, he got it from a paper mill."<sup>273</sup>

When asked about his interactions with (b) (6), (b) (3) (B), (b) (6) did not recall a specific request by (b) (6) to investigate Dr. Cuffari before his confirmation.<sup>274</sup> However, (b) (3) (B), (b) (6) recalled that (b) (6) talked about Dr. Cuffari's lack of qualifications and his Ph.D. in work meetings before Dr. Cuffari was confirmed.<sup>275</sup> (b) (3) (B), (b) (6) similarly stated that (b) (6) tried to

<sup>262</sup> WHDHS-00000024.

<sup>263</sup> WHDHS-00000024; WHDHS-00000028; WHDHS-00000030.

<sup>264</sup> WHDHS-00000024.

<sup>265</sup> WHDHS-00000030.

<sup>266</sup> *Id.* As we did not have access to (b) (6) personal email account, we do not know what further discussions occurred on this subject.

<sup>267</sup> *Id.*

<sup>268</sup> WHDHS-00000026.

<sup>269</sup> *Id.*

<sup>270</sup> Interview with (b) (6) (Aug. 7, 2020).

<sup>271</sup> Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> Interview with (b) (3) (B), (b) (6) (Sept. 17, 2020).

<sup>275</sup> *Id.*

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garner support for herself in senior meetings in anticipation of Dr. Cuffari's arrival.<sup>276</sup> She said that these efforts intensified following Dr. Cuffari's confirmation hearing.<sup>277</sup>

A number of current and former DHS OIG employees corroborated that (b) (6) openly criticized Dr. Cuffari's qualifications to become the IG, and recruited others to do the same. For example, (b) (3) (B), (b) (6) stated that (b) (6) made it very clear that she thought Dr. Cuffari was not qualified and that she was not impressed with him.<sup>278</sup> She said (b) (6) was constantly trying to undermine Dr. Cuffari, and trying to recruit (b) (6) to do so as well.<sup>279</sup> (b) (3) (B) also recalled that (b) (6) made a comment that she was talking to people in Congress about Dr. Cuffari.<sup>280</sup> (b) (3) (B), (b) (6) stated that she had heard that (b) (6) was talking to Senate staffers about Dr. Cuffari's nomination.<sup>281</sup> (b) (3) (B), (b) (6) likewise had heard that (b) (6) was talking to Congressional committees about Dr. Cuffari's nomination.<sup>282</sup> (b) (3) (B), (b) (6) also recalled (b) (6) speaking about (b) (6) efforts to undermine Dr. Cuffari's confirmation process.<sup>283</sup> He recalled (b) (6) saying something to the effect of (b) (6) recent trip to the Hill" will "hopefully . . . have an impact on this confirmation."<sup>284</sup>

(b) (3) (B), (b) (6), who was (b) (3) (B), (b) (6) while Dr. Cuffari's nomination was pending, stated that (b) (6) contacted him directly to express her concerns about Dr. Cuffari as well.<sup>285</sup> (b) (3) (B), (b) (6) explained to (b) (6) that it is not the (b) (6) role to get involved in vetting of presidential appointees and that she should go to the White House liaison with any concerns.<sup>286</sup> (b) (3) (B), (b) (6), who has served at DHS since 2003, stated that it was the first time he could recall a federal employee raising concerns about a presidential nominee.<sup>287</sup>

(b) (3) (B), (b) (6) stated that (b) (6) questioned Dr. Cuffari's qualifications and encouraged employees to write letters contesting his nomination.<sup>288</sup> According to (b) (3) (B), (b) (6), (b) (6) also criticized Dr. Cuffari's nomination to other DHS OIG employees.<sup>289</sup> (b) (3) (B), (b) (6) also reported that (b) (6) said that Dr. Cuffari had "no business becoming IG," that his education was a fraud, and that he was only a GS-14.<sup>290</sup> Similarly, (b) (3) (B), (b) (6) reported that (b) (6) told her Dr. Cuffari was "just a GS-14," so (b) (3) (B), (b) (6) should not have high expectations about

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<sup>276</sup> Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> Interview with (b) (3) (B), (b) (6) (Aug. 10, 2020).

<sup>282</sup> Interview with (b) (3) (B), (b) (6) (July 28, 2020).

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

<sup>285</sup> Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> Interview with (b) (3) (B), (b) (6) (July 28, 2020).

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

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his qualifications.<sup>291</sup> (b) (3) (B), (b) (6) also recalled that (b) (6) questioned Dr. Cuffari's management experience.<sup>292</sup>

In addition to conversations with employees within DHS OIG, (b) (6), in her position as (b) (6), also emailed CIGIE regarding her concerns with Dr. Cuffari's nomination. In a June 26, 2019 email, (b) (6) wrote to CIGIE: "we are currently struggling with a significant concern related to the nominee to be DHS Inspector General and we are unsure as to what we should do to address the issue. Right now (as well as at various points over the last year) we would be very grateful for a CIGIE ombudsperson to whom we could raise our concerns and seek advice about how to proceed."<sup>293</sup> Our review did not uncover a response from CIGIE on this issue.<sup>294</sup>

In addition to (b) (6), (b) (6) also raised doubts about Dr. Cuffari's nomination in her capacity as (b) (6) for DHS OIG. Specifically, in June 2019, (b) (6) and (b) (6) contacted (b) (6), (b) (6), to discuss Dr. Cuffari's nomination.<sup>295</sup> (b) (6), in her capacity as (b) (6) wrote to (b) (6) that she had "a sensitive matter related to the DHS IG nominee" to discuss.<sup>296</sup> They agreed to speak on the phone and, following that conversation, (b) (6) sent (b) (6) the link to a report regarding California Coast University.<sup>297</sup> During her interview, (b) (3) (B), (b) (6) acknowledged that she and (b) (6) spoke to (b) (6) about Dr. Cuffari's nomination, and stated that they were doing so because it was in the best interests of the agency.<sup>298</sup> According to (b) (3) (B), (b) (6), (b) (6) agreed that (b) (6) and (b) (6) had an obligation to protect the organization and figure out whether others knew that Dr. Cuffari's degree was issued by "a diploma mill."<sup>299</sup> (b) (6) declined our request for an interview.

(b) (6) next reached out to (b) (6). Documentary evidence indicates that (b) (6) called (b) (6) several times to speak about Dr. Cuffari's nomination but was unable to reach him initially.<sup>300</sup> (b) (6) eventually reached him on June 27, 2019.<sup>301</sup> At that point, Dr. Cuffari's nomination was awaiting

<sup>291</sup> Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).

<sup>292</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

<sup>293</sup> WHDHS-00000088.

<sup>294</sup> After he was confirmed, IG Cuffari requested to see (b) (6) referral letter to CIGIE with respect to (b) (6) and the EMOT reports. WHDHS-00000339. As noted above, (b) (6) cover email for the referral included the request to CIGIE about Dr. Cuffari's nomination. WHDHS-00000088. After IG Cuffari's request for the referral letter, (b) (6) conferred with (b) (6) and expressed her concern that Dr. Cuffari would be "unhappy" or "angry" if he saw (b) (6) reference to "a significant concern related to the nominee to be DHS Inspector General" in the cover email. WHDHS-00000339. (b) (6) replied, "Again, I really don't care if he's angry at me—I did the work at (b) (6) and it is what it is. It's also still a problem for our organization." *Id.* However, (b) (6) eventually suggested providing the CIGIE referral letter but not the cover email to IG Cuffari. *Id.* In response, (b) (6) expressed her concern that (b) (6) should not "hide the ball." *Id.* Nevertheless, it does not appear that (b) (6) or (b) (6) ever provided the cover email to IG Cuffari.

<sup>295</sup> WHDHS-00000090.

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).

<sup>299</sup> *Id.*

<sup>300</sup> WHDHS-00000401.

<sup>301</sup> Interview with (b) (3) (B), (b) (6) (July 22, 2020).

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a vote of the full Senate.<sup>302</sup> When (b) (6) initially reached out to (b) (6) via email to discuss this issue, her DHS signature block identified her as the (b) (6) for DHS OIG.<sup>303</sup> During the call, (b) (6) raised concerns regarding Dr. Cuffari's doctoral degree, claiming it was issued by "a diploma mill."<sup>304</sup> Similar to (b) (6), (b) (6) also claimed that she had previously investigated this university when she worked in Congress years prior.<sup>305</sup> (b) (3) (B), (b) (6) told (b) (6) that the issue had already been investigated.<sup>306</sup> During his interview, (b) (3) (B), (b) (6) explained that as part of the vetting process, (b) (3) (B), (b) (6) had already requested transcripts from California Coast University to verify Dr. Cuffari's doctoral degree.<sup>307</sup> (b) (3) (B), (b) (6) told us that he was surprised and "displeased" that (b) (6) called him because they had never spoken prior to this phone call, and it was uncommon for someone to contact him to raise concerns regarding presidential appointees given the extensive vetting process they undergo by the FBI.<sup>308</sup> (b) (3) (B), (b) (6) stated that he did not believe (b) (6) was calling to "help [Dr. Cuffari] with the Senate confirmation."<sup>309</sup>

That same month, on June 13, 2019, (b) (6) wrote to (b) (6), an (b) (6) that (b) (6) supervised in the (b) (6), asking for "a data dump/folder with all (b) (6) communications with Dr. Cuffari, the Dept., etc., on his nomination, conflicts, etc.?"<sup>310</sup> (b) (6) provided all of these documents later that day and (b) (6) forwarded them to another employee at DHS OIG, (b) (6).<sup>311</sup>

During her interview, (b) (3) (B), (b) (6) could not recall exactly why she requested these files from (b) (6) (b) (6), but explained that she may have been seeking information regarding Dr. Cuffari's doctoral degree.<sup>312</sup> (b) (3) (B), (b) (6) also could not recall why she sent the files to (b) (6), but she believed she may have done so in order for (b) (6) to include the files in an ethics database he was creating.<sup>313</sup> (b) (3) (B), (b) (6) explained that (b) (6) was tasked with creating a central database related (b) (6).<sup>314</sup> At the time that (b) (6) sent the information to (b) (6), however, Dr. Cuffari had not been yet confirmed by the Senate as the IG.

Both (b) (3) (B), (b) (6) and (b) (3) (B), (b) (6) were asked about (b) (6) "data dump" request. (b) (3) (B), (b) (6) recalled (b) (6) request for information.<sup>315</sup> (b) (3) (B), (b) (6) thought that, in her role as (b) (6) (b) (6), (b) (6) wanted to review all relevant information regarding the nominee and that she may have also been influenced by (b) (6) questions regarding Dr. Cuffari's qualifications

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<sup>302</sup> *Id.*

<sup>303</sup> WHDHS-00000401.

<sup>304</sup> Interview with (b) (3) (B), (b) (6) (July 22, 2020); Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).

<sup>305</sup> Interview with (b) (3) (B), (b) (6) (July 22, 2020).

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

<sup>310</sup> WHDHS-00000396.

<sup>311</sup> WHDHS-00000400.

<sup>312</sup> Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).

<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

<sup>315</sup> Interview with (b) (3) (B), (b) (6) (July 31, 2020).

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to be IG.<sup>316</sup> (b) (3) (B), (b) (6) did not consider the request improper though, given (b) (6) role as the (b) (6).<sup>317</sup> Although (b) (3) (B), (b) (6) did not recall the “data dump” email specifically, he said the purpose of collecting these emails was to prepare for Dr. Cuffari’s arrival and to review the files for potential conflicts or ethics issues.<sup>318</sup> (b) (3) (B), (b) (6) said he believed it was appropriate for (b) (6) to ask for this information because she needed to be able to provide (b) (6) —IG Cuffari—once he was confirmed.<sup>319</sup> Similarly, (b) (3) (B), (b) (6), (b) (6), (b) (3) (B), (b) (6), stated that (b) (6) may have needed to review the files to assess conflicts.<sup>320</sup> Our investigation did not reveal why (b) (6) specifically requested all of the emails and documents regarding Dr. Cuffari’s nomination process, or what (b) (6) did with them.

In her interview, (b) (3) (B), (b) (6) acknowledged that she and (b) (6) had concerns about Dr. Cuffari’s qualifications.<sup>321</sup> (b) (3) (B), (b) (6) claimed she had concerns that Dr. Cuffari received his doctoral degree from a “diploma mill,” which might damage OIG’s reputation.<sup>322</sup> (b) (3) (B), (b) (6) said that she expressed these concerns to several DHS OIG senior staff, including (b) (6), (b) (6), (b) (6) and (b) (6).<sup>323</sup> (b) (3) (B), (b) (6) acknowledged that she also spoke to (b) (6), (b) (6), (b) (6); and (b) (6), (b) (6), about her concerns about Dr. Cuffari’s qualifications.<sup>324</sup> During her interview, (b) (3) (B), (b) (6) confirmed that she was making these calls in her capacity as the (b) (3) (B), (b) (6), and was doing so out of her concern that the vetting process may not have properly scrutinized Dr. Cuffari’s educational background.<sup>325</sup> (b) (3) (B), (b) (6) stated that she was only acting in the best interest of the agency and not to benefit (b) (6), then serving as the (b) (6).<sup>326</sup> (b) (3) (B), (b) (6) said that once she spoke to (b) (6), she “considered the matter resolved.”<sup>327</sup> The evidence demonstrates, however, that the efforts to undermine IG Cuffari continued.

## V. UNDERMINING THE NEW IG

### A. (b) (6) Filled Vacancies to Limit the New IG

On July 25, 2019, the United States Senate confirmed Dr. Cuffari as the new IG.<sup>328</sup> With the confirmation of IG Cuffari, (b) (6) purportedly reverted back to the (b) (6) role. As she had

<sup>316</sup> *Id.*

<sup>317</sup> *Id.*

<sup>318</sup> Interview with (b) (3) (B), (b) (6) (Sept. 16, 2020).

<sup>319</sup> *Id.*

<sup>320</sup> Interview with (b) (3) (B), (b) (6) (Sept. 14, 2020).

<sup>321</sup> Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> *Id.*

<sup>326</sup> *Id.*

<sup>327</sup> *Id.*

<sup>328</sup> Meet the IG, *supra* note 13.

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done with (b) (6), however, (b) (6), with the assistance of (b) (6), once again orchestrated a campaign to undermine the new IG. In fact, as explained below, (b) (6) efforts to limit the new IG had begun months earlier, shortly after he was nominated for the post. Specifically, multiple current and former DHS OIG employees reported that (b) (6) engaged in a concerted effort to fill open positions, in particular Senior Executive Service (“SES”) positions, at the agency.

Multiple employees called the hiring unusual because SES positions typically remain vacant for the incoming IG to fill. (b) (3) (B), (b) (6), a (b) (3) (B), (b) (6) (b) (3) (B), (b) (6), described it as a contravention of the normal practice for (b) (6) to rapidly fill SES positions in the period between IG Cuffari’s nomination and his confirmation.<sup>329</sup> Both (b) (3) (B), (b) (6) and (b) (3) (B), (b) (6), the (b) (3) (B), (b) (6), explained that there is a general understanding in the government that those positions should be left open for the incoming presidential appointee to fill.<sup>330</sup>

Documentary evidence confirmed that (b) (6) was filling these roles in the agency in order to inhibit IG Cuffari’s ability to hire his own senior staff and to secure her own position as (b) (6). In December 2018, (b) (6), (b) (6) responsible for SES employees, emailed (b) (6) regarding the process for requesting additional SES positions at DHS OIG.<sup>331</sup> (b) (6) appeared hesitant to request additional slots because IG Cuffari would be able to fill these slots once confirmed.<sup>332</sup> Specifically, (b) (6) explained in her email to (b) (6), “I don’t think we should ask for any SES so new IG is limited.”<sup>333</sup> Later in the discussion, (b) (6) and (b) (6) discussed the 120-day moratorium during which a new IG cannot move employees in SES positions. After the moratorium is over, however, the new IG would be able to move SES employees into other SES positions.<sup>334</sup> (b) (6) wrote, “We had discussed this a couple of times and this is one of the reasons why we needed the SES positions filled so after the moratorium there is no where to move.”<sup>335</sup> (b) (6) wrote to (b) (6), “Please let me know if you need more information. I know how important this is.”<sup>336</sup> (b) (6) confirmed that she would not ask for additional SES positions.<sup>337</sup>

During her interview, (b) (3) (B), (b) (6) confirmed that (b) (6) intended to fill the existing SES positions for two reasons: (1) to limit IG Cuffari’s ability to fill the positions with his own selections, and (2) to constrain IG Cuffari’s ability to move (b) (6) from the (b) (6) position to an open SES slot after the 120-day moratorium.<sup>338</sup> (b) (3) (B), (b) (6) explained that, as a result, there was rapid hiring in the run up to IG Cuffari’s confirmation.<sup>339</sup> She noted that she worked around

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<sup>329</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>330</sup> *Id.* Interview with (b) (3) (B), (b) (6) (July 27, 2020).

<sup>331</sup> WHDHS-00000035.

<sup>332</sup> *Id.*

<sup>333</sup> *Id.*

<sup>334</sup> *See id.*

<sup>335</sup> *Id.*

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

<sup>338</sup> Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).

<sup>339</sup> *Id.*



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the clock for (b) (6) on hiring issues and that they filled seven SES positions in her last eight months in the office.<sup>340</sup> By contrast, she explained that agencies typically fill two to three SES positions in an entire year.<sup>341</sup> (b) (3) (B), (b) (6) thought that (b) (6) plan to hamstring IG Cuffari's ability to select executives was in "poor taste."<sup>342</sup>

As noted above, (b) (3) (B), (b) (6) also recalled that (b) (6) was very concerned that IG Cuffari would reassign her from the (b) (6) position after the 120-day moratorium was over.<sup>343</sup> Under Office of Personnel Management ("OPM") guidelines, SES employees can be transferred (even against their will) to other available SES positions for which they are qualified, and therefore (b) (6) did not want to leave open any SES roles.<sup>344</sup> She explained that (b) (6) would often refer to DHS OIG as "my agency" and that she needed to protect "her people" since IG Cuffari could replace her at any time.<sup>345</sup>

A review of DHS OIG employee records confirms that in the months following that exchange with (b) (6) about the need to "limit" the new IG, (b) (6) filled several SES positions. Specifically, we identified six SES positions that were filled during the time-period between IG Cuffari's nomination and confirmation, although for two of these positions, the initial request to OPM preceded IG Cuffari's nomination.<sup>346</sup> Additionally, one of those two requests was submitted prior to (b) (6) arrival at DHS OIG.<sup>347</sup>

The OPM SES Desk Guide provides guidance related to the timing of filling SES positions when a nominee is pending. Specifically, the Desk Guide states:

When an agency head leaves or announces the intention to leave, or if the President nominates a new agency head, OPM suspends [Qualifications Review Board ("QRB")] case processing for SES career appointments until a successor is appointed at the agency. OPM takes this action as a courtesy to the new agency head to afford him/her the greatest flexibility in making executive resources

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<sup>340</sup> *Id.* However, as explained further below, our investigation confirmed that six SES positions were filled during the time-period between IG Cuffari's nomination and his confirmation. (b) (3) (B), (b) (6), (b) (3) (B), (b) (6) confirmed that (b) (3) (B), (b) (6) was working overtime to process (b) (6) new hires prior to IG Cuffari's confirmation. Interview with (b) (3) (B), (b) (6) (July 23, 2020). (b) (3) (B), (b) (6) explained that she believed (b) (6) was hiring staff to build support for herself within the agency prior to IG Cuffari's arrival. *Id.*

<sup>341</sup> Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).

<sup>342</sup> *Id.*

<sup>343</sup> *Id.*

<sup>344</sup> *Id.* See also Guide to Senior Executive Service, U.S. Off. Of Pers. Mgmt., p. 10 (noting that "An agency may reassign a noncareer appointee to another General SES position for which he/she qualifies after obtaining approval from OPM and the Office of Presidential Personnel. The agency is not required to give the appointee advance written notice of the reassignment.").

<sup>345</sup> Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).

<sup>346</sup> For two of these SES slots, the request to OPM was made prior to IG Cuffari's nomination, but was not approved until after his nomination had been announced.

<sup>347</sup> OPM SES Documents – (b) (6) Documents.

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decisions. However, if an agency has a selection it considers urgent, OPM may consider whether to make an exception.<sup>348</sup>

The six employees that received SES assignments during the time-period between Dr. Cuffari's nomination (November 14, 2018) and confirmation (July 25, 2019) were:

- On January 18, 2017, OPM approved the appointment of (b) (6) to the Senior Executive Service.<sup>349</sup> On December 9, 2018, (b) (6) was promoted to an SES career appointment as (b) (6).<sup>350</sup> While (b) (6) was promoted during the relevant period, OPM approved his appointment to the SES well before IG Cuffari's nomination, and before (b) (6) arrival at DHS OIG in September 2017.
- On August 29, 2018, (b) (6) requested an exception of the QRB moratorium for (b) (6) to be appointed as (b) (6).<sup>351</sup> OPM approved the request. On November 25, 2018, (b) (6) was appointed as Deputy AIG (b) (6).<sup>352</sup>
- On November 27, 2018, (b) (6) requested an exception of the QRB moratorium to appoint (b) (6) as AIG (b) (6).<sup>353</sup> On March 31, 2019, (b) (6) was converted to a career SES appointment.<sup>354</sup>
- On December 14, 2018, (b) (6) requested an exception to appoint (b) (6) as Deputy AIG (b) (6).<sup>355</sup> On April 28, 2019, (b) (6) was converted to a career SES appointment.
- On March 28, 2019, (b) (6) requested an exception to appoint (b) (6) as Deputy AIG (b) (6).<sup>356</sup> On June 23, 2019, (b) (6) was appointed to an SES career position.
- On February 17, 2019, (b) (6) transferred to DHS OIG as a career SES employee into the role of (b) (6).<sup>357</sup>

(b) (3) (B), (b) (6) explained that while the QRB hiring process was followed for these hirings, she thought that (b) (6) engaged in "shady" behavior by moving forward with hiring decisions after Dr. Cuffari was nominated.<sup>358</sup> (b) (3) (B), (b) (6) also indicated that in her opinion, certain

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<sup>348</sup> Guide To The Senior Executive Service, US Off. Of Pers. Mgmt., (March 2017), <https://www.opm.gov/policy-data-oversight/senior-executive-service/reference-materials/guidesesservices.pdf>.

<sup>349</sup> OPM SES Documents – (b) (6) Documents.

<sup>350</sup> SES Appointments DHS OIG 10232020 v.1.

<sup>351</sup> OPM SES Documents - (b) (6) Documents.

<sup>352</sup> *Id.*

<sup>353</sup> *Id.*

<sup>354</sup> SES Appointments DHS OIG 10232020 v.1.

<sup>355</sup> OPM SES Documents - (b) (6) Documents.

<sup>356</sup> OPM SES Documents - (b) (6) Documents.

<sup>357</sup> SES Appointments DHS OIG 10232020 v.1.

<sup>358</sup> Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).

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executives were hired not because they were the best or most qualified person for the position, but because they would fit in and were friends with those that were doing the hiring.<sup>359</sup> (b) (3) (B), (b) (6) explained that (b) (6) served as the Executive Resources Board (“ERB”) chair for all SES hiring.<sup>360</sup> (b) (3) (B), (b) (6) explained that in her experience, the ERB chair rotated among executives, and she thought it was odd that the chair role did not rotate at DHS OIG.<sup>361</sup> (b) (3) (B), (b) (6) also recalled that (b) (6) was hired as (b) (6) in large part due to her prior relationship with (b) (6) at the (b) (6).<sup>362</sup>

(b) (6), who was the (b) (6) at the time of many of these hirings, told us that he worked with (b) (6) to fill SES positions throughout the organization.<sup>363</sup> He said he disagreed with some of (b) (6) SES hiring choices and, in retrospect, thought he should have pushed back harder, but he said that he acquiesced to her wishes at the time because of his imminent retirement.<sup>364</sup>

(b) (6) hiring efforts intensified in the days leading up to IG Cuffari’s confirmation in July 2019. On July 17, 2019, just days before IG Cuffari’s confirmation, (b) (6) asked (b) (6) (b) (6) an employee in human resources, “to permanently reassign (b) (6) to the (b) (6) Position and post for a (b) (6) (using her current PD) as soon as we can.”<sup>365</sup> In response, (b) (6) informed (b) (6) that DHS OIG had already committed to OPM to leave the position open for the new IG to fill. Nevertheless, (b) (6) asked him to push it through anyway.<sup>366</sup> Ultimately, (b) (6) was not promoted to (b) (6).

(b) (3) (B), (b) (6) could not recall why (b) (6) was not promoted to (b) (6), and he could not recall any other conversations about this issue.<sup>367</sup> Several employees, including (b) (3) (B), (b) (6), stated that the agency was required to keep the (b) (6) position open for the new IG to fill.<sup>368</sup> (b) (3) (B), (b) (6) stated that she believed (b) (6) was seeking to fill the (b) (6) position with an ally who would follow (b) (3) (B), (b) (6) direction.<sup>369</sup>

During her interview, (b) (6) stated she was aware that (b) (6) attempted to assign her to the (b) (6) position.<sup>370</sup> However, (b) (3) (B), (b) (6) claimed she told (b) (6) that she was uncomfortable moving forward with the promotion given IG Cuffari’s imminent confirmation.<sup>371</sup>

Around the time of IG Cuffari’s confirmation, (b) (6) and (b) (6) also sought to hire (b) (6), who worked at the (b) (6), to serve as AIG (b) (6), following the

<sup>359</sup> *Id.*

<sup>360</sup> *Id.*

<sup>361</sup> *Id.*

<sup>362</sup> *Id.*

<sup>363</sup> Interview with (b) (3) (B), (b) (6) (Aug. 7, 2020).

<sup>364</sup> *Id.*

<sup>365</sup> WHDHS-00000161.

<sup>366</sup> *Id.*

<sup>367</sup> Interview with (b) (3) (B), (b) (6) (Aug. 21, 2020).

<sup>368</sup> Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).

<sup>369</sup> Interview with (b) (3) (B), (b) (6) (July 31, 2020).

<sup>370</sup> Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).

<sup>371</sup> *Id.*

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retirement of (b) (6). On July 23, 2019, just two days before IG Cuffari was confirmed by the Senate, (b) (6) and (b) (6) exchanged emails with the human resources staff regarding (b) (6) job offer.<sup>372</sup> (b) (6) wrote, “Sorry for the mad rush but we’re hoping we can get him here so that there’s not too much of a gap after (b) (6) departure.”<sup>373</sup> (b) (3) (B), (b) (6) stated that (b) (6) and (b) (6) appeared to be in a hurry to hire (b) (6).<sup>374</sup> There was even a discussion of swearing in (b) (6) into the position remotely because he was on vacation and away from Washington D.C. until August.<sup>375</sup> (b) (3) (B), (b) (6) stated that could not recall that ever happening during his experience in government service.<sup>376</sup> (b) (3) (B), (b) (6) also noted that there was a rush to hire (b) (6) and other (b) (6) personnel before IG Cuffari joined the agency.<sup>377</sup> On July 26, 2019, one day after the Senate confirmed IG Cuffari, (b) (6) sent an agency-wide email announcing that (b) (6) had been appointed as AIG for (b) (6).<sup>378</sup>

During his interview, (b) (6) explained that (b) (6) and (b) (6) reached out to him unsolicited in early July 2019 and asked if he was interested in joining DHS OIG as AIG for (b) (6).<sup>379</sup> After he applied, he received a tentative offer and made plans to leave the (b) (6) (b) (6).<sup>380</sup> At some point after IG Cuffari’s confirmation, however, (b) (6) heard that hiring at DHS OIG was on hold.<sup>381</sup> (b) (6) had not received his final offer and IG Cuffari called to inform him that he would not be receiving one.<sup>382</sup> (b) (6) acknowledged IG Cuffari’s right to rescind the offer and said he respected the decision.<sup>383</sup>

On July 25, 2019, the same day that IG Cuffari was confirmed, OPM granted approval for DHS OIG to appoint (b) (6) as Deputy AIG (b) (6).<sup>384</sup> In an email about the appointment on August 5, 2019, (b) (6) wrote, “Though we received a waiver to the QRB moratorium, I’m reviewing all applicable guidance to determine the extent to which IG Cuffari’s confirmation impacts new SES appointments.”<sup>385</sup> IG Cuffari ultimately approved of (b) (6) appointment.<sup>386</sup>

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<sup>372</sup> WHDHS-00000172.

<sup>373</sup> *Id.*

<sup>374</sup> Interview with (b) (3) (B), (b) (6) (Aug. 21, 2020).

<sup>375</sup> *Id.*

<sup>376</sup> *Id.*

<sup>377</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>378</sup> WHDHS-00000162.

<sup>379</sup> Interview with (b) (6) (Aug. 5, 2020).

<sup>380</sup> *Id.*

<sup>381</sup> *Id.*

<sup>382</sup> *Id.*

<sup>383</sup> *Id.*

<sup>384</sup> WHDHS-00000169.

<sup>385</sup> *Id.*

<sup>386</sup> Interview with (b) (3) (B), (b) (6) (Aug. 21, 2020).

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On July 29, 2019, days after his confirmation, IG Cuffari attended a senior staff meeting at which he learned that the office was intending to hire additional employees despite anticipating a significant budget shortfall.<sup>387</sup> IG Cuffari announced a hiring freeze effective immediately.<sup>388</sup>

IG Cuffari's hiring freeze announcement disappointed some employees who were trying to fill positions on their teams. (b) (3) (B), (b) (6) noted that (b) (6), (b) (6) and (b) (6) were upset by the hiring freeze because they had hires in the pipeline.<sup>389</sup> He recalled that (b) (6) was visibly irritated and upset at the meeting.<sup>390</sup> (b) (3) (B), (b) (6) recalled that once IG Cuffari left the meeting, (b) (6) stated that IG Cuffari "doesn't know what he's talking about" and that "this is my meeting."<sup>391</sup> (b) (3) (B), (b) (6) noted that he did not initially understand the reason for the hiring freeze.<sup>392</sup> However, once he became more involved in (b) (3) (B), (b) (6) role, (b) (3) (B), (b) (6) learned that Dr. Cuffari was attempting to "right size" the organization and ensure that the right personnel were in office.<sup>393</sup>

## B. Unprofessional Behavior Directed at IG Cuffari

Several current and former DHS OIG employees described (b) (6) behavior in the office as unprofessional, both generally and particularly towards IG Cuffari. For example, (b) (6) (b) (6) described (b) (6) as "self-centered," and said she would "trash" those who did not support her.<sup>394</sup> (b) (3) (B), (b) (6), described (b) (6) as unprofessional, noting that (b) (6) manner of communicating was particularly informal and inappropriate for someone in senior leadership.<sup>395</sup> (b) (3) (B), (b) (6) similarly stated that (b) (6) complaints against Dr. Cuffari were inappropriate considering that she was (b) (3) (B), (b) (6) superior, and (b) (3) (B), (b) (6) was a newly-appointed SES in a probationary period with the agency.<sup>396</sup> (b) (3) (B), (b) (6), (b) (3) (B), (b) (6) noted (b) (6) lack of professionalism, stating that she would "get in people's space" and say "inappropriate things."<sup>397</sup> (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), also noted (b) (6) general unprofessional demeanor, and described her as a "capricious leader."<sup>398</sup> (b) (6), (b) (6), described (b) (6) as scary, intimidating, not a team player, and dismissive.<sup>399</sup> She stated that (b) (6) would often ignore her and other lower-level employees.<sup>400</sup> (b) (3) (B), (b) (6), the (b) (3) (B), (b) (6), stated that (b) (6) would often speak critically of other employees during meetings, and she

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<sup>387</sup> Interview with Joseph Cuffari (June 5, 2020).

<sup>388</sup> *Id.*

<sup>389</sup> Interview with (b) (3) (B), (b) (6) (July 28, 2020).

<sup>390</sup> *Id.*

<sup>391</sup> Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).

<sup>392</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>393</sup> *Id.*

<sup>394</sup> Interview with (b) (6) (Aug. 7, 2020).

<sup>395</sup> Interview with (b) (3) (B), (b) (6) (July 31, 2020).

<sup>396</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>397</sup> Interview with (b) (3) (B), (b) (6) (Aug. 20, 2020).

<sup>398</sup> Interview with (b) (3) (B), (b) (6) (Aug. 4, 2020).

<sup>399</sup> Interview with (b) (6) (Aug. 24, 2020).

<sup>400</sup> *Id.*

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created a culture of “us versus them” between the SES employees and the non-SES employees.<sup>401</sup> (b) (3) (B), (b) (6) described (b) (6) as aggressive and self-centered.<sup>402</sup>

According to DHS OIG employees, (b) (6) was especially unprofessional towards IG Cuffari. (b) (6), (b) (3) (B), (b) (6), stated that (b) (6) relationship with IG Cuffari was very unprofessional.<sup>403</sup> She said that (b) (6) and IG Cuffari seemingly never spoke to each other and that the environment in the office deteriorated, which in part drove (b) (3) (B), (b) (6) to look for a new job.<sup>404</sup> (b) (3) (B), (b) (6), (b) (3) (B), (b) (6) (b) (3) (B), said (b) (6) and IG Cuffari had a “uniquely cold” relationship.<sup>405</sup>

(b) (3) (B), (b) (6), (b) (3) (B), (b) (6), stated that in September or October 2019, (b) (6) complained to (b) (3) (B), (b) (6) that IG Cuffari was not qualified for his role, citing that he had a degree from a “degree mill university.”<sup>406</sup> He said that (b) (6) had a number of discussions with DHS OIG personnel concerning IG Cuffari’s inability to appropriately lead DHS OIG.<sup>407</sup> (b) (3) (B), (b) (6) recalled that (b) (6) asked (b) (3) (B), (b) (6) and others to contribute to a memo to IG Cuffari about his leadership capabilities.<sup>408</sup> According to (b) (3) (B), (b) (6), toward the end of (b) (6) tenure, she became highly emotional and fixated on IG Cuffari’s actions because she wanted to be the IG.<sup>409</sup> (b) (3) (B), (b) (6) said that (b) (6) even complained that IG Cuffari would not meet with her or respond to her calls or emails.<sup>410</sup> (b) (3) (B), (b) (6) believed (b) (6) sent emails to IG Cuffari simply to antagonize him.<sup>411</sup> (b) (3) (B), (b) (6) said that during senior staff meetings, (b) (6) appeared disconnected, did not pay attention to IG Cuffari while he was speaking, and often times made unpleasant faces.<sup>412</sup>

(b) (3) (B), (b) (6) stated that (b) (6) asked him and (b) (3) (B), (b) (6) to write letters to CIGIE informing them that the OIG was in shambles and that IG Cuffari was not capable of running the agency.<sup>413</sup> (b) (3) (B), (b) (6) said he and (b) (3) (B), (b) (6) refused.<sup>414</sup> (b) (3) (B), (b) (6) told us that he did not recall this request, but he did recall (b) (6) asking the AIGs to provide her with information about how IG Cuffari’s actions were negatively impacting their programs.<sup>415</sup>

(b) (3) (B), (b) (6), (b) (3) (B), (b) (6), recalled that (b) (6) called him a couple of times in the fall of 2019 to complain about IG Cuffari.<sup>416</sup> In the calls, (b) (6) said she thought

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<sup>401</sup> Interview with (b) (3) (B), (b) (6) (Aug. 20, 2020).

<sup>402</sup> Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).

<sup>403</sup> Interview with (b) (3) (B), (b) (6) (July 23, 2020).

<sup>404</sup> *Id.*

<sup>405</sup> Interview with (b) (3) (B), (b) (6) (July 8, 2020).

<sup>406</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>407</sup> *Id.*

<sup>408</sup> *Id.*

<sup>409</sup> *Id.*

<sup>410</sup> *Id.*

<sup>411</sup> *Id.*

<sup>412</sup> *Id.*

<sup>413</sup> Interview with (b) (3) (B), (b) (6) (July 28, 2020).

<sup>414</sup> *Id.*

<sup>415</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020); Interview with (b) (3) (B), (b) (6) (Sept. 14, 2020).

<sup>416</sup> Interview with (b) (3) (B), (b) (6) (Sept. 17, 2020).

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IG Cuffari was doing “illegal things.”<sup>417</sup> (b) (3) (B), (b) (6) stated that (b) (6) made several comments disparaging IG Cuffari’s background and lack of experience, and said he was not qualified to be IG.<sup>418</sup> (b) (3) (B), (b) (6) also said that (b) (6) would undermine IG Cuffari by sending emails to staff immediately after IG Cuffari’s emails undercutting him, or not copying him on certain emails.<sup>419</sup> Similarly, (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), explained that (b) (6) tried to undermine everything that IG Cuffari tried to do through her comments and body language.<sup>420</sup> (b) (3) (B), (b) (6) did not recall specific examples, but said she heard (b) (6) ranting about what the IG was doing.<sup>421</sup>

In addition to (b) (6), text messages between (b) (6) and (b) (6) on DHS OIG cellphones contained additional disparaging comments about IG Cuffari. For example, on November 7, 2019, (b) (6) wrote a text message to (b) (6) about IG Cuffari, to which (b) (6) responded, “Can’t do anything but laugh. He is an idiot.”<sup>422</sup>

### C. (b) (6) and (b) (6) Attempt to Investigate IG Cuffari

On August 23, 2019, approximately a month after his confirmation, IG Cuffari—who is from Arizona—announced that he was going to travel to Tucson in late October 2019.<sup>423</sup> IG Cuffari planned to meet the Tucson Sector Chief, the Arizona National Guard Colonel, and other Arizona officials on the trip, and to tour a detention facility.<sup>424</sup> (b) (6) forwarded the email from IG Cuffari to (b) (6), writing, “Tucson sector chief? National guard? FBI?”<sup>425</sup>

That same day, (b) (6) called (b) (6), (b) (7) (C), who was on vacation, to tell her about the trip.<sup>426</sup> According to (b) (3) (B), (b) (6), (b) (6) told her that IG Cuffari was planning a trip to the Southwest border and that (b) (6) was concerned that the trip would be perceived as “pretextual” because IG Cuffari was visiting the city where his family lived.<sup>427</sup> (b) (3) (B), (b) (6) said (b) (6) was responsible for approving IG Cuffari’s travel.<sup>428</sup>

After speaking with (b) (6), (b) (3) (B), (b) (6) called (b) (3) (B), (b) (6), (b) (3) (B), (b) (6) (b) (3) (B), (b) (6).<sup>429</sup> (b) (3) (B), (b) (6) reported that (b) (6) asked him to investigate IG Cuffari’s travel because (b) (6) believed the travel was illegitimate and for personal reasons.<sup>430</sup> (b) (3) (B), (b) (6) further noted that (b) (6) told him that (b) (6) had no confidence in IG

<sup>417</sup> *Id.*

<sup>418</sup> *Id.*

<sup>419</sup> *Id.*

<sup>420</sup> Interview with (b) (3) (B), (b) (6) (Sept. 17, 2020).

<sup>421</sup> *Id.*

<sup>422</sup> Text message between (b) (6) and (b) (6).

<sup>423</sup> WHDHS-00000187.

<sup>424</sup> *Id.*

<sup>425</sup> WHDHS-00000188

<sup>426</sup> (b) (3) (B), (b) (6) Memorandum to File (Aug. 26, 2019); Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).

<sup>427</sup> Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).

<sup>428</sup> *Id.*

<sup>429</sup> *Id.*

<sup>430</sup> Interview with (b) (3) (B), (b) (6) (July 28, 2020).

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Cuffari and was looking for reasons to question him.<sup>431</sup> (b) (3) (B), (b) (6) refused (b) (6) request to investigate and stated that it was inappropriate for (b) (6) to be investigating the IG.<sup>432</sup>

For her part, (b) (3) (B), (b) (6) admitted that she called (b) (3) (B), (b) (6) about the Southwest border trip, but claimed she only asked (b) (3) (B), (b) (6) for details about IG Cuffari's trip because he was helping plan the itinerary; she denied ever asking him to investigate IG Cuffari.<sup>433</sup> (b) (3) (B), (b) (6) acknowledged, however, that (b) (3) (B), (b) (6) responded that it was inappropriate to raise such concerns about IG Cuffari's travel to him.<sup>434</sup> (b) (3) (B), (b) (6) disagreed, believing it was (b) (3) (B), (b) (6) responsibility to alert IG Cuffari that the trip could be perceived as inappropriate.<sup>435</sup> Nevertheless, (b) (3) (B), (b) (6) claimed that after speaking to (b) (3) (B), (b) (6), she came away satisfied that the trip was appropriate for the IG to take.<sup>436</sup>

Immediately after speaking with (b) (6) (b) (3) (B), (b) (6) called IG Cuffari and relayed to him what had happened.<sup>437</sup> IG Cuffari described (b) (3) (B), (b) (6) as very upset on the call.<sup>438</sup> Three days later, (b) (3) (B), (b) (6) wrote a memorandum to file memorializing his conversation with (b) (6) (b) (6).<sup>439</sup> The memorandum stated, in part, as follows:

(b) (6) said that she had spoken with (b) (6) and that she (b) (6) was concerned that the IG was travelling to Tucson for personal reasons and not for legitimate OIG business. I explained that reviewing the IG's travel was outside the bounds of what was appropriate. I further explained that I did not question or review (b) (6) or (b) (6) travel because it wouldn't be appropriate, therefore, reviewing the IG's travel was completely ridiculous. (b) (6) said that (b) (6) had no confidence in the IG and that she (b) (6) was obviously looking for reasons to question him. (b) (6) said that (b) (6) believed Dr. Cuffari was only travelling under the auspices of official work, but that he was actually visiting family.<sup>440</sup>

During his interview, (b) (3) (B), (b) (6) explained that he wrote the memorandum because he was concerned about the propriety of (b) (6) request to investigate the IG.<sup>441</sup> He also rejected (b) (6) claim that she was merely seeking information about IG Cuffari's travel.<sup>442</sup>

After receiving (b) (3) (B), (b) (6) call, IG Cuffari emailed (b) (6) about her request.<sup>443</sup> He wrote to (b) (6), "I understand you have expressed concerns about my planned travel and visit

<sup>431</sup> (b) (3) (B), (b) (6) Memorandum to File.

<sup>432</sup> *Id.* See also Interview with (b) (3) (B), (b) (6) (July 28, 2020).

<sup>433</sup> Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).

<sup>434</sup> *Id.* See also (b) (3) (B), (b) (6) August 26, 2019 Memorandum to File.

<sup>435</sup> Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).

<sup>436</sup> *Id.*

<sup>437</sup> Interview with (b) (3) (B), (b) (6) (July 28, 2020).

<sup>438</sup> Interview with Joseph Cuffari (June 5, 2020).

<sup>439</sup> (b) (3) (B), (b) (6) August 26, 2019 Memorandum to File.

<sup>440</sup> *Id.*

<sup>441</sup> Interview with (b) (3) (B), (b) (6) (July 28, 2020).

<sup>442</sup> *Id.*

<sup>443</sup> WHDHS-00000189.



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to Arizona in October 2019,” and he explained the reasons for the trip.<sup>444</sup> IG Cuffari asked (b) (6) (b) (6) to “identify the specific facts and circumstances that caused [her] to be concerned about [his] travel activity.”<sup>445</sup>

On August 26, 2019, at 6:41 a.m., (b) (6) forwarded IG Cuffari’s message to (b) (6) with multiple question marks in the body of her message.<sup>446</sup> Later that same day, at 8:19 a.m., (b) (6) responded to IG Cuffari’s email, writing:

(b) (5)

(b) (6) followed up later that afternoon with more information on official travel.<sup>448</sup> With regard to the Southwest border trip, she wrote that IG Cuffari’s (b) (5)

[Redacted block]

In her interview, (b) (3) (B), (b) (6) denied that she was trying to “set up” IG Cuffari regarding his travel or requesting that (b) (3) (B), (b) (6) investigate the matter.<sup>451</sup> Instead, she insisted that she was looking out for IG Cuffari and the agency.<sup>452</sup> She stated that she was just trying “to protect [her] client.”<sup>453</sup> When asked why she did not go directly to her client to discuss her concerns, (b) (3) (B), (b) (6) said (b) (3) (B), (b) (6) knew the details about IG Cuffari’s itinerary.<sup>454</sup> (b) (3) (B), (b) (6) also pointed out that she later provided advice to IG Cuffari about the travel situation, albeit only after (b) (3) (B), (b) (6) refused her request and notified IG Cuffari of their conversation.<sup>455</sup> (b) (6) claims that she was acting solely to protect IG Cuffari are implausible given her earlier efforts to scuttle IG Cuffari’s confirmation and undermine him once he had arrived.<sup>456</sup>

<sup>444</sup> *Id.*

<sup>445</sup> *Id.*

<sup>446</sup> *Id.*

<sup>447</sup> WHDHS-00000452.

<sup>448</sup> *Id.*

<sup>449</sup> *Id.*

<sup>450</sup> *Id.*

<sup>451</sup> Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).

<sup>452</sup> *Id.*

<sup>453</sup> *Id.*

<sup>454</sup> *Id.*

<sup>455</sup> *Id.*

<sup>456</sup> We also reviewed multiple allegations related to (b) (6), (b) (6) and (b) (6) obtaining IG Cuffari’s email and the email of other DHS OIG employees without legitimate need or authority. We found no evidence indicating that (b) (6), (b) (6), or (b) (6) accessed IG Cuffari’s emails, improperly or otherwise. (b) (3) (B), (b) (6) (b) (3) (B), (b) (6) stated he was not aware of any such conduct. Interview with (b) (3) (B), (b) (6) (Sept. 21, 2020). In their interviews, (b) (3) (B), (b) (6) and (b) (3) (B), (b) (6) denied trying to access IG Cuffari’s

~~Privileged & Confidential~~~~Attorney Work Product~~**D. (b) (6) Accuses IG Cuffari of Unethical Conduct**

Less than one week after the travel incident with (b) (6), IG Cuffari confronted another accusation from (b) (6) that he was acting inappropriately. During IG Roth's tenure, DHS OIG had accepted a request from the IG for the Intelligence Community to review a complaint filed by a former Central Intelligence Agency ("CIA") employee.<sup>457</sup> IG Cuffari recused himself from the investigation because it involved former CIA IG David Buckley, who was Dr. Cuffari's friend.<sup>458</sup> Although there was some confusion about how to effectuate IG Cuffari's recusal, (b) (6). (b) (6) ultimately handled the matter on behalf of the agency.<sup>459</sup> But when IG Cuffari inadvertently joined a meeting about the matter, (b) (6) came to his office shortly after the meeting and told him that she was going to report him to Michael Horowitz, the Chair of CIGIE.<sup>460</sup>

The investigation involved a CIA employee who alleged that CIA IG officials, including CIA IG Buckley, retaliated against him by suspending his security clearance and putting him on administrative leave.<sup>461</sup> DHS OIG investigated and partially substantiated the allegations.<sup>462</sup> On April 25, 2019, DHS OIG completed its investigation and (b) (6) signed the Report on Investigation ("ROI").<sup>463</sup>

Emails show that the ROI underwent additional reviews and revisions after (b) (6) retirement and was not ready for distribution until August 2019.<sup>464</sup> On August 7, 2019, (b) (6) emailed herself talking points for a meeting with IG Cuffari that laid out the background of the investigation, high-level findings, and the next steps regarding closing out the matter.<sup>465</sup> The talking points included the following bullets:

- (1) "Potential conflict of interest - The ROI substantiates the retaliation allegations against former CIA IG David Buckley, who was present at Dr. Cuffari's HSGAC hearing and supported his nomination. [Buckley may have overlapped/worked with Dr. Cuffari during his time at the DOD IG, but I have not confirmed this.];" and
- (2) "[s]ince this investigation was completed prior to your confirmation, and given your relationship with CIA IG Buckley, I would recommend that you be recused from the

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emails or the emails of other OIG employees. See Interview with (b) (3) (B), (b) (5) (Aug. 28, 2020); see also Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

<sup>457</sup> DHS OIG Investigative Summary, Unclassified Summary, CIA OIG Employee Whistleblower Retaliation Complaint (Aug. 8, 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2019/I16-NON-DHS-SID-18500.pdf>.

<sup>458</sup> Interview with Joseph Cuffari (June 5, 2020); DHS OIG Timeline (06/08/2020).

<sup>459</sup> See Interview with Joseph Cuffari (June 5, 2020).

<sup>460</sup> *Id.*

<sup>461</sup> DHS OIG Investigative Summary, Unclassified Summary, CIA OIG Employee Whistleblower Retaliation Complaint (Aug. 8, 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2019/I16-NON-DHS-SID-18500.pdf>.

<sup>462</sup> *Id.*

<sup>463</sup> WHDHS-00000336.

<sup>464</sup> WHDHS-00000329.

<sup>465</sup> WHDHS-00000336.

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matter. If you concur, I will handle any requests we may receive about the matter. If any such requests come to you directly, you can just refer them to me.”<sup>466</sup>

IG Cuffari met with (b) (6) and (b) (6) on August 9, 2019.<sup>467</sup> According to IG Cuffari, they provided an overview of the investigation, and explained that the unclassified version of the report was ready for his review.<sup>468</sup> IG Cuffari explained to (b) (6) and (b) (6) that he had recused himself from participation in the matter.<sup>469</sup>

On August 28, 2019, IG Cuffari’s assistant received a call from the (b) (6), (b) (6) (b) (6), requesting an in-person meeting with him to discuss the investigation.<sup>470</sup> IG Cuffari stated that he instructed his assistant to inform (b) (6) that he was recused from the matter.<sup>471</sup>

(b) (6) came to DHS OIG to discuss the matter the following day, August 29, 2019.<sup>472</sup> (b) (6) sent an invitation for the meeting listing (b) (6) and (b) (6) as the required attendees and containing a note that read “Report issued – Retaliation WPU that occurred at CIA.”<sup>473</sup> Despite the location of the meeting being the “IG’s office,” IG Cuffari was not included on the invitation.<sup>474</sup> Nevertheless, IG Cuffari ended up in the meeting and was apparently caught off-guard when the subject of the investigation arose.<sup>475</sup> IG Cuffari reiterated that he was recused from the matter and excused himself from the meeting.<sup>476</sup>

According to IG Cuffari, (b) (6) came to him after the meeting, stating that the investigation was discussed in his presence and that she planned to inform Mr. Horowitz about the matter.<sup>477</sup> We uncovered no evidence that (b) (6) actually followed through on her statement by notifying IG Horowitz or anyone else at CIGIE about the incident, and both (b) (6) and (b) (6) declined our requests for interviews. Although it does not appear that (b) (6) or (b) (6) intentionally sought to include IG Cuffari in the meeting about a matter from which he was recused, (b) (6) appears to have taken advantage of the mix-up to suggest that IG Cuffari engaged in unethical behavior and to further challenge his authority.

#### E. (b) (6) and (b) (6) Allege that IG Cuffari Violated the IG Act

In November 2019, (b) (6) and (b) (6) sparred with IG Cuffari over the publication of an investigative report arising from a whistleblower complaint that had been referred to DHS OIG

<sup>466</sup> *Id.*

<sup>467</sup> Interview with Joseph Cuffari (June 5, 2020). We also confirmed the date of this meeting through an email review of calendar invitations. Our review uncovered a calendar invitation for a meeting on August 9, 2019 with required attendees, IG Cuffari and (b) (6), and titled, “Meeting – (b) (6).” WHDHS-00000338.

<sup>468</sup> Interview with Joseph Cuffari (June 5, 2020).

<sup>469</sup> *Id.*

<sup>470</sup> *Id.*

<sup>471</sup> *Id.*

<sup>472</sup> See WHDHS-00000184.

<sup>473</sup> *Id.*

<sup>474</sup> *Id.*

<sup>475</sup> Interview with Joseph Cuffari (June 5, 2020).

<sup>476</sup> *Id.*

<sup>477</sup> *Id.*

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from the OSC.<sup>478</sup> The OSC complained that the report, herein referred to as the “Tecate Report,” had been published before the OSC could finish its own review, but (b) (6) and (b) (6) insisted that the law required its publication and dismissed contrary views.<sup>479</sup> After conducting research on the question, (b) (3) (B), (b) (6) (b) (5) but by that point, publication had already led to unnecessary conflict with the OSC and with IG Cuffari.

Specifically, in 2018, the OSC referred allegations concerning possible violations of immigration law at the Tecate, California Port of Entry to DHS OIG for investigation.<sup>481</sup> (b) (6) directed the investigation and drafted the Tecate Report.<sup>482</sup> Emails show that (b) (6) sent (b) (6) and (b) (6) the draft report on June 28, 2019, noting that (b) (6), had already reviewed and approved it.<sup>483</sup> (b) (6) warned (b) (6) that the OSC would be “unhappy” if DHS OIG posted the report before the OSC completed its review process, but that the IG Act may require it to be published before then.<sup>484</sup> (b) (6) told (b) (6) she believed the report should be published.<sup>485</sup>

On September 5, 2019, (b) (6) emailed IG Cuffari to inform him that DHS OIG planned to publish the Tecate Report, but (b) (6) did not flag the potential for the OSC to take issue with the publication of the report.<sup>486</sup> Approximately three weeks later, DHS OIG published the report on its website.<sup>487</sup> The OSC had not yet concluded its review process at the time.<sup>488</sup> To make matters worse, the report contained the name of the whistleblower, who had agreed to disclose his name to Congress and DHS OIG, but did not consent to have his or her name included in the public report.<sup>489</sup>

The OSC notified the DHS Assistant General Counsel—who subsequently informed (b) (3) (B), (b) (6)—that the whistleblower raised concerns about being named in the report.<sup>490</sup> In his interview, (b) (3) (B), (b) (6) explained that DHS OIG’s report initially disclosed the whistleblower’s name due to a misunderstanding over the whistleblower’s consent.<sup>491</sup> (b) (6) emailed the

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<sup>478</sup> WHDHS-00000315; WHDHS-00000299.

<sup>479</sup> WHDHS-00000195; WHDHS-00000347; WHDHS-00000303; WHDHS-00000351.

<sup>480</sup> Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).

<sup>481</sup> WHDHS-00000858.

<sup>482</sup> Interview with (b) (3) (B), (b) (6) (July 16, 2020).

<sup>483</sup> WHDHS-00000413.

<sup>484</sup> *Id.*

<sup>485</sup> *Id.*

<sup>486</sup> WHDHS-00000342.

<sup>487</sup> Investigation of Alleged Violations of Immigration Laws at the Tecate, California, Port of Entry by U.S. Customs and Border Protection Personnel, Dep’t. of Homeland Sec., Off. Of the Inspector Gen., (Sept. 26, 2019),

(b) (3) (B), (b) (6), (b) (7)(C)

<sup>488</sup> See WHDHS-00000195.

<sup>489</sup> WHDHS-00000858.

<sup>490</sup> Interview with (b) (3) (B), (b) (6) (July 16, 2020); WHDHS-00000858.

<sup>491</sup> Interview with (b) (3) (B), (b) (6) (July 16, 2020); WHDHS-00000858.

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whistleblower to apologize for the disclosure.<sup>492</sup> On October 28, 2019, a redacted version of the Tecate Report was re-published on DHS OIG's website.<sup>493</sup>

Also in October 2019, (b) (6) and (b) (6) discussed publishing the Tecate report with (b) (6).<sup>494</sup> (b) (6) said that the report was required to be published under the IG Act.<sup>495</sup> In her email memorializing the conversation with (b) (6), (b) (6) noted that (b) (6) expressed frustration with DHS OIG's decision to post the Tecate Report prior to the OSC's completion of its review process and asked for advance notice in the future.<sup>496</sup>

On November 8, 2019, IG Cuffari spoke to (b) (6), about the Tecate Report.<sup>497</sup> In a follow up letter to IG Cuffari on November 14, 2019, (b) (6) expressed his concerns about DHS OIG's report and requested that DHS OIG "refrain from publishing its report publicly until the OSC review process was complete."<sup>498</sup>

On November 26, 2019, IG Cuffari directed (b) (6) to remove the Tecate Report from OIG's website.<sup>499</sup> IG Cuffari's memorandum stated:

I recently learned that on September 26, 2019, our office published on our external website, OSC File Number DI-18-58035 (OIG-19-65). This publication was unredacted, disclosed the whistleblower's name, and published before the Office of Special Counsel had completed its inquiry.

I am directing you to immediately [sic] take all appropriate action to remove OSC File Number DI-18-58035 from public view and remediate the disclosure by close of business today.<sup>500</sup>

That same day, (b) (6) replied to IG Cuffari explaining that the report had already been replaced with a redacted version, rectifying the whistleblower's concerns.<sup>501</sup> The following day, IG Cuffari emailed (b) (6) again directing her to comply with his instructions to remove the Tecate Report from OIG's website.<sup>502</sup> (b) (6) replied, "Joe, it's already been removed and redacted. Per my email below, we took prompt action when we first learned of the issue weeks ago. (b) (6) sent you a copy of the redacted version that is now on our website. Do you still want it removed even though the issue you identified has already been addressed? If so please confirm and I will have (b) (6) remove it."<sup>503</sup> IG Cuffari directed that the redacted version be

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<sup>492</sup> WHDHS-00000349.

<sup>493</sup> WHDHS-00000317.

<sup>494</sup> WHDHS-00000195.

<sup>495</sup> WHDHS-00000347.

<sup>496</sup> WHDHS-00000195.

<sup>497</sup> WHDHS-00000858.

<sup>498</sup> *Id.*

<sup>499</sup> WHDHS-00000315.

<sup>500</sup> *Id.*

<sup>501</sup> WHDHS-00000299.

<sup>502</sup> *Id.*

<sup>503</sup> *Id.*

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removed from the website.<sup>504</sup> Per IG Cuffari's instructions, (b) (3) (B), (b) (6) arranged for the Tecate Report to be removed from the website.<sup>505</sup>

On December 4, 2019, (b) (6) drafted and sent a memorandum to IG Cuffari addressing the concerns that the Tecate Report disclosed the whistleblower's name.<sup>506</sup> The memorandum explained that "the disclosure of the complainant's name was an inadvertent error" and was "remediated immediately."<sup>507</sup>

On January 15, 2020, (b) (6), emailed (b) (6), (b) (6), (b) (6) and (b) (6) asking (b) (5).<sup>508</sup> (b) (6) forwarded the email to (b) (6), (b) (6), and (b) (6) writing dismissively, "I can't even."<sup>509</sup> The following day, (b) (6) sent (b) (6) talking points which included the reasons why she believed removing the Tecate Report would contravene the IG Act.<sup>510</sup>

Later, (b) (3) (B), (b) (6) researched the issue of whether the IG Act required the Tecate Report to be published.<sup>511</sup> (b) (3) (B), (b) (6) concluded that (b) (6) (b) (5) As (b) (3) (B), (b) (6) explained in her interview, (b) (5)

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<sup>504</sup> *Id.*

<sup>505</sup> Interview with (b) (3) (B), (b) (6) (July 27, 2020).

<sup>506</sup> WHDHS-00000316; WHDHS-00000317.

<sup>507</sup> WHDHS-00000317.

<sup>508</sup> WHDHS-00000303.

<sup>509</sup> *Id.*

<sup>510</sup> WHDHS-00000351.

<sup>511</sup> Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).

<sup>512</sup> *See id.*

<sup>513</sup> *Id.* Section 4(e)(1) of the Inspector General Act ("IG Act") provides that "whenever an Inspector General *issues a recommendation* for corrective action to the agency," the Inspector General must, among other things, (a) "submit the document making a recommendation for corrective action to the head of the establishment" and (b) "not later than 3 days after the recommendation for corrective action is submitted in final form to the head of the establishment, post the document making a recommendation for corrective action on the website of the Office of Inspector General." 5a U.S.C. § 4(e)(1) (emphasis added). The Tecate Report expressly states it "contains no recommendations." The Tecate Report, *supra* note 488. (b) (5) Additionally, Section 8M(b)(1)(A) of the IG Act provides, in part that: "The Inspector General of each Federal agency and designated Federal entity shall . . . not later than 3 days after any audit report, inspection report, or evaluation report (or portion of any such report) is submitted in final form to the head of the Federal agency or the head of the designated Federal entity, as applicable, post that report (or portion of that report) on the website of the Office of Inspector General." 5a U.S.C. § 8M(b)(1)(A). Audits, inspections, and evaluations are different from investigations. *See* Congressional Research Service, Statutory Inspectors General in the Federal Government: A Primer (Jan. 3, 2019) available at [https://www.everycrsreport.com/files/20190103\\_R45450\\_b79ea6a64860e857714e961814cc0c206ad135ef.pdf](https://www.everycrsreport.com/files/20190103_R45450_b79ea6a64860e857714e961814cc0c206ad135ef.pdf) (explaining that "IG audits and inspections or evaluations include programmatic analysis, which may involve analyses related to the compliance, internal control, or efficiency and effectiveness of agency programs and operations. . . . IG investigations, by contrast, typically include nonprogrammatic analysis and instead focus primarily on alleged misuse or mismanagement of an agency's programs, operations, or resources . . ."). (b) (5)

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(b) (6) and (b) (6) (b) (5) [redacted] The facts do not establish that (b) (6) or (b) (6) (b) (6) were intentionally untruthful about the obligations of the IG Act, but nevertheless provided incorrect information on multiple occasions to IG Cuffari and the OSC and were obstinate when others questioned their position.

**F. (b) (6) and (b) (6) Seek to Withhold Information from IG Cuffari**

Current and former DHS OIG employees raised concerns that (b) (6) and (b) (6) had sought to withhold information from IG Cuffari, and that (b) (6) insisted that the agency's business run through her.

(b) (6) at the time, reported that in mid-September 2019, (b) (6) (b) (6) called him and asked why he had not provided the draft reports on a child migrant death investigation to her and (b) (6).<sup>514</sup> (b) (6) responded that he had provided the draft reports to IG Cuffari.<sup>515</sup> (b) (3) (B), (b) (6) recalled that (b) (6) became angry and demanded to know why he had done that, to which (b) (3) (B), (b) (6) responded that IG Cuffari had requested them.<sup>516</sup> According to (b) (3) (B), (b) (6), (b) (6) stated that draft reports should not be given to IG Cuffari.<sup>517</sup> (b) (6) also reminded (b) (6) that she was his "rating official."<sup>518</sup> (b) (3) (B), (b) (6) stated that (b) (6) gave him that same reminder several more times over the next few weeks.<sup>519</sup>

At the time, (b) (3) (B), (b) (6) was a new SES employee and still in the one-year probationary period during which the agency evaluates a new SES employee's performance.<sup>520</sup> As a result, a bad performance review from (b) (6) could lead to (b) (3) (B), (b) (6) removal from an SES position.<sup>521</sup> (b) (6), (b) (3) (B) viewed (b) (6) statements that she was his "rating official" as implicit threats that she could jeopardize his employment status if he did not accede to her demands.<sup>522</sup>

On or around September 23, 2019, (b) (6) summoned (b) (3) (B), (b) (6) to her office for a meeting.<sup>523</sup> According to (b) (3) (B), (b) (6), (b) (6) stated that she wanted to wait for (b) (6)

(b) (5)

<sup>514</sup> Memo from (b) (3) (B), (b) (6) (Nov. 21, 2019).

<sup>515</sup> *Id.*

<sup>516</sup> Interview with (b) (3) (B), (b) (6) (July 28, 2020).

<sup>517</sup> *Id.*

<sup>518</sup> *Id.*

<sup>519</sup> *Id.*

<sup>520</sup> *Id.*

<sup>521</sup> Addressing Poor Performance, Sr. Exec. Service, <https://www.opm.gov/policy-data-oversight/senior-executive-service/adverse-actions/ses-addressing-poor-performance-fact-sheet.pdf> (last visited 12/12/2020) (noting that "the agency may remove" an employee "from the SES based upon unacceptable performance" during the probationary period).

<sup>522</sup> Interview with (b) (3) (B), (b) (6) (July 28, 2020).

<sup>523</sup> Memo from (b) (3) (B), (b) (6) (Nov. 21, 2019).

<sup>523</sup> *Id.*

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(b) (6) before beginning the meeting, but eventually began when (b) (6) did not arrive.<sup>524</sup> In the meeting, (b) (6) again expressed her anger that (b) (3) (B), (b) (6) had provided IG Cuffari with the draft reports, and stated that IG Cuffari was not capable of running the agency.<sup>525</sup> (b) (6) once again reminded (b) (3) (B), (b) (6) that she was his “rating official.”<sup>526</sup> (b) (3) (B), (b) (6) explained that he felt “extremely threatened and intimidated.”<sup>527</sup> At that time, (b) (3) (B), (b) (6) announced to (b) (6) that he was immediately stepping down as (b) (3) (B), (b) (6) and returning to his role as (b) (3) (B), (b) (6) for personal reasons.<sup>528</sup>

(b) (3) (B), (b) (6), the (b) (3) (B), (b) (6), stated that (b) (6), like (b) (6), also made a concerted effort to prevent information from reaching IG Cuffari, including information about disciplinary matters.<sup>529</sup> (b) (3) (B), (b) (6) conclusion was based on his own interactions with (b) (6) and what he had heard from at least three other people.<sup>530</sup> (b) (3) (B), (b) (6) said (b) (6) eventually insisted that (b) (3) (B), (b) (6) stop meeting directly with IG Cuffari.<sup>531</sup>

(b) (3) (B), (b) (6) also believed that (b) (6), (b) (6) and (b) (6) kept important information from IG Cuffari.<sup>532</sup> After being removed from the (b) (3) (B), (b) (6) and being detailed to the (b) (6), (b) (6), (b) (3) (B), (b) (6) continued to (b) (3) (B), (b) (6).<sup>533</sup> When she attempted to send that information to IG Cuffari directly (rather than to (b) (6), who had replaced (b) (3) (B), (b) (6) as (b) (3) (B), (b) (6)), (b) (6) admonished (b) (3) (B), (b) (6), writing “was there anything unclear in my earlier email (attached) that any communications you received as a result of your former job duties you must forward only to (b) (6).”<sup>534</sup> When (b) (3) (B), (b) (6) noted that she had heard through “rumors in the building” that IG Cuffari wanted to see everything that was addressed to his attention, (b) (6) scolded her, writing, “You’re a GS-15, and you ignored my instructions based on ‘rumors in the building.’”<sup>535</sup>

#### G. (b) (6) and (b) (6) Charge IG Cuffari with Abusing his Authority Regarding the Telework Policy

Early in IG Cuffari’s tenure, a decision about whether to permit a DHS OIG employee to telework from across the country—and broader discussions about the agency’s telework policy—escalated from a respectful disagreement to bitter conflict that created further animosity and distrust among

<sup>524</sup> Interview with (b) (3) (B), (b) (6) (July 28, 2020).

<sup>525</sup> *Id.*

<sup>526</sup> Memo from (b) (3) (B), (b) (6) (Nov. 21, 2019).

<sup>527</sup> *Id.*

<sup>528</sup> *Id.*

<sup>529</sup> Interview with (b) (3) (B), (b) (6) (July 27, 2020).

<sup>530</sup> *Id.* (b) (3) (B), (b) (6) did not provide the names of the other three people he mentioned.

<sup>531</sup> *Id.* (b) (3) (B), (b) (6) also believed (b) (6) informed (b) (6) of all Dr. Cuffari’s meetings and calls. *Id.* However, we found no documentary evidence of this practice.

<sup>532</sup> Interview with (b) (3) (B), (b) (6) (Aug. 10, 2020).

<sup>533</sup> *Id.*

<sup>534</sup> WHDHS-00000454.

<sup>535</sup> *Id.*



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the agency's leadership. As with previous episodes, (b) (6) and (b) (6) challenged IG Cuffari, claiming that he was acting inappropriately and abusing his authority.

In October 2019, (b) (6), (b) (3) (B), (b) (6), notified his supervisors, including (b) (6), that he planned to move to (b) (6) in November 2019 (b) (6).<sup>536</sup> (b) (6) asked to expand his telework agreement to the maximum extent permitted by law and DHS OIG policy so that he could work from his new home in (b) (6).<sup>537</sup> By all accounts, (b) (6) was an excellent employee, and his request raised difficult questions about the wisdom of permitting telework so far from DHS OIG's headquarters.<sup>538</sup> Under DHS OIG's policy at the time, employees could telework if they received written approval from their supervisors and physically reported to their duty station at least two days per pay period.<sup>539</sup> The policy was silent on the issue of long-distance telework, but it made clear that telework was a management prerogative rather than an employee right.<sup>540</sup>

(b) (6) flagged the telework request for IG Cuffari and sought his feedback on her plan to approve the request.<sup>541</sup> On October 15, 2019, (b) (6) emailed IG Cuffari to ask whether he had any input given that (b) (6) would be departing for (b) (6) in three weeks.<sup>542</sup> She wrote that the arrangement "would merely require a modification to [(b) (6)] telework agreement, permitting him to telework to the full extent allowable (i.e., reporting to HQ twice per pay period), like many other OIG employees currently do."<sup>543</sup> (b) (6) argued that the telework arrangement would be "cost neutral from the agency's perspective" because (b) (6) would personally pay for his periodic travel to the office.<sup>544</sup>

IG Cuffari was concerned about the financial and operational risks that a long-distance telework arrangement posed to the agency.<sup>545</sup> After meeting with (b) (6) to discuss the issue, IG Cuffari asked for information about the specific request and the agency's telework practices more broadly.<sup>546</sup> He directed (b) (6) to draft a memo detailing whether (b) (6) request complied with agency policy.<sup>547</sup> IG Cuffari specifically asked that (b) (6) explain why she was "concerned that denying the request would give rise to claims that we were treating similarly situated employees differently," including by identifying the employees she believed were similarly situated.<sup>548</sup>

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<sup>536</sup> Interview with (b) (3) (B), (b) (6) (July 16, 2020).

<sup>537</sup> *Id.* See also WHDHS-00000257.

<sup>538</sup> WHDHS-00000224.

<sup>539</sup> WHDHS-00000200.

<sup>540</sup> *See id.*

<sup>541</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

<sup>542</sup> WHDHS-00000344.

<sup>543</sup> *Id.*

<sup>544</sup> *Id.*

<sup>545</sup> WHDHS-00000225; WHDHS-00000485.

<sup>546</sup> WHDHS-00000256.

<sup>547</sup> *Id.*

<sup>548</sup> *Id.*

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Following the receipt of IG Cuffari's request, (b) (6) directed (b) (6) that she not respond to IG Cuffari's request without first consulting with (b) (6) and (b) (6).<sup>549</sup> (b) (6) did not respond directly to IG Cuffari and did not provide the list of employees that IG Cuffari requested.<sup>550</sup> Instead, she drafted a memo and sent it to (b) (6), who submitted it on her behalf.<sup>551</sup> The memo explained why (b) (6) believed (b) (3) (B), (b) (6) telework request complied with DHS OIG's policy and federal law.<sup>552</sup> Though IG Cuffari had asked for additional time to consider the request, (b) (6) told him that she would temporarily approve it.<sup>553</sup>

Per DHS OIG's telework directive, I, as (b) (6) manager, am responsible for approving or disapproving his proposed telework arrangement. ... I fully support his request and believe that a denial of his request would jeopardize the (b) (6) mission. As you know, he and his family are scheduled to move in early November. (b) (3) (B), (b) (6) will continue his employment under a modified telework arrangement while you consider this matter, and pending any official changes to DHS OIG's telework policy.<sup>554</sup>

When transmitting (b) (6) memo to IG Cuffari, (b) (6) did not provide IG Cuffari with the information he requested about other agency employees who supposedly had similar telework arrangements.<sup>555</sup> (b) (6) claimed that it would be "inappropriate" for (b) (6) to provide that information.<sup>556</sup> (b) (6) did not explain why it would be inappropriate to provide the head of the agency with information about which employees, if any, were teleworking from a long distance.<sup>557</sup> Without explanation, (b) (6) opined that there was "no basis" to deny (b) (3) (B), (b) (6) request under the current policy.<sup>558</sup>

Several weeks later, after fully considering the issue, IG Cuffari denied (b) (6) request to telework from (b) (6) in a memorandum explaining the basis for his decision.<sup>559</sup> He expressed concern that approving the arrangement would impair DHS OIG's ability to require (b) (2), (b) (6), (b) (5)

<sup>549</sup> WHDHS-00000659.

<sup>550</sup> WHDHS-00000198.

<sup>551</sup> WHDHS-00000197.

<sup>552</sup> WHDHS-00000198.

<sup>553</sup> *Id.*

<sup>554</sup> *Id.*

<sup>555</sup> *See* WHDHS-00000197.

<sup>556</sup> *Id.*

<sup>557</sup> WHDHS-00000198.

<sup>558</sup> WHDHS-00000197.

<sup>559</sup> WHDHS-00000224.

<sup>560</sup> WHDHS-00000225.

<sup>561</sup> *Id.*

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(b) (2), (b) (6), (b) (5)

At the same time that he denied the request, IG Cuffari also suggested edits to DHS OIG's Grievance Handbook to add telework decisions to the list of decisions exempted from the grievance process.<sup>563</sup> IG Cuffari explained that the telework program, "when effectively administered, is a valuable way to increase productivity," and that any "disputes or other concerns" about the program could be brought directly to the Inspector General rather than handled through the formal grievance process.<sup>564</sup>

(b) (6) responded to the denial with a direct and forceful memo asking IG Cuffari to reconsider his decision.<sup>565</sup> The memorandum challenged IG Cuffari's legal and factual positions, insisting that (b) (3) (B), (b) (6) request was permitted by DHS OIG policy.<sup>566</sup> In addition, the memo challenged not only IG Cuffari's judgment, but also his motives.<sup>567</sup> (b) (6) wrote that she was "frankly shocked and dismayed" that IG Cuffari had characterized the telework discussions as an "administrative burden" given that she viewed them as "relat[ing] to the career and livelihood of a committed, high-performing OIG employee."<sup>568</sup> She further argued that IG Cuffari, "in [her] humble opinion," had committed "an abuse of authority" by modifying the Grievance Handbook, in her view, "purely to deprive an individual employee of the ability to raise concerns about one of [his] decisions."<sup>569</sup>

(b) (6) and (b) (6) pressed IG Cuffari to reconsider as well.<sup>570</sup> (b) (6) emailed IG Cuffari to emphasize that she agreed with (b) (6), stating, "Modifying our grievance and telework policies to target one employee is a clear abuse of your authority as IG."<sup>571</sup> (b) (6) told IG Cuffari that she believed his actions created (b) (5).<sup>572</sup> She explained, (b) (5)

<sup>573</sup> IG Cuffari rejected the notion that he had changed the grievance policy to target (b) (3) (B), (b) (6), noting that "I am the head of this agency and decisions I make are often final."<sup>574</sup>

(b) (3) (B), (b) (6) determined that he would not move back to D.C., and on November 15, 2019 asked for a (b) (6) transition period to "smoothly transfer [his] responsibilities."<sup>575</sup> To accommodate

<sup>562</sup> *Id.*

<sup>563</sup> *See* WHDHS-00000235.

<sup>564</sup> WHDHS-00000224.

<sup>565</sup> WHDHS-00000215; WHDHS-00000216.

<sup>566</sup> WHDHS-00000216.

<sup>567</sup> *Id.*

<sup>568</sup> *Id.*

<sup>569</sup> *Id.*

<sup>570</sup> WHDHS-00000221; WHDHS-00000485.

<sup>571</sup> WHDHS-00000221.

<sup>572</sup> WHDHS-00000485.

<sup>573</sup> *Id.*

<sup>574</sup> *Id.*

<sup>575</sup> WHDHS-00000223.

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this request, IG Cuffari proposed a “situational telework” arrangement that would expire (b) (6). Under this arrangement, IG Cuffari stated that (b) (6) would not be required to travel to Washington, D.C. two days per pay period.<sup>577</sup> IG Cuffari expressed the view that his proposal, rather than the arrangement proposed by (b) (6), would better protect the agency from financial exposure.<sup>578</sup>

(b) (6) intervened in the discussion to question not only IG Cuffari’s decision, but also his leadership.<sup>579</sup> She responded to IG Cuffari’s proposal by accusing him of “unwillingness to follow established OIG policies or to even engage in discussions on these issues with [his] executive team” in a way she found “baffling,” “extraordinarily confusing,” and “concerning on many levels.”<sup>580</sup> She claimed that IG Cuffari’s actions had left OIG’s policies in “complete disarray.”<sup>581</sup> (b) (6) made the “strong recommendation” that IG Cuffari “hold [himself] to the same standards” to which OIG holds senior leaders in DHS who fail to follow DHS policies.<sup>582</sup>

Around this time, as discussed further below, (b) (6) and (b) (6) sent a referral letter to the CIGIE IC charging IG Cuffari with “gross mismanagement” of the agency.<sup>583</sup> Among the allegations contained in the letter, they charged that IG Cuffari had “abused his authority by attempting to modify DHS OIG’s existing policies and procedures to target a particular employee.”<sup>584</sup> (b) (6) notified IG Cuffari that she had referred him to CIGIE.<sup>585</sup>

On November 22, 2019, IG Cuffari emailed (b) (6) to request paperwork to approve the (b) (6) situational telework arrangement.<sup>586</sup> In the email, IG Cuffari outlined the conditions for (b) (6), specifically, that (b) (6) provide IG Cuffari with weekly proposals and certifications of his work and that he not travel without IG Cuffari’s approval.<sup>587</sup> IG Cuffari emphasized that (b) (6) initial telework request “was not within our policy and any manager lacked authority to approve it.”<sup>588</sup>

In late January 2020, IG Cuffari’s (b) (6) (6), (b) (6), told (b) (6) that after (b) (6), (b) (6) (b) (5) continued to resist the decision, arguing that (b) (6) was being treated unfairly because there were other OIG employees who had been permitted to telework from hundreds of miles away.<sup>590</sup> She argued that (b) (6) request should be granted absent a policy change to

<sup>576</sup> WHDHS-00000259.

<sup>577</sup> *Id.*

<sup>578</sup> *Id.*

<sup>579</sup> WHDHS-00000261.

<sup>580</sup> *Id.*

<sup>581</sup> *Id.*

<sup>582</sup> *Id.*

<sup>583</sup> WHDHS-00000305; WHDHS-00000255.

<sup>584</sup> WHDHS-00000305.

<sup>585</sup> WHDHS-00000314.

<sup>586</sup> WHDHS-00000294.

<sup>587</sup> *Id.*

<sup>588</sup> *Id.*

<sup>589</sup> WHDHS-00000354.

<sup>590</sup> *Id.*

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require that employees live within a certain proximity of their duty location, which she claimed would affect many other employees.<sup>591</sup> Again, (b) (6) did not provide IG Cuffari with a list of other employees who were supposedly teleworking from across the country.<sup>592</sup>

On February 27, 2020, IG Cuffari brought this dispute to a close by instructing (b) (6) to notify (b) (6) that his telework agreement would terminate on (b) (6). IG Cuffari explained that the telework agreement he approved for (b) (6) was “always intended to be temporary” and that the arrangement (b) (6) originally approved was “inconsistent” with DHS OIG’s telework directive.<sup>594</sup> IG Cuffari told (b) (6) that the “telework arrangement you approved for (b) (6) subordinated the legitimate mission-related needs of OIG to the personal preferences of an employee who chose to relocate to (b) (6).” Thus, IG Cuffari concluded that he “overruled” (b) (6) “exercise of discretion with regard to (b) (6) telework privileges.”<sup>596</sup>

Consistent with IG Cuffari’s direction, (b) (6) communicated to (b) (6) that his telework agreement was being terminated.<sup>597</sup> She reiterated to (b) (6) that she had been “overruled.”<sup>598</sup> After doing so, she informed (b) (6) that she “respectfully disagree[d] with this decision,” but had notified (b) (6) as instructed.<sup>599</sup>

This debate over whether a single employee should be permitted to telework from (b) (6), against the backdrop of attempts to undermine IG Cuffari’s authority, escalated this issue from a basic policy disagreement to accusations of personal misconduct that further limited the ability of the leadership team to operate effectively. While the communications began for the most part respectful and constructive, (b) (6) escalated the rhetoric by questioning IG Cuffari’s motives and claiming he had abused his authority to punish a particular employee. (b) (6) intervention in the discussion at key points added little substance but added accusations of violations and abuses. The discourse was worsened by repeated assertions—not supported with evidence—that many other OIG employees were long-distance teleworking. The refusal or inability to provide evidence to back their claims created further distrust among the parties. Rather than reaching a constructive resolution of this matter, (b) (6) and (b) (6) charged IG Cuffari with abusing his authority and referred the matter to CIGIE.<sup>600</sup>

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<sup>591</sup> *Id.*

<sup>592</sup> *Id.* Over the course of these discussions, it appears that IG Cuffari was provided with the name of one OIG employee who was teleworking from North Dakota. WHDHS-00000485.

<sup>593</sup> WHDHS-00000323.

<sup>594</sup> *Id.*

<sup>595</sup> *Id.*

<sup>596</sup> *Id.*

<sup>597</sup> WHDHS-00000322.

<sup>598</sup> *Id.*

<sup>599</sup> *Id.*

<sup>600</sup> WHDHS-00000305; WHDHS-00000255. Following the denial of (b) (6) telework request, IG Cuffari asked (b) (6) to set up a telework committee to review DHS OIG’s telework policy and propose possible revisions for his review. WHDHS-00000485. We reviewed an allegation that (b) (6) engaged in professional misconduct and insubordination when she drafted the proposed telework procedures that directly contradicted what IG Cuffari requested. On December 6, 2019, (b) (6) sent IG Cuffari a memorandum on behalf of the telework

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#### H. (b) (6) Failure to Follow IG Cuffari's Directive

We reviewed an allegation that (b) (6) failed to timely report allegations of improprieties against (b) (6) and (b) (6) after being directed to do so by IG Cuffari.

On September 24, 2019, IG Cuffari had a meeting with (b) (6) about a complaint from (b) (6), (b) (3) (B), a (b) (3) (B), (b) (6) in the (b) (3) (B), (b) (6).<sup>601</sup> (b) (6) informed IG Cuffari that (b) (6), (b) (3) (B) had made a complaint to the Senate HSGAC and potentially to CIGIE alleging disparate treatment by (b) (6) and (b) (6).<sup>602</sup> (b) (3) (B), (b) (6) and (b) (3) (B), (b) (6) had previously filed complaints against each other, and (b) (3) (B), (b) (6) alleged that (b) (6) and (b) (6) only investigated (b) (3) (B), (b) (6) complaint and not his because they were her friends with (b) (3) (B), (b) (6).<sup>603</sup> IG Cuffari said that during a meeting, (b) (6) suggested that (b) (3) (B), (b) (6) complaint should be referred to the CIGIE IC since (b) (6) (b) (6), as the (b) (6), was a "covered person."<sup>604</sup> IG Cuffari agreed, and instructed (b) (3) (B), (b) (6) to draft a referral letter to the CIGIE IC regarding (b) (3) (B), (b) (6) allegations against (b) (6).<sup>605</sup>

After several weeks, (b) (6) had not provided the draft referral letter to IG Cuffari as he had requested.<sup>606</sup> A month later, on October 16, 2019, IG Cuffari met with (b) (6) and (b) (6) (b) (6) then (b) (6) Cuffari, to follow up about the draft referral letter.<sup>607</sup> During the meeting, (b) (6) denied ever telling IG Cuffari that the matter should be referred to the CIGIE IC, claiming that the issue did not rise to the level of requiring a referral to the CIGIE IC and that the (b) (6), could internally handle the matter despite the fact that (b) (6) was a "covered person."<sup>608</sup> After (b) (6) left the meeting with IG Cuffari, IG Cuffari showed (b) (6) a handwritten note about the prior meeting and stated that (b) (6) was not being truthful about his request to draft a referral to CIGIE.<sup>609</sup>

We reviewed IG Cuffari's contemporaneous handwritten notes of his meeting with (b) (6), which corroborate that (b) (6) recommended sending the "allegations about (b) (6) and (b) (6)

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committee, outlining their proposed recommendations for the DHS OIG telework policy. WHDHS-00000594. The telework committee (b) (2), (b) (5). *Id.* We found no evidence that (b) (6) engaged in professional misconduct or insubordination or directly contradicted IG Cuffari's request. Rather, our investigation found that (b) (6), along with the other members of the telework committee, followed IG Cuffari's instructions in proposing possible revisions to the telework policy. While the committee did not strictly adhere to the 10-page limit IG Cuffari suggested, (WHDHS-00000600) this failure was de minimis.

<sup>601</sup> DHS OIG Timeline (06/08/2020).

<sup>602</sup> Interview with Joseph Cuffari (June 8, 2020).

<sup>603</sup> *Id.*

<sup>604</sup> *Id.*

<sup>605</sup> Dr. Cuffari took contemporaneous notes dated September 24, 2019 memorializing his conversation with (b) (6). (b) (6) IG Cuffari's Notes of his September 24, 2019 Conversation with (b) (6). We reviewed these notes, which largely corroborate Dr. Cuffari's account.

<sup>606</sup> Interview with Joseph Cuffari (June 8, 2020).

<sup>607</sup> *Id.*

<sup>608</sup> *Id.*

<sup>609</sup> Response to WilmerHale Investigation from (b) (3) (B), (b) (6) (Dec. 8, 2020).

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to CIGIE,” and that IG Cuffari directed (b) (6) to “prepare a memo with supporting documents.”<sup>610</sup>

In her interview, (b) (3) (B), (b) (6) said she did not recall IG Cuffari asking her to draft a referral letter to the CIGIE IC about the allegations related to (b) (3) (B), (b) (6).<sup>611</sup> (b) (3) (B), (b) (6) also said she did not recall meeting with IG Cuffari and (b) (6) to discuss the referral to CIGIE.<sup>612</sup>

IG Cuffari’s contemporaneous notes of his meeting with (b) (6) corroborate his statement that (b) (6) recommended sending the allegations to the CIGIE IC and that he asked her to prepare a memo on the issue with supporting documentation. In his written responses to questions, (b) (3) (B), (b) (6) largely confirmed IG Cuffari’s account. Given (b) (6) friendship with (b) (6) and (b) (6), it is plausible that (b) (6) would have been reluctant to draft a referral letter to the CIGIE IC regarding potential misconduct on their part.

### I. Confusion Over a Meeting with Foreign Nationals at DHS OIG Leads to Further Suspicion

Like the telework dispute, a mundane decision about whether to host an hour-long meeting with an international delegation led IG Cuffari to further distrust (b) (6).

On October 17, 2019, (b) (6), (b) (6), emailed (b) (6) and (b) (6) to inquire whether IG Cuffari was interested in attending a meeting with a foreign delegation.<sup>613</sup> According to (b) (6), the DOJ Overseas Prosecutorial Development and Training (“OPDAT”), along with the State Department Resident Legal Advisor at the U.S. Embassy in Myanmar, was planning to bring a delegation of foreign officials to DHS OIG’s office on November 6 or 7 for about an hour.<sup>614</sup> (b) (6) asked (b) (6) to let her know if IG Cuffari was interested in doing a meet-and-greet or presentation at the meeting.<sup>615</sup>

On November 2, 2019, (b) (6) emailed IG Cuffari, copying (b) (6), asking if he was interested in attending the OPDAT meeting with the Myanmar delegation.<sup>616</sup> (b) (6) explained that the delegation wanted to learn about DHS OIG and that the meeting was scheduled to take place the following week.<sup>617</sup> Finally, (b) (6) stated that (b) (6) could attend the meeting as an alternative if IG Cuffari could not attend.<sup>618</sup> Two days before the meeting, on November 4, 2019, IG Cuffari emailed (b) (6) and (b) (6) informing them that he planned to attend.<sup>619</sup>

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<sup>610</sup> Joseph Cuffari’s handwritten notes of meeting with (b) (6).

<sup>611</sup> Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).

<sup>612</sup> *Id.*

<sup>613</sup> WHDHS-00000465.

<sup>614</sup> *Id.*

<sup>615</sup> *Id.*

<sup>616</sup> WHDHS-00000480.

<sup>617</sup> *Id.*

<sup>618</sup> *Id.*

<sup>619</sup> *Id.*

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Later that day, IG Cuffari emailed (b) (6) stating that he recalled from previous government experience that he had to obtain foreign access clearance from the DOJ Security and Emergency Planning Division to participate in “foreign visits.”<sup>620</sup> He asked (b) (6) to confirm whether DHS “has a similar clearance requirement and if so whether the Chief Security Officer has conducted the required security checks and granted such approval.”<sup>621</sup>

(b) (6) responded that she knew about his “previous involvement which is partly why (b) (6) (b) (6) thought [IG Cuffari would] be interested in this visit” and “assume[ed] all the security checks etc. were done but will confirm.”<sup>622</sup> Following IG Cuffari’s email, (b) (6) emailed (b) (6) (b) (6) noting that IG Cuffari would attend the meeting and asked whether she had information on the security clearances.<sup>623</sup> (b) (6) forwarded (b) (6) email to (b) (6), (b) (6) to the IG, who looked into the issue.<sup>624</sup>

On November 5, 2019, (b) (6) emailed IG Cuffari stating:

The security check is still in process apparently. DHS requires 30 days notice, they didn’t get the names soon enough, but DOJ apparently has cleared. Question as to why we can’t rely on reciprocity using DOJ’s clearance, but they’re trying to work through it. It may mean the meeting has to be at DOJ instead of here, but we’ll keep you posted.<sup>625</sup>

The following day, (b) (6) told IG Cuffari that she “finally got to the bottom of the clearance question” and confirmed that the meeting had to be held at DOJ.<sup>626</sup>

(b) (6) had extended the invitation to IG Cuffari to attend the OPDAT meeting without first determining whether the appropriate clearances were in place for the attendees to enter the DHS OIG facility, and ultimately was unable to secure those clearances in time to hold the meeting.<sup>627</sup> It is unclear whether this security issue would have been identified had IG Cuffari himself not asked (b) (6) to check on it. Although we found no evidence that the failure to obtain these clearances was more than an innocent mistake, this error—in the context of the contemporaneous efforts of (b) (6) and her allies to undermine IG Cuffari’s work—led IG Cuffari to suspect that (b) (6) or (b) (6) might have been trying to lure him into a meeting with foreign nationals that violated DHS OIG’s security protocols.<sup>628</sup>

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<sup>620</sup> *Id.*

<sup>621</sup> *Id.*

<sup>622</sup> WHDHS-00000475.

<sup>623</sup> WHDHS-00000477.

<sup>624</sup> *Id.*

<sup>625</sup> WHDHS-00000475.

<sup>626</sup> WHDHS-00000483.

<sup>627</sup> *Id.*

<sup>628</sup> *See* Interview with Joseph Cuffari (June 8, 2020).



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**J. Another Dispute Leads (b) (6) and (b) (6) to Send Complaints about IG Cuffari to CIGIE IC and Congress**

In the fall of 2019, DHS OIG was preparing an audit report on undocumented immigrant families separated after crossing the border (the “Separated Families Report”). (b) (3) (B), (b) (6), the (b) (3) (B), (b) (6), provided a draft of the Separated Families Report to IG Cuffari for his comments in September 2019, at the end of fiscal year.<sup>629</sup> She said the team had also provided IG Cuffari an advance copy in August 2019.<sup>630</sup> (b) (3) (B), (b) (6) recalled following up with IG Cuffari several times about the report, but found that he was still reviewing it.<sup>631</sup>

On November 12, 2019, IG Cuffari received a letter from the Chairwoman of the House Committee on Oversight and Reform, Representative Carolyn Maloney, inquiring about the status of the Separated Families Report.<sup>632</sup> IG Cuffari explained that Chairwoman Maloney had the erroneous idea that he had “parked the report” and that he was sitting on it for political purposes.<sup>633</sup>

Two days later, on November 14, 2019, (b) (6) sent a referral letter to the CIGIE IC alleging that Dr. Cuffari had engaged in “gross mismanagement” of the organization, “abused [his] authority” as Inspector General, and demonstrated “impaired independence.”<sup>634</sup> The letter was signed by (b) (6), but listed both (b) (6) and (b) (6) as contacts to contact about the issues.<sup>635</sup> (b) (6) was also copied on the email submitting the referral.<sup>636</sup> The first allegation related to IG Cuffari’s supposed withholding of OIG reports, including the Separated Families Report.<sup>637</sup> (b) (6) and (b) (6) had testified before Congress that the Separated Families Report would be published by the end of September.<sup>638</sup> In the referral letter, (b) (6) wrote, “IG Cuffari’s withholding of reports constitutes management action (or inaction) creating a substantial risk of significant adverse impact upon DHS OIG’s ability to accomplish its mission.”<sup>639</sup> The referral also included the allegation by (b) (6) and (b) (6) that IG Cuffari “abused his authority” with respect to the (b) (6) telework issue.<sup>640</sup>

After submitting the letter to CIGIE, (b) (6) emailed IG Cuffari, “Today I submitted a formal complaint to the CIGIE Integrity Committee alleging that you have grossly mismanaged the

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<sup>629</sup> Interview with (b) (3) (B), (b) (6) (Aug. 7, 2020).

<sup>630</sup> *Id.*

<sup>631</sup> *Id.*

<sup>632</sup> WHDHS-00000207.

<sup>633</sup> Interview with Joseph Cuffari (June 8, 2020).

<sup>634</sup> WHDHS-00000305. On November 20, 2019, Dr. Cuffari also self-reported to CIGIE allegations from (b) (6) (b) (6) about his leadership with respect to the Separated Families Report. Cuffari Referrals to CIGIE, p. 21. We have not identified any response from CIGIE.

<sup>635</sup> *Id.*

<sup>636</sup> WHDHS-00000869.

<sup>637</sup> WHDHS-00000305.

<sup>638</sup> *Id.*

<sup>639</sup> *Id.*

<sup>640</sup> WHDHS-00000870.

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organization, abused your authority as Inspector General, and demonstrated independence impairments.”<sup>641</sup>

Five days later, on November 19, 2019, IG Cuffari responded to Chairwoman Maloney’s letter, writing that the Separated Families Report needed some edits and would be published as soon as it was ready.<sup>642</sup> IG Cuffari denied the report was being “withheld for any partisan or political reasons.”<sup>643</sup> To avoid the appearance of partisanship with the report, IG Cuffari delegated authority to (b) (6) to sign the report since the audit work was done prior to his confirmation.<sup>644</sup>

The next morning, on November 20, 2019, (b) (6) refused.<sup>645</sup> In a strongly worded response to IG Cuffari, (b) (6) charged that his letter to Chairwoman Maloney was “not truthful” because the report was finished.<sup>646</sup> She wrote that IG Cuffari had the report since September 23, 2019, and suggested that he had intentionally delayed his review.<sup>647</sup> She further claimed that since his memo to her delegating authority “was prepared less than a day after you sent your letter to Chairwoman Maloney, your actions are deceitful.”<sup>648</sup> She ended her email by noting, “I have already sent this information to the Integrity Committee and will take any other actions I deem appropriate to protect the integrity of DHS OIG.”<sup>649</sup>

That same morning, (b) (6) sent a follow up email to the CIGIE IC alleging that IG Cuffari’s response to Chairwoman Maloney was not truthful.<sup>650</sup> She wrote, “Contrary to his claim, no additional ‘editing, reviewing, and evaluation’ of the report is taking place.”<sup>651</sup> She concluded her email by writing, “It appears IG Cuffari simply is unwilling to affix his name to a report with findings with which he is ‘uncomfortable’ for reasons that appear to relate to his relationship/position vis-à-vis the Administration/White House.”<sup>652</sup>

In addition to the CIGIE IC, (b) (6) and (b) (6) reached out to Congressional staffers, briefing both the majority and minority staffs of the House Committee on Oversight and Reform. (b) (6) wrote that she “wanted to alert [them] to some inaccuracies in the letter” that IG Cuffari sent.<sup>653</sup> They also provided the staffers with a copy of their CIGIE referral letter.<sup>654</sup>

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<sup>641</sup> WHDHS-00000857.

<sup>642</sup> WHDHS-00000282.

<sup>643</sup> *Id.*

<sup>644</sup> Interview with Joseph Cuffari (June 8, 2020); *see also* WHDHS-00000281.

<sup>645</sup> Interview with Joseph Cuffari (June 8, 2020); *see also* WHDHS-00000850; WHDHS-00000281.

<sup>646</sup> WHDHS-00000281.

<sup>647</sup> *Id.*

<sup>648</sup> *Id.*

<sup>649</sup> *Id.*

<sup>650</sup> WHDHS-00000264.

<sup>651</sup> *Id.*

<sup>652</sup> *Id.*

<sup>653</sup> WHDHS-00000267.

<sup>654</sup> *Id.* We reviewed allegations that (b) (6) engaged in a pattern of selectively having meetings with members of Congress and/or legislative staff of only one political party. Two witnesses stated that (b) (6) communicated with Senator Schumer’s office in an effort to derail IG Cuffari’s nomination. With respect to the

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On November 25, 2019, DHS OIG published the Separated Families Report, signed by IG Cuffari.<sup>655</sup> The report contained a footnote which read, “The IG signed this report to ensure its timely completion and submission to Congress and the public, but did not participate in the investigative phases of the project.”<sup>656</sup> (b) (6), (b) (3) (B), said she found the footnote odd, noting she has never seen such a footnote included in a report signed by an IG.<sup>657</sup> (b) (3) (B), (b) (6) thought IG Cuffari was trying to separate himself from the work.<sup>658</sup>

For his part, IG Cuffari explained that he added the footnote at the recommendation of (b) (6), (b) (6), to demonstrate that IG Cuffari was not involved in the underlying investigation nor had he made substantive changes to the report.<sup>659</sup> The footnote was to refute the allegation made by (b) (6) and (b) (6) to Congress and CIGIE that he had interfered in the report for political reasons.<sup>660</sup>

On December 11, 2019, the CIGIE IC sent (b) (6) a letter notifying her that they declined to investigate her complaint.<sup>661</sup>

## VI. MISTREATMENT OF OTHER DHS OIG EMPLOYEES

### A. An Atmosphere of Mistrust and Retaliation

In addition to their efforts to undermine (b) (6) and IG Cuffari outlined above, current and former DHS OIG employees detailed what they believed to be a pattern of mistreatment by (b) (6), (b) (6) and to a lesser extent (b) (6), of any employees deemed insufficiently loyal or standing in the way of their agenda.<sup>662</sup> (b) (3) (B), (b) (6), explained that (b) (6), (b) (6) and (b) (6) operated together and (b) (3) (B), (b) (6) suggested that they would retaliate against anyone who crossed them.<sup>663</sup> (b) (6), (b) (3) (B) (b) (6) said (b) (6), (b) (6), and (b) (6) had a target on the backs of certain DHS OIG personnel, and she believed their goal was to get certain people out of the way.<sup>664</sup> As a result,

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Separated Families Report, our investigation uncovered that (b) (6) emailed Congressional staff members of both the Majority and Minority committee staff. In another instance, (b) (6) emailed a member of the Democratic staff of the House Oversight and Reform Committee regarding her concerns that IG Cuffari was retaliating against her and suggested a bipartisan hearing. While we found (b) (6) had multiple interactions with Congress, we did not find evidence to substantiate the allegation that she engaged in a pattern of selectively having meetings with just one political party.

<sup>655</sup> DHS Lacked Technology Needed to Successfully Account for Separated Migrant Families, The Dep’t. of Homeland Sec., Off. Of the Inspector General, <https://www.oig.dhs.gov/sites/default/files/assets/2019-11/OIG-20-06-Nov19.pdf> (Nov. 29, 2019).

<sup>656</sup> *Id.*

<sup>657</sup> Interview with (b) (3) (B), (b) (6) (Aug. 7, 2020).

<sup>658</sup> *Id.*

<sup>659</sup> Interview with Joseph Cuffari (June 8, 2020).

<sup>660</sup> *Id.*

<sup>661</sup> WHDHS-00000298.

<sup>662</sup> Interview with (b) (3) (B), (b) (6) (July 22, 2020); Interview with (b) (3) (B), (b) (6) (July 23, 2020).

<sup>663</sup> Interview with (b) (3) (B), (b) (6) (July 22, 2020).

<sup>664</sup> Interview with (b) (3) (B), (b) (6) (July 23, 2020).

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some employees referred to them collectively as the “Mean Girls.”<sup>665</sup> (b) (3) (B), (b) (6) similarly described them as “the Trio,” who would target individuals they did not like.<sup>666</sup>

In interviews, current and former DHS OIG employees described a challenging working environment where employees often faced verbal abuse and threats of poor performance evaluations.<sup>667</sup> For example, as noted above, (b) (6) explained that (b) (6) would “trash” those who did not support her.<sup>668</sup> (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), stated that (b) (6) would often speak critically of other employees during meetings.<sup>669</sup> (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), described (b) (6) as “belittling and demeaning to the entire core of chief inspectors” and GS-15s, including (b) (3) (B), (b) (6).<sup>670</sup> (b) (3) (B), (b) (6) left her former position as (b) (3) (B), (b) (6) — due to (b) (6) mistreatment.<sup>671</sup>

(b) (3) (B), (b) (6), (b) (3) (B), (b) (6), described her as “cutting” and “mean” to (b) (6) and recalled that she caused one (b) (6) to cry in the workplace.<sup>672</sup> (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), described her as “mean” and “abusive.”<sup>673</sup> (b) (3) (B), (b) (6) alleged that (b) (6) attempted to force (b) (3) (B), (b) (6) to resign from her role as (b) (3) (B), (b) (6), and threatened her with poor performance evaluations if she did not.<sup>674</sup> (b) (3) (B), (b) (6) believed (b) (6) tried to get her to resign simply because she would not bend to (b) (6) requests.<sup>675</sup> Other employees, such as (b) (3) (B), (b) (6) and (b) (3) (B), (b) (6), described (b) (6) as a “bully” and “disrespectful.”<sup>676</sup> (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), stated that (b) (6) became “aggressive” when she was displeased with employees.<sup>677</sup>

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<sup>665</sup> Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020); Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020). The term “Mean Girls” is a reference to the 2004 movie of the same name about high school social cliques and the interactions between them. *See Mean Girls* (Paramount Pictures Film Released Apr. 19, 2004).

<sup>666</sup> Interview with (b) (3) (B), (b) (6) (July 28, 2020).

<sup>667</sup> *See* Interview with (b) (3) (B), (b) (6) (July 23, 2020); Interview with (b) (6) (Aug. 7, 2020); Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020); Interview with (b) (3) (B), (b) (6) (July 31, 2020).

<sup>668</sup> Interview with (b) (3) (B), (b) (6) (Aug. 7, 2020).

<sup>669</sup> Interview with (b) (3) (B), (b) (6) (Aug. 20, 2020).

<sup>670</sup> Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).

<sup>671</sup> *Id.*

<sup>672</sup> Interview with (b) (3) (B), (b) (6) (July 31, 2020).

<sup>673</sup> Interview with (b) (3) (B), (b) (6) (July 23, 2020).

<sup>674</sup> *Id.*

<sup>675</sup> *Id.*

<sup>676</sup> Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020); Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>677</sup> Interview with (b) (3) (B), (b) (6) (Oct. 28, 2020). We reviewed an allegation that (b) (6) created a hostile work environment and permitted a subordinate to create a hostile work environment. While there was evidence, as described above, of (b) (6) unprofessional behavior to subordinates, we did not find any evidence that (b) (6) conduct was motivated by a discriminatory intent. *See, e.g., Ashraf-Hassan v. Embassy of France in United States*, 999 F. Supp. 2d 106, 113 (D.D.C. 2013) (“To prevail on a hostile-work-environment claim, a plaintiff must show that his employer subjected him to discriminatory intimidation, ridicule, and insult...” (internal quotation marks and citation omitted)).

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By contrast, (b) (3) (B), (b) (6) said she liked (b) (6) and felt badly that (b) (6) got caught up in the “Mean Girl club.”<sup>678</sup> (b) (3) (B), (b) (6) described (b) (6) as “smart” and “a bright (b) (6).”<sup>679</sup> (b) (3) (B), (b) (6) also had a favorable impression of (b) (6), recalling that (b) (6) hosted a team-building event at her home.<sup>680</sup> For the most part, few witnesses had negative things to say about (b) (6) treatment of DHS OIG employees.

## B. Accumulation of Power Through the Consolidation of Human Resources Management Division under the Office of Counsel

In August 2018, (b) (6) and (b) (6) transferred 17 members of the Human Relations and Management Division (“HRMD”) from the Office of Management (“OM”) to the OC.<sup>681</sup> At the time, (b) (6), while (b) (6). The employees were moved following allegations by several employees, including (b) (3) (B), (b) (6), the (b) (3) (B), (b) (6), that (b) (6) had (b) (6). The move was purportedly designed to (b) (6) during the pendency of the investigation of those allegations.<sup>683</sup>

When an employee has made a claim of (b) (6), it is unusual for management to move the complainant (not to mention an entire department) as opposed to the alleged transgressor. The movement of the complainant as opposed to the transgressor could create a perception of (b) (6). Thus, in these situations, the typical practice is to remove the alleged transgressor from the situation rather than the complainant.<sup>684</sup>

During her interview, (b) (3) (B), (b) (6) stated that (b) (6) and (b) (6) told her that HRMD would be moved from OM to the OC because of complaints filed against her.<sup>685</sup> (b) (6) told (b) (3) (B), (b) (6) that they were worried about (b) (6) but that it would be too disruptive to place (b) (3) (B), (b) (6) on administrative leave, which (b) (3) (B), (b) (6) said would have been the normal process.<sup>686</sup> (b) (3) (B), (b) (6) described the approach as “very unusual.”<sup>687</sup>

In her interview, (b) (3) (B), (b) (6) explained that as (b) (6), (b) (6) oversaw (b) (6).<sup>688</sup> She stated that since the allegations of wrongdoing were limited to HRMD, she and (b) (6) decided that HRMD should be moved rather than (b) (6).

<sup>678</sup> Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020). We also reviewed an allegation that (b) (6) permitted a (b) (6). We were not able to find any evidence to support this allegation.

<sup>679</sup> Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).

<sup>680</sup> Interview with (b) (3) (B), (b) (6) (Aug. 7, 2020).

<sup>681</sup> Interview with (b) (3) (B), (b) (6) (July 23, 2020); DHS OIG Timeline (06/08/2020).

<sup>682</sup> Interview with (b) (3) (B), (b) (6) (July 23, 2020).

<sup>683</sup> *Id.*

<sup>684</sup> (b) (6)

<sup>685</sup> Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).

<sup>686</sup> *Id.*

<sup>687</sup> *Id.*

<sup>688</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

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(b) (6).<sup>689</sup> As a result of the move, (b) (6) became (b) (6) (b) (6) and all HRMD personnel from August 2018 to February 2019.<sup>690</sup> In February 2019, when (b) (6) (b) (6) joined DHS OIG, she (b) (6).<sup>691</sup>

(b) (3) (B), (b) (6) said (b) (6) and (b) (6) told her that they would not announce the move publicly, but would say that it was part of an end-to-end review of HRMD's processes if they had to discuss it.<sup>692</sup> When the reorganization was announced to the affected employees, (b) (6) communicated to (b) (3) (B), (b) (6) that the move would occur as part of a 30-day trial.<sup>693</sup> In fact, HRMD remained under OC for more than a year until it was moved back at IG Cuffari's direction.<sup>694</sup>

Shortly after his confirmation, IG Cuffari asked why HRMD was under the OC and expressed his intention that HRMD be returned to OM.<sup>695</sup> On August 13, 2019, (b) (6), (b) (6) told (b) (6) that "Dr. Cuffari requested yesterday that we start the process of transferring HR[MD] back to OM."<sup>696</sup>

In November 2019, IG Cuffari requested additional information from (b) (6) and (b) (6) on the reasons underlying the 2018 decision to move HRMD.<sup>697</sup> Our investigation uncovered internal communications between (b) (6), (b) (6) and (b) (6) about a possible response.<sup>698</sup> In one email exchange among the three individuals, (b) (6) wrote that HRMD was moved from under OM because DHS OIG had received complaints about (b) (6) and others.<sup>699</sup> (b) (6) also prepared a timeline of the (b) (6) investigation.<sup>700</sup> The timeline noted that, in August 2018, "(b) (6) and then-(b) (6) (b) (6) evaluated the situation and determined that, while the inquiry was ongoing, the HR function should be removed from (b) (6) direct supervision" both to "shield the complainants from further direct contact with their alleged (b) (6)" and "to protect (b) (6) from further claims of (b) (6)."<sup>701</sup>

On November 14, 2019, (b) (6) provided a memorandum to IG Cuffari regarding the (b) (6) investigation.<sup>702</sup> The memorandum stated that, (b) (5)

<sup>689</sup> *Id.*

<sup>690</sup> DHS OIG Timeline (06/08/2020).

<sup>691</sup> *Id.*

<sup>692</sup> Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).

<sup>693</sup> Interview with (b) (3) (B), (b) (6) (July 23, 2020).

<sup>694</sup> *Id.*

<sup>695</sup> WHDHS-00000273.

<sup>696</sup> *Id.*

<sup>697</sup> WHDHS-00000210.

<sup>698</sup> WHDHS-00000269.

<sup>699</sup> *Id.*

<sup>700</sup> *Id.*

<sup>701</sup> *Id.*

<sup>702</sup> WHDHS-00000811.

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(b) (5)

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In January 2020, in response to additional questions from (b) (6), about the move of HRMD, (b) (6) wrote in an email that the HRMD move “was not officially documented.”<sup>704</sup> (b) (3) (B), (b) (6) also stated her belief that there was no formal/official paperwork to reassign the employees from OM to the OC.<sup>705</sup> During her interview, (b) (3) (B), (b) (6) stated that the HRMD move was not documented with new SF-50s or other paperwork.<sup>706</sup> However, she disputed that the lack of SF-50s meant that the move was improper or that she was overseeing HR in an unofficial capacity.<sup>707</sup> (b) (3) (B), (b) (6) similarly stated that “we didn’t cut personnel actions” for the move, meaning that no formal personnel documentation was completed.<sup>708</sup>

Consistent with the witnesses’ statements, our investigation did not identify any documentation from the Fall of 2018 formalizing the move of HRMD from OM to the OC. However, we found no OPM or DHS guidelines requiring SF-50s to effectuate the employees’ moves.<sup>709</sup>

Internal emails and documents corroborate the stated rationale for moving HRMD under the OC, albeit after the fact—namely, that HRMD was moved from OM after DHS OIG received complaints from HRMD employees concerning executives in that office.<sup>710</sup> While moving HRMD to the OC enabled (b) (6), (b) (6), and (b) (6) to have greater control over personnel actions and investigations, we did not find evidence to conclude that this was the primary motivation for the reorganization.

Nevertheless, the effect of reassigning HRMD under the OC was that it consolidated personnel decisions and employee misconduct investigations under the auspices of first (b) (6) and later, (b) (6). Multiple current and former DHS OIG employees shared the general belief that (b) (6), (b) (6), (b) (6) and (b) (6) initiated improper investigations or took personnel actions against employees deemed to be insufficiently loyal.<sup>711</sup>

Following the move of HRMD to the OC, a number of administrative investigations into employees were conducted by the OC (b) (6), (b) (6) and later (b) (6).<sup>712</sup>

<sup>703</sup> *Id.*

<sup>704</sup> WHDHS-00000633.

<sup>705</sup> Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).

<sup>706</sup> Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).

<sup>707</sup> *Id.*

<sup>708</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

<sup>709</sup> Chapter 21: Realignment and Mass Transfer, Off. Of Pers. Mgmt, <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/personnel-documentation/processing-personnel-actions/gppa21.pdf> (“Agencies may use any method that meets the conditions in Chapter 4, section 6, to notify employees of realignment actions. This is an additional agency option *in lieu of* the individual Standard Form 50, Notification of Personnel Action, or the list form of notice.”).

<sup>710</sup> WHDHS-00000213.

<sup>711</sup> See Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020); Interview with (b) (3) (B), (b) (6) (July 22, 2020); Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>712</sup> See Interview with (b) (3) (B), (b) (6) (Aug. 20, 2020).

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When asked about the number of internal investigations of DHS OIG employees, (b) (3) (B), (b) (6) (b) (3) (B), (b) (6), the (b) (3) (B), (b) (6), stated that it was because employees kept filing complaints against one another, and (b) (6) was holding employees accountable for any misconduct.<sup>713</sup>

Our review found no clear standard applied before launching an internal investigation of a DHS OIG employee. In February 2020, (b) (6), (b) (6), asked (b) (6) and (b) (6) about the standard they applied when opening an internal investigation.<sup>714</sup> (b) (6) (b) (6) forwarded the request to (b) (6), and (b) (6) later included (b) (6) in the discussion, and they discussed how to craft a coordinated response.<sup>715</sup> After exchanging several drafts internally, (b) (6) responded to (b) (6) with a lengthy description, which stated (in relevant part) that:

OC does not have a written policy governing when to open a management inquiry in response to allegations. (b) (6)

[REDACTED]

(b) (2), (b) (5)

[REDACTED]

In her interview, (b) (3) (B), (b) (6) acknowledged that there were no written criteria for determining whether to open a management inquiry.<sup>719</sup> However, (b) (3) (B), (b) (6) said that typically she and (b) (6) (b) (2), (b) (5) (b) (3) (B), (b) (6) said that (b) (6) was sometimes involved in the decision.<sup>721</sup> (b) (3) (B), (b) (6) confirmed that there was no standard practice for opening an internal investigation.<sup>722</sup> (b) (3) (B), (b) (6) attributed this to the culture of DHS OIG,

<sup>713</sup> We reviewed allegations that (b) (6), (b) (6), and (b) (6) made anonymous calls to the DHS OIG complaint hotline to justify initiating unwarranted investigations of employees. Our review identified evidence of investigations initiated in response to complaints filed by individuals other than (b) (6), (b) (6), and (b) (6). Despite reviewing numerous hotline complaints from the relevant time-period however, we did not identify any evidence that (b) (6), (b) (6) or (b) (6) made anonymous calls to the hotline.

<sup>714</sup> WHDHS-00000325.

<sup>715</sup> *Id.*

<sup>716</sup> WHDHS-00000320.

<sup>717</sup> WHDHS-00000320.

<sup>718</sup> WHDHS-00000325.

<sup>719</sup> Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).

<sup>720</sup> *Id.*

<sup>721</sup> *Id.*

<sup>722</sup> Interview with (b) (3) (B), (b) (6) (Oct. 20, 2020).



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where she claimed there were no clear-cut, structured guidance or policies in place.<sup>723</sup> As a result, (b) (3) (B), (b) (6) described it more as an ad-hoc approach.<sup>724</sup> (b) (3) (B), (b) (6) insisted that in crafting a response to (b) (6), she and (b) (6) were not creating a post-hoc written criteria.<sup>725</sup> Instead, she believed they were putting “pen to paper” on the approach already used to determine whether to open management inquiries.<sup>726</sup> For her part, (b) (3) (B), (b) (6) stated that they “would often do, you know, some pressure testing to see, you know, can – can we gauge the credibility of it.”<sup>727</sup> She explained that “basically we were doing kind of a threshold analysis to see if these were credible allegations of – of something that rose to the level of requiring a review.”<sup>728</sup>

### C. Reassignment of (b) (6), (b) (7)(C) and Initiation of a Criminal Investigation for Use of a Parking Pass

(b) (6), (b) (7)(C) served as the (b) (6) at DHS OIG from 2009 to 2019—a time-period that encompassed service to IGs (b) (6), John Roth, and (b) (6) (b) (6).<sup>729</sup> (b) (6) strongly disliked (b) (6), (b) (7)(C), a sentiment seemingly shared by (b) (6), (b) (7)(C) and (b) (6). (b) (6) made it known repeatedly that she intended to remove (b) (6), (b) (7)(C) from the DHS OIG (b) (6) position as soon as she became (b) (6).

(b) (6), (b) (6), and (b) (6) raised various complaints about (b) (6), (b) (7)(C). For one, (b) (6) believed that (b) (6) had improperly promoted (b) (6), (b) (7)(C) to a GS-15.<sup>730</sup> (b) (6) openly complained within DHS OIG that (b) (6), (b) (7)(C) was not doing work sufficient to justify her GS-15 salary.<sup>731</sup> According to (b) (3) (B), (b) (6), (b) (7)(C), (b) (6) and (b) (6) also did not like (b) (6), (b) (7)(C) sitting in to take notes during meetings with (b) (6).<sup>732</sup> (b) (3) (B), (b) (6) confirmed that she was “uncomfortable” with (b) (6) attending meetings and taking notes during sensitive personnel meetings.<sup>733</sup> (b) (3) (B), (b) (6) believed that (b) (6) had improperly restored (b) (6), (b) (7)(C) hours of leave, thereby allowing her to rollover excessive leave to the following year.<sup>734</sup> (b) (6) and (b) (6) also had questioned (b) (6), (b) (7)(C) purchase of a nameplate for IG Cuffari’s door in June 2019, a month before he was confirmed by the Senate.<sup>735</sup> While (b) (6) had approved of (b) (6), (b) (7)(C) purchase of the nameplate, (b) (3) (B), (b) (6) explained that it represented “poor judgment” and (b) (6), (b) (7)(C) was counseled about the proper use of her government purchase card.<sup>736</sup> (b) (6) included the nameplate issue in her referral to CIGIE

<sup>723</sup> *Id.*

<sup>724</sup> *Id.*

<sup>725</sup> Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).

<sup>726</sup> *Id.*

<sup>727</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

<sup>728</sup> *Id.*

<sup>729</sup> Interview with (b) (3) (B), (b) (6), (b) (7)(C) (Aug. 6, 2020); Interview with (b) (6), (b) (7)(C) (Aug. 10, 2020).

<sup>730</sup> WHDHS-00000863.

<sup>731</sup> Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).

<sup>732</sup> Interview with (b) (3) (B), (b) (6), (b) (7)(C) (Aug. 6, 2020).

<sup>733</sup> Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).

<sup>734</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

<sup>735</sup> Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).

<sup>736</sup> *Id.*

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about (b) (6), claiming that it “put Dr. Cuffari in a dangerous situation vis-à-vis Congress, which has been known to look unfavorably on nominees whose actions presuppose confirmation.”<sup>737</sup>

(b) (6), (b) (6) and (b) (6) spoke disparagingly of (b) (6), (b) (7)(C) role in the DHS OIG (b) (6). In her interview, (b) (6), (b) (7)(C) described (b) (6), (b) (7)(C) as “(b) (6) and she let you know it and nobody got access (b) (6) unless they went through” (b) (6), (b) (7)(C).<sup>738</sup> A number of witnesses commented that on repeated occasions, (b) (6) stated her intention to remove (b) (6), (b) (7)(C) from her (b) (6) position as soon as (b) (6) had retired. For example, (b) (3) (B), (b) (6) said (b) (6) told her that she would do whatever it took to get (b) (6), (b) (7)(C) out of the (b) (6).<sup>739</sup> (b) (3) (B), (b) (6) corroborated this as well, noting that (b) (6) did not plan to keep (b) (6), (b) (7)(C) in her (b) (6) position once (b) (6) retired.<sup>740</sup> (b) (3) (B), (b) (6) stated that (b) (6) said in an open senior staff meeting that (b) (6), (b) (7)(C) is out as soon as possible.”<sup>741</sup> (b) (6), (b) (7)(C) confirmed that (b) (6) did not intend to keep (b) (6), (b) (7)(C) in her (b) (6) position once (b) (6) retired, but (b) (3) (B), (b) (6) did not know whether (b) (6), (b) (7)(C) would be reassigned to another position at that time.<sup>742</sup>

(b) (6) told DHS OIG investigators that there was “friction” between (b) (6), (b) (7)(C), (b) (6), (b) (6), and (b) (6), and that he heard all three make “disparaging comments” about (b) (6), (b) (7)(C).<sup>743</sup> (b) (6) thought that the source of the friction had to do with (b) (6) loyalty to him in the face of (b) (6), (b) (6), and (b) (6) trying to force him into retirement.<sup>744</sup> In an email from April 26, 2019 referring to (b) (6), (b) (7)(C), (b) (6) wrote to (b) (6) and (b) (6) that “Cinderella will be back in rags on May 3. But I’ll keep the glass slippers...”<sup>745</sup> In her interview, (b) (3) (B), (b) (6) presumed that (b) (6) reference to May 3<sup>rd</sup> was the date when (b) (6) was expected to retire.<sup>746</sup> (b) (3) (B), (b) (6) explained that in this email, (b) (6) was stating that (b) (6), (b) (7)(C) would “not be on a high horse and in charge of the (b) (6) in the way that she has been when (b) (6) retires because (b) (6) was, you know, the person who really promoted her and gave her vast authority as his (b) (6).”<sup>747</sup> However, (b) (3) (B), (b) (6) said she did not remember having any conversations with (b) (6) about moving (b) (6), (b) (7)(C) out of her (b) (6) position.<sup>748</sup> (b) (3) (B), (b) (6) also pushed back on the idea that there was any tension between (b) (6) and (b) (6), (b) (7)(C) a statement inconsistent with the evidence and witnesses’ statements.<sup>749</sup> The same day (b) (6) sent her email to (b) (6) and (b) (6),

<sup>737</sup> WHDHS-00000862.

<sup>738</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

<sup>739</sup> Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).

<sup>740</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

<sup>741</sup> Interview with (b) (3) (B), (b) (6) (July 28, 2020).

<sup>742</sup> Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).

<sup>743</sup> I19-OIG-SIU-18975 MOA, 10-21-19 (b) (6), (b) (3) (B) Interview.

<sup>744</sup> *Id.*

<sup>745</sup> WHDHS-00000067.

<sup>746</sup> Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).

<sup>747</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

<sup>748</sup> *Id.*

<sup>749</sup> *Id.*

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April 26, 2019, she also sent a separate email to (b) (6) and (b) (6), (b) (6), inquiring about where in the agency (b) (6), (b) (7)(C) could be transferred.<sup>750</sup>

On June 13, 2019, just three days after (b) (6) retirement, (b) (6) and (b) (6) removed (b) (6), (b) (7)(C) from her (b) (6).<sup>751</sup> (b) (6) and (b) (6) told (b) (6) that they wanted to make changes to the (b) (6) and that she was being reassigned.<sup>752</sup> Initially, they did not have a new position for (b) (6), (b) (7)(C), so she was placed on a detail to the (b) (6), effective June 24, 2019, until she received a new position description.<sup>753</sup> Later, (b) (6) and (b) (6) informed (b) (6), (b) (6), (b) (7)(C) that she was going to be moved to the (b) (6) permanently.<sup>754</sup> (b) (6), (b) (7)(C), (b) (7)(C), (b) (7)(C) explained in her interview that she had last worked in the (b) (6) prior to becoming an (b) (3) (B), (b) (6) eleven years before.<sup>755</sup> When (b) (6), (b) (7)(C) was reassigned to (b) (6), (b) (6), (b) (7)(C) was a GS-15 and did not understand what her role in the (b) (6) would be or her expectations.<sup>756</sup> She was concerned that she would not know how to do the job since it had been a decade since she had done it.<sup>757</sup>

(b) (6) was also moved from her cubicle in the (b) (6) to a cubicle in the (b) (6) seating area.<sup>758</sup> (b) (6) asked (b) (6) about her seating arrangement because all GS-15 employees in the (b) (6) had offices. In response, (b) (6) explained that only GS-15 attorneys were assigned to offices.<sup>759</sup> (b) (6) noted that there were empty offices and asked (b) (6) if she could use one until more attorneys were hired.<sup>760</sup> (b) (6) refused.<sup>761</sup>

Despite being removed from the (b) (6), (b) (6), (b) (6), (b) (6) IG Cuffari. When she attempted to (b) (6), (b) (6) severely admonished her. In one email, on July 9, 2019, (b) (6) wrote, "I believe (b) (6) was clear when you were reassigned from the (b) (6) that (b) (6) was handling all (b) (6) matters. Any communications you receive from anyone concerning OIG matters that come to you because (b) (6) immediately upon receiving them."<sup>762</sup> In her interview, (b) (3) (B), (b) (7)(C) explained:

A GS-15 should be able to follow very simple instructions, like she's no longer in the position and (b) (6) was acting as (b) (6). I expect my instructions to be followed....I mean, it just – that passive aggressiveness as I

<sup>750</sup> WHDHS-00000851.

<sup>751</sup> See Interview with (b) (3) (B), (b) (6) (Aug. 10, 2020).

<sup>752</sup> Interview with (b) (3) (B), (b) (6) (Aug. 10, 2020).

<sup>753</sup> *Id.*

<sup>754</sup> *Id.*

<sup>755</sup> Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).

<sup>756</sup> Interview with (b) (3) (B), (b) (6) (Aug. 10, 2020).

<sup>757</sup> *Id.*

<sup>758</sup> Follow-Up Interview with (b) (6) (Dec. 2, 2020) (noting that (b) (6) occupied a cubicle when she served as (b) (6)); WHDHS-00000653.

<sup>759</sup> *Id.*

<sup>760</sup> *Id.*

<sup>761</sup> *Id.*

<sup>762</sup> WHDHS-00000457.

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characterize it was inappropriate and I can't tolerate that. I don't have time for that.<sup>763</sup>

Six days later after (b) (6) email, on July 15, 2019, a criminal investigation was initiated into (b) (6), (b) (7)(C) use of a parking pass.<sup>764</sup> According to the report of the investigation, it was initiated "based on information from (b) (6)." <sup>765</sup> (b) (6) alleged that (b) (6) "may have misused a government funded parking card that had been created for Dr. Joseph Cuffari . . . ." <sup>766</sup> In her interview, (b) (3) (B), (b) (6) stated that (b) (6) provided her with documentation showing activity on a parking pass assigned to IG Cuffari, whose nomination at that time was pending confirmation.<sup>767</sup> According to (b) (3) (B), (b) (6), (b) (6) had directed the agency to revoke parking passes for anyone who was not an "SES, executive, or had a reasonable accommodation" in an attempt to cut costs.<sup>768</sup> Prior to his retirement, (b) (6) had raised the issue of (b) (6) (b) (6) continued use of the parking pass with (b) (6), and he stated that he would discuss it with her.<sup>769</sup>

An employee in OM reviewed parking pass usage and informed (b) (3) (B), (b) (6) that (b) (6), (b) (7)(C) had a parking pass that had been assigned to IG Cuffari.<sup>770</sup> (b) (3) (B), (b) (6) asked (b) (6) for advice about how to proceed and (b) (6) said she would handle it.<sup>771</sup> (b) (3) (B), (b) (6) later learned that an inquiry was opened to investigate this issue.<sup>772</sup> (b) (3) (B), (b) (6) believes the use of the parking pass was a legitimate question to pursue, but was skeptical that it warranted a full investigation.<sup>773</sup>

In her interview, (b) (3) (B), (b) (6) stated that she felt some investigation needed to occur, and notified (b) (6), and (b) (6), of the activity on the parking pass.<sup>774</sup> (b) (3) (B), (b) (6) said they told her that INV would investigate the issue because there could be potential fraud.<sup>775</sup> On July 23, 2019, (b) (6) notified the FBI that DHS OIG initiated a criminal investigation concerning allegations that (b) (6) violated 18 U.S.C. § 641 (theft of government property).<sup>776</sup> Also on July 23, 2019, (b) (6) contacted (b) (6) of the Public Integrity Section at the DOJ, and briefed him

<sup>763</sup> Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).

<sup>764</sup> WHDHS-00000285.

<sup>765</sup> *Id.*

<sup>766</sup> *Id.*

<sup>767</sup> See Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020); Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).

<sup>768</sup> Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).

<sup>769</sup> Interview with (b) (6) (Oct. 30, 2020).

<sup>770</sup> Interview with (b) (3) (B), (b) (6) (Aug. 6, 2020).

<sup>771</sup> *Id.*

<sup>772</sup> *Id.*

<sup>773</sup> *Id.*

<sup>774</sup> Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).

<sup>775</sup> *Id.*

<sup>776</sup> FBI Notification, July 23, 2019.

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on the allegation related to (b) (6), (b) (7)(C).<sup>777</sup> (b) (6) declined to open a criminal matter.<sup>778</sup> On July 27, 2019, (b) (6), (b) (7)(C) was notified that she was under investigation.<sup>779</sup>

In her interview, (b) (3) (B), (b) (6) told us that she decided that INV should handle the (b) (6), (b) (7)(C) investigation because she felt (b) (6), (b) (7)(C) would not be treated fairly if the investigation were conducted by (b) (6) and the OC.<sup>780</sup> (b) (3) (B), (b) (6) pointed to the fact that (b) (6), (b) (7)(C) had already been removed from the (b) (6) and treated poorly by (b) (6) and (b) (6).<sup>781</sup> She said that (b) (6) had already made it clear that she did not trust (b) (6), (b) (7)(C) because of her loyalty to (b) (6).<sup>782</sup> Because of her concerns, (b) (3) (B), (b) (6) decided INV would handle the investigation on the basis that the allegation related to potential criminal activity and INV could run an efficient and straightforward investigation of that charge.<sup>783</sup>

In his interview, (b) (3) (B), (b) (6) stated that he told (b) (6) that INV was not the appropriate vehicle to investigate this issue.<sup>784</sup> (b) (6) responded that INV would investigate it “for the benefit of the agency.”<sup>785</sup> (b) (3) (B), (b) (6) recalled that during the course of the (b) (6), (b) (7)(C) investigation, (b) (6) and (b) (6) showed great interest in the outcome of the investigation.<sup>786</sup> (b) (3) (B), (b) (6) found it odd that (b) (6) was interested in (b) (6), (b) (7)(C) parking pass investigation, particularly because (b) (6) did not express interest in other more serious cases INV was handling.<sup>787</sup>

The report of the investigation into (b) (6), (b) (7)(C) was completed by INV on November 25, 2019, and provided to (b) (6).<sup>788</sup> The report concluded that, “[t]he Special Investigations Unit (SIU) did not substantiate the allegation that (b) (6), (b) (7)(C) misused the government funded parking card.”<sup>789</sup> The report found that (b) (6) “had given (b) (6), (b) (7)(C) permission to use the parking card on an ad-hoc basis to use for official DHS OIG business” and “found no evidence that (b) (6) or any other member of DHS OIG, to include management, instructed (b) (6), (b) (7)(C) to discontinue using the parking card.”<sup>790</sup>

For her part, (b) (3) (B), (b) (6), (b) (7)(C) explained that she was a “covered employee” and as such her investigation should have been handled by the CIGIE IC and not DHS OIG.<sup>791</sup> (b) (3) (B), (b) (6) and (b) (3) (B), (b) (6) confirmed that the (b) (6), (b) (7)(C) investigation should have been referred to the

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<sup>777</sup> MOA\_2 - Other - DOJ Public Integrity Section Declination.

<sup>778</sup> *Id.*

<sup>779</sup> Interview with (b) (3) (B), (b) (6) (Aug. 10, 2020).

<sup>780</sup> MOA\_2 - Other - DOJ Public Integrity Section Declination.

<sup>781</sup> Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).

<sup>782</sup> *Id.*

<sup>783</sup> *Id.*

<sup>784</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>785</sup> *Id.*

<sup>786</sup> *Id.*

<sup>787</sup> *Id.*

<sup>788</sup> WHDHS-00000284; WHDHS-00000285.

<sup>789</sup> WHDHS-00000284.

<sup>790</sup> *Id.*

<sup>791</sup> Interview with (b) (3) (B), (b) (6) (Aug. 10, 2020).

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CIGIE IC.<sup>792</sup> A May 13, 2019, email from (b) (6), (b) (7)(C), on behalf of (b) (6), to CIGIE includes her designation as a “covered position.”<sup>793</sup> (b) (6) and (b) (6) acknowledged that the conduct that was investigated occurred when (b) (6), (b) (7)(C) was serving in a covered position, and (b) (6) informed CIGIE about the investigation after it was initiated.<sup>794</sup> However, (b) (6) wrote that the issue did not warrant a referral to the CIGIE IC.<sup>795</sup>

According to CIGIE’s policies, the CIGIE IC “may consider wrongdoing alleged to have occurred while an individual served as a Covered Person, even if that individual is no longer a Covered Person or in government service when the IC receives the allegation.”<sup>796</sup> (b) (6), (b) (7)(C) was still in her covered position when the investigation was initiated on July 15, 2019 even though she was detailed to (b) (6).<sup>797</sup>

(b) (3) (B), (b) (6), (b) (7)(C) believes she was investigated for the parking pass due to her “association” with former IGs (b) (6) and Roth.<sup>798</sup> (b) (3) (B), (b) (6), (b) (7)(C) also thought that “she was being targeted” by (b) (6) and (b) (6).<sup>799</sup> (b) (3) (B), (b) (6), (b) (7)(C) also claimed the investigation was retaliatory, although she could not specify precisely what actions for which she was being retaliated.<sup>800</sup>

Multiple current and former DHS OIG employees echoed (b) (6), (b) (7)(C) view that the parking pass investigation was vindictive in nature. (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), told us that she believed the investigation into (b) (6), (b) (7)(C) was retaliatory, and that (b) (6), (b) (6), and (b) (6) were behind it.<sup>801</sup> Similarly, (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), expressed his belief that (b) (6), (b) (7)(C) was investigated simply because (b) (6) did not like (b) (6), (b) (7)(C).<sup>802</sup>

(b) (3) (B), (b) (6), (b) (7)(C) last day was (b) (6). She left voluntarily, but reported that she felt she had no choice.<sup>804</sup> (b) (3) (B), (b) (6), (b) (7)(C) explained that she had a lot of annual leave stored up and she needed to use it before the end of the year.<sup>805</sup> (b) (6) informed (b) (3) (B), (b) (6), (b) (7)(C) that her leave

<sup>792</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020); Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).

<sup>793</sup> WHDHS-00000651.

<sup>794</sup> WHDHS-00000183; WHDHS-00000179.

<sup>795</sup> WHDHS-00000183.

<sup>796</sup> Policies and Procedures of the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency, Council of the Inspector Gen. of Integrity and Efficiency, (Jan. 2018), p.1-2, [https://www.ignet.gov/sites/default/files/files/Integrity\\_Committee\\_Policies\\_and\\_Procedures\\_Revised\\_Jan-2018\\_Final.pdf](https://www.ignet.gov/sites/default/files/files/Integrity_Committee_Policies_and_Procedures_Revised_Jan-2018_Final.pdf).

<sup>797</sup> (b) (6), (b) (7)(C) was not permanently reassigned to her new position in the (b) (6) unit until August 4, 2019.

(b) (6), (b) (7)(C) - Updated Status Memo (EEO OSC matters).

<sup>798</sup> I19-OIG-SID: (b) (3) (B), (b) (6) MOA (10) 09-20-19 (b) (3) (B), (b) (6) Interview.

<sup>799</sup> I19-OIG-SID: (b) (3) (B), (b) (6) MOA (10) 09-20-19 (b) (3) (B), (b) (6) Interview.

<sup>800</sup> Interview with (b) (3) (B), (b) (6), (b) (7)(C) (Aug. 6, 2020); Interview with (b) (3) (B), (b) (6), (b) (7)(C) (Aug. 10, 2020). We reviewed an allegation that the parking pass investigation was initiated in retaliation for (b) (6), (b) (7)(C) (b) (3) (B). We did not find any evidence that (b) (6) and (b) (6) were aware of (b) (6), or that they took actions against her as retaliation for those activities.

<sup>801</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>802</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>803</sup> Interview with (b) (3) (B), (b) (6), (b) (7)(C) (Aug. 10, 2020).

<sup>804</sup> *Id.*

<sup>805</sup> *Id.*

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would not be restored that year, which would have resulted in a significant financial loss if (b) (6). (b) (6) did not retire.<sup>806</sup> Accordingly, (b) (6), (b) (3) (B) felt as though she had no choice but to retire.

#### D. Reassignment of IG (b) (6)

(b) (3) (B), (b) (6) served as (b) (3) (B), (b) (6) beginning in 2015 with IG Roth.<sup>807</sup> In her role as (b) (3) (B), (b) (6), (b) (6) met weekly with (b) (6) and reported to her.<sup>808</sup> On September 10, 2018, at one of their weekly meetings, (b) (6) informed (b) (3) (B), (b) (6) that she was being reassigned to a position in (b) (6) immediately.<sup>809</sup> (b) (3) (B), (b) (6) was not given any warning about the reassignment, nor did she ever receive a formal reassignment letter.<sup>810</sup> Instead, like (b) (6), she was abruptly removed from the (b) (6) and placed on a detail in a different section of the agency.<sup>811</sup> (b) (3) (B), (b) (6) position description remained for the role of (b) (3) (B), (b) (6).<sup>812</sup>

According to (b) (3) (B), (b) (6), (b) (6) told her that the move was to protect her because a new IG, might want to select (b) (3) (B), (b) (6). At the time of the reassignment in September 2018 however, no one had been nominated for the position yet. Accordingly, (b) (3) (B), (b) (6) did not credit that explanation.<sup>813</sup> Instead, (b) (3) (B), (b) (6) suspected that (b) (6) did not like the idea of (b) (3) (B), (b) (6) (a GS-15) reporting to her, preferring instead to have only SES direct reports.<sup>814</sup> (b) (3) (B), (b) (6) also heard from (b) (6), that (b) (6) did not like that (b) (3) (B), (b) (6) had a bigger office than (b) (6).<sup>815</sup>

(b) (3) (B), (b) (6) remained assigned to (b) (3) (B), (b) (6) as of December 2020. (b) (3) (B), (b) (6) believes that she was “on the receiving end of (b) (6) inappropriate practices.”<sup>816</sup> As a result, she believes that her “career got derailed to some degree because of this reassignment.”<sup>817</sup> (b) (6) stated that he was aware that (b) (6) reassigned (b) (3) (B), (b) (6).<sup>818</sup> He stated that (b) (3) (B), (b) (6) had not been serving in a traditional (b) (3) (B), (b) (6), and he was not working closely with her.<sup>819</sup> (b) (3) (B), (b) (6) observed some tension between (b) (6) and (b) (3) (B), (b) (6), but he did not know the source of the tension.<sup>820</sup>

## VII. THE UNCONFIRMED REMAINING ALLEGATIONS

In addition to the numerous events and allegations detailed above, WilmerHale also investigated a number of other allegations that could not be confirmed. Some involved allegations for which

<sup>806</sup> *Id.*

<sup>807</sup> Interview with (b) (3) (B), (b) (6) (Aug. 20, 2020).

<sup>808</sup> *Id.*

<sup>809</sup> *Id.*

<sup>810</sup> *Id.*

<sup>811</sup> *Id.*

<sup>812</sup> *Id.*

<sup>813</sup> *Id.*

<sup>814</sup> *Id.*

<sup>815</sup> *Id.*

<sup>816</sup> Email from (b) (3) (B), (b) (6) to OIG Inquiries (June 12, 2020).

<sup>817</sup> *Id.*

<sup>818</sup> Follow-Up Interview with (b) (6) (Dec. 2, 2020).

<sup>819</sup> *Id.*

<sup>820</sup> *Id.*

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we uncovered a substantial amount of corroborating evidence but nonetheless lacked a critical piece that prevented us from confirming the allegation. For other allegations, there was no supporting evidence or witnesses denied critical facts. These allegations related to (A) false testimony before Congress; (B) the preferential or unfavorable treatment of DHS OIG employees; and (C) purported instances of misconduct, malpractice or unprofessional behavior. We describe some of the more significant unconfirmed allegations below. A list summarizing the remaining unconfirmed allegations not addressed below is included in Appendix A.

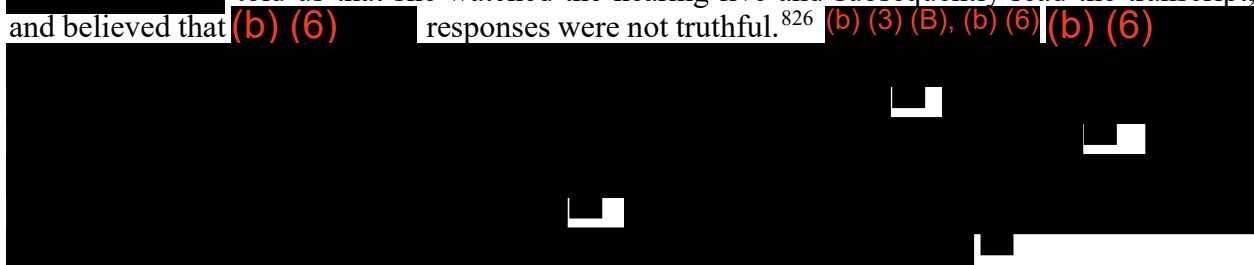
#### A. False Testimony Before Congress

We reviewed the allegation that (b) (6) gave false testimony during a hearing before Congress. Specifically, (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), and (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), both reported that (b) (6) had been less than forthcoming in her testimony to Congress.

(b) (6)



(b) (3) (B), (b) (6) told us that she watched the hearing live and subsequently read the transcript, and believed that (b) (6) responses were not truthful.<sup>826</sup> (b) (3) (B), (b) (6) (b) (6)



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<sup>821</sup> Interview with (b) (3) (B) (July 24, 2020).

<sup>822</sup> WHDHS-00000097.

<sup>823</sup> *Id.*

<sup>824</sup> *Id.*

<sup>825</sup> *Id.*

<sup>826</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>827</sup> *Id.*

<sup>828</sup> *Id.*

<sup>829</sup> *Id.*

<sup>830</sup> *Id.*



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(b) (3) (B), (b) (6) also believed (b) (6) was not forthcoming with respect to her testimony (b) (6)

(b) (3) (B), (b) (6) believed the complaint was discussed again at a July 9, 2019 follow-up meeting, but she did not know for certain.<sup>836</sup>

We reviewed documentation from both staff meetings (b) (6)

(b) (6)

(b) (6)

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<sup>831</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>832</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020); Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>833</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>834</sup> *Id.*

<sup>835</sup> *Id.*

<sup>836</sup> *Id.*

<sup>837</sup> WHDHS-00000634; WHDHS-00000637; Engagement Planning Agenda 07-09-2019 (1).

<sup>838</sup> WHDHS-00000637.

<sup>839</sup> Engagement Planning Agenda 07-09-2019 (1).

<sup>840</sup> (b) (6)

<sup>841</sup> *Id.*

<sup>842</sup> WHDHS-00000853; *see also* Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>843</sup> WHDHS-00000853.

<sup>844</sup> *Id.*

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(b) (6), (b) (6)

Thus, as to the allegation that (b) (6) perjured herself before Congress, the evidence demonstrates that (b) (6) had discussed (b) (6) in preparation for testimony. The first known discussion occurred nearly a month before her testimony, while the second discussion occurred just three days prior to her testimony. However, it is possible that (b) (6) did not recall the complaints in that moment, which occurred during a lengthy Congressional hearing. The fact that (b) (6) promptly responded after the hearing in writing to Representative Tlaib's question, disclosing accurate and additional information, suggests that (b) (6) did not intend to conceal the information from Congress. (b) (6) declined to sit for an interview, so we could not assess her credibility on this point. Accordingly, we were not able to fully assess the allegation that (b) (6) lied to Congress.

## B. Preferential or Unfavorable Treatment of DHS OIG Employees

### 1. Appointment of (b) (6)

Multiple allegations pertain to the propriety of (b) (6) appointment to an SES position as (b) (6) (b) (6). We reviewed allegations that (b) (6) took a number of actions to effectuate the appointment of (b) (6) to an SES position, including falsely claiming that there was no one available to run the (b) (6) and making public comments that undermined confidence in the impartiality of a search and interview process. We also reviewed allegations that (b) (6) conspired with (b) (6) to be appointed to the position.

Multiple witnesses interpreted (b) (6) appointment of (b) (6) to the (b) (6) (b) (6) position as an act of favoritism to benefit a close friend.<sup>846</sup> For example, (b) (3) (B), (b) (6), who oversaw the SES positions in HRMD, told us that while she respected (b) (6) and thought highly of her, she believed that (b) (6) lacked the experience for the (b) (6) role and that more experienced attorneys were passed over for the job.<sup>847</sup> (b) (3) (B), (b) (6) felt that (b) (6) was given the position because of (b) (6) close relationship with (b) (6).<sup>848</sup> (b) (3) (B) called the appointment a "power play" by (b) (6) and (b) (6).<sup>849</sup> Similarly, (b) (3) (B) stated that (b) (6) and (b) (6) used "machinations" to avoid posting the position so that more qualified candidates would not apply for the role and she could acquire an SES position.<sup>850</sup> As part of our investigation, we reviewed administrative files related to this position.<sup>851</sup> We found no evidence that the (b) (6) was publicly posted or that

<sup>845</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>846</sup> Interview with (b) (3) (B), (b) (6) (Aug. 20, 2020); Interview with (b) (3) (B), (b) (6) (July 22, 2020); *see also* Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).

<sup>847</sup> Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020).

<sup>848</sup> *Id.*

<sup>849</sup> Interview with (b) (3) (B), (b) (6) (Aug. 20, 2020).

<sup>850</sup> Interview with (b) (3) (B), (b) (6) (July 22, 2020). However, we found no documentary evidence of any such "machinations."

<sup>851</sup> Hard Copy Personnel Files SHQ\_707520092911350.

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anyone else applied for the role. Rather, a draft announcement in the file indicated that (b) (5)

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(b) (6) was instrumental in (b) (6) appointment. On June 7, 2018, (b) (6) provided (b) (6) a series of draft documents relating to the appointment of (b) (6) as (b) (6) (b) (6), including a Standard Form 52 Request for Personnel Action, a draft position description, a “Justification, Resume, and Organizational Chart For (b) (6),” and a draft resume for (b) (6).<sup>853</sup> The SF 52 Request for Personnel Action form sought authorization for (b) (6) to be converted to an SES limited term appointment from her “(b) (6) (b) (6) role at the time to (b) (6).”<sup>854</sup> The metadata on the job description document also revealed that it was edited *after* the “request for personnel action” form for (b) (6) was drafted.<sup>855</sup> Because (b) (6) was already selected for the position, the edits to the job description may have been made to justify the requested personnel action.

After receiving the documents from (b) (6), (b) (6) wrote an email to (b) (6) and (b) (6) with the subject line, “good news.”<sup>856</sup> (b) (6) wrote, “I can make that type of appointment and (b) (6) is moving on it now. Also, would it be better if technically you reported to me until everything has wrapped up? I believe (b) (6) should report to the agency head but maybe for now we should make a change?”<sup>857</sup> (b) (6) then revised the position description so that that the limited-term position would report to (b) (6) as (b) (6) (b) (6).<sup>858</sup> In her interview, (b) (3) (B), (b) (6) stated that this change was because she was involved in the (b) (6) and therefore, (b) (6) thought it best that (b) (6) report to her rather than (b) (6).<sup>859</sup>

Between June 20, 2018, and June 22, 2018, (b) (6), (b) (6), and (b) (6) exchanged emails about the announcement that (b) (6) would make about the new appointment.<sup>860</sup> On June 22, 2018, (b) (6) sent an agency-wide email to all DHS OIG employees announcing the appointment of (b) (6) as (b) (6).<sup>861</sup> The announcement from (b) (6) to all employees at DHS-OIG stated, “I am very pleased to announce that I have decided to appoint (b) (6) to the position of (b) (6). As (b) (6), (b) (6) will serve as DHS OIG’s (b) (6) while the (b) (6) position remains vacant.”<sup>862</sup> In his interview, (b) (6) stated he was not involved in the selection of (b) (6) (b) (6) for this role because he generally allowed (b) (6) to handle administrative matters such

<sup>852</sup> *Id.*

<sup>853</sup> WHDHS-00000001; WHDHS-00000002; WHDHS-00000004; WHDHS-00000006; WHDHS-00000010; WHDHS-00000016.

<sup>854</sup> WHDHS-00000002.

<sup>855</sup> WHDHS-00000004; WHDHS-00000006.

<sup>856</sup> WHDHS-00000357.

<sup>857</sup> *Id.*

<sup>858</sup> *Id.*

<sup>859</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

<sup>860</sup> WHDHS-00000019; WHDHS-00000020.

<sup>861</sup> WHDHS-00000023.

<sup>862</sup> *Id.*

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as this one.<sup>863</sup> He further stated that he was not aware that (b) (6) reported to (b) (6), and insisted that, as the agency's (b) (6), (b) (6) should have been reporting to him.<sup>864</sup>

(b) (3) (B), (b) (6) also pointed out that the position of (b) (6) was described as crucial when it was created and filled by (b) (6) with (b) (6).<sup>865</sup> However, once (b) (6) moved on to become the (b) (6) the position was left vacant, undermining the argument that it was critical.<sup>866</sup> Our review confirmed that the position was left vacant after (b) (6) was appointed to the (b) (6) role. In an email on March 27, 2019, (b) (6) wrote to all of DHS OIG: "Now that (b) (6) will be helming (b) (6), (b) (6) (b) (6) will step into the role of (b) (6) and the (b) (6) position is no longer needed."<sup>867</sup>

Our investigation revealed evidence that the (b) (6) position was vacant at the time that (b) (6) was appointed by (b) (6) to serve as (b) (6) and that the position was specifically created for (b) (6). Documentary evidence shows that (b) (6) and (b) (6) worked together, along with (b) (6), to facilitate the appointment of (b) (6) to the new position. However, the investigation did not identify any false claims or certifications made by (b) (6) or (b) (6) in connection with (b) (6) appointment. We also did not identify any evidence that (b) (6) made public comments that undermined confidence in the impartiality of a search and interview process for the position, though it does appear that it was not publicly advertised and no other candidates were considered other than (b) (6). It is also apparent that DHS OIG employees believed that (b) (6) selection was an act of favoritism on (b) (6) part and the evidence supports this interpretation of events, given that (b) (6) played a critical role in securing the position for (b) (6) and it appears that they worked together to secure the appointment.

## 2. Investigation of (b) (6)

As explained above, in August 2018, (b) (6) and (b) (6) transferred 17 members of the HRMD from OM to the OC. The move was purportedly designed to shield HRMD personnel from further (b) (6) by (b) (6) during the investigation of the allegations against her.<sup>868</sup> The effect of this highly unusual move was to consolidate personnel decisions and employee misconduct investigations under the auspices of first (b) (6) and later, (b) (6). One of the allegations we investigated was whether the allegations against (b) (6) were frivolous, and used by (b) (6) and (b) (6) as a pretext to justify the move of HRMD from OM to the OC for their own ends.

Our investigation found that there were multiple complaints made about (b) (6) by her subordinates in HRMD. Between June 9, 2017 and April 9, 2018, at least six complaints were

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<sup>863</sup> Follow-Up Interview with (b) (6) (Dec. 2, 2020).

<sup>864</sup> *Id.*

<sup>865</sup> Interview with (b) (3) (B), (b) (6) (July 22, 2020).

<sup>866</sup> *Id.*

<sup>867</sup> (b) (6) (b) (2), (b) (6)

<sup>868</sup> Interview with (b) (3) (B), (b) (6) (July 23, 2020).

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filed through the DHS OIG hotline concerning (b) (6).<sup>869</sup> While two of the complaints came from anonymous sources, four did not. The complaints alleged that (b) (6) (b) (6). Below is a brief overview of the relevant allegations we identified.

- On June 9, 2017, an HR specialist alleged (b) (6)
- On April 6, 2018, an anonymous complainant alleged (b) (6). The complainant reported that (b) (6) directed him/her to submit the complaint.<sup>876</sup>
- Also on April 6, 2018, another anonymous complainant alleged (b) (6)

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<sup>869</sup> Complaint (b) (6), (b) (7)(C)

<sup>870</sup> The name of the HR specialist has been redacted to protect confidentiality. DHS OIG's Whistleblower Protection Unit (WPU) reviewed this complaint and determined that the complainant had alleged a (b) (6) by (b) (6). WHDHS-00000274. (b) (6) WHDHS-00000274.

<sup>871</sup> WHDHS-00000274; WHDHS-00000491; Complaint (b) (6), (b) (7)(C).

<sup>872</sup> Complaint (b) (6), (b) (7)(C).

<sup>873</sup> *Id.*

<sup>874</sup> Anonymous Employee, DHS OIG Exit Interview Survey Responses.

<sup>875</sup> *Id.*

<sup>876</sup> Complaint (b) (6), (b) (7)(C).

<sup>877</sup> Complaint (b) (6), (b) (7)(C).

<sup>878</sup> *Id.*

<sup>879</sup> *Id.*

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(b) (6) The complainant alleged that (b) (6) directed him/her to submit the complaint.<sup>881</sup>

- On April 7 and April 9, 2018, (b) (3) (B), (b) (6) filed two complaints against (b) (6).<sup>882</sup> She alleged (b) (6).
- On April 9, 2018, (b) (3) (B), (b) (6) filed a complaint against (b) (6).

At least five of the six complaints were reviewed by the OC and IQO.<sup>885</sup> The (b) (6) investigation was the first investigation undertaken by the newly formed PLD that was created under (b) (6) direction.<sup>886</sup>

On November 4, 2019, the report was finalized.<sup>887</sup> The 103-page report detailed the allegations and the OC's findings.<sup>888</sup> The report found several allegations against (b) (6), (b) (6), (b) (5), (b) (6), (b) (5).

While WilmerHale did not conduct an independent review of the OC's investigation of (b) (6), we did review the complaints and interview some of the complainants as part of our investigation. We found no evidence that the investigation of (b) (6) was frivolous or unwarranted. Likewise, we uncovered no evidence that the investigation of (b) (6) was used as a pretext in order to justify the move of HRMD to the OC.

### 3. Reprisal against (b) (3) (B), (b) (6)

We reviewed allegations that (b) (6) engaged in reprisals against (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), who she supervised as part of the move of HRMD under the OC. Between August and October 2019, (b) (3) (B), (b) (6) claimed that (b) (6) engaged in mean and demeaning behavior

<sup>880</sup> *Id.*

<sup>881</sup> *Id.*

<sup>882</sup> Complaint (b) (6), (b) (7)(C).

<sup>883</sup> Complaint (b) (6), (b) (7)(C).

<sup>884</sup> Complaint (b) (6), (b) (7)(C).

<sup>885</sup> Complaints (b) (6), (b) (7)(C).

<sup>886</sup> Interview with (b) (3) (B), (b) (6) (Oct. 30, 2020).

<sup>887</sup> WHDHS-00000768; WHDHS-00000665.

<sup>888</sup> See WHDHS-00000665.

<sup>889</sup> See *id.*

<sup>890</sup> See *id.*

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toward her.<sup>891</sup> For example, (b) (3) (B), (b) (6) explained that (b) (6) reprimanded her for refusing to follow (b) (6) orders without first researching the propriety of the requests.<sup>892</sup> (b) (3) (B), (b) (6) said (b) (6) repeatedly spoke harshly to her and other staff and frequently criticized HRMD for its failures.<sup>893</sup> (b) (3) (B), (b) (6) also claimed that (b) (6) made requests of HRMD staff, and then repeatedly “moved the ball” by changing her request when HRMD responded to her.<sup>894</sup> According to (b) (3) (B), (b) (6), (b) (6) also told DHS OIG senior leadership and other SES employees that she did not trust the information HRMD provided to her and would tell others it was not valid.<sup>895</sup>

(b) (3) (B), (b) (6) believed (b) (6) ultimate goal was to force her to resign as (b) (3) (B), (b) (6).<sup>896</sup> (b) (3) (B), (b) (6) attended weekly meetings with (b) (6) and (b) (6) (b) (6).<sup>897</sup> During one of these meetings, (b) (3) (B), (b) (6) stated that she was not going to be forced out of her position.<sup>898</sup> (b) (3) (B), (b) (6) said (b) (6) then “gritted her teeth” and told (b) (3) (B), (b) (6) she would give (b) (3) (B), (b) (6) a failing performance rating.<sup>899</sup> (b) (3) (B), (b) (6) said (b) (6), (b) (6), and (b) (6) targeted certain DHS OIG personnel they viewed as impediments to their agenda.<sup>900</sup> She stated that their goal was to ensure that employees follow their directions without question.<sup>901</sup>

In January 2020, (b) (6) submitted a FY2019 end-of-year performance appraisal for (b) (3) (B), (b) (6) with a rating of “unsatisfactory.”<sup>902</sup> (b) (3) (B), (b) (6) believed this poor rating was in retaliation for her not following (b) (6) directives.<sup>903</sup> At the time, HRMD operated under the OC even though (b) (6) remained (b) (3) (B), (b) (6) official supervisor.<sup>904</sup> (b) (6) signed (b) (3) (B), (b) (6) performance rating in the DHS OIG system despite not being her official supervisor.<sup>905</sup>

However, we did not find any evidence that the poor performance rating was “reprisal” for (b) (3) (B), (b) (6) “refus[ing] to fabricate allegations against another employee that (b) (6) wished to discipline or otherwise remove.” Instead, the evidence suggested that (b) (6) was extremely

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<sup>891</sup> Interview with (b) (3) (B), (b) (6) (Sept. 18, 2020).

<sup>892</sup> *Id.*

<sup>893</sup> *Id.*

<sup>894</sup> *Id.*

<sup>895</sup> *Id.* See also Interview with (b) (3) (B), (b) (6) (Sept. 17, 2020). (b) (3) (B), (b) (6) (b) (3) (B), (b) (6) also told us that the HR function was poorly run; noting, for example, that HR would routinely pay employees the wrong amount. *Id.* He also said the HR Department routinely did a poor job of issuing certification lists for job positions. *Id.*

<sup>896</sup> Interview with (b) (3) (B), (b) (6) (Sept. 18, 2020).

<sup>897</sup> *Id.*

<sup>898</sup> *Id.*

<sup>899</sup> *Id.*

<sup>900</sup> *Id.*

<sup>901</sup> *Id.*

<sup>902</sup> WHDHS-00000620; WHDHS-00000621; WHDHS-00000628.

<sup>903</sup> Interview with (b) (3) (B), (b) (6) (Sept. 18, 2020).

<sup>904</sup> *Id.*

<sup>905</sup> *Id.*

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dissatisfied with (b) (3) (B), (b) (6) performance and her refusal to resign, which led to (b) (3) (B), (b) (6) failing performance rating.

#### 4. Investigation of (b) (3) (B), (b) (6)

We reviewed an allegation that (b) (3) (B), (b) (6) was investigated in retaliation for refusing to investigate IG Cuffari. As detailed above, on August 23, 2019, (b) (6), (b) (3) (B) called (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), and asked him to investigate IG Cuffari's travel to the Southwest border because (b) (6) believed the travel was illegitimate and for personal reasons.<sup>906</sup> (b) (3) (B), (b) (6) refused (b) (6) request to investigate and stated that it was inappropriate for (b) (6) to be investigating the IG.<sup>907</sup>

(b) (3) (B), (b) (6) stated that immediately thereafter, he felt a "sea change" in how (b) (6) and (b) (6) treated him.<sup>908</sup> He noticed a change in their everyday posture.<sup>909</sup> By way of example, he stated that when he was in the hallway, (b) (6) would abruptly close her door, or (b) (6), (b) (6) and (b) (6) would not look at him or acknowledge his presence in senior staff meetings.<sup>910</sup>

Four days after (b) (6) request to investigate IG Cuffari, on August 27, 2019, (b) (3) (B), (b) (6) was interviewed as the subject of an internal investigation by the OC.<sup>911</sup> Specifically, (b) (3) (B), (b) (6) was interviewed by (b) (6), and (b) (6) (b) (6), in connection with an investigation relating to the performance rating of the (b) (3) (B), (b) (6) Office.<sup>912</sup> The interview pertained to allegations from an anonymous complaint that (b) (3) (B), (b) (6) had asked the (b) (3) (B), (b) (6) Office to lower the (b) (3) (B), (b) (6) 2018 performance rating and threatened to retaliate against (b) (3) (B), (b) (6) if she did not.<sup>913</sup>

During the interview, (b) (3) (B), (b) (6) categorically denied the allegations.<sup>914</sup> Instead, (b) (3) (B), (b) (6) believed the investigation was in retaliation for his refusal to investigate IG Cuffari's travel based on the circumstantial evidence of the timing and the presence of (b) (6) in the interview.<sup>915</sup> (b) (6), who had previously worked with (b) (6) and (b) (6) at the (b) (6), was then serving as (b) (6).<sup>916</sup>

<sup>906</sup> Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).

<sup>907</sup> *Id.*

<sup>908</sup> *Id.*

<sup>909</sup> *Id.*

<sup>910</sup> *Id.*

<sup>911</sup> Memo from (b) (3) (B), (b) (6) (Nov. 21, 2019).

<sup>912</sup> *Id.*

<sup>914</sup> *Id.* (b) (3) (B), (b) (6) Signed MOA; DHS OIG Hotline Complaint (b) (6), (b) (7)(C).

<sup>914</sup> (b) (3) (B), (b) (6) Signed MOA.

<sup>915</sup> (b) (3) (B), (b) (6) Interview (September 15, 2020).

<sup>916</sup> (b) (3) (B), (b) (6) Interview (September 15, 2020); Follow-Up Interview with (b) (3) (B), (b) (6) (Dec. 11, 2020).



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The documentary evidence revealed however that the investigation was triggered by an anonymous complaint that was originally filed in December 2018, and (b) (6) had been working on the investigation for months.<sup>917</sup> The evidence also revealed that (b) (6) initially reached out to schedule the interview with (b) (3) (B), (b) (6) on August 21, 2019, two days prior to (b) (6) request to investigate IG Cuffari.<sup>918</sup> On August 22, 2019, a day before (b) (6) request, (b) (6) and (b) (3) (B), (b) (6) agreed to do the interview on August 27, 2019.<sup>919</sup>

During her interview, (b) (3) (B), (b) (6) claimed that she was not aware of the management inquiry regarding (b) (3) (B), (b) (6) until sometime after February 28 2020.<sup>920</sup> She also claimed that she was not formally notified of, and did not approve, (b) (6) participation in the investigation.<sup>921</sup> But documentary evidence contradicts both of her statements.

In June 2019, soon after learning of a CIGIE IC complaint about failure to take action in the (b) (3) (B), (b) (6) investigation, (b) (6) emailed (b) (6) about the matter, copying (b) (6).<sup>922</sup> In the email, (b) (6) instructed (b) (6) to (b) (5)

(b) (6) replied to that email and requested a copy of the complaint against (b) (6).<sup>923</sup> (b) (6) provided (b) (6) a copy of the original complaint, a summary of its allegations, and a report on her interview of (b) (3) (B), (b) (6), who had denied the allegations against (b) (3) (B), (b) (6).<sup>924</sup> In July 2019, (b) (6) suggested to (b) (6) that (b) (6) could help with the investigation to get the matter resolved quickly.<sup>925</sup>

Over the next seven months, (b) (6) was repeatedly informed of the status of the allegations against (b) (3) (B), (b) (6). For example, in November 2019, (b) (6) sent (b) (6) the final memorandum and recommendation on the (b) (3) (B), (b) (6) management inquiry, along with supporting documents for (b) (6) “review and finaliz[ation].”<sup>927</sup> In January 2020, (b) (6) also received and provided comments on a chart of DHS OIG investigations, which included this (b) (3) (B), (b) (6) management inquiry.<sup>928</sup>

In sum, the evidence does not support the allegation that (b) (3) (B), (b) (6) was investigated because of his refusal to investigate IG Cuffari on August 23rd. As explained above, the complaint against (b) (3) (B), (b) (6) was filed in December 2018, and on August 22, 2019, he and (b) (6) set

<sup>917</sup> DHS OIG Hotline Complaint (b) (3) (B), (b) (6), (b) (7) (C); WHDHS-00000657.

<sup>918</sup> WHDHS-00000657.

<sup>919</sup> *Id.*

<sup>920</sup> See Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020); (b) (6) (b) (6) (Feb. 28, 2020).

<sup>921</sup> Interview with (b) (3) (B), (b) (6) (Aug. 28, 2020).

<sup>922</sup> WHDHS-00000408.

<sup>923</sup> *Id.*

<sup>924</sup> *Id.*

<sup>925</sup> *Id.*

<sup>926</sup> WHDHS-00000841.

<sup>927</sup> WHDHS-00000808.

<sup>928</sup> WHDHS-00000617.

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the date of August 27th for the interview. Nevertheless, (b) (6) statement during her interview about her awareness of the investigation was inaccurate. Similarly, her statement about her knowledge of (b) (6) participation in the investigation was also inaccurate. Emails show that (b) (6) was briefed about the investigation on several occasions, and that she not only knew about (b) (6) participation in the (b) (6) investigation, she actually suggested it.<sup>929</sup>

5. Investigation of (b) (3) (B), (b) (6)

We also reviewed allegations that (b) (6) and (b) (6) initiated an adverse personnel action or removal action against then (b) (3) (B), (b) (6) for frivolous claims after trying to elicit a series of false misconduct allegations from other employees. In connection with this allegation, we reviewed allegations that (b) (6) and (b) (6) falsified his performance appraisals and that (b) (6) and (b) (6) falsified government documents and directed that false information be created to support a removal action of a SES employee. We also reviewed allegations that (b) (6), (b) (6), and (b) (6) provided false testimony before the Merit Systems Protection Board (“MSPB”) about (b) (3) (B), (b) (6) and his performance, and that (b) (6). (b) (6) knowingly caused falsified government documents to be introduced into evidence and considered by a tribunal.

Separately, we reviewed allegations that (b) (6) threatened (b) (3) (B), (b) (6) by directing comments to him about her concealment of a handgun in her purse and her utilization of a concealed carry permit despite the fact that she is not permitted to bring a weapon into the workplace. In connection with this allegation, we were also asked to determine whether (b) (6) unlawfully brought a weapon into the office.

a) Investigation of (b) (3) (B), (b) (6)

The investigation into (b) (3) (B), (b) (6) was the result of several complaints made against him. (b) (3) (B), (b) (6) supervisor, (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), stated that employees in the (b) (3) (B), (b) (6) that (b) (3) (B), (b) (6) supervised reported that he made (b) (6) (b) (6) used (b) (6)

One of the complaints underlying the investigation into (b) (3) (B), (b) (6) is a complaint made by (b) (3) (B), (b) (6).<sup>932</sup> (b) (3) (B), (b) (6) and (b) (3) (B), (b) (6) had a tense email exchange on May 25, 2018 about the transfer of an employee.<sup>933</sup> After (b) (3) (B), (b) (6) wrote to (b) (3) (B), (b) (6) that he should “rethink [his] tact,” (b) (3) (B), (b) (6) responded:

<sup>929</sup> WHDHS-00000410.

<sup>930</sup> Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).

<sup>931</sup> DHS OIG Hotline Complaint (b) (3) (B), (b) (6), (b) (6).

<sup>932</sup> WHDHS-00000635.

<sup>933</sup> *Id.*

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Really <sup>(b) (3) (B), (b) (6)</sup>? Rethink my tact with you, or what? There was not a single thing in my email that was out of line. Within the last three months, you have talked about sending agents to a <sup>(b) (6)</sup>

In his interview, <sup>(b) (3) (B), (b) (6)</sup> stated that he had witnessed all the behavior he described in the email.<sup>935</sup> <sup>(b) (3) (B), (b) (6)</sup> <sup>(b) (3) (B), (b) (6)</sup>

<sup>(b) (6), (b) (3) (B)</sup>

For his part, <sup>(b) (3) (B), (b) (6)</sup> stated that when he saw the allegations in <sup>(b) (3) (B), (b) (6)</sup> email, he was in complete shock, because the allegations were completely irrelevant to the issue.<sup>939</sup> When he saw that <sup>(b) (6)</sup> and <sup>(b) (6)</sup> were copied on the email, he had the sense the email was orchestrated.<sup>940</sup>

Around the same time, on June 14, 2018, an anonymous complaint was submitted to the DHS OIG hotline.<sup>941</sup> The complaint alleged that <sup>(b) (3) (B), (b) (6)</sup> <sup>(b) (6)</sup>

<sup>(b) (6)</sup> The complaint concluded that <sup>(b) (3) (B), (b) (6)</sup> <sup>(b) (6)</sup> Upon receipt of the complaint, <sup>(b) (6)</sup> <sup>(b) (6)</sup> wrote to <sup>(b) (6)</sup> :

Today INV received an anonymous complaint against <sup>(b) (3) (B), (b) (6)</sup> regarding the same or similar allegations made by <sup>(b) (3) (B), (b) (6)</sup>. The complaint was sent through the Hotline and was also sent to Congress. Given the seriousness of the allegations, <sup>(b) (3) (B), (b) (6)</sup> has decided to place <sup>(b) (3) (B), (b) (6)</sup> on Administrative Leave for the allowed 5-10 days while she reviews.<sup>944</sup>

<sup>(b) (3) (B), (b) (6)</sup> told us that she informed <sup>(b) (6)</sup> of the complaints about <sup>(b) (3) (B)</sup>.<sup>945</sup> <sup>(b) (3) (B), (b) (6)</sup> told <sup>(b) (6)</sup> that the complaint needed to be investigated,

<sup>934</sup> *Id.*

<sup>935</sup> Interview with <sup>(b) (3) (B), (b) (6)</sup> (September 15, 2020).

<sup>936</sup> *Id.*

<sup>937</sup> *Id.*

<sup>938</sup> Interview with <sup>(b) (3) (B), (b) (6)</sup> (July 28, 2020).

<sup>939</sup> Interview with <sup>(b) (3) (B), (b) (6)</sup> (Sept. 15, 2020).

<sup>940</sup> *Id.*

<sup>941</sup> WHDHS-00000359.

<sup>942</sup> FW: <sup>(b) (3) (B), (b) (6)</sup> Complaint and IQO review of <sup>(b) (6)</sup>; Complaint dated June 14 2018.pdf.

<sup>943</sup> *Id.*

<sup>944</sup> WHDHS-00000359.

<sup>945</sup> Interview with <sup>(b) (3) (B), (b) (6)</sup> (Sept. 15, 2020).

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but that (b) (6) should not be involved in the investigation because (b) (3) (B), (b) (6) was an employee in that division.<sup>946</sup> (b) (3) (B), (b) (6) said the complaint was sent to the OC, and she then had no input on how it was investigated.<sup>947</sup> (b) (3) (B), (b) (6) was then placed on administrative leave.<sup>948</sup>

WilmerHale reviewed two reports that were prepared about the (b) (3) (B), (b) (6) investigation—one dated June 10, 2018, from (b) (6), to (b) (6),<sup>949</sup> and one dated October 3, 2018, from (b) (6), to (b) (6) her supervisor.<sup>950</sup> (b) (5), (b) (6)

Our investigation found no evidence that (b) (6), (b) (6), or (b) (6) initiated an investigation against (b) (3) (B), (b) (6) for an improper purpose. Instead, the investigation into (b) (6) was initiated as a result of several complaints against him and (b) (6)

#### b) Performance Appraisals

We also investigated an allegation that (b) (6) and (b) (6) falsified (b) (3) (B), (b) (6) performance appraisals. While our investigation uncovered deficiencies with his performance appraisals, we found no evidence that the appraisals were falsified.

(b) (3) (B), (b) (6) received four versions of his FY 2018 performance appraisal.<sup>956</sup> In his interview, (b) (3) (B), (b) (6) identified a number of problems with the FY 2018 performance appraisals,

<sup>946</sup> *Id.*

<sup>947</sup> *Id.*

<sup>948</sup> (b) (3) (B), (b) (6) AdminLeave6-19-2018.

<sup>949</sup> WHDHS-00000383.

<sup>950</sup> ROI (b) (3) (B), (b) (6).

<sup>951</sup> *See* WHDHS-00000383; ROI (b) (3) (B), (b) (6).

<sup>952</sup> WHDHS-00000383.

<sup>953</sup> *Id.*

<sup>954</sup> ROI (b) (3) (B), (b) (6), at 11-13.

<sup>955</sup> Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020); Interview with (b) (3) (B), (b) (6) (Sept. 17, 2020). We also looked into whether (b) (3) (B), (b) (6) was investigated and/or removed from his position in retaliation for (b) (3) (B), (b) (6) (b) (3) (B), (b) (6). We did not find any evidence to support this claim.

<sup>956</sup> FY 2018 Performance Appraisal Closeout; Exhibit B. (b) (3) (B), (b) (6) (b) (3) (B), (b) (6))\_FY18 Executive Perf Reissued PII 060419; FY18 Final Performance Appraisal - (b) (3) (B), (b) (6); FY18 Performance Appraisal - (b) (3) (B), (b) (6)\_SIGNED (1).

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including with respect to the dates on the appraisals, the signatures, and the allegations mentioned in them.<sup>957</sup> He stated that the appraisals contained a number of unsubstantiated allegations and falsely stated that he was failing in his job.<sup>958</sup>

(b) (3) (B), (b) (6) recalled that the appraisal was delayed because of the government shutdown, which is corroborated by email evidence we reviewed that show the appraisal was discussed after the shutdown.<sup>959</sup> We identified a number of communications in February 2019 about (b) (3) (B), (b) (6) performance appraisal. On February 6, 2019, (b) (6) sent (b) (6) write-up of the appraisal to (b) (6), (b) (6) and (b) (6) for review ahead of submission to the Performance Review Board (“PRB”).<sup>960</sup> (b) (6) made substantial edits to the narrative<sup>961</sup> and (b) (6) recirculated a new draft on February 19, 2019.<sup>962</sup> On February 20, 2019, (b) (6) wrote, (b) (6) and I reworked the other three remaining elements a little. (b) (6): if you need assistance with identifying suitable examples to insert I am happy to assist.”<sup>963</sup> (b) (6) then circulated a new draft, which (b) (6) and (b) (6) approved.<sup>964</sup> (b) (6) wrote that day, “I agree this strikes the exactly [sic] the right balance. (b) (6) has given the appropriate amount of credit for his contributions to the office while still being very firm on the areas where he has failed to perform at a satisfactory level.”<sup>965</sup> (b) (3) (B), (b) (6) received this first FY 2018 performance appraisal on February 21, 2019.<sup>966</sup> In her interview, (b) (3) (B), (b) (6) explained that it was not outside the normal processes for (b) (6), as (b) (3) (B), (b) (6) second-line supervisor, to have been involved in the initial drafting of his performance appraisal.<sup>967</sup>

The appraisal provided to (b) (3) (B), (b) (6) was signed by (b) (6) and dated December 28, 2018.<sup>968</sup> (b) (3) (B), (b) (6) was rated “unsatisfactory” and the summary section included a number of allegations about (b) (3) (B), (b) (6), including that he used (b) (6). It stated that he “referred to (b) (6)

(b) (6) The summary cited several specific instances of (b) (3) (B), (b) (6) making (b) (6)

A few days later, on February 25, 2019, (b) (3) (B), (b) (6) sent the two reports of the (b) (3) (B), (b) (6) management inquiry from June and October 2018 to (b) (6) and (b) (6),

<sup>957</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>958</sup> *Id.*

<sup>959</sup> Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020); WHDHS-00000048.

<sup>960</sup> WHDHS-00000048.

<sup>961</sup> *Id.*

<sup>962</sup> WHDHS-00000050.

<sup>963</sup> WHDHS-00000053.

<sup>964</sup> *Id.*

<sup>965</sup> *Id.*

<sup>966</sup> FY 2018 Performance Appraisal Closeout; Annotated Timeline (August 10 2020).

<sup>967</sup> Interview with (b) (3) (B), (b) (6) (Oct. 23, 2020).

<sup>968</sup> FY 2018 Performance Appraisal Closeout.

<sup>969</sup> *Id.* at 7.

<sup>970</sup> *Id.* at 8.

<sup>971</sup> *Id.*

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copying (b) (6).<sup>972</sup> (b) (6) wrote, “I left (b) (6) off of this email to prevent any possible ‘taint’ issue for her at this phase of the process.”<sup>973</sup> (b) (3) (B), (b) (6) interview that since (b) (6) would be serving as (b) (3) (B), (b) (6) “higher-level reviewer” should he decide to challenge the findings in his appraisal, (b) (6) had told (b) (6) that (b) (6) should not be included in discussions about the appraisal.<sup>974</sup> However, (b) (6), (b) (6), (b) (3) (B) recalled (b) (6) being in meetings related to (b) (3) (B), (b) (6) appraisal and emails demonstrate that (b) (6) continued to be involved in discussions about his appraisal after this date.<sup>975</sup> In addition, information from the management inquiry was included in the FY2018 appraisal.<sup>976</sup>

In March 2019, (b) (3) (B), (b) (6) filed a complaint (b) (3) (B), (b) (6)

[REDACTED]

On April 22, 2019, (b) (3) (B), (b) (6) met with (b) (6) in person to discuss his allegations.<sup>982</sup> (b) (3) (B), (b) (6) stated that the allegations against him were false and that he felt he was being treated differently from other SES employees.<sup>983</sup> (b) (6) confirmed that other employees who had allegedly engaged in misconduct were not treated as harshly as (b) (6).<sup>984</sup> Specifically, (b) (6) recalled that little was done concerning alleged (b) (6) lodged against a similarly situated SES official (b) (6), but that (b) (3) (B), (b) (6) was “persecuted significantly” for allegedly making (b) (6)

On May 2, 2019, (b) (6) wrote to (b) (6) and (b) (6) that because the FY 2018 appraisal “cites incidents that could not have occurred in the appraisal period, there is reasonable cause to

<sup>972</sup> WHDHS-00000380.

<sup>973</sup> *Id.*

<sup>974</sup> Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).

<sup>975</sup> Interview with (b) (3) (B), (b) (6) (Sept. 3, 2020); WHDHS-00000055.

<sup>976</sup> Exhibit B. (b) (3) (B), (b) (6) (b) (3) (B), (b) (6) FY18 Executive Perf Reissued PII.

<sup>977</sup> Interview with (b) (3) (B), (b) (6) (Sept. 15, 2020).

<sup>978</sup> WHDHS-00000063.

<sup>979</sup> *Id.*

<sup>980</sup> *Id.*

<sup>981</sup> Interview with (b) (3) (B), (b) (6) (Aug. 27, 2020).

<sup>982</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>983</sup> *Id.* WHDHS-00000391.

<sup>984</sup> Interview with (b) (6) (Aug. 7, 2020).

<sup>985</sup> *Id.*

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believe that the evaluation violates SES performance laws, a prohibited personnel practice under 5 U.S.C. § 2302(b)(12).<sup>986</sup>

On June 4, 2019, (b) (6) sent (b) (3) (B), (b) (6) a revised performance appraisal.<sup>987</sup> In the letter accompanying the reissued appraisal, (b) (6) stated that DHS OIG was rescinding and reissuing the FY 2018 appraisal (b) (6). She indicated that “the only substantive revisions to the appraisal” were changes to the narrative section containing the allegations.<sup>989</sup>

A comparison of the February 21, 2019 version and the June 4, 2019 version of the appraisals confirmed that the only difference between the versions was that several of the older allegations pertaining to (b) (3) (B), (b) (6) were removed, (b) (3) (B), (b) (6)

(b) (6). The June 4, 2019 appraisal included the same cover page as the one sent on February 21, 2019, with (b) (6) electronic signature dated December 28, 2018.<sup>991</sup> On June 5, 2019, (b) (3) (B), (b) (6) submitted a request for higher-level review of his June 4, 2019 performance appraisal.<sup>992</sup> (b) (6) did not sign the appraisals as the “higher level review” authority.<sup>993</sup> Rather, that field is left blank on each of the appraisals.<sup>994</sup> However, (b) (6) wrote a statement on June 20, 2019 stating that she performed the higher level review and approved the rating.<sup>995</sup> DHS OIG submitted the appraisal to the PRB on June 24, 2019.<sup>996</sup>

On July 2, 2019, the PRB wrote that it agreed with (b) (3) (B), (b) (6) rating but recommended changes to the narrative descriptions, which (b) (6) and (b) (6) then discussed.<sup>997</sup> On July 9, 2019, (b) (6) sent the performance appraisal to (b) (6), the PRB chair, for his “electronic signature.”<sup>998</sup> After internal discussions following the PRB’s recommendation, DHS OIG did not make any changes to the narrative.<sup>999</sup>

On July 16, 2019, (b) (6) sent the appraisal to (b) (3) (B), (b) (6) attorneys reflecting PRB review,<sup>1000</sup> but it was the wrong version of the appraisal. Instead of sending the June 4, 2019 appraisal with the PRB chair’s signature, (b) (6) sent the rescinded February 21, 2019 appraisal with the PRB chair’s signature.<sup>1001</sup> On July 18, 2019, (b) (6) notified (b) (6)

<sup>986</sup> WHDHS-00000433.

<sup>987</sup> Exhibit B. (b) (3) (B), (b) (6) (b) (3) (B), (b) (6))\_FY18 Executive Perf Reissued PII.

<sup>988</sup> WHDHS-00000394.

<sup>989</sup> *Id.*

<sup>990</sup> *Id.* Exhibit B. (b) (3) (B), (b) (6) (b) (3) (B), (b) (6))\_FY18 Executive Perf Reissued PII 060419.

<sup>991</sup> *Id.*

<sup>992</sup> WHDHS-00000082; WHDHS-00000086.

<sup>993</sup> FY18 Performance Appraisal - (b) (3) (B), (b) (6) SIGNED.

<sup>994</sup> FY18 Final Performance Appraisal - (b) (3) (B), (b) (6); FY18 Performance Appraisal - (b) (6) SIGNED.

<sup>995</sup> WHDHS-00000163.

<sup>996</sup> WHDHS-00000082; WHDHS-00000086.

<sup>997</sup> WHDHS-00000445.

<sup>998</sup> WHDHS-00000091.

<sup>999</sup> WHDHS-00000450; WHDHS-00000093.

<sup>1000</sup> WHDHS-00000432.

<sup>1001</sup> *Id.* FY18 Final Performance Appraisal - (b) (3) (B), (b) (6).

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(b) (6) that he had “sent the old, rescinded appraisal” to (b) (3) (B), (b) (6) lawyers and instructed him to “retract and send the new appraisal.”<sup>1002</sup> On July 18, 2019, (b) (6) wrote to (b) (3) (B), (b) (6) lawyers, “Due to an administrative error, the wrong performance appraisal was sent to you. I need to rescind the removal notice and performance appraisal and will reissue shortly.”<sup>1003</sup>

On July 23, 2019, (b) (6) wrote to (b) (6) that he received the correct signed performance appraisal from PRB chair (b) (6).<sup>1004</sup> He then sent the revised performance appraisal to (b) (3) (B), (b) (6) lawyers, along with a notice for (b) (3) (B), (b) (6) dated July 23, 2019 removing him from his SES role and demoting him to a GS-15 position effective August 23, 2019.<sup>1005</sup> In the email, (b) (6) explained the administrative error to (b) (3) (B), (b) (6) lawyers, stating that he had “inadvertently sent the [PRB] Chair, (b) (6), the rescinded appraisal to sign rather than requesting he sign and return to [him] the correct appraisal he already had.”<sup>1006</sup>

On July 25, 2019, (b) (6) and (b) (6) testified in an MSPB hearing regarding (b) (3) (B), (b) (6) performance appraisals.<sup>1007</sup> In her sworn testimony, (b) (6) testified that she was not aware of (b) (3) (B), (b) (6). As discussed above, emails demonstrate that (b) (6) had been aware of (b) (3) (B), (b) (6) and that she was not in favor of granting it.<sup>1009</sup> Two days after the MSPB hearing, DHS OIG filed a motion to correct the record accompanied by an affidavit from (b) (6) correcting the statements she made regarding (b) (3) (B), (b) (6). In the affidavit, she noted that contrary to her sworn testimony, (b) (3) (B), (b) (6) which DHS OIG denied.<sup>1011</sup> The MSPB judge denied DHS OIG’s motion to correct the record.<sup>1012</sup>

With respect to the allegations that we investigated, we have not identified any evidence that (b) (6), (b) (6), or (b) (6) falsified the appraisals in any way. While there were changes made between the first and second versions of the appraisal, those changes were made in response to issues identified by (b) (3) (B), (b) (6) and clearly communicated to (b) (3) (B), (b) (6) lawyers. With regard to the third and fourth versions of the appraisals, reflecting the PRB’s final review, our review confirmed that the wrong, retracted appraisal was sent to (b) (3) (B), (b) (6) as the result of an administrative error. The mistake was explained to (b) (3) (B), (b) (6) lawyers and the correct appraisal was sent to (b) (3) (B), (b) (6) lawyers on July 23, 2019.

<sup>1002</sup> WHDHS-00000442.

<sup>1003</sup> WHDHS-00000443.

<sup>1004</sup> WHDHS-00000178.

<sup>1005</sup> WHDHS-00000447; (b) (6), (b) (6), (b) (2) (August 22 2019).

<sup>1006</sup> *Id.*

<sup>1007</sup> *See generally* July 24, 2019 Transcript of Proceeding Administrative Hearing of the Merit Systems Protection Board (“MSPB Hearing Tr.”).

<sup>1008</sup> MSPB Hearing Tr. 168:1-6.

<sup>1009</sup> WHDHS-00000063.

<sup>1010</sup> (b) (2), (b) (6) -DocNum (b) (6) Affidavit.

<sup>1011</sup> *Id.*

<sup>1012</sup> Order Denying Motion to Amend Record.



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While (b) (3) (B), (b) (6) has alleged that the incorrect dates and different signatures for the PRB officer are evidence that the appraisals were falsified, we did not find evidence to support that claim. The same date of December 28, 2018 appears on all four appraisals as a result of (b) (6) (b) (6) electronic signature. The date is crossed out on the fourth appraisal and replaced with June 4, 2019 in handwriting. The different signature for the PRB chair appears to be the result of an electronic signature being included on the third appraisal, while a manual signature was included on the fourth one.

c) Removal from SES

On August 22, 2019, (b) (6) wrote a letter to (b) (3) (B), (b) (6) stating that his telework status would end on September 3, 2019, at which point he would receive more information about his duties.<sup>1013</sup> On September 17, 2019, (b) (3) (B), (b) (6) returned to work at DHS-OIG as a GS-15 employee in (b) (7)(A).<sup>1014</sup> We did not uncover any evidence that this action was pretextual or in retaliation for a protected disclosure or activity.

d) Concealed Weapon Incident

Shortly after returning to work at DHS OIG, on September 26, 2019, (b) (3) (B), (b) (6) wrote to IG Cuffari to report misconduct involving (b) (6).<sup>1015</sup> (b) (3) (B), (b) (6) conveyed that during an “icebreaker” in an (b) (6) meeting, (b) (6), (b) (7)(C) made comments about a concealed weapon.<sup>1016</sup> He did not specify the date of the meeting. In his letter to IG Cuffari, (b) (3) (B), (b) (6) wrote:

(b) (3) (B), (b) (6), (b) (7)(C)



In his interview, (b) (3) (B), (b) (6) described the meeting at which (b) (6), (b) (7)(C) made these comments and reiterated his sense that (b) (6), (b) (7)(C) was directing her comments to him in a threatening manner.<sup>1018</sup> Other witnesses, including (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), recalled (b) (6), (b) (7)(C) comments regarding a concealed weapon.<sup>1019</sup> However, no witnesses corroborated (b) (3) (B), (b) (6) view that (b) (6), (b) (7)(C) was directing the comment to him.

(b) (6), (b) (7)(C) statement was made before a large gathering of DHS OIG employees and, while it may have exhibited poor judgment on her part, we found no evidence that her comments were

<sup>1013</sup> WHDHS-00000185.

<sup>1014</sup> (b) (3) (B), (b) (6) Annotated Timeline.

<sup>1015</sup> WHDHS-00000650.

<sup>1016</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>1017</sup> WHDHS-00000650.

<sup>1018</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

<sup>1019</sup> Interview with (b) (3) (B), (b) (6) (July 24, 2020).

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intended to be a threat to the group generally, or to (b) (3) (B), (b) (6) specifically, or that (b) (6), (b) (7)(C) in fact brought a concealed handgun into the DHS OIG building.

6. *Disciplinary Action Taken Against (b) (3) (B), (b) (6)*

We reviewed allegations that (b) (6) engaged in misconduct related to (b) (3) (B), (b) (6), (b) (3) (B), (b) (6) (b) (3) (B), (b) (6), including that she unjustifiably disciplined (b) (3) (B), (b) (6) when his conduct was underserving of serious punishment.



Our investigation did not reveal sufficient evidence to substantiate the allegation that (b) (6) unjustifiably disciplined (b) (3) (B), (b) (6). While (b) (3) (B), (b) (6) did complain that (b) (6) inappropriately handled his suspension, and IG Cuffari subsequently reduced the punishment, we have not found any evidence to indicate that (b) (6) engaged in reprisal against him following his appeal, or that her initial discipline was unjustified.

**C. Misconduct, Malpractice or Unprofessional Behavior**

1. *IG Cuffari Questions (b) (6) Drafting of an Ethics Screening Agreement*

We reviewed an allegation that (b) (6) purposefully drafted a “defective and unworkable” ethics screening agreement. Against the backdrop of (b) (6) allegation that IG Cuffari had

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1020 Interview with (b) (3) (B), (b) (6) (July 22, 2020).

1021 WHDHS-00000389.

1022 Interview with (b) (3) (B), (b) (6) (July 22, 2020).

1023 *Id.*

1024 *Id.*

1025 *Id.*

1026 *Id.*

1027 *Id.*

1028 *Id.*

1029 *Id.*

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violated his recusal obligations regarding the CIA investigation and other efforts to keep information from IG Cuffari, he questioned the ethics screening agreement presented to him by (b) (6), which would have given (b) (6) authority to screen matters from IG Cuffari without his knowledge or involvement.<sup>1030</sup>

As a Presidential appointee requiring Senate confirmation, IG Cuffari had 90 days from the date of his confirmation, July 25, 2019, to comply with the terms of his ethics agreement, including by submitting a screening agreement.<sup>1031</sup> (b) (6) worked to prepare a draft agreement with (b) (6), (b) (6), and (b) (6).<sup>1032</sup>

On October 17, 2019, (b) (6) emailed (b) (6) and another attorney in the OC, attaching a draft screening agreement and other ethics forms for IG Cuffari's signature.<sup>1033</sup> On October 23, 2019, (b) (6) forwarded (b) (6) email to IG Cuffari with the documents attached.<sup>1034</sup> (b) (6) wrote that IG Cuffari had "previously signed a hard copy of the screening agreement that hadn't been updated." (b) (6) further noted that the documents were all due the next day on October 24, 2019 (three months after IG Cuffari's confirmation).<sup>1035</sup>

IG Cuffari forwarded (b) (6) email to (b) (6), for his review.<sup>1036</sup> (b) (6) replied by asking IG Cuffari if he had seen the following provision of the draft screening agreement:

I have instructed the Counsel to the Inspector General ("Counsel") (or Deputy Counsel in the absence or unavailability of the Counsel) to screen all DHS matters directed to my attention that involve outside entities or that require my participation, to determine if they involve any of the individuals, entities, or organizations listed above, and if they do to direct these matters to the Deputy Inspector General (the Alternate Official) for action or assignment, without my knowledge or involvement.<sup>1037</sup>

(b) (3) (B), (b) (6) stated that he was concerned that the paragraph assigned responsibility for screening matters to (b) (6).<sup>1038</sup>

On the same day (b) (6) forwarded the documents to IG Cuffari, October 23, 2019, (b) (6) emailed (b) (6) to say, "He hasn't responded to any of my emails including the ethics

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<sup>1030</sup> WHDHS-00000855.

<sup>1031</sup> See 5 C.F.R. § 2634.802(b); WHDHS-00000461.

<sup>1032</sup> WHDHS-00000461.

<sup>1033</sup> WHDHS-00000467.

<sup>1034</sup> WHDHS-00000468

<sup>1035</sup> *Id.* In her email, (b) (6) indicated that she had sent (b) (6) email to IG Cuffari on October 17, 2019 but that due to a technology issue she suspected that the email did not get delivered. WHDHS-00000468.

<sup>1036</sup> WHDHS-00000855.

<sup>1037</sup> *Id.*

<sup>1038</sup> Response to WilmerHale Investigation from (b) (3) (B), (b) (6) (Dec. 8, 2020).

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agreement. Trying to figure out what to make of it.”<sup>1039</sup> (b) (6) responded that IG Cuffari had replied to one email she sent earlier that day but “otherwise crickets.”<sup>1040</sup>

Later that day, IG Cuffari replied to (b) (6), “I am disappointed that this was not brought to me at an earlier date, as even one week ago the importance of this matter was not identified among the countless e-mails I received. I intend to address this later with you.”<sup>1041</sup> IG Cuffari then asked (b) (6) a series of questions about the screening agreement, including whether several paragraphs in the agreement, including the paragraph that (b) (6) had flagged, were part of a “template form used department wide”; whether the provisions of agreement were “substantially identical to what John Roth and (b) (6) and their predecessors signed”; and whether they were “substantially identical” to what other IGs sign.<sup>1042</sup> Finally, IG Cuffari noted that, “rather than the cumbersome and burdensome process outlined” in the draft agreement, he wondered whether a better approach would be for him to list the matters from which he is recused and that, if someone approached him about one of those matters, he would direct that person to the DIG or AIG for INV.<sup>1043</sup>

(b) (6) replied to IG Cuffari, noting that they had discussed the screening agreement two weeks earlier and that IG Cuffari had signed a prior draft that just needed to be updated.<sup>1044</sup> (b) (6) statement was incorrect, as IG Cuffari had not signed the previous agreement; (b) (6) informed (b) (6) of this fact after (b) (6) incorrectly advised IG Cuffari that he had already signed the agreement.<sup>1045</sup>

(b) (6) also answered some of IG Cuffari’s questions. She explained that the paragraphs IG Cuffari asked about were from a template shared by DHS.<sup>1046</sup> She also answered that (b) (6) would not have signed a screening agreement since he was not a Senate-confirmed appointee and that Mr. Roth signed a screening agreement that came from DHS, so it would have likely had substantially similar language.<sup>1047</sup> (b) (6) also answered that she did not know whether other IGs had signed agreements with similar language.<sup>1048</sup>

After replying to IG Cuffari, (b) (6) wrote to (b) (6) from DHS and informed her that she answered IG Cuffari’s “many questions about the agreement” but that she was “[d]oubtful that they allayed his concerns.”<sup>1049</sup> (b) (6) continued, “I don’t know what he’s thinking but I suspect he doesn’t want a formal process, that he wants to make decisions about what needs to be discussed for possible recusal without my active involvement/knowledge up-front.”<sup>1050</sup> (b) (6).

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<sup>1039</sup> WHDHS-00000190.

<sup>1040</sup> *Id.*

<sup>1041</sup> WHDHS-00000468.

<sup>1042</sup> *Id.*

<sup>1043</sup> *Id.*

<sup>1044</sup> WHDHS-00000191.

<sup>1045</sup> WHDHS-00000472.

<sup>1046</sup> WHDHS-00000191.

<sup>1047</sup> *Id.*

<sup>1048</sup> *Id.*

<sup>1049</sup> WHDHS-00000470.

<sup>1050</sup> *Id.*

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(b) (6) noted that she had previously gone into “great depth” with IG Cuffari on his ethics and pledge requirements.<sup>1051</sup> (b) (6) replied (erroneously) that IG Cuffari “signed the darn thing two weeks ago when the only difference was what he was subject to re[c]usal on. So these 11th hour issues make no sense. Unless he didn’t read what he signed.”<sup>1052</sup>

On October 24, 2019, IG Cuffari emailed (b) (6), and attached his revised screening agreement.<sup>1053</sup> When (b) (6) received a copy, she noted that IG Cuffari “opted to change the screening arrangement” and asked that (b) (6) send to her the list of matters from which IG Cuffari recused himself.<sup>1054</sup> (b) (6) was concerned that the revised screening agreement “might not cover prospective items” but that IG Cuffari had previously acknowledged his continued obligation to recuse himself from matters that “he knows or should know require[] his recusal.”<sup>1055</sup> (b) (6) replied, “[f]ascinating changes.”<sup>1056</sup> Notably, the finalized agreement did not authorize (b) (6) to screen matters on IG Cuffari’s behalf.<sup>1057</sup>

In sum, our investigation did not reveal that (b) (6) drafted a “defective and unworkable” ethics agreement. It appears that (b) (6), and not (b) (6) drafted the agreement, and that it, including the paragraph that (b) (6) initially found concerning, appeared to be modeled after a standard Office of Government Ethics form.<sup>1058</sup> But the evidence did demonstrate that (b) (6) erred by claiming that IG Cuffari had signed a previous version of the agreement when in fact he had not. Moreover, given (b) (6) efforts to undermine IG Cuffari and the atmosphere of distrust within the leadership of the agency, it is unsurprising that IG Cuffari objected to the ethics screening agreement as originally drafted entrusting her to screen his matters.

## VIII. CONCLUSION

In sum, our investigation revealed that (b) (6), with the assistance of (b) (6) and (b) (6), engaged in a systematic effort to undermine (b) (6) in order to advance her goal of leading the agency. This effort included, among other things, insubordination and disrespect towards (b) (6) in front of the agency’s senior staff, badgering (b) (6) to retire, lobbying senior staff to convince him to leave, and overseeing the EMOT investigation that directly implicated him and publicizing its results. Current and former DHS OIG employees described (b) (6)

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<sup>1051</sup> *Id.*

<sup>1052</sup> *Id.*

<sup>1053</sup> WHDHS-00000473.

<sup>1054</sup> *Id.*

<sup>1055</sup> *Id.*

<sup>1056</sup> *Id.*

<sup>1057</sup> WHDHS-00000809.

<sup>1058</sup> Flexibility in Ensuring and Documenting Compliance with Ethics Agreements, Off. Of Govt. Ethics, (Nov. 4, 2014), available at

[https://www.oge.gov/Web/OGES.nsf/0/E527228F98093F59852585BA005BEC70/\\$FILE/eebbe744513c40b7a3c049def23f2fdd3.pdf](https://www.oge.gov/Web/OGES.nsf/0/E527228F98093F59852585BA005BEC70/$FILE/eebbe744513c40b7a3c049def23f2fdd3.pdf); Effective Screening Arrangements for Recusal Obligations, Off. Of Govt. Ethics (Jun. 1, 2004), available at

[https://www2.oge.gov/web/oge.nsf/All%20Advisories/1E1D99C40A8CC70E85257E96005FBDBA/\\$FILE/DO-04-012.pdf?open](https://www2.oge.gov/web/oge.nsf/All%20Advisories/1E1D99C40A8CC70E85257E96005FBDBA/$FILE/DO-04-012.pdf?open).

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insubordination and disrespect towards (b) (6) as “uncomfortable,” “awkward,” “childish,” and “frustrating.”

With respect to IG Cuffari, (b) (6), with the assistance of (b) (6) and to a lesser degree (b) (6), publicly disparaged him to other DHS OIG employees. For example, (b) (6) and (b) (6) made statements that his degree came from a “diploma mill.” (b) (6) also made statements that he was “dumber than a box of rocks” and “only a GS-14.” (b) (6), (b) (6), and (b) (6) reached outside the agency to try and scuttle IG Cuffari’s nomination as well, contacting individuals in DHS, CIGIE, Congress, and the (b) (6). In the months leading up to his confirmation, (b) (6) manipulated the hiring process “so [the] new IG is limited.” (b) (6) repeatedly referred to DHS OIG as “my agency” and that she needed to protect “her people” from IG Cuffari. Once he was confirmed, (b) (6) and (b) (6) made concerted efforts to prevent information from reaching IG Cuffari, and even threatened DHS OIG employees who directly provided IG Cuffari with reports and documents that he requested. (b) (6) (b) (6) and (b) (6) attempted to persuade the (b) (6) to investigate IG Cuffari’s official travel.

Their efforts created a culture of fear and retribution within the agency directed at employees deemed insufficiently loyal. (b) (6) described (b) (6) as having a “Machiavellian” leadership style and stated that she would “trash” people who did not support her. (b) (6) was described by employees as “cutting,” “mean,” and “abusive” to anyone who disagreed with her. Disfavored employees found themselves threatened with poor performance reviews or reassigned to different positions.

While we could not substantiate other allegations, based on the documents reviewed and the witnesses available to us, we found that the evidence demonstrated that (b) (6)—with the assistance of (b) (6) and (b) (6) often planted and then cultivated seeds of divisiveness, disorder, and dissension to the detriment of DHS OIG and its mission.

Submitted By (b) (6)

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Appendix A:

**Remaining Unconfirmed Allegations**

Allegations	Findings
<p>(b) (6) allegedly approved reports that she knew to be materially false or misleading.</p>	<p>We did not find any evidence of materially false or misleading information in reports.</p>
<p>(b) (6) allegedly engaged in prohibited personnel practices, including intentionally failing to provide performance plans and evaluations.</p>	<p>We did not find any evidence that (b) (6) engaged in prohibited personnel practices. Although we found evidence that (b) (3) (B), (b) (6) did not receive a performance plan, (b) (6) was not responsible for providing a performance plan to (b) (3) (B), (b) (6)</p>
<p>(b) (6) and (b) (6) allegedly failed to take particular workplace actions based on favoritism, and (b) (6) allegedly failed to implement or comply with appropriate procedures for recusal.</p>	<p>As detailed in the report, our review found that there was no clear standard applied for the initiation of an investigation against a DHS.OIG employee following a complaint, but we did not find evidence that (b) (6) or (b) (6) failed to take particular workplace actions on the basis of favoritism or that (b) (6) failed to comply with recusal procedures.</p>
<p>(b) (6) (b) (6)</p>	<p>Our investigation identified a number of emails in which (b) (6) (b) (6) Because this allegation forms the basis of (b) (6) (b) (6) we did not reach a conclusion on this allegation.</p>

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Allegations	Findings
<p>(b) (6) allegedly failed to adequately maintain records, including of key matters such as settlements and settlement agreements.</p>	<p>In her interview, (b) (3) (B), (b) (6) said she was not aware of having violated recordkeeping requirements. We did not find any evidence that she did.</p>
<p>(b) (6), (b) (6), and (b) (6) allegedly failed to comply with recordkeeping requirements and agency procedures regarding electronic communications.</p>	<p>In her interview, (b) (3) (B), (b) (6) said she was not aware of having violated recordkeeping requirements. We did not find any evidence that (b) (6), (b) (6), or (b) (6) violated recordkeeping requirements.</p>
<p>(b) (6), (b) (6) and (b) (6) allegedly failed to comply with OIG policies regarding text messages and cell phone use (e.g., limiting personal use and prohibiting inappropriate use to view explicit material or engage in otherwise prohibited activity).</p>	<p>In her interview, (b) (3) (B), (b) (6) said she was not aware of having violated OIG policies regarding text messages and cell phone use. We did not find any evidence that she did.</p> <p>In her interview, (b) (3) (B), (b) (6) said she was not aware of having violated OIG policies regarding text messages and cell phone use. We did not find evidence that she did. Although at least one person told us that (b) (6) sent text messages during meetings, we did not find evidence that (b) (6) violated OIG policies regarding text messages and cell phone use.</p>



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Allegations	Findings
<p>(b) (6) allegedly failed to recuse herself despite a conflict of interest and also failed to preserve relevant data.</p>	<p>DHS OIG has indicated that this allegation refers to actions by (b) (6) relating to DHS official (b) (6) and a letter to Congress accusing her of not cooperating with a Department of State OIG investigation. We did not find any evidence confirming this allegation in our investigation.</p>
<p>(b) (6) and (b) (6) allegedly failed to follow telework procedures.</p>	<p>In her interview, (b) (3) (B), (b) (6) said she was not aware of having violated telework procedures. We did not find any evidence that (b) (6) or (b) (6) violated telework procedures.</p>
<p>(b) (6) allegedly improperly selected reviewing officials who would provide ratings for SES personnel, including herself, at DHS OIG.</p>	<p>We were not able to interview (b) (6), who we understand to be the person with knowledge of this issue. We did not find any other evidence to substantiate this allegation.</p>
<p>(b) (6) allegedly abused the FOIA response process and improperly accessed the Relativity database.</p>	<p>In her interview, (b) (6) said she was not aware of any allegations related to abuse of the FOIA response process or Relativity databases. We did not find any evidence that she abused the FOIA response process or improperly accessed the Relativity database.</p>
<p>(b) (6) allegedly caused false information to be transmitted to the Office of Special Counsel.</p>	<p>It is alleged that (b) (6) withheld responsive documents from the DHS OIG response to OSC counsel regarding the complaint by (b) (3) (B), (b) (6). We did not find any evidence that this occurred.</p>

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Allegations	Findings
<p>(b) (6) allegedly permitted her personal political preferences to guide or otherwise manipulate official agency actions.</p>	<p>We did not find any evidence that (b) (6) permitted her personal preferences to influence her work.</p>

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Appendix B

**I. INTERVIEW METHODOLOGY**

In light of the global COVID-19 pandemic, all interviews were conducted by videoconference. Most interviews were conducted over the Microsoft Teams platform, with a few exceptions.<sup>1059</sup>

All interviewees were informed that they were being asked to provide information as part of an investigation being conducted by DHS OIG into alleged misconduct and/or improper performance of official duties.

The interviewers explained that they were WilmerHale attorneys who had been retained by DHS OIG, and that they did not represent the interviewee or any other individual at DHS in a personal capacity. Interviewers stated that the discussion was covered by the attorney-client privilege and that the privilege belonged to DHS OIG, and not to the interviewee personally. The interviewers further explained that DHS OIG could decide whether, and to what extent, to waive the privilege and share the contents of the interviews with third parties, including other government agencies or Congress, without notifying the interviewee.

All interviewees were asked not to discuss the nature of the interview with any other persons, except any private legal counsel retained by the interviewee related to this investigation.

WilmerHale interviewed 53 individuals, many of whom are current or former DHS OIG personnel. Some individuals were interviewed on multiple occasions.

In total, WilmerHale conducted approximately 71 interviews of the following 53 individuals:

- (b) (3) (B), (b) (6) ((b) (3) (B), (b) (6) );
- (b) (3) (B), (b) (6) );
- (b) (3) (B), (b) (6) ((b) (3) (B), (b) (6) );
- (b) (3) (B), (b) (6) );
- (b) (3) (B), (b) (6) ((b) (3) (B), (b) (6) );
- (b) (3) (B), (b) (6) ((b) (3) (B), (b) (6) );
- (b) (6) ;
- (b) (3) (B), (b) (6) ((b) (3) (B), (b) (6) );
- Joseph Cuffari (Inspector General);
- (b) (6) );
- (b) (3) (B), (b) (6) ((b) (3) (B), (b) (6) );
- (b) (6) );

<sup>1059</sup> (b) (3) (B), (b) (6) interview was conducted over Adobe Connect (b) (3) (B), (b) (6) (b) (3) (B), (b) (6) (b) (3) (B), (b) (6) , and a few other individuals were interviewed by teleconference.

All redactions in this document made pursuant to FOIA Exemption 3(b) are also subject to redaction pursuant to FOIA Exemption 6.

(b) (3) (B), (b) (6)

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## II. DOCUMENT REVIEW METHODOLOGY

### A. Document Review

Overall, we reviewed over 42,000 documents. In conducting this investigation, WilmerHale collected and reviewed a broad range of materials, including:

**Emails:** WilmerHale collected over 1.3 million email communications from a dozen former and current DHS OIG employees. The emails spanned a period of nearly three years, and we applied targeted search terms and parameters to identify relevant emails for the investigation.<sup>1060</sup> These search terms were designed to target emails relating to the allegations of misconduct against (b) (6), (b) (6), and (b) (6) at issue in our investigation. Overall, we reviewed over 34,000 emails and attachments.

**Computer Review:** Additionally, WilmerHale obtained over 13,500 documents that DHS OIG IT remotely collected in February 2020 from DHS computer devices issued to (b) (6), (b) (6), and (b) (6).<sup>1061</sup> Through a targeted analysis, WilmerHale identified and reviewed over 1,900 potentially relevant documents. WilmerHale also retained forensic experts who imaged all six DHS-issued laptops used by (b) (6), (b) (6), and (b) (6) (two laptops per employee). The forensic experts were able to extract content from all six laptops. Through a targeted analysis, WilmerHale identified and reviewed over 4,500 files for previously unidentified relevant content.

**Cell Phone Materials:** The forensic experts also analyzed data stored on the DHS OIG cell phones issued to (b) (6), (b) (6), and (b) (6). The forensic experts were able to extract some information from all three cell phones. The data they were able to extract included, but was not limited to, text messages, voicemails, chats, emails and documents. WilmerHale reviewed all potentially relevant content.

**Deleted Materials:** WilmerHale learned that prior to her departure, (b) (6) deleted approximately 6,000 files from her laptop. DHS OIG was able to restore approximately 3,500 of these files for review. WilmerHale performed an analysis of the metadata for these files to identify only files that were reviewable and could potentially be business related. This yielded a document population of approximately 2,100 files, all of which were reviewed.

**Transfer of Electronic Files:** We reviewed an allegation that on May 2, 2020, (b) (6) transferred a “massive batch” of electronic files to (b) (6) shortly before (b) (6) separation from DHS OIG. In her interview, (b) (3) (B), (b) (6) confirmed that she had transferred files related to her work as (b) (6) to a shared drive for (b) (6). Our investigation confirmed that

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<sup>1060</sup> For most of our custodians, we were given full access to the data set and were able to review any files that hit on our search terms. However, we were not given full access to the data set for IG Dr. Cuffari. Instead, we provided a list of search terms and a date restriction to the counsel’s office of DHS OIG, who applied those terms to the data set and then reviewed the resulting search hits before providing access to us. We understand that certain documents may have been withheld from our review set on the basis of irrelevancy, privilege, or other sensitivity.

<sup>1061</sup> However, this collection was not a complete inventory of documents stored on these devices, as DHS OIG IT was not able to retrieve all documents due to technical limitations.

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~~Attorney Work Product~~

(b) (6) accessed files from a DHS OIG shared drive folder called F:\Groups\OIG-wide\Transition (b) (6)\.” WilmerHale was unable to review the files located in this folder because this folder was not backed up on DHS OIG’s server. Nevertheless, we did review the names of the files in the folder, which suggest that (b) (6) transferred these files to the (b) (6) shared drive for legitimate work-related purposes.

**Personnel Files:** WilmerHale obtained and reviewed personnel files for a number of current and former DHS OIG employees, including (b) (6), (b) (6) and (b) (6).

**Other Documents:** WilmerHale obtained and reviewed several hundred additional relevant files from DHS OIG. These files included administrative documents, documents excerpted from hard-copy personnel files, policies and procedures, standards of conduct and codes of ethics, organizational charts, and DHS OIG hotline complaints, among others.

## B. Limitations on the Investigation

### 1. Key witnesses refused to be interviewed

WilmerHale requested interviews of a number of additional witnesses, but some were unwilling to participate in an interview. Of those witnesses, some were compelled to participate in the interview by his/her employer.<sup>1062</sup> However, some key witnesses refused to be interviewed and could not otherwise be compelled to participate:

- (b) (6): (b) (6) is one of the three subjects of this investigation, and is thus a primary person of interest. She would likely have been able to share information related to her intentions, as well as her observations and recollections of key events. On August 6, 2020, WilmerHale contacted (b) (6) to inquire as to whether (b) (6) would make herself available for an interview. That same day, (b) (6) informed WilmerHale that (b) (6) would not make herself available for an interview.
- (b) (6): (b) (6) served as (b) (6) of the CIGIE Integrity Committee during the relevant time period, and he would likely have information concerning the CIGIE IC’s investigations process generally, as well as the investigations of (b) (6), IG Cuffari, and (b) (6). (b) (6) would likely also be able to discuss whether certain investigations were referred to the CIGIE IC and explain why the committee declined to investigate in some instances. On September 18, 2020, WilmerHale contacted (b) (6) to inquire as to whether he would agree to be interviewed. After receiving no response, WilmerHale contacted (b) (6) again on September 21, 2020. That same day, (b) (6) noted that he would not agree to be interviewed.
- (b) (6): (b) (6), (b) (3) (B) is the former (b) (6), (b) (3) (B) to IG Cuffari. (b) (6), (b) (3) (B) would likely have information concerning the misconduct that allegedly took place during his tenure at DHS OIG, and efforts to undermine IG Cuffari. In July 2020, WilmerHale contacted (b) (6), (b) (3) (B) to inquire as to whether (b) (6), (b) (3) (B) would make

<sup>1062</sup> These witnesses included (b) (3) (B), (b) (6), (b) (3) (B), (b) (6), and (b) (3) (B), (b) (6).

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himself available for an interview. In September 2020, (b) (6), (b) (3) (B) counsel, (b) (6) (b) (6) spoke with WilmerHale to discuss the nature of the interview. Thereafter, (b) (6) represented that (b) (6), (b) (3) (B) was unable to sit for an interview due to (b) (6), (b) (3) (B), but he would answer written questions. WilmerHale sent written questions to (b) (6), (b) (3) (B) on October 6, 2020. On December 9, 2020, (b) (6), (b) (3) (B) provided responses to the written questions. With the exception of these written responses, we were not able to interview (b) (6), (b) (3) (B) or show him any relevant documents.<sup>1063</sup>

- (b) (6) : As the (b) (6), (b) (6) would likely be familiar with CIGIE's interactions with DHS OIG during the relevant time-period as well as his interactions with IG Cuffari and (b) (6). In September 2020, WilmerHale contacted (b) (6) to inquire as to whether he would make himself available for an interview. On September 15, 2020, (b) (6) notified WilmerHale that (b) (6) was "not in a position to" sit for an interview related to this investigation.
- (b) (6) : (b) (6) is the (b) (6), and she is the (b) (6). (b) (6) and (b) (6) contacted (b) (6) to discuss IG Cuffari's nomination before he was confirmed. (b) (6) would likely have information about these discussions, and in particular, whether she recommended (b) (6) contact the DHS White House liaison. In July 2020, WilmerHale contacted (b) (6) to inquire as to whether she would agree to an interview. On September 15, 2020, (b) (6) notified WilmerHale that (b) (6) was "not in a position to" sit for an interview related to this investigation.
- (b) (6) : As (b) (6), (b) (6) would likely be familiar with complaints filed with OSC, including allegations of reprisal filed by (b) (3) (B), (b) (6) in November 2019. In July 2020, WilmerHale contacted (b) (6) to inquire as to whether he would make himself available for an interview. On July 30, 2020, (b) (6) notified WilmerHale that the General Counsel of OSC contacted her to convey that (b) (6) declined to be interviewed.
- (b) (6) : (b) (6) was allegedly selected by (b) (6) to serve on the Performance Review Board (PRB). The PRB approves all performance evaluations of SES employees in the DHS OIG. (b) (6) allegedly recused himself when (b) (6) (b) (6), (b) (2) from IG Cuffari, an action DHS OIG asked WilmerHale to investigate. (b) (6) would likely have spoken to his selection process for the PRB, his relationship with (b) (6), and the reason he recused himself from (b) (6) review. In August 2020, WilmerHale contacted (b) (6) to inquire as to whether he would agree to an interview. On August 26, 2020, (b) (6) responded to our inquiry noting that he believed participating in the interview would be "problematic." He did not provide any additional detail as to why. On September 11, 2020, WilmerHale contacted (b) (6) to confirm his position about attending the interview. WilmerHale received no response. On September 25, 2020, (b) (6)

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<sup>1063</sup> (b) (3) (B), (b) (6) Response to WilmerHale Investigation 12-8-20.

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notified WilmerHale that (b) (6) was “uncomfortable” proceeding with an interview and his employer did not want to compel him to sit for the interview.

- (b) (6) (b) (6) likely would have had information concerning the Tecate Report; DHS OIG’s telework policy; and various other allegations of misconduct and mismanagement. In September 2020, WilmerHale contacted (b) (6) to inquire as to whether he would make himself available for an interview. On September 23, 2020, (b) (6) responded noting that he is on military orders and is therefore not available for the interview. (b) (6) is on active military duty until March 1, 2021.

Some other potential witnesses were unreachable.<sup>1064</sup>

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<sup>1064</sup> Those witnesses included (b) (6)

(b) (6)  
(b) (6)



All redactions in this document are pursuant to FOIA Exemption 3(b) are also subject to redaction pursuant to FOIA Exemption 6.

(b) (6), (b) (3) (B)

All redactions in this document are pursuant to FOIA Exemption 3(b) are also subject to redaction pursuant to FOIA Exemption 6.

(b) (6), (b) (3) (B)

(b) (6), (b) (3) (B)

## Exhibit 2

## Chart of Claims

<b>Date</b>	<b>Accused</b>	<b>No. of Allegations</b>
9/10/2019	Cuffari	2
7/1/2020	Cuffari	2
7/27/2020	Cuffari	14
8/19/2020	Cuffari	1
9/25/2020	Cuffari	9
5/13/2021	Cuffari	1
6/24/2021	Cuffari	8
9/12/2022	Cuffari	2
10/26/2022	Cuffari	6
3/3/2023	Cuffari	10
4/3/2023	Cuffari	8
<b>Total</b>		<b>63</b>

<b>Date</b>	<b>Accused</b>	<b>No. of Allegations</b>
6/24/2021	Fredricks	8
6/24/2021	Read	8
5/6/2022	Read	2
6/7/2022	Gangloff	2
10/26/2022	Fredricks	2
4/3/2023	Fredricks	8
4/3/2023	Read	7
<b>Total</b>		<b>37</b>

## Exhibit 3



**COUNCIL OF THE INSPECTORS GENERAL  
ON INTEGRITY AND EFFICIENCY**  
**INTEGRITY COMMITTEE**

June 7, 2022

Via Certified Mail/Return Receipt Requested

Joseph Gangloff  
Former Counsel to the Inspector General  
Social Security Administration  
1220 Edgevale Road  
Silver Spring, MD. 20910

Integrity Committee Case 22-048: Notification of Investigation

Dear Mr. Gangloff:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged with receiving, reviewing, and investigating, where appropriate, allegations of misconduct made against Inspectors General (IG) and designated members of an IG's staff. Additionally, at its discretion and consistent with the public interest, the IC may consider wrongdoing alleged to have occurred while and individual served as a Covered Person, even if that individual is no longer a Covered Person or in government service when the IC receives the allegation.

The IC takes action on allegations of wrongdoing that involve abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such persons. In addition to determining whether a complaint falls within its authority and meets the threshold for investigation, the IC also determines whether, given the totality of the circumstances surrounding the complaint, further action is warranted.

The IC received a complaint alleging you and other senior leaders of the U.S. Social Security Administration (SSA) Office of Inspector General (OIG) abused your authority and grossly mismanaged the SSA's Civil Monetary Penalty (CMP) program, when you allegedly levied unprecedented fines against SSA beneficiaries without due process and retaliated against two OIG employees who raised concerns about the management of the CMP program. Based on its thorough review of the allegations and supporting documentation, including a May 6, 2022, Merit Systems Protection Board (MSPB) opinion as well as public reporting on the affected SSA beneficiaries, the IC has

1717 H Street, NW ★ Suite 825 ★ Washington DC ★ 20006-3900

<https://www.ignet.gov/cigie/committees/integrity-committee>

[Integrity-Complaint@cigie.gov](mailto:Integrity-Complaint@cigie.gov)

IC 22-048

2 | Page

determined to initiate an investigation into this matter. Specifically, the IC will investigate:

- 1) Whether any SSA OIG Covered Person abused his or her authority in the implementation of the CMP program, or grossly mismanaged the CMP program, or otherwise managed the CMP program in violation of applicable laws, rules, or regulations.
- 2) Whether any SSA OIG Covered Person's actions in any of the above circumstances demonstrate a lack of the integrity or independence reasonably expected of a senior official in the Inspector General community.

At the request of the IC, the U.S. Department of Justice (DOJ) Office of Inspector General (OIG) has been assigned to lead the investigation and prepare a draft Report of Investigation (ROI). An investigator from the DOJ OIG may contact you for an interview regarding this matter. Upon completion of its investigation, DOJ OIG will provide the draft ROI to the IC. You will have the opportunity to comment on the draft ROI prior to final consideration of the ROI by the IC. You may also submit additional statements or documents to the IC for its consideration.

The final ROI, along with the findings, conclusions, and recommendations of the IC, if applicable, will be forwarded to the President, the CIGIE Executive Chairperson, the CIGIE Chairperson, and to the relevant Congressional committees as required by the Inspector General Act, 5 USC App, Section 11 (d)(8)(A). You will be notified in writing when the IC forwards the ROI to the above individuals for review. If you have questions regarding this matter, please contact the IC at by email at [Integrity-WG@cigie.gov](mailto:Integrity-WG@cigie.gov).

Sincerely,



Kevin H. Winters  
Chairperson  
Integrity Committee

cc: The Honorable Michael Horowitz  
Inspector General  
U.S. Department of Justice  
Office of Inspector General



## Exhibit 4



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

October 27, 2020

Via e-mail: [Integrity-WG@cigie.gov](mailto:Integrity-WG@cigie.gov)

The Honorable Kevin H. Winters  
Chairperson  
Integrity Committee  
Council of the Inspectors General on Integrity & Efficiency  
1717 H Street NW, Suite 825  
Washington, DC 20006

Re: Integrity Committee's October 19, 2020 letters concerning contacts with CIGIE Chair and Treasury Inspector General staff

Dear Chairperson Winters:

Pursuant to my obligations under *Integrity Committee Policies and Procedures* (ICPP), § 5.B, I am referring allegations of retaliation and bias to the Integrity Committee.

As described below, I am a whistleblower who made protected disclosures to Congress and the Integrity Committee (IC) about allegations of serious misconduct by Department of Homeland Security (DHS) Office of Inspector General (OIG) senior executives. To date, your actions related to my protected disclosures have the appearance of or are in fact retaliation and bias against me, DHS OIG Counsel, and DHS OIG. Therefore, pursuant to ICPP, § 3.K.v, you must be recused from matters involving me, DHS OIG Counsel, and DHS OIG writ large.

### **Background**

My first day as Inspector General (IG) of DHS was July 29, 2019. Over the next few months, I personally observed or received credible reports of gross mismanagement, financial irregularities, prohibited personnel practices, insubordination, incivility, abuse of authority, lack of candor, and other forms of misconduct on the part of DHS OIG senior executives. After conferring with several members of the Inspector General community, I referred to the IC multiple, credible allegations of serious misconduct on the part of those DHS OIG senior executives. At least two other DHS OIG employees independently filed complaints with the IC alleging serious misconduct on the part of DHS OIG senior executives. The



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IC advised me that it would take no action on my referrals and returned them back to me for whatever action I deemed appropriate. I later learned that the IC also intended to take no action on the other complaints. Additionally, IC Senior Assistant General Counsel cautioned my acting Chief of Staff that I should make no more referrals to the IC. This was inexplicable, given the ICPP.

I nevertheless determined that investigating the allegations against DHS OIG senior executives was in the public interest. I knew that given the nature of the allegations and the high level of the employees involved, “an internal investigation of the matter[s] might not be objective in fact or appearance.” ICPP, § 5.A.ii.b.<sup>1</sup> I attempted to engage another Inspector General to investigate the matters but was unsuccessful. After conferring with members of the IG community, I concluded that the appropriate course was to retain an independent investigator under competitive contracting procedures, a common practice in the federal government.

The IC then launched an inquiry into whether my decision to engage the services of a contractor to conduct such an independent administrative investigation was “retaliatory.” However, the IC’s exercise of authority in this matter was precluded by the procedures outlined in the Civil Service Reform Act of 1978, 5 U.S.C. §§ 1201 – 1221, 2302, 7701, which provide the exclusive remedy for an allegedly retaliatory investigation. *See United States v. Fausto*, 484 U.S. 439 (1988).<sup>2</sup>

Moreover, the IC asserted in a July 20, 2020 letter to James Read, DHS OIG Counsel to the Inspector General, that he was prohibited from providing representation relative to the IC’s inquiry because the IC was inquiring into my actions in my “personal capacity.” When Mr. Read asked

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<sup>1</sup> Since mid-August 2019, I have also personally informed members of the Senate Homeland Security and Governmental Affairs (HSGAC) committee and their staff of these allegations about DHS OIG senior executives’ serious misconduct. In December 2019, the Chairmen and Ranking Members of the HSGAC and the House Homeland Security Committee sent me a letter expressing their concerns about senior executives’ misconduct and their support for my efforts to take appropriate actions, and asking me to keep them apprised of my progress. I have kept the committees informed of my actions to include my use of an independent contractor, and I shared the same information about the independent contractor with the Council of the Inspectors General on Integrity and Efficiency, DHS OIG appropriators, and the Office of Management and Budget.

<sup>2</sup> An individual may seek relief from the Merit Systems Protection Board when an agency initiates an investigation in retaliation for the individual’s whistleblowing. *Russell v. Department of Justice*, 76 M.S.P.R. 317 (1997).



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Department of Homeland Security

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IC Senior Assistant General Counsel to identify the basis for the IC's authority, she responded in a telephone call that if he determined that I was acting in my official capacity in authorizing the investigation by the contractor and that it was in DHS OIG's interest to provide representation, the IC might open an investigation into Mr. Read. However, I am aware of no law that gives the IC authority to oversee an Inspector General in his "personal capacity," nor am I aware of a law that gives the IC the power to disqualify a duly-appointed Counsel to an Inspector General from providing advice or representation in a matter.<sup>3</sup>

In this connection, Mr. Read told IC Senior Assistant General Counsel that based on the information available to him it was unreasonable to conclude that the investigation was retaliatory and therefore providing advice and representation to DHS OIG leadership was warranted. IC Senior Assistant General Counsel responded that in this case the starting point was to assume that the allegation of retaliation is true. I consider this an explicit expression of bias against me.

Moreover, when Mr. Read asked IC Senior Assistant General Counsel how I could provide the DHS OIG procurement records requested by the IC if the IC's inquiry was directed at me in my "personal capacity," she responded that DHS OIG should simply give me the records so that I could submit them to the IC. Of course, a federal employee may not disseminate agency records in an effort to resolve a personal dispute. IC Senior Assistant General Counsel appears to have been encouraging Mr. Read to participate in a violation of DHS OIG records policies, federal records laws, and ethics rules prohibiting the use of one's official position for private gain. This is not something an unbiased investigator would do. To be clear, I reject the notion that the IC's inquiry is directed at me in my "personal capacity," but if the IC believes otherwise then its demand that I produce agency records was an abuse of authority.

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<sup>3</sup> The client of an attorney employed by a federal agency is the agency. See D.C. Bar Rules of Professional Conduct § 1.6(k); *Blue Lake Forest Products*, 75 Fed. Cl. 779, 792 (2007). Consistent with Department of Justice guidelines, see 28 C.F.R. § 50.15(b), Counsel to the Inspector General and his subordinate attorneys are obligated by the terms of their appointments to provide legal advice and representation to DHS OIG employees *unless*: (i) It does not reasonably appear that the matter involves actions that a DHS OIG employee took in the scope of his or her employment; or (ii) based on the particular circumstances presented, Counsel determines that it is not in the interest of DHS OIG to provide legal advice or representation.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

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**Basis for current referral -- October 19, 2020 letters**

In your October 19, 2020 letter to me (attached), you express concern over my recent contact with Michael Horowitz, Chair of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), as well as contact that Mr. Read had with staff of the Treasury Office of Inspector General (TOIG). According to your letter, these contacts related to “an ongoing IC investigation” and were made to obtain information that I believed “would be helpful to a DHS OIG investigation.” Your letter states that these contacts could “be perceived as interfering with or otherwise prejudicing the IC’s investigation.”

As explained below, I contacted the Chair of CIGIE because it is important the Chair know that the IC has had knowledge of, but has not provided information it possesses about, a threat against a sitting Inspector General. Those actions were so unusual that I thought the Chair could provide information about what I hoped was a mistake. However, the IC’s inexplicable behavior after I contacted the Chair of CIGIE seeking clarification about this threat and your subsequent letters no longer appear to be mistakes, and are indeed the basis for my referral.

The IC investigation to which your October 19, 2020 letter refers concerns allegations about the conduct of a former DHS OIG detailee. TOIG agents interviewed me on September 17, 2020, and during the course of the interview, they described the allegations they were investigating in detail. At no time during my interview did TOIG agents state they were investigating the threat against me. At the conclusion of the interview, the TOIG agents, before they left, asked me whether I was aware that former DHS OIG senior executive [REDACTED] had voiced a threat against me to at least one other DHS OIG employee. I responded that I was aware that she made derogatory statements about me in the past to subordinate employees but was not aware of an actual threat against me. The TOIG agents declined to provide me with additional details.

To my knowledge, the IC is not investigating the alleged threat by [REDACTED]. Accordingly, your letter is incorrect in stating that Mr. Read was trying to obtain information about an “an ongoing IC investigation.” Likewise, your letter is incorrect to suggest that Mr. Read’s contact with TOIG could “be perceived as interfering with or otherwise prejudicing the



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IC's investigation," as Mr. Read was not inquiring about an allegation under investigation by the IC.<sup>4</sup>

Since my interview with the TOIG agents, I have become increasingly concerned because it is not clear whether anyone in proper authority has *fully* assessed the credibility of the threat or taken steps to ensure my safety or the safety of others. I asked Mr. Read to contact TOIG to obtain additional information about the alleged threat that I could provide to the Federal Bureau of Investigation.<sup>5</sup> Contrary to your letter, Mr. Read was not seeking information that could be "helpful to a DHS OIG investigation" because neither DHS OIG nor its independent contractor is investigating [REDACTED] alleged threat.

In this connection, on October 9, 2020, the Acting General Counsel of TOIG told Mr. Read that TOIG's investigation was ongoing, and that CIGIE, not TOIG, would determine whether any of TOIG's work product could be shared. Standard law enforcement procedures call for informing the victim of a threat and interviewing the victim to obtain relevant information to assess the threat. The IC has not yet taken these basic steps to provide me with this important information. Without this information, my attempts to seek an informed protective order and to take the steps necessary to ensure my safety and that of others are exceedingly difficult and unnecessarily delayed.

If in fact the IC is unilaterally investigating a threat against me, I have not been notified nor am I aware of any steps to ensure my and others' safety. In the more than one month since I learned of [REDACTED] alleged threat against me, I have been left to my own devices to determine whether any steps have been taken to fully gather pertinent evidence, bring the matter to the attention of appropriate authorities, and begin the process of obtaining whatever protection may be warranted. As a law enforcement officer, I find it inconceivable and outside the course of proper investigative protocol that the IC would investigate an alleged threat

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<sup>4</sup> While it appears that TOIG became aware of [REDACTED] alleged threat while conducting the investigation of a former DHS OIG detailee, information about any such threat against me, my family, or staff is clearly separate and apart from the underlying investigation.

<sup>5</sup> I am both a principal officer of the United States and a federal law enforcement officer within the meaning of 18 U.S.C. § 115. The FBI has primary jurisdiction to investigate allegations of threats against public officials. See 28 C.F.R. § 0.85(a) (the FBI has authority to investigate violations of the laws of the United States "except in cases in which such responsibility is by statute or otherwise exclusively assigned to another investigative agency").



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Department of Homeland Security

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without informing me, the victim, nor why it would criticize me with insinuations of untoward behavior for trying to learn about the underlying threat and to protect myself and others.

**Referral to IC and resulting recusal**

The IC's actions to date, as outlined above and as punctuated by your letters to Mr. Read and me, appear to demonstrate bias against us and DHS OIG writ large. The evidence strongly suggests that the IC's actions are in retaliation for my protected whistleblowing to the oversight committees and to the IC.

Therefore, as I am obligated to do, I am referring these facts and your letters to the Integrity Committee. Please confirm that you are recused from all matters involving Mr. Read, myself, or other DHS OIG designated individuals and ensure that the other members of the IC provide objective oversight of matters that involve Mr. Read, myself, and DHS OIG. Additionally, please provide me with the pertinent details of the threat, including but not limited to what was said, to whom, the steps taken to assess the threat, and when those steps were taken.

Sincerely,

JOSEPH V CUFFARI Digitally signed by JOSEPH V CUFFARI  
Date: 2020.10.27 09:21:19 -0400'

Joseph V. Cuffari, Ph.D.  
Inspector General

Attachments: IC Letter to DHS OIG IG, dated October 19, 2020  
IC Letter to James Read, dated October 19, 2020

cc: The Honorable Michael Horowitz  
Chair  
Council of the Inspectors General on Integrity and Efficiency

The Honorable Allison Lerner  
Vice Chair  
Council of the Inspectors General on Integrity and Efficiency

## Exhibit 5





## Integrity Committee

Council of the Inspectors General on Integrity and Efficiency

1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ [Integrity-Complaint@cigie.gov](mailto:Integrity-Complaint@cigie.gov)

October 19, 2020

### Via Email

Honorable Joseph V. Cuffari  
Inspector General  
Office of Inspector General  
U.S. Department of Homeland Security

Dear Inspector General Cuffari:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) was recently made aware of your communications with the CIGIE Chairperson and employees of the U.S. Department of Treasury Office of Inspector General (Treasury OIG) regarding an ongoing IC investigation.

The purpose of this letter is to express the IC's concerns with your apparent attempt to gain information and your communications about an ongoing IC investigation, and the potential impact of your actions on that investigation. It is the IC's understanding that, in addition to contacting the CIGIE Chairperson on more than one occasion about this matter, you also asked Mr. James Read, Counsel to the Inspector General, U.S. Department of Homeland Security Office of Inspector General (DHS OIG), to contact counsel at Treasury OIG and attempt to obtain information in the IC's investigation that you believe would be helpful to a DHS OIG investigation. While these actions may be well-intentioned, they may also be perceived as interfering with or otherwise prejudicing the IC's investigation.

The IC was established by Congress to fill the vital role of holding senior OIG officials accountable for serious misconduct by ensuring fair, consistent, timely, and impartial disposition of allegations that fall within the IC's statutory authority. For the IC to maintain its independence and ensure the credibility of its processes, all allegations within the jurisdiction of the IC must be resolved through the required IC process without interference. While the IC is hopeful that you did not intend to interfere with an IC investigation by these actions, the IC requests that you allow its process to continue and to cease actions that may hinder its investigation. For example, if you believe a covered person has engaged in wrongdoing, then the appropriate venue to receive that allegation is the IC, not the CIGIE Chairperson or Treasury OIG.

Finally, we have a process by which you can communicate with the IC. Specifically, you may submit any complaints against a covered person to [Integrity-Complaint@cigie.gov](mailto:Integrity-Complaint@cigie.gov).

October 19, 2020  
Page 2

If you have questions about the IC's policies or process, then you may submit those to [Integrity-WG@cigie.gov](mailto:Integrity-WG@cigie.gov) or to Faith Coutier, Senior Assistant General Counsel, at [faith.coutier@cigie.gov](mailto:faith.coutier@cigie.gov).

Sincerely,

A handwritten signature in black ink that reads "K. H. Winters". The signature is written in a cursive style with a long horizontal flourish at the end.

Kevin H. Winters  
Chairperson  
Integrity Committee

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY ("CIGIE"), INTEGRITY COMMITTEE ("IC"); et al.

I. (a) PLAINTIFFS

KRISTEN FREDRICKS, JOSEPH V. CUFFARI, JOSEPH E. GANGLOFF, and JAMES M. READ

Council of the Inspectors General on Integrity and Efficiency ("CIGIE"), Integrity Committee ("IC"); et al.

(b) County of Residence of First Listed Plaintiff Howard County, MD (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant District of Columbia (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

JOHN J. VECCHIONE, NEW CIVIL LIBERTIES ALLIANCE 1225 19th Street NW, Suite 450 Washington, DC 20036 (202) 869-5210

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, PERSONAL PROPERTY, HABEAS CORPUS, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 5 U.S.C. §§ 702 and 706; 28 U.S.C. §§ 1361 and 2201-2202

Brief description of cause: Set aside actions of Council of CIGIE, IC, and members thereof as the structure of these entities violates the Constitution

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE: Apr 4, 2023 SIGNATURE OF ATTORNEY OF RECORD: /s/ John J. Vecchione

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**Additional Defendants**

1. KEVIN H. WINTERS, Chairman, IC, in his official capacity;
2. ROBERT P. STORCH, Vice-Chairman, IC, in his official capacity;
3. GAIL S. ENNIS, Member, IC, in her official capacity;
4. KIMBERLY A. HOWELL, Member, IC, in her official capacity;
5. DALE A CHRISTOPHER, Deputy Director for Compliance, U.S. Office of Government Ethics, in his official capacity;
6. TOM MONHEIM, Member, IC, in his official capacity;
7. CATHERINE S. BRUNO, Member, IC, in her official capacity;
8. ALLISON LERNER, Inspector General, National Science Foundation, former Chair and Vice Chair, CIGIE, in her official capacity,