

June 27, 2022

The Honorable Joseph V. Cuffari
Inspector General
U.S. Department of Homeland Security
245 Murray Lane, SW
Washington, D.C. 20528

Dear Inspector General Cuffari:

We write regarding your May 13 response to our April 26 letter requesting information about reports that you and senior officials in your office diminished and delayed reports of sexual harassment, domestic violence, and other misconduct at the Department of Homeland Security (DHS). In your May 13 response, you acknowledge that you removed findings regarding employee discipline from a November 2020 Office of Inspector General (OIG) report on domestic violence by DHS personnel and a draft, unpublished OIG report on sexual harassment and misconduct. You also provided a detailed explanation for the conclusions you reached with respect to each report. However, your responses also raise additional questions, and we write again to seek further clarity.

A May 2020 draft of the domestic violence report, released by the Project on Government Oversight (POGO), discusses DHS's approach to disciplining personnel against whom agency investigators substantiated allegations of domestic violence. The draft finds that certain DHS law enforcement agencies "took limited disciplinary action against law enforcement officers who engaged in domestic violence," describes examples of such cases, and recommended that DHS components revise their disciplinary tables of offenses and penalties to identify specific charges and penalties for domestic violence.¹

You explain that you removed these findings and recommendations based on input from an expert in employment law and because they "substitute[d] the subjective policy preferences of [Office of Inspections and Evaluations] staff for the lawful, strategic judgments of component attorneys and managers." You further stated that you endorsed the removal of similar findings from the unpublished sexual harassment and misconduct report for similar reasons, and that "[a]n Inspector General is in no position to substitute the subjective preferences of an inspector for the considered strategic judgments of agency attorneys and managers." In recent years, however, the Department of State and Department of Justice (DOJ) OIGs have published similar reports, albeit with slightly different scopes and methodologies, and have provided recommendations that could be read to critique agency decision making in these areas.² For example, the DOJ OIG reviewed how

¹ Draft Report, *DHS Has Not Adequately Addressed Law Enforcement Officer Misconduct Related to Domestic Violence*, <https://www.pogo.org/document/2022/04/draft-homeland-security-watchdog-report-on-domestic-violence>.

² See U.S. Dep't of State, Off. Of Inspector Gen., *Evaluation of the Department's Handling of Sexual Harassment Reports* (Sept. 2020), <https://www.stateoig.gov/system/files/esp-20-06.pdf>; U.S. Dep't of Just., Off. of Inspector Gen., *The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components* (Mar. 26, 2015), <https://oig.justice.gov/reports/2015/e1504.pdf>.

component agencies handled allegations of sexual misconduct and sexual harassment that resulted in disciplinary action or decision to take no action.³ DOJ OIG recommended, among other things, that DOJ develop consistent policies and practices to ensure sexual misconduct and harassment allegations are handled in an appropriate manner.⁴ Further, DOJ OIG found that while multiple subcomponents had offense tables containing specific offenses to address sexual harassment and misconduct, the subcomponents often applied general offense categories to misconduct that fell within more specific offense categories contained in offense tables.⁵ It is unclear why DHS OIG would be unable to make similar critiques.

You further explain that you removed these findings from the domestic violence report because they addressed DHS employees found by agency investigators to have engaged in domestic violence, and not just those convicted of misdemeanor crimes of domestic violence (MCDVs). You state that the findings thus went “beyond the scope of the project as originally approved,” and that the “approved project scope . . . was about [law enforcement officers] convicted of MCDVs.” This description of the project’s approved scope does not appear consistent with that detailed in the draft report, which states that the project’s scope was “to determine whether CBP, Secret Service, ICE, and TSA effectively identify, report, investigate, and discipline law enforcement employees who commit domestic violence offenses.”⁶ It is also unclear why you and the inspectors conducting the evaluation would have divergent understandings of its approved scope.

With respect to the second report addressing sexual harassment and misconduct at DHS components, you produced a copy of the OIG’s 2018 survey. Among other troubling findings, more than 10,000 survey respondents reported having experienced sexual harassment or misconduct. In explaining why the report was not transmitted, you state that you “first became aware” of the survey and its findings on or around December 3, 2020, and that “[t]he report has been delayed further by some OIE staff members’ refusal to accept input from subject matter experts.”

You also note that you are “considering closing the review without issuing a report” on the survey findings at least partially due to “the most recent draft report [not satisfying] the ‘currency’ criterion found in section 2 of the Inspector General Act.” You add that you “have approved a project proposal under which OIE will administer another survey in Fiscal Year 2023” and state that this future survey “would likely provide DHS leadership with useful information about any changes in response patterns since 2018.” It is unclear why analysis of the original survey results would not be useful to DHS leadership.

Your response to our inquiry has not resolved the significant concerns that we expressed in our April 26 letter. Furthermore, our review of your response has led to additional questions regarding the editorial process and decision making surrounding the draft report and subsequent non-release.

To that end, please respond to the following questions as soon as possible, but no later than July 18, 2022:

³ U.S. Dep’t of Just., Off. of Inspector Gen., *The Handling of Sexual Harassment and Misconduct Allegations by the Department’s Law Enforcement Components* (Mar. 26, 2015).

⁴ *Id.*

⁵ *Id.*

⁶ Draft Report, *supra* n.1 at 15.

1. You state that “[a]n Inspector General is in no position to substitute the subjective preferences of an inspector for the considered strategic judgments of agency attorneys and managers.”
 - a. What is the basis for this assertion that an OIG is in no position to question agency decision-making?
 - b. The Department of State and Department of Justice OIG’s have issued similar reports on sexual harassment in recent years, albeit with slightly different scopes and methodologies. Please explain how the conclusions reached and recommendations made in those reports are substantively different than those reached in the draft DHS OIG report, and why DHS OIG would be stopped from evaluating agency disciplinary decisions in this instance.
 - c. When did you and/or your staff develop this theory? How does this theory guide OIG’s approach to the preparation of reports in general?
2. Regarding the November 2020 report on domestic violence by DHS personnel, you state that “the approved objective of this project was to ‘[d]etermine whether DHS agencies with law enforcement officers and agents are complying with requirements of the Lautenberg Amendment.’”
 - a. Why does this objective, which you state was approved on December 13, 2018, differ from the objective listed in the draft report from May 2020? If the scope of the report was changed between December 13, 2018 and November 13, 2020, please provide an explanation of any changes along with relevant documentation.
 - b. What OIG standards or best practices pertain to changing the scope or objective of a report after the work on that report has been completed?
 - c. Please provide the original scope language that was approved on December 13, 2018.
3. You provide two explanations for why the unreleased sexual harassment and misconduct report was delayed: 1) “DHS OIG staff withheld information about the survey”; and 2) “[t]he report has been delayed further by some OIE staff members’ refusal to accept input from subject matter experts.”
 - a. Did you at any point after December 3, 2020 request a staff briefing on the draft report?
 - b. You state that you did report the survey to DHS leadership on the day you transmitted the response to the Congress. However, it is unclear why the reporting requirement was not triggered upon your learning of the existence of the survey. Please explain why this survey did not meet the reporting requirement of the IG Act which states that an IG “shall report immediately to the head of the establishment

involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment.”⁷

- c. Please provide a description of the changes that were made by OIE staff members in response to input from subject matter experts. Please also provide all finalized versions of the draft report including comments from OIE staff members and subject matter experts.
4. You state that you are “considering closing the review without issuing a report” and that you have approved a new survey.
- a. When did you first consider not releasing a report?
 - b. Please explain the “currency criterion” you noted in your response and why you believe that the survey results do not currently meet this standard. Given that the survey results covered a period of seven years, please explain why OIG analysis of these results would not be relevant for DHS leadership.
 - c. What was the status of the draft report on April 7, 2022?
 - d. What is the scope of the new project proposal which you have approved? Does it differ in scope from the original project scope? And if it does, how so?
 - e. When did you approve this new project proposal?
 - f. How will you determine whether to issue a report based on the proposed project proposal?
 - g. Please provide the proposal and any accompanying documentation.

Thank you for your prompt attention to this important request.

Sincerely,



Richard J. Durbin
Chair



Charles E. Grassley
Ranking Member

cc: The Honorable Alejandro Mayorkas
Secretary of the Department of Homeland Security

⁷ 5 U.S.C. App. 3 §5(d).