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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

July 29, 2022

The Honorable Merrick B. Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

Dear Attorney General Garland:

Department of Homeland Security (DHS) Inspector General Joseph V. Cuffari has reportedly opened a criminal investigation into the apparent deletion of text messages sent and received by DHS and United States Secret Service officials around the time of the January 6, 2021 attack on the Capitol. I write to convey my serious concerns about Inspector General Cuffari's ability to effectively conduct this investigation, and to request that you exercise your authority under the Inspector General Act to assume control of this matter.

In recent days, the DHS Office of the Inspector General (OIG) has informed Congress of ongoing challenges with accessing text messages and other records related to the January 6 attack. OIG first requested these records in February 2021<sup>1</sup>, but, aside from cursory references to access challenges in OIG's two most recent semiannual reports to Congress, did not notify Congress until this month—nearly 17 months later—that OIG had been unable to obtain text messages relevant to its January 6 investigation.

On July 13, OIG informed the House and Senate Homeland Security Committees that relevant text messages had been “erased as part of a device-replacement program.”<sup>2</sup> OIG subsequently informed Congress that the erasure encompassed text messages from high-ranking Trump administration officials and two dozen Secret Service personnel, and that OIG had known of the erasure since at least this February.<sup>3</sup> Last week, following public reporting and criticism regarding the erasure of these text messages, Inspector General Cuffari reportedly opened a criminal investigation into the circumstances surrounding the text messages' deletion.<sup>4</sup>

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<sup>1</sup> Briefing by OIG for Majority Staff, Senate Committee on the Judiciary (July 27, 2022).

<sup>2</sup> Letter from Joseph V. Cuffari to Senate Homeland Security and Governmental Affairs Committee and House Committee on Homeland Security (July 13, 2022).

<sup>3</sup> Briefing by OIG for Majority Staff, Senate Committee on the Judiciary (July 27, 2022).

<sup>4</sup> Pete Williams and Julia Ainsley, *DHS Watchdog Has Launched Criminal Probe into Destruction of Jan. 6 Secret Service Text Messages*, *Sources Say*, NBC News (July 21, 2022).

Inspectors General are entitled by law to full and prompt access to agency records.<sup>5</sup> Delays and stonewalling that inhibit an Inspector General's access to agency records run afoul of the Inspector General Act and are a serious matter warranting timely congressional notification. That is particularly true where, as here, the records are responsive to parallel congressional investigations. Inspector General Cuffari's failure to promptly notify Congress of the Secret Service's months-long refusal to produce text messages that OIG had requested in February 2021, or of the Secret Service's belated admission that those text messages had been erased as part of a device-replacement program, calls into question his ability to effectively and objectively conduct the criminal investigation he recently opened.

The text messages at issue may provide important insight into the actions of senior Trump administration and White House officials on and in the leadup to January 6. As such, their apparent deletion is relevant not only to OIG's investigation and parallel congressional inquiries, but also to the Justice Department's own commitment to "hold everyone, anyone who was criminally responsible for the events surrounding January 6, for any attempt to interfere with the lawful transfer of power from one administration to another, accountable."<sup>6</sup> As Attorney General and our nation's chief law enforcement officer, you have plenary authority to determine how the executive branch executes its law enforcement functions, including the authority to rescind OIG's exercise of law enforcement authority in this case.<sup>7</sup> I respectfully request that you exercise that authority here, given the serious concerns outlined above.

I look forward to your prompt response. Thank you for your time and consideration.

Sincerely,



Richard J. Durbin  
Chair

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<sup>5</sup> 5 U.S.C. App. § 6(a).

<sup>6</sup> Attorney General Garland, NBC News (July 26, 2022).

<sup>7</sup> 5 U.S.C. App. § 6(f)(5).